

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 2nd October, 2007

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### COMMUNICATIONS FROM THE CHAIR

#### DISTINGUISHED GUEST FROM THE HOUSE OF COMMONS IN THE SPEAKER'S ROW

**Mr. Speaker:** Hon. Members, I wish to introduce to you, and to welcome this afternoon, a distinguished guest, Sir Michael Lord, who is seated in the Speaker's Row. Sir Michael Lord is a Deputy Speaker in the United Kingdom, House of Commons, and is on an official visit as a guest of the National Assembly of Kenya. He is here to meet and exchange experiences with colleagues on the development taking place in our respective countries. He is accompanied by Mr. Andrew Kinon, who is a Principal Clerk.

On behalf of the entire House and on my own behalf, I would like to wish them a fruitful and enjoyable stay in Kenya.

#### THE PRESIDENT'S MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. Members, you will recall that on 13th September, 2007, this House passed the Statute Law (Miscellaneous Amendment) Bill, 2007. Thereafter, upon presentation of the Bill to His Excellency the President for his assent, the President, pursuant to Section 46(iii) of the Constitution, refused to assent to the Bill.

In accordance with Section 46(iv) of the Constitution, His Excellency the President has submitted to me a Memorandum indicating the specific provisions of the Bill, which in his opinion, should be reconsidered by this House, including his recommendations for amendments.

The President's recommendations relate to amendments passed by this House to the Anti-Corruption and Economic Crimes Act, Act. No.3 of 2003; The Public Officer Ethics Act, 2003, Act No.4 of 2003, and the National Assembly and Presidential Elections Act, Cap. No.7.

Hon. Members, I have ordered the copies of the President's Memorandum to be availed to all the hon. Members and that the consideration of the Memorandum on Statute Law (Miscellaneous Amendments) Bill, 2007, by the Committee of the Whole House, be placed on the Order Paper on Wednesday, 3rd October, 2007, during the afternoon sitting.

Hon. Members, may I remind you, that in terms of Section 46(v) of the Constitution, this House shall be required to consider the Statute Law (Miscellaneous Amendments) Bill, 2007,

taking into account the comments of the President and to either; (a) approve the recommendations proposed by the President with or without amendments and resubmit the Bill to the President for assent or (b), refuse to accept the recommendations and approve the Bill in its original form by resolution in that behalf, supported by the votes of not less than 65 per cent of all the hon. Members of the National Assembly, excluding *ex-officio* hon. Members.

I urge the hon. Members to carefully consider the Memorandum and be ready for the Committee of the Whole House on Wednesday, 3rd October, 2007, in the afternoon.,

Thank you.

## ORAL ANSWERS TO QUESTIONS

### *Question No.054*

#### STALLING OF MARALAL BUS PARK PROJECT

**Mr. Lesrima** asked the Minister for Local Government:-

(a) whether he is aware of the stalled bus park project at Maralal Town Council; and,

(b) what the value of the contract is.

**The Assistant Minister for Local Government** (Mr. Muchiri): Mr. Speaker, Sir, I beg to reply.

(a) The contract which was procured through open tendering was awarded to Jibrota Contractors Company Limited. The contract commenced on 23rd February, 2006, and was expected to be completed on 24th May, 2007, which has now passed.

The contractor for the project has since December, 2006, failed to carry out any construction work. The Ministry intends to re-advertise the contract once the process of terminating the contract is complete.

(b) The contract sum of the proposed Maralal Bus Park is Kshs52,860,716.15.

**Mr. Lesrima:** Mr. Speaker, Sir, I would like to thank the Assistant Minister for providing that answer. The Maralal Town Council was totally unaware of the award of this contract.

Could the Assistant Minister clarify where this tendering was done? Was it done at the national or the Ministry level?

**Mr. Muchiri:** Mr. Speaker, Sir, this is a contract that was supposed to be funded by the Ministry and not by the town council. All the projects that are funded by the Ministry are administered through the Department of Urban Development, which is in Cianda House. For projects that are funded by town councils, tendering is done by the specific town councils. For projects that are funded by the Ministry, then tendering is done by the Ministry because that is where there is capacity of engineers and all the relevant staff. The contractor is Jibrota Contractors Limited.

**Capt. Nakitare:** Mr. Speaker, Sir, the Maralal Bus Park Project is not the only stalled project. The Ministry of Local Government has a hidden agenda. All over the country, the Ministry has run into a political system where it is initiating projects that it is not completing. They say that they have a tendering system at the Ministry headquarters.

I would like the Assistant Minister to tell us the methodology used at the Ministry to tender and procure for projects in the local authorities. This should include the purchase of a second-hand grader in Trans Nzoia Municipality. This is preposterous!

**Mr. Muchiri:** Mr. Speaker, Sir, I would appreciate if the hon. Member would ask a specific Question regarding Trans Nzoia. We are talking about matters relating to Maralal Town Council.

However, I would like to state that the Ministry uses the normal Government tendering process. We have an Act that has all the provisions regarding procurement and that is exactly what we use.

**Mr. Sungu:** Mr. Speaker, Sir, I am surprised that the Assistant Minister has said that these funds were provided by the Central Government. I thought all funds to local authorities are provided by the Central Government.

What is the Assistant Minister doing to ensure that local authorities have capacity to implement such projects? We are in an era where we want less Government at the top and more Government at the bottom. What is he doing about that?

**Mr. Muchiri:** Mr. Speaker, Sir, we are not lacking in any capacity. We have enough capacity to undertake and manage all the projects in the Ministry. I would like hon. Members to understand that the Ministry of Local Government supervises local authorities in this country. The local authorities have funds that they generate through their own resources. They also receive funds through the Local Authorities Transfer Funds (LATF) from the Central Government. They manage that particular kitty. Any other money that we give to them as subsidies in way of projects, then we manage those funds. So, we are not lacking any capacity. We have engineers and architects, who sit in our Urban Development Department Committee.

**Mr. Sungu:** On a point of order, Mr. Speaker, Sir. The Assistant Minister failed to get the gist of my question. The gist of my question is creating capacity at the local authorities' level and not at the Ministry's level. That is an area in this country which needs to be capacitated, so that the local authorities can implement the projects themselves.

**Mr. Muchiri:** Mr. Speaker, Sir, the Ministry is trying to post such relevant staff to the local authorities. We intend to cluster the local authorities so that we can provide them with engineers and architects. For example, all local authorities in Nyanza will receive the relevant staff who can boost their capacity, so that they can be able to carry out their projects.

**Mr. Lesrima:** Mr. Speaker, Sir, it appears that the Assistant Minister was not given the correct information. The contractor cleared the ground, put up some structures, employed 100 workers, rented premises, but he has disappeared from the site. Could he tell the House the truth because termination of the contract has taken place? Could he also tell this House who will meet the liabilities because the workers are demanding their dues? They have been abandoned on the ground. The rent for the building has not been paid.

**Mr. Muchiri:** Mr. Speaker, Sir, by the time the contractor vacated the site, he had done five per cent of the work. We had not paid him any money at all. If there were any liabilities on the site, that is the responsibility of the contractor and not that of the Ministry of Local Government. I would also like to inform the hon. Member that I travelled to Maralal and was able to inspect that site. I did not see any structures there.

**Mr. Speaker:** Very well.

Next Question.

*Question No.440*

ABOLITION OF CROP CESS

**Mr. Mwanicha** asked the Minister for Local Government:-

(a) whether he is aware that crop cess levied on farmers for maintenance of roads is not utilized for the intended purpose in most parts of the country; and,

(b) whether he could abolish all crop cess considering that many farmers grow a variety of crops for which they pay cess, which amounts to multiple taxation.

**The Assistant Minister for Local Government** (Mr. Muchiri): Mr. Speaker, Sir, I beg to

reply.

(a) I am aware that agricultural produce cess collected from farmers for the purpose of improving rural roads is managed by the Kenya Roads Board.

(b) The Minister will not abolish crop cess since a portion of the revenue from it forms part of the general revenue of local authorities which is used to finance critical services and facilities necessary to improve the livelihood of the people within the area of jurisdiction of the local authority.

**Mr. Mwanicha:** Mr. Speaker, Sir, the Assistant Minister has not come up with any new answer other than the one he had here last time. This Question was deferred because funds do not go through the Kenya Roads Board (KRB). Mr. Maore said that the money comes from the Fuel Levy and not from the crop cess. However, now that we have the Local Roads Authority, the Highways Authority and the Rural Roads Authority, could he consider waiving any further taxation of coffee, tea and pyrethrum farmers for maintenance of the roads, so that all road maintenance in this country is left for the three authorities which we were told in this House will now be able to take care of all the roads in this country without exception?

**Mr. Muchiri:** Mr. Speaker, Sir, I wish to remind the hon. Member that through the Statute Law (Miscellaneous Amendments) Act No.2 of 2002, the Minister for Agriculture stated that all money collected as cess shall be used in maintaining roads and other services in the local authorities. Twenty per cent of such funds is credited to the general accounts of the local authorities. Eighty per cent will be sent to the KRB through the various District Roads Committees (DRC) for rural road maintenance. The hon. Member is aware that the DRC is a composition of chairmen of local authorities, district roads engineers, district accountants, district commissioners and area MPs. Therefore, hon. Members are part of the DRC. So, they are the ones who are actually managing the funds. I do not see the problem, as asked by the hon. Member.

**Prof. Olweny:** Mr. Speaker, Sir, the Assistant Minister says that the crop cess money is supposed to be managed by the KRB. In my district, the crop cess money that is collected from sugar cane farmers is taken to the local authorities. They keep 20 per cent of the money and claim that they use 80 per cent for road maintenance, some of which is not seen. What is he doing to ensure that this money is taken to the KRB instead of the local authorities account where they deduct 20 per cent?

**Mr. Muchiri:** Mr. Speaker, Sir, the local authorities require the 20 per cent for their general fund. That is the only money that is retained by them out of the cess that is collected. As I said, 80 per cent of the cess is passed over. If the hon. Member has any specific problem maybe from Muhoroni, he can direct it to the Ministry and we will sort it out, in conjunction with the Ministry of Roads and Public Works.

**Mr. Arunga:** Mr. Speaker, Sir, I think Mr. Mwanicha meant to say that when this cess was introduced, at that time, we did not have such a fund as the Fuel Levy Fund. So, the Fuel Levy Fund is supposed to go towards the maintenance of roads. Why do we want to levy another tax on farmers when we have money through the Fuel Levy Fund that is supposed to be used to maintain roads? Why tax farmers twice? Why can we not abolish this cess altogether, on all the crops and not just coffee, tea and sugar cane?

**Mr. Muchiri:** Mr. Speaker, Sir, I think it is important for the House to understand that construction of roads is fairly expensive. So, if you can get money from all corners, that is the best for any hon. Member or for any area. The issue of crop cess is a small tax levied on farmers and the money goes to the local authorities. So, we do not, as a Government, see why this tax should not be levied.

**Mr. Mwanicha:** Mr. Speaker, Sir, the truth of the matter is that the Assistant Minister does not seem to understand the whole aspect involved. However, how much money has been collected from cess and remitted to the various authorities through the KRB? Could he table those figures because he does not know?

**Mr. Muchiri:** Mr. Speaker, Sir, that does not appear to have been part of the Question. However, if that information is required, I can provide it to the House or circulate it to the hon. Member.

**Mr. Syongo:** On a point of order, Mr. Speaker, Sir. The question of money being allocated to local authorities for specific projects is a major one and covers the whole country. Would I be in order to ask the Assistant Minister to table allocation of funds from fuel levy as well as LATF for development projects from all local authorities, so that we can follow up on the matter?

**Mr. Speaker:** Mr. Syongo, just ask the Assistant Minister to do that and he will do so. Will you, please, put your question?

**Mr. Syongo:** Mr. Speaker, Sir, when can the Assistant Minister table before the House allocations of development funding from the KRB, LATF as well as LASDAP for all local authorities, so that the country can know exactly what money has been allocated and how much has been spent for the intended purposes?

**Mr. Muchiri:** Mr. Speaker, Sir, I appreciate the question by Mr. Syongo. I have already instructed the PS to the Ministry to prepare that particular list. I believe that list will be here before the House adjourns and I will be able to table it.

**Mr. Mwanicha:** On a point of order, Mr. Speaker, Sir. This is a definite Question. The Assistant Minister wants to buy time. When will this information be brought before the House? Would I be in order to ask him to be more specific?

**Mr. Speaker:** Order, hon. Members. Mr. Mwanicha, you did not ask that in your Question. The Assistant Minister has been pressed by the hon. Member to table that document. He has promised that he will do so, if, between the time of its preparation and completion, Parliament will still be in session. So, just pray that, that will be the position.

Next Question.

*Question No.101*

TARMACKING/UPGRADING OF  
ROADS IN AMAGORO

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

(a) whether he is aware that roads C34 (Malakisi-Lwakhakha) and C43 (Busia-Malaba) are security roads and are annually allocated very little funds for their repair and maintenance;

(b) what measures the Ministry is taking to ensure grading and murraming of the roads; and,

(c) when Road C43(Busia-Malaba) will be tarmacked.

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

(a) I am aware that Malakisi-Lwakhakha Road C34 and Busia-Malaba Road C43 are security roads and that they are adequately allocated funds annually for repairs and routine maintenance.

(b) The Ministry is processing issuance of funds for routine maintenance and spot rehabilitation of the roads as per Road Maintenance Levy Fund Budget for major roads for financial year 2007/2008.

(c) My Ministry will include Busia-Malaba Road in the budget proposals for financial year 2008/2009 for design and tender documentation for construction to bitumen standards. Tendering and commencement of construction to bitumen standards will be included in the budget proposals for the financial year 2009/2010.

**Mr. Ojaamong:** Mr. Speaker, Sir, could I know from the Assistant Minister how much has been earmarked for the spot repairs and murraming of these two roads this financial year?

**Eng. Toro:** Mr. Speaker, Sir, these roads are in Busia, Bungoma and Teso Districts. The road that traverses through Busia will receive Kshs3.6 million for the section passing through Busia totalling 13.4 kilometres. The section traversing Bungoma which is 21.9 kilometres will receive Kshs7.2 million. The section traversing Teso which is 10.4 kilometres will receive Kshs1.650 million. The Malava Busia Road which is entirely in Teso District and measures 24.8 kilometres will receive Kshs13 million this financial year.

**Mr. Sungu:** Mr. Speaker, Sir, the Assistant Minister must agree with me that he is aware that most roads in the western part of this country are past tense; they are all gone. It now takes over 10 hours to go from Nairobi to Kisumu. Now there is a tendency to do spot patching. When it comes to specific areas like Nyanza, instead of using tarmac to repair tarmac, they use murrum to repair tarmac. It is like repairing a piece of cloth with paper. It does not match and does not last. What will he do to ensure that this tendency stops because it is a waste of public money and to ensure that these roads are repaired adequately like those in other parts of the country?

**Eng. Toro:** Mr. Speaker, Sir, it depends on the condition of the road. The section that Mr. Sungu is talking about is so dilapidated that we cannot patch it using bitumen. The easiest and most convenient way is to use gravel which is a bit cheaper, more convenient and quicker to repair.

**Mr. Speaker:** Last question, Mr. Ojaamong.

**Mr. Ojaamong:** Mr. Speaker, Sir, I think I am satisfied with the answer.

**Mr. Speaker:** Very well.

Next Question.

*Question No.326*

NON-PAYMENT OF PENSION DUES  
TO MR. VITALIS OROGO

**Prof. Olweny** asked the Minister of State for Administration and National Security:-

(a) whether he is aware that Mr. Vitalis Aguko Orog, No.1988034740, who was the Assistant Chief of Kamswa North Sub-Location, Miwani Division, Muhoroni Constituency, retired from the Civil Service on 30th June, 2005;

(b) whether he is further aware that Mr. Orog has not been paid his pension dues since he retired; and,

(c) what efforts he is making to ensure that the pension dues of Mr. Orog are released to him.

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

(a) I am aware that Mr. Vitalis Aguko Orog, an Assistant Chief, retired from the Civil Service on 30th June, 2005.

(b) I am also aware that Mr. Orog has not been paid his pension dues.

(c) His claim papers have, however, been prepared and submitted to the Director of Pensions for computation and payment, on 20th August, 2007, and the case was passed by the Directorate of Pensions verifiers on 27th September, 2007.

Thank you, Mr. Speaker, Sir.

**Prof. Olweny:** Mr. Speaker, Sir, Mr. Orog came to the Office of the President to follow up this case some time in June, and he was told that his file could not be traced. I had to put this Question to the Minister for him to get the file. Is it necessary for this to be done? Could the Assistant Minister tell this House why hon. Members have to bring here cases like this one? This should have been done by the Government so easily! Why?

**Mr. Munya:** Mr. Speaker, Sir, this is a unique matter. This particular Assistant Chief was

appointed as support staff, on temporary basis, in November, 1974, in the then Ministry of Public Works. Later on, in 1998, he was promoted to Assistant Chief II, but due to an oversight his terms of service were not regularised when he joined the Provincial Administration. This anomaly was only discovered after his retirement. It took some time for the Ministerial Advisory Committee to ratify his position as an Assistant Chief. That is what has delayed his payment. However, everything is now okay, and he is going to receive his money.

**Mr. Sambu:** Mr. Speaker, Sir, the Assistant Minister has said that this is a unique case. I have several cases, one of which is that of a retired Paramount Chief, who worked in many places, including Laikipia District. His name is Steven Kirua. He is now 89 years old, but he has not been getting his pension since 1999. I have written over six letters. There is a problem with the filing at the Pensions Department. Could the Assistant Minister sort out the filing problem at the Pensions Department, so that pensioners can get their pensions, or so that, at least, their files can be found?

**Mr. Munya:** Mr. Speaker, Sir, the work of my Ministry is to process the documents and forward them to the Director of Pensions. It is the business of the Director of Pensions to pay. So, in this particular case, there were the reasons that I have given, which caused the delay. If there is a specific case which Mr. Sambu wants us to follow up, we can do so. The delay in this particular case was because Mr. Orogoo was initially employed in another Ministry, and his position was never regularised in our Ministry until his retirement. So, computation of his dues took time. However, that has now been done, and he should collect his money.

**Mr. Rotino:** Mr. Speaker, Sir, I want the Assistant Minister to be very sincere. If he goes to the Office of the President right now, he will get a long queue of assistant chiefs and chiefs, coming all the way from as far as Turkana. They have stayed there for more than a week. How long does it take him to process documents and submit them to the Director of Pensions? The Office of the President is where the problem is. How long does it take him to prepare documents? In my constituency, there are chiefs who have died without getting their retirement benefits.

*(Loud consultations)*

**Mr. Speaker:** Order! Order, hon. Members! I think this afternoon, we have two parallel Parliaments, one of which is at the last bench on my right, which is ably chaired by Ms. Ndung'u! So, can I bring them to order!

Mr. Assistant Minister, as you answer this Question, you may wish to address your mind to the amendment to the Pensions Act that was passed by this House as a result of the efforts of the Deputy Speaker.

**Mr. Munya:** Mr. Speaker, Sir, I am very much aware of that amendment but, in practice, sometimes things become difficult because of the processing they have to go through.

I am not speaking generally for all the Government departments, but I am saying that this was a particular case which had a unique problem. If Mr. Rotino has specific issues, he can bring them forward and I will take action on them, but talking on generality will not help.

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

**Mr. Speaker:** Is that Mr. Marende?

**An hon. Member:** It is Mr. Ahenda!

**Mr. Speaker:** Very well; Mr. Ahenda!

**Mr. Ahenda:** Mr. Speaker, Sir, Mr. Marende sits near me but he does not look like me.

**Mr. Speaker:** Does he not? How do you know?

*(Laughter)*

**Mr. Ahenda:** He wears spectacles, Mr. Speaker, Sir.

**Mr. Speaker:** Anyway, proceed with your question!

**Mr. Ahenda:** Mr. Speaker, Sir, you have just mentioned what I wanted to say about the amendment to the Pensions Act, of which the Office of the President is the worst offender. The delays of pensions are caused by the processing at the Office of the President, and not at the Directorate of Pensions, as the Assistant Minister would like us to believe. Could he confirm that the Act, as amended, is operational, and they are implementing it, so that pensions can be processed even before a retiree's last day in office?

**Mr. Munya:** Mr. Speaker, Sir, I am not aware that the Office of the President is the worst offender. In the case of this retired officer, the Government had to regularise his position and work out what benefits he was supposed to get in his new position. In fact, it was like ratifying something that had already happened. He had been appointed an assistant chief, but he was never regularised into that job. So, the Pensions Department had to work out his pension to know how much it was supposed to pay the officer. That is why it took time. However, if the hon. Members have other cases, they can bring them forward and we will deal with them.

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

**Mr. Speaker:** What is it?

**Mr. Ahenda:** The Assistant Minister has evaded my question, which was whether the Pensions Act, as amended, is operational and whether they are implementing it.

**Mr. Munya:** Mr. Speaker, Sir, the hon. Member needs to know that the Act is operational. Obviously, once an Act is signed into law, it becomes operational. So, it is operational.

**Mr. Speaker:** Very well! Last question, Prof. Olweny!

**Prof. Olweny:** Mr. Speaker, Sir, if the Act is operational, then this Assistant Chief will be paid with some interest! Anyway, my question to the Assistant Minister is this: The Office of the President gets a lot of money each year, which is passed by this House. Today, we are living in a highly computerised world. Do you still need those huge paper-back files? Why can you not computerise all the data regarding an employee, so that you can just press a code on a computer keyboard and get all the information? Why do you still rely on those yellow pieces of paper, which are stuck together?

**Mr. Munya:** Mr. Speaker, Sir, I agree with the hon. Member that part of our problem is the paper work. The computerisation process is on course. Soon, this will be history.

**Mr. Speaker:** Very well! The Last Question on the Order Paper by Prof. Oniang'o!

*Question No.455*

NON-PAYMENT OF BENEFITS TO  
LATE OMUSUNDI'S WIDOW

Prof. Oniang'o is still absent! The Question is dropped. It falls on its face!

*(Question dropped)*

Hon. Members, that marks the end of Question Time. There is an Assistant Minister who wanted to issue a Ministerial Statement!

Proceed, Mr. Munya!

**MINISTERIAL STATEMENTS**

ASSAULT ON ODM LEADERS  
AT NYAMARAMBE



**The Assistant Minister, Office of the President** (Mr. Munya): Mr. Speaker, Sir, on 25th September, 2007, the hon. Member for Kajiado Central Constituency, Maj-Gen. Nkaiserry, requested for a Ministerial Statement from the Minister of State for Administration and National Security regarding an incident that took place in South Mugirango Constituency in Kisii South.

Mr. Speaker, Sir, on 21st September, 2007, Mr. Nyachae, the hon. Member for Nyaribari Chache Constituency and the Minister for Roads and Public Works was the chief guest in a fund-raising in aid of the youth of South Mugirango Constituency. The Minister arrived at Riosiri Secondary School at about 10.35 a.m. in a chopper, and was met by the host, Mr. Reuben Oyondi, an hon. Member of the East African Legislative Assembly in Arusha, among other politicians of FORD(P) within South Mugirango Constituency. There were other hon. Members and leaders from the larger Kisii region.

Mr. Speaker, Sir, after taking lunch, the Minister left by road to the venue of the fund-raising at Nyamarambe Sports Ground. At about 12.15 p.m., all the guests were seated. They were being entertained by songs by a group of youths wearing Kisii community regalia. At about 12.30 p.m., the chopper for Mr. Nyachae landed at a distance of about 600 metres at the back of the dais. The youths finished entertaining the guests and went to where the chopper was parked. At about 12.50 p.m., another chopper landed and was parked near that of Mr. Nyachae. The following hon. Members allied to the Orange Democratic Movement (ODM) alighted from the chopper. They were Messrs. Samoei and Magara. There was also Mr. Chris Obure and Mr. Chris Bichage, a political aspirant in one of the Kisii constituencies.

At the dais, political aspirants were delivering their speeches to the audience. The presence of ODM politicians did not go down well with the youths who saw it as an act of provocation because the Harambee had been planned by Mr. Nyachae. Consequently, when the ODM politicians were walking towards the dais, they were attacked by the armed youths. The pilot who had flown them to the venue sensed danger and took off. As a result, Messrs. Samoei and Omingo, the aspirant, Mr. Bichage, and an administration police constable, Mr. Jonathan Osoyi, the escort for Mr. Omingo, were injured.

Mr. Speaker, Sir, the injured hon. Members left the sports ground with help from a vehicle which was in the vicinity. They were taken to Rongo Township where they boarded their chopper to Nairobi. The Administration Police constable Mr. Osoyi was rushed to Tabaka Mission Hospital where he was treated and discharged. The fund-raising exercise, which was attended by about 1,800 people ended at 4.00 p.m. Investigations were commenced immediately. Statements from witnesses have been recorded vide Ogembo Inquiry File No.1 of 2007. Those suspects were arrested and later released under Section 22 of the Police Act pending further investigations. They will be arraigned in court once investigations are finalised.

Thank you.

**Mr. Speaker:** Hon. Members, just seek clarifications! This is not Question Time! I will begin with Mr. Marende!

**Mr. Marende:** Mr. Speaker, Sir, among other things, the Assistant Minister has said that there were youths wearing Kisii community regalia. Could he clarify whether that community regalia include bows, arrows, swords and metal clubs? In that clarification, could he clarify why an hon. Member of the Cabinet, who was captured on camera inspecting a guard of honour mounted by those youths, has not been arrested and charged for involving himself in war-like activities and/or incitement?

**Mr. Sungu:** Mr. Speaker, Sir, under the Public Officer Ethics Act, hon. Members, Cabinet Ministers and other leaders are not supposed to conduct Harambees as guests of honour.

The Assistant Minister has said that, that Harambee was owned by Mr. Nyachae and, therefore, it was a provocation for other people to go and attend it. Could he clarify whether that Minister is above the Public Officer Ethics Act, which was passed by this very House?

**Mr. Speaker:** Mr. Sungu, I expected you, in all honesty, not to restrict that particular bit to that occasion. Why are you not brave enough to say: "Why have you all breached the law, including you, by conducting Harambees?" Please, be sincere and honest! Ask that question!

**Mr. Sungu:** Mr. Speaker, Sir, why has the Government allowed that particular law to be continuously and deliberately flouted by leaders, particularly hon. Members and Cabinet Ministers, who seem to have an endless source of money?

**Mr. Manoti:** Mr. Speaker, Sir, after that Harambee, quite a number of innocent people were beaten up along the Kisii-Kipsigis border. Some matatus were burnt. One councillor from Kisii Municipal Council by the name of Mr. Mrefu, and who attended that Harambee, was also beaten up.

Mr. Speaker, Sir, could the Assistant Minister enlighten us as to what action has been taken? What mechanism have they put in place to control the two communities from fighting? Those are innocent people who are being affected and yet, they had nothing to do with the Harambee!

**The Assistant Minister, Office of the President (Mr. Munya):** Mr. Speaker, Sir, I said at the end of my Ministerial Statement that we are investigating all the aspects of that incident. We want to know who were involved. We want to know whether those particular youths were ordinary youths in Kisii regalia or they were criminals. All those aspects are being investigated.

On the issue of inspecting a guard of honour, if it took place, we are also investigating. I do not think there is any criminal offence related to inspecting a guard of honour. But we are investigating every aspect. If we find evidence incriminating individuals who were involved in those acts of violence, the law will take its course.

Mr. Speaker, Sir, we also need to ask politicians here not to be selective, when they are protesting against violence. There is violence everywhere. The other day, there was a political rally in Kibera and youths were pelting people with stones. Unless we behave responsibly, the police will not be able to contain those situations. The police will not be able to deal with a culture. It is an entrenched culture where politicians use thugs to take care of their meetings and deal with their opponents. That is where the buck stops. It stops with all the leaders from both sides of the political divide.

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

**Mr. Speaker:** What is it?

**Mr. Marende:** Mr. Speaker, Sir, with due respect, the Assistant Minister has not answered by question. He said they are investigating. I said that those activities were captured on camera. What other evidence does he need? We saw those persons on television screens. We know who was involved. We know that police officers were present. We know how the youths were armed. What other evidence does he need?

**The Assistant Minister, Office of the President (Mr. Munya):** Mr. Speaker, Sir, I have not been given a report by the police. They are independently conducting their investigations. If Mr. Marende wants to help them with the information which he seems to have, he can go to one of the police stations and provide the information. But as I emphasised, let all the politicians in this House take responsibility and restrain themselves as we approach the elections period. We are investigating all acts of violence, including the one in Kisii, Kibera and any other violence that may take place anywhere as we go for elections.

**Mr. Raila:** Mr. Speaker, Sir---

**Mr. Speaker:** And please, do not forget that you are seeking clarification!

**Mr. Raila:** Yes, Mr. Speaker, Sir.

**Hon. Members:** Mr. Livondo!

**Mr. Raila:** Do not talk about Mr. Livondo!

*(Loud consultations)*

**Mr. Speaker:** Order! Order, Members! You must also sit down, Mr. Raila! No hon. Member has a right to bring violence to this House. At least, here, I am in charge. Here, you will not be given any latitude to create any violence. As a matter of fact, if you go through the HANSARD, you will realise that I have pleaded with hon. Members of this House to treat Kenyans as human beings. They are not toys. They feel pain and they die. You, as leaders of this country, owe it to every Kenyan to ensure that in your quest for power, Kenyans do not suffer. It is legitimate to seek political power, but it is illegitimate, immoral and unlawful to use violence to attain it. I plead to all of you. You may not listen to me, but let it be on record. Please, ensure that you, and Kenyans in general, go through the 2007 General Election safely so that after it is concluded, we are all there as one nation and one people, safe. Please, listen, at least, to me.

Thank you. Proceed, Mr. Raila!

**Mr. Raila:** Mr. Speaker, Sir, I want to thank you for the remarks that you have just made on this issue. We all need to appreciate that Kenya will exist beyond the 2007 General Election. Therefore, it is important that all of us, as leaders who are competing, uphold peace and speak the language of peace.

*(Applause)*

Mr. Speaker, Sir, we have said very well that we want all the cases of violence, including that of Mr. Livondo in Lang'ata Constituency, to be investigated. I have come out clearly to say that I want a fair contest with Mr. Livondo. If he defeats me, I will concede defeat. That is why we also want to urge the other side to assure us that there is peace. However, Members of Parliament are not just ordinary people. If, for example, an hon. Member comes to hold a function in my Lang'ata Constituency and I try to go there to the public function and he tells me, "No, this is a private function", I will not interfere.

So, Mr. Speaker, Sir, the incidence that took place in Kisii was very ugly. The hon. Member who was involved in this function has personally admitted to the country that he has no regrets over what happened to his own colleagues on that particular day.

**Mr. Speaker:** What are you seeking?

**Hon. Members:** Seek clarification!

**Mr. Raila:** Mr. Speaker, Sir, I am seeking---

**Mr. Speaker:** Order, Members! Order, Raila! *Mhe. Raila, kidogo tu.* Will you sit down all of you, please?

I am extremely tolerant on this issue because I feel it from the bottom of my heart that it should not happen in Kenya. I really want you to listen to me, if you can. I hate this!

I think every sane Kenyan should hate, detest and abhor it. So, please, can you shorten this matter? We should all move forward with one agreement that whatever we do during the election, let us keep Kenya safe. That is it!

**Mr. Raila:** Mr. Speaker, Sir, I just need two clarifications. I would like the Assistant Minister, with regard to the Kibera case, to confirm or deny the story that I have received that there are plans to harm Mr. Livondo in Kibera and then blame it on me. Secondly, could he confirm whether hon. Simeon Nyachae has recorded a statement with the police over the incident that took place in Kisii?

**The Assistant Minister, Office of the President** (Mr. Munya): Mr. Speaker, Sir, I do not know who has or has not recorded a statement because that is the work of the police. The police are supposed to do investigations independently. They are not supposed to be directed by Ministers. They are supposed to do their work independently as professionals. So, whether Mr. Nyachae has recorded one or not, I do not know. The information I have is that investigations are going on well and they are not being restricted to Kisii violence only. The investigations---

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

**Mr. Speaker:** Order! Order! Mr. Syongo, will you, please, sit down? It is that kind of attitude that brings trouble to this country. You have no ability and patience to listen to a colleague. You will have to learn it here. Whether you like it or not, you will hear him.

Proceed!

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

**Mr. Speaker:** Will you sit down? He will have to finish his bit, my friend!

**The Assistant Minister, Office of the President** (Mr. Munya): Mr. Speaker, Sir, I was saying that the investigations are not restricted to the violence that took place in Kisii, rather they have been extended to the violence that took place in Kibera the other day. The police are also investigating whatever led to the burning of houses and the carjacking of matatus on the way and people being beaten. All those incidents are under investigation and the law will take its course.

Mr. Speaker, Sir, as to whether the Government is planning to harm Mr. Livondo, that is completely baseless. I hope that the opposite is not true, that is, somebody could be planning to harm Mr. Livondo to blame it on the Government.

*(Applause)*

That statement could be made so that should something happen to Mr. Livondo, which is planned by somebody else, it is blamed on the Government. The responsibility of the Government is to protect everybody and to give every campaigner an opportunity to campaign.

I would like to plead with hon. Members here that if the police have licensed a rally or a meeting for an opponent, they should restrain themselves from going to attend that meeting. That will help in preventing supporters from clashing and violence taking place. If you belong to a different party and your meeting is licensed, please, do your meeting and avoid other people's meetings.

Mr. Speaker, Sir, I would also like to plead with hon. Members not to own this country. Let us give every Kenyan an opportunity to ask for his votes anywhere. They should not arm youths to prevent people from attending rallies or asking for votes in any part of this country. If that is done, the police will have an easy task. However, for as long as we continue promoting a culture of violence and intolerance, the police will never be enough to stabilise this country.

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

**Mr. Speaker:** I think I will recognise the last one from the hon. Member for Gwassi. It appears like there is something that is really burning.

**Mr. Syongo:** Thank you, Mr. Speaker, Sir, for acknowledging that there was something burning me.

Mr. Speaker, Sir, first of all, I want to assure you that the Member of Parliament for Gwassi cannot have an attitude which can bring any violence in any part of this country, including this House.

**Mr. Speaker:** Thank you for the assurance.

**Mr. Syongo:** Mr. Speaker, Sir, you heard the Assistant Minister say very clearly that he does not know and, therefore, does not wish to comment on whether or not hon. Nyachae has recorded a statement with the police.

Mr. Speaker, Sir, the police are answerable to this House through that same Assistant Minister! Is he in order to deny his responsibility? Is he in order to deny this House information

which we are entitled to? This is a very serious matter. The entire community of Kisii cannot survive if they do not relate and live amongst others outside Kisii District. They cannot!

*(Loud consultations)*

**Mr. Speaker:** Order, Order! Mr. Syongo, you have just back-tracked from what you had promised and assured me. It sounds to me like a threat. You will sit down! I will not allow that to happen here. I will not allow! I repeat: Kenya will exist even if all of us present here, were to lose our seats.

I want to repeat again that, Kenya will not come to a standstill because the totality of the Ninth Parliament has been voted out. It is their right to return or to refuse to return any one of you or all of you.

Let us give them that chance to do so in a peaceful manner. That ends the story.

Next Order! Sorry! Dr. Kituyi.

TERMS AND CONDITIONS OF NEW  
TRADE CO-OPERATION REGIME

**The Minister for Trade and Industry** (Dr. Kituyi): Mr. Speaker, Sir, last week, hon. Ndambuki sought a Ministerial Statement regarding the status of negotiations of an economic partnership between Kenya and the European Union. He specifically sought three issues. One, whether we have completed the negotiations with the European Union.

Two, whether the European Union is threatening to lower the market access for our products. Three, what will happen if the European products are flooding the Kenyan market.

Mr. Speaker, Sir, I beg to issue the Statement as follows:-

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Order! You know, when we were dealing with violence issues, everybody was seated and attentive. When we deal with commerce issues, nobody is interested. Those who are not interested in anything other than violence may leave quietly.

Proceed, Minister!

**The Minister for Trade and Industry** (Dr. Kituyi): Thank you, Mr. Speaker, Sir. Today, Kenya, with other members of the African, Caribbean and Pacific countries, are negotiating a new regime of trade relationship between the European Union and themselves, at the expiry of the non-reciprocal preferential arrangement which has served us for the past 25 years.

Mr. Speaker, Sir, in the Agreement of Cotonou - that is the basis under which we are negotiating - we must complete an agreement by 31st December, this year. We have not completed. We are satisfied that we will not be able to complete everything in an acceptable way. But in order not to disrupt trade flows, we have agreed with the European Union that some key pillars of the new economic partnership agreement have to be completed before the end of December. Then we can sign non-interruption of current trade flows and complete other detailed work later. The pillars that have to be completed are:-

One, the development issues, including commitment of secure determined resources in the European Development Fund (EDF) and other instruments.

Number two, market access definition to keep the promise of the original mandate that nobody will have less market access in January next year than they had when we started negotiating EPA. There are some areas which have been rather difficult. But we have made very significant progress over the past two weeks at negotiations in Kigali, and at the Council Meeting of Ministers in three weeks in Djibouti. We hope to finish the most critical outstanding issues.

The bit of problem that we have is the demand by the European Union for substantial market access opening and reduction of tariff from us upfront, come January next year.

On the second question, I am aware that Europe is threatening lowered market access.

*(Loud consultations)*

**Mr. Speaker:** Order! Order! The Minister will be heard! There will not be a discussion across the Table. All address is through me. Please, listen to the Minister! If you have anything to ask him later, I will avail the opportunity to you. Please, listen!

Mr. Syongo, could you, please, approach the Chair?

*[Mr. Speaker left the Chair]*

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

**The Minister for Trade and Industry (Dr. Kituyi):** Mr. Temporary Deputy Speaker, Sir, on the question of the threat to reduced market access, it is true that both the European Union and the ACP countries submitted to a promise that if, by the end of December, the agreement they want to have is not compatible with the waiver that was given under the World Trade Organisation (WTO) - that means that it is reciprocal - the current market access will be substantially reduced. But we sense that we must make enough progress for that dire situation not to occur.

On the third question, on how we intend to defend Kenya from a flood of cheap European imports; number one, we have a list of 1,700 products that we consider sensitive. We have two different regimes that we use on this as the insurance policy. One, areas where we think Europe can flood our markets, we are seeking extended period before tariff reductions are implemented for as long as 25 years. Number two, we have build-in triggers that if there is a surge in imports, we can apply some mechanisms on special products that stops any further imports of those that demonstrate that they will erode our economic security. Number three, we are looking for a limited range of products only, which we can allow Europe to export to us immediately. For example, Europe is free to export to Kenya flowers without paying any duty from January next year.

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

*[Mr. Speaker resumed the Chair]*

**Mr. Speaker:** Yes, Mr. Ndambuki

**Mr. Ndambuki:** Thank you, Mr. Speaker, Sir. I would like to thank the Minister. But, Mr. Minister, could you take this issue seriously and tell Kenyans exactly what is going to happen? That is because many Kenyans out there are asking many questions. If you went through the newspapers today, they are raising concerns. You have not even addressed the concerns that I have raised. You know it in your head, but we do not know it. Could you seriously be open and tell us exactly which are the countries you are negotiating with? When are you likely to sign the agreement?

Two, if you sign that document with the European Union, 65 per cent of Kenyan industries will go down. That is because our industries cannot compete with European industries. Those are the things we want to know. That way, our people will know what to expect. I know that you are negotiating. I know that you are going to have an extension. But the farmers and exporters would like to know exactly what the country is doing. Last week, there was an advert in the newspaper

asking Kenyans to fight against that. On Thursday last week, there was a demonstration in all the European countries against the European Union for putting pressure on African countries. So, please, I know that you know it, but let us also know it!

**Mr. Raila:** Mr. Speaker, Sir, over and above the concerns raised by hon. Ndambuki, I would like the Minister to clarify to the House about the scope of those negotiations, particularly as regard the East African countries. I know that there have been proposals that the East African countries - that is Uganda, Kenya, Tanzania, Rwanda and Burundi - to negotiate with the European Union as a group. The information that I have is that Kenya is resisting that.

I would think that if they negotiate as a group, our bargaining position would be stronger. Could the Minister throw some light about that? What is the position of Kenya as regards that?

**The Minister for Trade and Industry (Dr. Kituyi):** Mr. Speaker, Sir---

**Mr. Speaker:** I wonder, Mr. Minister, whether you could wait a little, as I take on board all those who are seeking clarifications. Then, you will return!

Mr. Lesrima!

**Mr. Lesrima:** Mr. Speaker, Sir, hon. Ndambuki requested the Minister to inform us. I would like the Minister to clarify what method he is going to use to inform Kenyans. I am aware that there is a lot of information on the website.

Mr. Speaker, Sir, I am also aware that the Permanent Secretary and the Minister are continuously in the media informing Kenyans about that subject. Could the Minister also consider giving that information to inter-sectoral groups such as farmers at the provincial level and all the way down, so that this matter could be known by everybody?

**Mr. Syongo:** Thank you, Mr. Speaker, Sir. I would like to seek three clarifications. First, the Minister talked about the development component of the agreement. The purpose of the development component in the agreement is to help specific sectors to achieve competitiveness so that reciprocity

does not harm our market. Could he give us an assurance on the amount of money they have committed, which particular sectors are targeted and the time lines?

Secondly, there is the issue of Kenyan producers. Presently, Kenya exports much more to non-European markets compared to European markets. What assurance is he giving us that, by coming here and flooding our market, our competitiveness in the non-European markets will not be undermined?

Finally, could the Minister assure this House that before he puts his signature on that agreement, that the agreement will be brought to Parliament, discussed fully and ratified before it is actually made official? I say this because it is important that we do so. This agreement could completely destroy our economy, unless we are very careful.

**The Minister for Trade and Industry (Dr. Kituyi):** Thank you, Mr. Speaker, Sir. I, first, want to thank hon. Ndambuki for bringing this matter up. This is a very serious matter. It is a matter that can erode most of the gains we have made in the recent past. It is a matter that has to be treated with the seriousness it deserves.

Having said that, I wish to say the following---

*(Loud consultations)*

Could you protect me from the leader of TIP?

**Mr. Speaker:** Order! Order! Could you, please, sit down, Mr. Minister?

Earlier on, I invited all hon. Members who are not ready to listen to commerce, who are only keen to listen to issues related to violence, to kindly leave the Chamber. Those who were left here are hon. Members who are interested in the welfare of the Kenyan people. There is nothing more fundamental in the welfare of the Kenyan people than what we are talking about; commerce and business that generates employment, money and progress. So, please, listen!

Proceed, Mr. Minister!

**The Minister for Trade and Industry** (Dr. Kituyi): Mr. Speaker, Sir, I wish to mention, from the outset, that when the World Trade Organisation (WTO) decided that the traditional preferential market access we have enjoyed with the European Union for 25 years must come to an end because it was unfair to other countries which were trying to get to that market, it was not an act for our development. It was a hostile act. We are negotiating a new regime where we have been promised to have as much market access as we have been having, but where we must start opening our doors. We must make concession. This is painful! We are trying to find the most vulnerable sectors and industries and draw up a list of the most sensitive products and services which we will reinvest and say that we cannot reduce tariffs on them for the next 25 years. We have 1,700 products. So, it is not true that immediately we sign an economic partnership, our market will be flooded by cheap goods from Europe. Our market is protected through a list of sensitive products over a staggered period of time from such a flood. That is one.

Secondly, let me take up the issue hon. Lesrima raised before I come to what hon. Raila raised; the issue of popularising the negotiations. At my Ministry, we have operated an open door of all organised sectors of society with an interest and a capacity to contribute in developing Kenya's position. We are involved in the national negotiating mechanism under the KEPLA Trade. We even give them training to understand the issues and then they contribute to the negotiations.

The problem we have is that some sections of the civil society which come with us to develop the Government negotiation position, later on join the European Non-Governmental Organisations (NGOs) to demonstrate against the position they have helped to develop. European NGOs do not help in shaping the position of the Government. Similarly, over the past three weeks, there have been two forms of communications. One, the bombardment to Parliamentarians to ask their Governments to stop negotiating Economic Partnerships Agreements (EPAs) and buying space in newspapers declaring why we should stop negotiating EPAs. Yes, we can stop EPAs. However, that is like the prerogative of a harlot. The NGOs can say that we stop negotiating and walk away. They do not carry any bucket. You and I know that unlike the Less Developed Countries (LDCs), Kenya will totally lose, at least, 70 per cent of its horticultural exports to Europe by January next year if there is no successor to the current regime of negotiations. So, saying that we should just walk away is walking away from responsibilities. Some people have suggested in published articles that we should negotiate for a Generalised System of Preference (GSP). A GSP is a unilateral offer! It is a favour! It can be withdrawn any time. It cannot be the basis of long term finances of, for example, infrastructure. On the issue of Development Matrix by hon. Syongo, there are two key components. One is that since the Fifth Ministerial Meeting of WTO in Hong Kong on 6th December, 2005, there is a new commitment to aid for trade. All major development partners said that we were going to discipline the development aid to strengthen the trading ability of developing countries to address infrastructural constraints for reaching markets competitively. All EDF funds, EDF 10 and 11 on infrastructure is now being parcelled as part of aid for trade, which is being negotiated in the development matrix.

Similarly, there are the traditional development concerns listed in the Millennium Development Goals (MDGs). We told them to discipline their commitments to make aid contribute to achieving the MDGs as agreed by all the developing countries.

Regarding the issue that hon. Raila raised, I wish to make a certain clarification. I have been vilified in the Parliament of Tanzania as an enemy of East Africa negotiating EPAs together. I need to bring out this clearly. I share the fact that we have strength in numbers. If you are looking forward to negotiate for 1,700 items as sensitive products, the more you are, the better it is for you. Where is the difference between I and Tanzania? Tanzania, having left the Southern Africa Configuration, because it is now exclusively SACU and it can never be a member of SACU, wanted to join and negotiate with us on the same side. However, Tanzanians said that they had done a patriotic duty as East Africans by pulling out of the SACU. We now want Kenya, Uganda,



Rwanda and Burundi to do a similar patriotic duty by pulling out of the Eastern and Southern African configuration (ESA). In ESA, we are 16 countries. In the EAC, we have five countries. If it is a matter of strength in membership, the logic is that we should invite Tanzania to join us with other ESA countries and not to sacrifice the larger configuration to become less. That was the issue of contention.

*(Applause)*

At the last Summit of the East African Community, our President instructed the Ministers of Trade to explore the possibilities of negotiating an Economic Partnership Agreement (EPA) as EAC. I think we must work on the EAC plus. East Africa should sign as one because we have a Customs Union. The more we are, the more we open the frontier for Kenya's commerce to prosper and expand. We are at the point where it is in our advantage not to turn our backs on the Democratic Republic of Congo, Sudan, Zimbabwe and Malawi, which are offering to negotiate as part of the same team with Kenya. That is why those who see a problem in expanded mandate are seeing as if Kenya wants to negotiate alone. However, we are ready to share with Tanzania our common position and sign an EPA when it is ready together.

The last issue was about bringing the agreement to Parliament. On the 31st day of December, 2007, the current regime of preferential market access comes to an end. We must have signed the agreement by 31st December. If the hon. Member will convene Parliament between the end of November and the last day of December to sign, I will be glad to bring it here.

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

**Mr. Speaker:** Order, hon. Members! You cannot have a person as patient as I am. I have given you all the latitude, but you know at some stage we must go to business. I think we have had very able interventions by hon. Members on this issue, which is very important. We have also had very able responses by the Minister.

I want to applaud all of you for being very alert to the interests of Kenyans in matters of trade. Its all accolades to all of you, but we must now go ahead.

Mr. Weya!

## POINT OF ORDER

### OPERATIONALISATION OF THE PERSONS WITH DISABILITIES ACT

**Mr. Weya:** On a point of order, Mr. Speaker, Sir. For over four weeks, I have been asking the Government to give a Ministerial Statement on the Persons with Disabilities Act, because it has not been operationalised. The issue of the Persons with Disabilities Fund and the Persons with Disabilities Board have not been put in place. Up to today, I have not had a response. The Vice-President and Minister for Home Affairs was supposed to deal with the matter but it was moved from his Office to the Ministry of Gender, Sports, Culture and Social Services. Until now, this matter has been put under the carpet, and it is a matter, that deals with people with disabilities in this country, who are about three million Kenyans.

**Mr. Speaker:** I remember that, that matter came up when I was on the Chair. I think we asked the responsible Minister to respond. I am glad that Mr. Kimunya has taken appropriate steps to operationalise the Privatisation Act. But the issue is: Do Ministers forget that they have a responsibility to operationalise a Bill?

**Hon. Members:** Yes!

**Mr. Speaker:** Which Ministry in this case?

**An hon. Member:** Gender!

**Mr. Speaker:** Is the Minister for Gender, Sports, Culture and Social Services here?

**An hon. Member:** No!

**Mr. Speaker:** He is not here! Your Excellency, could you, please - you do not even need to come to the House. If you operationalise that thing the matter ends!

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Speaker, Sir, I will once again speak to the Minister concerned. I think in the initial stages, there was a misconception; because of my own interest in the persons with disabilities, the matter was directed to me. However, there is a special Ministry, and I will speak to the Minister and insist that he operationalises the regulations and brings a statement here.

Thank you.

**Mr. Speaker:** Indeed, I wish to compliment you from the Chair for the sterling effort you have put into assisting the disabled of Kenya. This is what you really need to cap your very feathery hat with, by ensuring the Bill is operationalised.

Next Order!

## BILL

### *Second Reading*

#### THE APPROPRIATION BILL

*(The Minister for Finance  
on 26.9.2007)*

*(Resumption of Debate interrupted  
on 26.9.2007)*

**Mr. Speaker:** What stage were we? Was it continuation of the debate, or was the Minister moving?

**An hon. Member:** Moving!

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

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, indeed, I was summarising, and had undertaken to this House that we are now practising best practices. I want to assure the House that the funds that will be approved will be used for the purposes and services for which they are meant. Further, I confirm that in implementing the Act, we will be guided by the financial laws and regulations that are in force.

The Appropriation Bill, 2007, contains the details of supply for each Vote, including the amounts that shall be applied as Appropriations-in-Aid (A-in-A).

Mr. Speaker, Sir, Clause 2 provides for the issue out of the Consolidated Fund of the sum of Kshs449,038,426,260 and to appropriate the funds for various services and purposes during the financial year ending 30th June, 2008. This sum includes the amount authorised by Parliament on 21st June, 2007, during the Vote on Account in accordance with Section 101 of the Constitution of Kenya. Clause 3 makes provision for amounts to be applied as A-in-A for the various services and purposes.

Having apprised hon. Members of the objects and reasons for the Bill, may I now request them to pass it in order to authorise the issue of funds from the Consolidated Fund to meet the expenditures as contained in the Recurrent and Development Estimates of the 2007/2008 Financial Year.

Mr. Speaker, Sir, I also wish to thank hon. Members for the co-operation and hope that we are going to give this nation what it deserves. I also want to - as I mentioned to hon. Members - say that we are in the process of finalising the Constituencies Development Fund (Amendment) Bill and we will be bringing the amendments here as soon as they are all finalised.

With those few remarks, I beg to move and request Ms. Karua to second.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Thank you, Mr. Speaker, Sir. I rise to second the Bill before the House, and say that, indeed, as hon. Members, we have an obligation to pass the Appropriation Bill.

I beg to second.

*(Question proposed)*

**Mr. Sungu:** Mr. Speaker, Sir, I would like to contribute to this debate on the Appropriation Bill. It is a statutory requirement that the Minister comes to the House for approval by Parliament to spend some odd Kshs450 billion. I am glad to note that the Minister for Justice and Constitutional Affairs, the other day, presented us with the Elections Commission of Kenya (ECK) rules on the Presidential and Parliamentary elections and I hope that they will be followed.

As we go for these elections, we hope that when we appropriate this money, the Government is not going to misuse the money in terms of electioneering. Time and again, we have noted that the Government always uses its vehicles, military and police aircraft and the Provincial Administration for purposes of partisan electioneering, and this ought not to be allowed. We also note that the Minister the other day, in fact not long ago, ordered that Government Ministers and other senior Government officials hand over excess vehicles. I hope that these vehicles, that were handed over were sold in the open market and that the Minister is not keeping several of those vehicles in his compound like I have heard before.

These four by four vehicles---

**Mr. Speaker:** What did you say about the Minister?

**Mr. Sungu:** Mr. Speaker, Sir, I said that I only hope that some of these vehicles are not lying in a Minister's compound like we have been told---

**Mr. Speaker:** Order, Mr. Sungu! Decorum! Why do you think the Minister would keep Government vehicles in his House?

**Mr. Sungu:** Mr. Speaker, Sir, I did not want to go into in details, because there are rumours to the effect that some of these vehicles are---

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

**Mr. Speaker:** Order! Yes, Mr. Kimunya!

**The Minister for Finance** (Mr. Kimunya): On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to make such a serious allegation, that I am keeping Government vehicles that were returned by Ministries in my compound, while there is not a single Government vehicle in my compound? All the vehicles that were sold had been advertised in the Press, including some this week and others last week.

**Mr. Speaker:** Order, hon. Members! Order, Mr. Sungu! It amounts, again, to what I said this afternoon. Let us get out of political hysteria and panic, because that is political hysteria. I think Mr. Sungu is suffering from--- What do they call it in medical terms when it is severe, or is it gross?

**An hon. Member:** Acute!

**Mr. Speaker:** Acute political hysteria! As I said earlier today, please, relax! Kenya will be there even if all the hon. Members of the Ninth Parliament are voted out including Mr. Sungu!

*(Applause)*

So, shall we please come back to planet earth?

Proceed, Mr. Sungu!

**Mr. Sungu:** Mr. Speaker, Sir, I am much obliged. Thank you for your advice.

Mr. Speaker, Sir, I do not know why the Minister wants to own this! But we know for a fact that a certain Government Minister either bought or had four of those 4WD vehicles parked in his compound. Those areas are occupied by people and they tell us! But we do not want to go into that right now.

**Mr. Speaker:** Order! Can you substantiate? As I said earlier, that is political hysteria. Substantiate now!

**Mr. Sungu:** Mr. Speaker, Sir, may I withdraw?

**Mr. Speaker:** Now, you must withdraw wholeheartedly, apologise to this House and to the country!

**Mr. Sungu:** Mr. Speaker, Sir, I do apologize to the House---

**Mr. Speaker:** And the country!

**Mr. Sungu:** And to the country.

**Mr. Speaker:** Thank you!

**Mr. Sungu:** Mr. Speaker, Sir, as we appropriate that money, we must also ask about security. As we go into the electioneering period, we have just discussed that momentous issue! You know about the insecurity caused by electioneering. We hope that Government officers who are in the field will be fair. That is because they are paid by the Government through the taxpayers' money. We hope that they will do their work properly and that they will not side with the Government of the day. The tendency is, usually, for the incumbent Government to misuse security officials when it comes to the electioneering period. I hope that, that will be discouraged.

Mr. Speaker, Sir, when I was a young man, I worked for Kenya Airways. I used to go home and give some of my money to my mother to keep. My mother always squandered half of the money, gave me only a little bit and say: "Please, use this money carefully. It is difficult to get money". Therefore, when we are giving the Minister the money, he must make sure that he puts his ears on the ground. That money was not got easily by the wananchi of this country.

Mr. Speaker, Sir, a lot of money is allocated to the Ministry of Finance. But, still, there are delays in procurement and tendering. For example, the Kisumu Airport Project is funded by the World Bank! That airport is now dangerous because aircraft cannot land there properly. That has been caused by the haphazard repairs that have been carried out on the runway. That airport was supposed to have been repaired two years ago. The Government has been meeting with the stakeholders. We have held meetings with the Kenya Airports Authority (KAA) and the local people. All the issues regarding that airport have been sorted out. But none of that has started. No work has started and yet, Jomo Kenyatta International Airport (JKIA) is now being repaired. They are constructing a new part of the airport. I think that is discrimination and, as a Member of Parliament for Kisumu East Constituency, I must draw the Government's attention to the fact that, as you appropriate that money, you must apply it even-handedly so that all the areas of this country are taken into consideration.

Mr. Speaker, Sir, even on the question of roads, we know for certain that there are delays in issuing monies for roads in the western part of this country! It is virtually impossible to drive to Kisumu, Eldoret, Kakamega or even to Narok, because of delays in tendering.

Mr. Speaker, Sir, when it comes to tendering, may I say - and this is very, very important - that there ought to be open tendering, particularly in security-related departments. We have known of cases where a lot of money has been lost by this Government, because of the so-called obsession with secrecy when it comes to security tendering. The case of the civilian Spanish ship which was converted to military use and bought at an exorbitant price is still fresh in our minds! The Nexus

Project in Karen is still fresh in our minds. There was the question of "terrorist-proof" passports. Some of those cases are referred to as Anglo Leasing.

Mr. Speaker, Sir, as we give money, the military is getting a lot of money out of this Vote. We want to say that the military should not be sitting idle because we do not have present immediate threats to security that require their attention. They should be used in civilian projects! For example, with regard to the flooding in Budalangi, right next door to the Vice-President and Minister for Home Affairs, the military should be there to help in the construction of dykes and evacuation of our people. That way, they can be gainfully employed. Most of them are sitting idle there as we pay them a lot of money, while the police and other uniformed forces are busy day in, day out, being shot at as they face criminals and so on.

Mr. Speaker, Sir, the military can be used to dig boreholes in dry areas like Ukambani and even DolDol. They have got the equipment! That equipment is lying idle! Even in Kisumu and Busia, we could use them to help us. Even the maintenance of remote airstrips--- Those airstrips could be of military use if there was need. For example, the Busia Airstrip, which caused a very serious accident because of its condition, where several of us were injured and some were killed--- The military could be used to repair such facilities, instead of waiting for us. They have got the equipment! Beside the equipment and obvious occupation, they will also gain experience. That experience is very necessary when it comes to war situations.

Mr. Speaker, Sir, again, as we appropriate, I want to talk about agriculture. I want to "cry" that, as this Government has waived billions of shillings for the coffee and tea sub-sectors, it has failed to do the same for the sugar sector. That is not right! As we speak now--- In fact, right next to my home, Miwani Sugar Factory is still lying idle when it has got the most modern refinery to produce refined sugar. It could save us foreign currency because we actually import refined sugar. The Government could do a lot instead of just looking at one sector only. It should look at other sectors, like the sugar sector.

Mr. Speaker, Sir, there are very many issues when it comes to money. I cannot, probably, raise all of them. This Government has been on record as saying that there has been some economic recovery and that there has been a huge economic growth. But we will never fail to remind them that, as they talk about those huge percentages of growth rate, the gap between the rich and the poor is still increasing. The poor are getting poorer and the rich are getting richer. The people who are rich are only a few compared to the many poor people. That is actually a time-bomb because, one day, it could cause insecurity of unmanageable proportions.

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

**Mr. Speaker:** Proceed, Mr. Wambora! But as I give Mr. Wambora this opportunity to contribute to this Bill, I want to remind the House that this is an Appropriation Bill. In the Appropriation Bill, we deal with the figures in the Bill. That is because we have had an opportunity to talk about the policy through the Budget process and the Finance Bill. So, let us confine ourselves to the allocation. It is the allocation of the funds distributed to the various Ministries. That is the issue here! It is not actually the policies.

Proceed, Mr. Wambora!

**Mr. Wambora:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to a very, very critical Appropriation Bill of 2007, which is going to raise nearly Kshs500 billion for the economy. It is, definitely, the highest appropriation in one single year in Kenya's history. We should be very, very proud when we are passing this Appropriation Bill.

Secondly, Mr. Speaker, Sir, the passage of this Bill will ensure that the funds released are going to be utilized in some of the most critical sectors and subsectors of the economy, starting with the infrastructure. We are aware that there is no country on earth which can become a developed country without developing its infrastructure. This Appropriation Bill will ensure that the funds are available to rehabilitate most of our dilapidated roads and also tarmack new roads. Already, we know that, from the last Budget, many roads are already being constructed. Those

funds are going to ensure that the infrastructure is further improved. The Appropriation Bill will also appropriate funds to the critical sector of education. It is a major beneficiary.

**Mr. Speaker:** By the way, Mr. Wambora, we had dealt with the Ministries, including the Ministry of Education! In fact, you should be looking at the figures! You should be saying "if this is the amount given to this Ministry, is it beyond what Parliament allocated?" That is what the Appropriation Bill is all about!

**Mr. Wambora:** Thank you, Mr. Speaker, Sir, for your guidance. I concur and wish to support this wonderful Appropriation Bill.

**Mr. Raila:** Mr. Speaker, Sir, I have said before, and I will repeat it here, that we need a paradigm shift in our budgeting. We need to allocate more and more money for Development Expenditure rather than Recurrent Expenditure. This is a developing economy and, therefore, more money is required for development rather than consumption. We live too much in the past, yesterday and today, without doing much for tomorrow.

Mr. Speaker, Sir, when I was launching my vision, I talked about infrastructure. I am happy that the Minister took the cue and tried to allocate more money for roads construction. However, the philosophy here is "repair and panel beating". This country needs reconstruction, not just repair! That is why they are very happy managing repair work that is going on right now. We want to move from repair to real new things. I just want to give a few pieces of advice to the Government; in the unlikely event that they have an opportunity to do a Budget again, it should be done differently!

Mr. Speaker, Sir, I am sure that next year's Budget that will be done by the ODM Government, will be very different from this one!

*(Applause)*

**Mr. Speaker:** Very well! It looks like there is no more interest in this matter and, therefore, I will call upon the Minister to respond!

**The Minister for Finance** (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to thank hon. Members for the issues that they have raised. I want to assure hon. Members, especially Mr. Sungu, that as I said, all the money in this Bill will be used for the purposes this House has appropriated it. However, this does not include political purposes!

I also want to assure him that the 6.1 per cent growth of the economy that we are talking of, is being felt everywhere. Hon. Members who go to their constituencies would attest to this. In fact, children are going to school, people are going to health centres and Constituencies Development Fund (CDF) projects are taking place.

Mr. Speaker, Sir, I also want to mention to Mr. Raila that the Kibaki Government is committed to infrastructural development. I would also like to thank him for taking cue from our Budget Strategy Paper which outlines our expenditure commitment and paved the way for the vision that he launched!

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

### COMMUNICATION FROM THE CHAIR

MINISTER TO AMEND CLAUSE 77 OF THE  
LICENSING LAW (REPEAL AND AMENDMENT) BILL AT COMMITTEE STAGE

**Mr. Speaker:** Very well! Hon. Members, just before I put the Question, I forgot, initially, to bring to your attention the existence of a Supplementary Order Paper.

This Supplementary Order Paper only contains one item. Its difference from the Ordinary

Order Paper is that it contains a notice by the Minister for Finance of his intention to move an amendment at the Committee Stage on Clause 77 of the Licensing Laws (Repeal and Amendment) Bill. The net effect will be to delete it. I think it is just proper that hon. Members know that the Minister, at the Committee Stage, will move to amend Clause 77 of the Licensing Law (Repeal and Amendment) Bill, by deleting it. So, you will proceed on that basis!

*(Question put and agreed to)*

**COMMITTEE OF THE  
WHOLE HOUSE**

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

IN THE COMMITTEE  
*[The Temporary Deputy Chairman  
(Mr. Sungu) took the Chair]*

**The Temporary Deputy Chairman** (Mr. Sungu): Order, hon. Members! We are now in the Committee of the whole House. As you notice, we have three Bills to attend to. We shall take all of them before reporting to the House. We will start with the Appropriation Bill!

THE APPROPRIATION BILL

*(Clauses 2 and 3 agreed to)*

*(Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

Hon. Members, we are proceeding to the next Bill which is the Internal Loans (Amendment) Bill!

THE INTERNAL LOANS (AMENDMENT) BILL

*(Clauses 2, 3, 4, 5, 6, 7, 9, 10,  
11, 12, 13, 14 and 15 agreed to)*  
*(Clauses 16, 17, 18(a), 18(b),  
19, 20, 21 and 22 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Mr. Sungu): Order hon. Members! We are going to the next Bill, which is the Licensing Laws (Repeal and Amendment) Bill.

LICENSING LAWS (REPEAL  
AND AMENDMENT) BILL

*(Clauses 2, 3, 4, 5, 6, 7, 8, 9,  
10, 11, 12, 13, 14, 15, 16, 17,  
18, 19, 20, 21, 22, 23, 24, 25,  
26, 27, 28, 29, 30, 31, 32, 33  
34, 35, 36, 37, 38, 39, 40, 41,  
42, 43, 44, 45, 46, 47, 48, 49,  
50, 51, 52, 53, 54, 55, 56, 57,  
58, 59, 60, 61, 62, 63, 64, 65,  
66, 67, 68, 69, 70, 71, 72,  
73, 74, 75 and 76 agreed to)*

*Clause 77*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 77 of the Bill be deleted.

This amendment is basically deleting this clause which was included by error.

*(Question of the amendment  
proposed)*

*(Question, that the words to be left  
be left out, put and agreed to)  
(Clause 77 deleted)*

*(Clauses 78, 79, 80, 81 and 82  
agreed to)*

*Clause 83*

**The Temporary Deputy Chairman** (Mr. Sungu): Mr. Minister, if you look at the Bill, at page 1995, after Clause 82, we move again to Clause 82. Could you clarify if there is a mistake and if you would like it to be renamed accordingly?

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, it is another typographical error!

I beg to move that the second Clause 82 be now renamed Clause 83.

*(Clause 83 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Appropriation Bill and



The Internal Loans (Amendment) Bill and their approval thereof without amendment.

*(Question proposed)*  
*(Question put and agreed to)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Licensing Laws (Repeal and Amendment) Bill and its approval thereof with amendment.

*(Question proposed)*  
*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Speaker in the Chair]*

### REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

**Mr. Speaker:** Order! You have to report each Bill individually!

#### THE APPROPRIATION BILL

**Mr. Sungu:** Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered the Appropriation Bill and approved the same without amendment.

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**Mr. Speaker:** Just for my satisfaction, was Clause 77 not amended?

*(Mr. Speaker consulted with  
the Clerk-at-the-Table)*

Sorry!

*(Question proposed)*  
*(Question put and agreed to)*

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, I beg to move that the Appropriation Bill be now read the Third Time.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua) seconded.

*(Question proposed)*  
*(Question put and agreed to)*  
*(The Bill was accordingly read  
the Third Time and passed)*

## THE INTERNAL LOANS (AMENDMENT) BILL

**Mr. Sungu:** Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered the Internal Loans (Amendment) Bill and approved the same without amendment.

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

*(Question proposed)*

*(Question put and agreed to)*

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, I beg to move that the Internal Loans (Amendment) Bill be now read the Third Time.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua) seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read  
the Third Time and passed)*

THE LICENSING LAWS (REPEAL  
AND AMENDMENT) BILL

**Mr. Sungu:** Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered the Licensing Laws (Repeal and Amendment) Bill and approved the same with amendment.

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

*(Question proposed)*

*(Question put and agreed to)*

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, I beg to move that the Licensing Laws (Repeal and Amendment) Bill be now read the Third Time.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua) seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read  
the Third Time and passed)*

**MOTION**

## ADOPTION OF FIFTEENTH PIC REPORT

THAT, this House adopts the Fifteenth Report of the Public Investments

Committee on the Accounts of State Corporations (2007), laid on the Table of the House on Thursday, 9th August, 2007.

*(Mr. Muturi on 27.9.2007)*  
*(Resumption of Debate interrupted*  
*on 27.9.2007)*

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

**Mr. Speaker:** Order, hon. Members! The Business of the House is not over yet! We are still in business. Could we transact the Business of the House and complete it? The position on this Motion is that Mr. Muturi was in the process of moving it and he will continue to do so.

**Mr. Muturi:** Mr. Speaker, Sir, just before we adjourned last week on Thursday, I was putting the case that the shadowy company referred to as Mobitelea Ventures was registered on 18th June, 1999 whereas the shareholders agreement had been concluded on 25th January, 1999. In the shareholders agreement, it had been pointed out that Vodafone PLC or Vodafone Kenya Limited, which is a subsidiary of the former, held an equity of 30 per cent and that Telkom Kenya held 70 per cent.

According to the letters from Gavin Derby to the Committee, he says that in 2000 they came by Mobitelea Ventures, a company registered in Guernsey. By the time they came by this company, already the shareholders agreement had been signed and concluded.

Therefore, to say that they were given the 10 per cent by Vodafone for their valued advice on local business protocols and practices, is a matter that raised a lot of concern to the Committee. It also exercised the minds of hon. Members because it was not possible that this company could have been advising Vodafone PLC before it was formed. We agreed that also Telkom Kenya failed in its statutory duty to ask for permission from the parent Ministry to reduce its shares from 70 per cent to 60 per cent.

In turn, the parent Ministry was expected, as is the law, to seek authority from Treasury to reduce the 70 per cent hold to 60 per cent.

Mr. Speaker, Sir, Clause 12.3(a) of the Shareholders Agreement says:

"That, if a shareholder wishes to sell any part or all his shareholding in Safaricom, such shareholder shall notify the other parties in writing and show the number of shares to be sold, the transfer price, identity of the person offering to purchase and other terms and conditions. That, offerees shall have the right of refusal to purchase the shares *pro rata* of their respective shareholding."

It, therefore, means that in terms of this clause, Vodafone PLC, who have admitted in their own letter that they sold a part of their shares to M/s. Mobitelea Ventures, did not disclose that part to Telkom Kenya who are the other shareholders. Also, Telkom Kenya Limited failed in their duty in terms of this agreement to find out from Vodafone PLC, who the person they are calling M/s. Mobitelea Ventures were as is supposed to be the case.

Mr. Speaker, Sir, in fact, I do appreciate the fact that the Government has gone to great lengths in trying to persuade Vodafone PLC to allow it to off load some of their shares. Indeed, it is provided that the offerees shall have the right of first refusal to purchase the sale shares *pro rata* their respective shareholdings. Such rights must be exercised by giving notice in writing to the transferals within 30 days of the date of receipt of the transfer notice.

It, therefore, means that Telkom Kenya were negligent in not finding out from their fellow shareholders, indeed, the majority shareholder, to whom it is, that they were off-loading part of

their shares to and yet these were shares that they held in trust for the public of Kenya.

Mr. Speaker, Sir, it was observed by the Committee that, at one point during the course of taking evidence, there were some deliberate efforts to mislead the Committee in its endeavour to investigate this matter. For instance, there was produced before the Committee a letter dated 26th May, 2000 tabled before the Committee by one, Mr. Michael Joseph, ostensibly, from Vodafone Kenya Limited forwarding a bankers draft of US\$22 million and claiming that Vodafone Kenya Limited had paid its part of licence fee which was later found to be fictitious as it purported to use the postal address of VKL as P.O. Box 40034-00100, Eighth Floor, Lonrho House, Nairobi. It is common knowledge that as at that date of the year 2000, Kenya as a whole had not effected the postal coding of 00100. It only made it appalling that Vodafone PLC, a company registered in the United Kingdom (UK), involved itself in underhand activities of corrupt nature aimed at depriving Kenyan citizens of billions of shillings through M/s. Mobitelea Ventures, despite the fact that the UK has been one of the countries in the forefront of campaigning against corruption in developing countries. Yet, this is a company in their own country which was engaged in this kind of murky affairs.

Mr. Speaker, Sir, it was evident also that despite the fact that Safaricom is a capital investment, Telkom's Board of Directors later obtained, as I said earlier, the requisite sanction of the parent Ministry or Treasury to reduce the shareholding in that company. Furthermore, the Registrar of Companies did inform the Committee that even the records of the known shareholder, Messrs. Vodafone Kenya Limited abbreviated as VKL which is a subsidiary company of Vodafone PLC and which is said to own 40 per cent of Safaricom, have since inexplicably disappeared from the registry. She further told the Committee that she was not able to locate that file.

However, be that as it may, it was worth noting that despite the huge profits that the company has made in the past few years, Telkom Kenya did not receive any cash dividend while M/s. Mobitelea Ventures has continued to enjoy annual cash dividends. The first dividend to shareholders was approved in the year 2006 following a net profit of Kshs8,425,436,000. Subsequently, the shareholders approved a dividend of Kshs2,991,673. Of this amount, Vodafone Kenya Limited was paid a cash dividend of Kshs1,196,699,000 while Kshs1,795,300,759 payable to Telkom was used to offset alleged obligations that Telkom had to Safaricom. Safaricom recorded a net profit, in the subsequent year, of Kshs12,010,431. This has been recorded this year. It is noteworthy that the financial year for Safaricom ends at the end of February of each year. Subsequently, a dividend of Kshs4 billion was proposed. Out of this amount, it was not indicated how much, as of the time we took evidence, would go to M/s. Mobitelea Ventures.

Mr. Speaker, Sir, in view of the fact that the Committee is oblivious of the net amount or amounts owing from Telkom to Safaricom, it is not possible to ascertain or report to the House whether Telkom will receive any cash dividend in the foreseeable future. Against this backdrop, it would, therefore, be gratuitous, indeed, for Telkom or even the Government to delight in news of the huge profits that are reported year in, year out by Safaricom Limited. I want to report to the House that this is a matter that Members of the Committee constantly and rightly, I believe so, described as "A murky case of grand corruption". The Committee heard that there appears to have been a conspiracy by some officers in Government, particularly in the Ministry of Information and Communications, the officers of M/s. Mobitelea Ventures who are known to be nominee companies registered in the tiny islands of Aguilla and Antigua, Vodafone PLC and Telkom Board to defraud the public of its shares in Safaricom.

Mr. Speaker, Sir, neither the management of Safaricom Kenya Limited nor that of Telkom Kenya Limited could produce the written request by Vodafone PLC for increase in Vodafone's PLC shares from 30 per cent to 40 per cent. This supposition is further affirmed by the unexplainable disappearance of the records of Vodafone Kenya Limited from the Office of the

Registrar of Companies. Against that background, the Committee, therefore, recommends as follows: That the Director of Kenya Anti-Corruption Commission (KACC) immediately---

**Mr. Speaker:** Mr. Muturi, just as a matter of interest, the company law requires that every registered company will file returns, and that if they do not do that, they will be prosecuted. Did you inquire, as a Committee, what happened with regard to that provision?

**Mr. Muturi:** Mr. Speaker, Sir, in fact, that is the point we raised with the Registrar of Companies. There were no returns from the year 2000 up to this year. We thought that it was that office which should have taken appropriate action when companies fail to comply with the provisions of the Companies Act.

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

**Mr. Muturi:** Mr. Speaker, Sir, therefore, the Committee recommends as follows:

(1) That, the Director-General of the KACC immediately institutes investigations into the circumstances and manner in which the 10 per cent of Telkom Kenya Limited shares in Safaricom Limited was irregularly transferred to Mobitelea Ventures Limited without the consent of the Treasury, and that of the parent Ministry, with a view to taking appropriate action against any person or persons found to have been culpable in the matter.

(2) That, this House asks the Director of the KACC to include a progress report on the investigations in our first recommendation above in the Commission's quarterly reports to the House for the next immediate period.

(3) That, this House invites any organisation with knowledge about the manner in which nominee companies are registered in the Islands of Guernsey, Angwila or Antigua, with a view to assisting the KACC to arrive at the ownership of that shady company referred to as "Mobitelea Ventures Limited".

(4) Due to his roles on the Board of the defunct Kenya Posts & Telecommunications Corporation (KPTC) and Telkom Kenya Limited at the time of changes in Safaricom shareholding and the Communications Commission of Kenya, as exemplified by the evidence adduced and papers laid, this House recommends that the Director of the KACC investigate the activities of one Eng. John Waweru to find what role, if any, he played in the transfer process.

(5) That, Messrs. W.N Ayah, A.K. Cheserem, M.P. Manji, K.K. Cherongon, D.A. Oyatsi, G. Mitine, who discussed the Board Paper No.56 of 1999, which I discussed last week, and abetted the outright transfer of public shares in Safaricom Kenya Limited, be barred from holding public office conferred by the Republic of Kenya.

(6) That, the Chief Executive of Telkom Kenya Limited, in liaison with the parent Ministry and the Ministry of Finance, determine the value of the 10 per cent shares irregularly ceded to Mobitelea Ventures Limited; Safaricom Kenya Limited, or Vodafone PLC, be made to redeem the determined value by 30th June, 2008, and that the awaited Initial Public Offer of Safaricom be suspended until such time as the above mentioned investigations are done.

(7) That, the 10 per cent, which was irregularly transferred to Vodafone PLC, should immediately revert to Telkom Kenya Limited to be held in trust for the Kenyan public, as was the case before, factored in the event of any privatisation of Safaricom Limited.

Mr. Speaker, Sir, that was just one of the many State Corporations that we dealt with---

**Mr. Speaker:** Order! Order! The Chair would like to know, on behalf of the House, whether the individuals you have recommended to be debarred from ever holding public office were ever given an opportunity to be heard.

**Mr. Muturi:** Mr. Speaker, Sir, we have found it very difficult. We were told by the Office of the Clerk of the National Assembly that some of them could be called, and that others could not be called because they had since stopped holding public office. Therefore, we had to go by the advice given by the Office of the Clerk of the National Assembly, as evidence will show. It is on record.

**Mr. Speaker:** Mr. Muturi, surely, as a lawyer of longstanding, you know that it is against the laws of natural justice to condemn any person unheard. You did not get in touch with the Speaker to help you, which I would gladly have done. It makes a mockery of this House, which is the source of all laws, if we are going to condemn people unheard.

**Mr. Muturi:** Precisely, Mr. Speaker, Sir. It is for that reason that I, personally, sought the assistance of the Office of the Clerk of the National Assembly whenever you were not available. Whenever we directed that letters inviting people to attend our hearings be issued, they refused to do so. I have had occasion to adjourn several sessions of the Committee, because I perfectly believed that it was important that the people needed to be given an opportunity to explain themselves. But it became extremely difficult. It is actually important that you have raised this issue, because I personally believe that it is important that every person against whom some findings should be made has had an opportunity to explain themselves in one way or the other.

**Mr. Speaker:** Hon. Members, just to get it right, as you know, I am the one responsible for the integrity of this House, and it is my duty to ensure that we do not do anything that will erode the integrity of this House, so that we do not become a laughing stock. Just for my own satisfaction, no assistance was ever sought from the Chair, if you were having problems!

**Mr. Muturi:** That is true, Mr. Speaker, Sir.

**Mr. Speaker:** So, if that be the position, Mr. Muturi, we want to get this right. You and me, as lawyers, and above that, you, as a responsible officer of the House, being the Opposition Chief Whip and the Chairman of the Public Investments Committee, and me, as the Speaker of the National Assembly, what do we do in a situation like this, where, for example, we are condemning some Kenyans unheard? They were not given an opportunity to be heard. It would have been a different thing if they were summoned and they refused to come. I would have no problem in such a case. What my problem is, which is what would be the problem of the House as well, we are condemning people unheard. What is the remedy, Mr. Muturi?

**Mr. Muturi:** Mr. Speaker, Sir, there are things to come out very clearly in the form of communication from you to the Office of the Clerk of the National Assembly for the latter to be able to facilitate Committees in their work. In this particular case, I am willing to give the names of the persons who did not appear before the Committee.

**Mr. Speaker:** So, what do we do, as a House, because of that problem? As I said, if any assistance was sought from me--- In fact, I am hearing this news now, that you did not get assistance from my office, which I, really, do not think should be the case. The clerks are here to serve the Committee and the House. Now that you are telling me this, and that there is, obviously, that unlawful bit of your Report, are you suggesting, therefore, that you will give the list of those who were not given the opportunity to the Clerk of the National Assembly, and that I order that, that list be expunged from the Report? Is that what you are saying?

**Mr. Muturi:** Mr. Speaker, Sir, I am willing to do so. I did admit here that not all the people mentioned in this Report appeared before the Committee.

**Mr. Speaker:** Mr. Muturi, may be, in order to help, because we may not have the opportunity to re-visit all this, it would be nice for you to read out the names of the persons who were not given an opportunity to be heard. There would be those who were given the opportunity to be heard but refused to come. The Committee would be at liberty to deal with them in the best way it can, because they had the opportunity to be heard and they did not turn up. So, maybe, you

will read out the names of the ones who have had no opportunity.

Mr. Githae!

**The Assistant Minister for Transport** (Mr. Githae): Mr. Speaker, Sir, first, the Committee did not even consult you on this very important issue!

Secondly, a number of people were not invited to give their side of the story.

Thirdly, even those who have left offices can later on assume public offices. That is not a good excuse for not having called them.

Mr. Speaker, Sir, I want to move the Motion that the debate on this Motion be adjourned until the people are summoned.

**Mr. Speaker:** Let us get this right! I am interested in the dignity of the House. We have to abide by the law, particularly the law of natural justice. The law of natural justice is not enacted by Parliament. It is not given by a human being. It is given directly by God. What God has given, you cannot take it away. What I am saying is that, what God has given those people, you cannot take it away!

The other issue is beside the point for now. Mr. Muturi, could you read out those names and then I will order that their names be expunged from the Report? The next Committee must summon them and ensure that they are actually given the opportunity. If they refuse to turn up, the House is at liberty to deal with them in the way it wants. I hope you are happy with that position!

**Mr. Muturi:** Mr. Speaker, Sir, your advice is actually the best. Mr. Githae wanted to introduce an element of some little politics! I was going to give the names of the people. This Report is not Muturi's. It is the Committee's Report. I have my own individual views about some of these processes. But my views as a Chair of the Committee may not necessarily carry the day since I could, very well, be the minority. It is for that reason that I agree with you. I could, right now, give the names of the people named here, who I know were not summoned, even though we had given instructions that they be summoned. But for the reasons that I have explained, we were told that since they had left office, they should not be summoned. It was not a good reason. It is for that reason that I feel and agree with you that you could direct from the Chair, that the names of those people be expunged from this recommendation.

**Mr. Speaker:** Mr. Muturi, I will do that! But I also want to state the procedure correctly. It is not a good excuse that a person has ceased to hold a public office and, therefore, he or she cannot come to give evidence. They must give evidence whether or not they are holding a public office. It is their duty to come to the Committee and give that evidence. Otherwise, the other side of it is that, somebody in public office can make all the mess they want and, maybe, resign or retire tomorrow, so that they cannot be called! I think that would be a crazy world! I would not like to live in a crazy world. This House will not live in a crazy world!

**Mr. Muturi:** In fact, Mr. Speaker, Sir, I wholly agree with you. It is the Office of the Clerk of the National Assembly that gave that advice. We did not agree with it!

**Mr. Speaker:** Mr. Muturi, I hope you are not using the Floor to bash my officers!

**Mr. Muturi:** Mr. Speaker, Sir, I wish I was about to do that because---

**Mr. Speaker:** Just give me a chance! I also have a responsibility to protect my staff! You also had a duty to make an appeal to Mr. Speaker, which you did not! So, you are also guilty! Could we finish that and get to the other matters!

**Mr. Muturi:** Mr. Speaker, Sir, on matters that I know I am very correct on, as you know, I stand very firm. On this one, I know it is because you were not available. We really took a lot of time arguing about it and I would say: "I wish the Speaker was around because he would correct you!" Anyway, the names of the people are as follows:-

Mr. W.N. Ayah, Mr. M.P. Manji, Mr. D.A. Oyatsi and Mr. G. Mitine. Those people did not attend, even though the Committee had resolved that they be called. Therefore, I want to agree with

you that you direct from the Chair that their names be expunged from this recommendation.

**Mr. Speaker:** Exactly! I hereby do order that their names be expunged from that Report!

**Mr. Muturi:** Thank you very much, Mr. Speaker, Sir.

I am not going to refer to all the evidence that we took from the Report of the Controller and Auditor-General with regard to all the corporations that we took evidence from. As I indicated, we held 62 sittings. We examined, very closely, a total of 85 reports. In order to bring, particularly the bigger corporations up to date, we would examine the reports of about two or three years consecutively so that, at least, we were able to bring them up to date. I did indicate that in that effort, we examined and brought up to date the reports of the Controller and Auditor-General for the Kenya Medical Research Institute (KEMRI), National Hospital Insurance Fund (NHIF), Capital Markets Authority (CMA), Kenya Reinsurance Corporation (Kenya-Re), Kenya Airports Authority (KAA), Investments Promotion Centre (IPC) - now Kenya Investments Authority (KIA) - Agricultural Finance Corporation (AFC), Kenya Tourist Board (KTB), Tea Board of Kenya (TBK), Higher Education Loans Board (HELB) and, last but not least, Safaricom Limited. As we speak, all their reports from the Controller and Auditor-General are now up to date. They have been dealt with by the Committee.

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, another issue I want to point out is with regard to what is contained in the Public Audit Act, which we passed here in 2003. Under that Act, in Section 39, we provide that:-

"The Controller and Auditor-General may appoint any private audit firm to carry out audit of any State corporation. Once that appointment has been made, the appointed audit firm must report to the Controller and Auditor-General who must sign those audit reports."

It is the Controller and Auditor-General, both under the Public Audit Act and also the State Corporations Act, who has the authority to sign. But we found out--- I suppose it could have been one of the so-called teething problems of any new arrangement, particularly with regard to the Kenya-Re--- Their accounts were examined by a firm known as KPMG on appointment by the Controller and Auditor-General, but because they were used to reporting to Kenya-Re directly, notwithstanding the appointment and the clear terms of the letter which was produced before the Committee by the Controller and Auditor-General--- It reads:-

"Upon doing the audit, you will report to me."

That is what is provided for in the Public Audit Act which we passed here in 2003. But, contrary to that, KPMG gave their audit report straight to Kenya-Re, who went on to publish that report as duly passed by the Controller and Auditor-General. That is in direct contravention to Section 39(3) of the Public Audit Act - indeed, even up to Section 39(6). Once they do so, they breach the law.

Mr. Temporary Deputy Speaker, Sir, we appreciate that the Controller and Auditor-General may not have the capacity, as it is now, to audit all the State corporations which now run. We thought they were reducing then but now, they appear to be increasing, especially after the passage of the very many Bills that we passed recently. We created several other new State corporations even though some of them are merely regulatory. But, nevertheless, this Committee abhors that practice.



Mr. Temporary Deputy Speaker, Sir, we know that unless the Minister for Finance comes to this House with some amendments to the law, the National Bank of Kenya (NBK) and the Industrial Development Bank (IDB), which I think has been sold off, but as we did this Report, it was still there--- It was observed by the Committee that their audited accounts were never presented to this House. We have pursued the matter with the Controller and Auditor-General, who told the Committee that they did the audit and forwarded their report to the Minister for Finance, who was, in turn, expected to come and lay them here on the Table and not keep them at the Treasury. I think they are the Reports for 2005/2006 or thereabouts. The Minister for Finance has, however, not brought those reports here. It is against the law for him not to forward those reports.

If this practice continues, this House may be asked to amend the law so as to allow the Controller and Auditor-General to file in their reports straight to Parliament. This is because we do not know what reasons the Minister has. We suspect that because of some of the bail-outs that the Minister was advancing towards the National Bank of Kenya (NBK), perhaps, they may not have wanted those reports to be laid on the Table in this House and become public knowledge because of certain other issues that they may have wanted to sort out before they begin doing so. We only want to encourage the Minister to follow the law. The Public Audit Act is not a very old law. It was only passed here in 2003, which is when the Minister came to Parliament. We want the Minister to grow with that Act so that he can find it easier. It is like the way a toddler grows from crawling, standing and eventually beginning to walk. We, therefore, want to encourage the Minister, especially, with regard to those corporations.

Mr. Temporary Deputy Speaker, Sir, there is need for the Minister to rethink the issue of the banks. We appreciate that certain disclosures by banks could lead to very disastrous consequences. However, if the law provides for that, you cannot hide reports because it is likely to lead to certain dangerous consequences. The best way to go about it - we want to advise the Minister - is to amend the law so that public corporations or parastatals, which are of banking nature, are not obliged to make certain disclosures. We want to appreciate the fact that in some of them, some banks, for example, the NBK, some of the disclosures could send some shock-waves. We will not want a situation that will also compromise our savers in those banks. We would want them to continue operating.

Mr. Temporary Deputy Speaker, Sir, I had intended to look through various recommendations, but in the interest of time and in order to give other hon. Members an opportunity to comment, I may want not to go too far. However, I may want to talk about the affairs of the Kenya Airports Authority (KAA). I would like to tell a small story, which was brought out through the evidence that was given.

Mr. Temporary Deputy Speaker, Sir, between 1992 and 2003, KAA was operating on a negative balance sheet. The Authority made losses amounting to billions of shillings due Government debtors; poorly-negotiated loans, including loans from the Bank of Africa and World Bank; procurement irregularities; for example, the Anglo Leasing related Computerisation Project; and general poor management. The Authority posted a loss after tax of Kshs626,021,598 and Kshs422,424,617 in the Financial Years 2001/2002 and 2002/2003 respectively. In 2002/2003, the adjusted accumulated losses rose to Kshs3,427,788,000 from the previous year's figure of Kshs1,949,061,000. The Committee noted that the management has since embarked on an aggressive debt collection strategy, which includes collecting all the debts in the Government agencies. The Board and Management of KAA have, since 2003/2004, managed to turn around the Authority to profitability.

(Applause)

Mr. Temporary Deputy Speaker, Sir, I think it is worth pointing out that it is not everything that we looked at that was murky. It is only fair that where there is progress, one must appreciate and commend those responsible.

Further, the Committee counselled the Authority Board and management to adhere to the requirements of the Public Procurement and Disposal Act of 2005 in the procurement of goods and services. Stringent measures need to be employed in the execution of the newly-commissioned expansion and rehabilitation of the Jomo Kenyatta International Airport (JKIA) Project. We pointed this out because some of the reports that came through appeared to suggest that the Public Procurement and Disposal Act may not have been followed strictly to the letter. However, we did not think it was necessary for us to direct for a special audit. It was enough for us to have invited the management, who came and gave an assurance to the Committee that whatever may have been perceived as having not been proper would be addressed. I think the Controller and Auditor-General would be in a position to capture any irregularities that may have been committed. Therefore, we did not think that it was necessary. It was going to tie us from preparing our Report.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to move, and request hon. Prof. Anyang'-Nyong'o to second.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Speaker, Sir, I stand to second the Fifteenth Report of the PIC on the accounts of State corporations for the year 2006/2007, that the Chairman of the PIC has ably presented to the House.

Mr. Temporary Deputy Speaker, Sir, I was at one time the Chairman of the PIC and a Member of the same Committee from 1993 to 1995. I chaired the PIC for two consecutive years. One of the things that we observed before the Committee then is that we tended to deal with history. What we were doing was *postfacto*. In the final analysis, the recommendations that we made could not, very often, lead to the Government recovering the monies that had been lost. However, if the recommendations would, at least, be followed, they could lead to better management of public corporations and avoidance of future losses.

Mr. Temporary Deputy Speaker, Sir, the result of the Report that we made in the mid-1990s led to the Kombo Committee on Anti-Corruption, which finally tabled, in this House, the famous Kombo Report from which names were expunged for reasons which still pertain to this day. Finally, it led to the passing, by this House, of the Anti-Corruption and Economic Crime Bill. So, I believe that the Report of the PIC and the Public Accounts Committee (PAC), although quite often they deal with historical matters in terms of public accounting, have been very useful in the evolution of proper management of public affairs in the Republic of Kenya.

Mr. Temporary Deputy Speaker, Sir, having said that, when I look at this Report, the only public corporation whose accounts were up to date by the time the PIC was sitting was the Kenya Medical Research Institute (KEMRI), whose Report for the year ending 30th June, 2006, was handled by the PIC. Otherwise, all other public corporations handled herein had their reports of previous years attached to that. That means that we have not made substantial improvements in ten years, notwithstanding the fact that, many public corporations have been privatised and hence, the few that remained should be better managed. The report submitting to the Public Investments Committee and appearances before it should be done more promptly.

Mr. Temporary Deputy Speaker, Sir, I was here when the Speaker was making a ruling that any public official who has been employed by a public corporation whether he or she is in active service or has retired, when summoned by the Public Investments Committee to appear before that Committee, has the duty to appear before that Committee. The Public Investments Committee has the powers to summon such a person, even using the police Airwing, to appear before the

Committee. I did such a thing when I was the Chairman. Somebody was hauled from his farm in Narok by the Police Airwing and brought before my Committee. So, there should be no excuse whatsoever for anybody not to appear before the Committee because he or she has simply retired as a civil servant. The law does not allow that.

Having said that, when I look at the accounts of Kenya Airports Authority--- I agree with the Chairman that Kenya Airports Authority should be commended for turning around the performance. But, nonetheless, as we stand here today, Kenya Airports Authority has still not been able to meet its target. In April, last year, we met Kisumu in the Imperial Hotel, when the Netherlands Airport Authority, which was doing the basic work for building Kisumu Airport, presented us with their report. Construction of the new airport was supposed to have started by September last year. We are now in October - two years later - and the work has not started. So, all is not well with the Kenya Airports Authority. There is sluggishness in financial management and implementation stated agenda as, indeed, stated in the Economic Recovery Strategy, still leaves a lot to be desired.

Mr. Temporary Deputy Speaker, Sir, the issue between Kenya Ports Authority and M/S Grain Bulk Handlers Limited is not simply confined to Grain Bulk Handlers Limited. The performance of the Kenya Ports Authority in terms of efficiency and delivery of services still leaves a lot to be desired. If only one read the editorial in *The Standard* today, one would understand what I mean. At the moment, there are containers stuck up at the Port of Mombasa. Shippers are actually asking for a new tax to be levied that could help them meet the extra charges for the extra delay at the Port, so that they do not incur too much losses. The reason given is that the Kenya Revenue Authority is not only inefficient in the collection of its taxes, but it is actually bordering on corruption. The Kenya Ports Authority is the goose that lays the golden egg for revenue collection in this country. Promises to make the Kenya Ports Authority efficient are not enough. Performance is the key issue. Where the Kenya Ports Authority enters into a contract, as we can see here, with the Grain Bulk Handlers Limited, that is a symptom of a greater disease in Kenya Ports Authority. If, indeed, the country is going to triple its revenue collection, which it can, efficiency and proper management of such institutions such as Kenya Ports Authority must, indeed, be taken seriously.

If indeed, appointments to Kenya Ports Authority are going to be based on client-patron relationship, then, indeed, performance will not improve. But if appointment to the management of Kenya Ports Authority is going to be based on merit, qualification and proper reporting system, then the Kenya Ports Authority will, indeed, perform well. Both shipper and traders will---

**The Assistant Minister for Transport** (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. You heard Prof. Anyang'-Nyong'o say that the appointment of the Managing Director of Kenya Ports Authority was not done on merit. I would like him to substantiate how it was not done on merit.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Speaker, Sir, I was speaking in the "conditional". I said "if". If the hon. Member followed what I said - and he can refer to the HANSARD - my sentence began with "if". It is a "conditional". If the appointments at the Kenya Ports Authority are done on patron-client relationships, then performance will not improve. If they are done on merit, then, performance will improve. That is a conditional sentence. I have nothing to substantiate on that, Mr. Temporary Deputy Speaker, Sir.

Mr. Temporary Deputy Speaker, Sir, let me turn to the Lake Basin Development Authority (LBDA). I will use the Lake Basin Development Authority as an example, precisely because of the importance of the development authorities in our economy. I could have used the Tana and Athi Rivers Development Authority or the Ewaso-Nyiro Development Authority. But it is the Lake Basin Development Authority whose

accounts for the year ending 30th June, 2000 appear on this Report. There are certain issues in this Report regarding the Lake Basin Development Authority, to which I would like to draw the attention of the House. The attention that I want to draw the House to is based on the following:-

That the audit queries on the Lake Basin Development Authority arose as a result of the following issues. One, the under-funding of the development Authority. Two, inflation in terms of the Authority procuring services it cannot afford after under-funding and prices having faced inflationary tendencies. Thirdly, depreciation of the assets of Lake Basin Development Authority which had not been taken into account.

Mr. Temporary Deputy Speaker, Sir, when I was the Chairman of the Public Investments Committee, over ten years ago, there was one chronic problem that was facing public corporations. There were two things. One, there was no proper accounting for their assets. Two, they were not taking into account, when they were doing their accounting, depreciation of assets. So, quite often, what may appear in their accounts were inflated values of their assets. They finally appeared in their reports as losses. The Lake Basin Development Authority - and I would like to read from the Report--- I will not be long! I quote:-

" The Committee was informed that the following factors were responsible for the Authority's poor financial performance. One, under-funding in the previous and current years leading to accumulation of debts. Two, escalation of financial cost of Kshs12 million-plus being interest on bank overdraft with the National Bank incurred in the year 1991/1992. Three, depreciation charge of Kshs27 million-plus in the income and expenditure account which is a non-cash item."

Mr. Temporary Deputy Speaker, Sir, let me just talk about under-funding and indebtedness. That problem is chronic in most public corporations. That is why, in the end, they exist only in name and not in performance. If a public corporation like Lake Basin Development Authority submits its budget to the parent Ministry and says it needs Kshs50 million to run its affairs to deliver the services for which it exists and, finally, in the Budget, the said Authority is given money which cannot even pay its staff which it has contracted, the Chief Executive Officer of that Authority would do a very logical thing! He would go to the bank and withdraw money on overdraft to pay the staff! That is a recurrent expenditure. It has not even done the job it is meant to do - deliver development and services. So, you are borrowing from the banks using overdraft facilities to bridge your finances for recurrent expenditure. After he has done that, he would enter into a vicious cycle of indebtedness. So, when your accounts are audited, there is deficit financing at the recurrent expenditure level--- The more money that you are given will go into paying interests on bank overdrafts. You will never get out of the rut of indebtedness. So, it is not logical to call such an organisation a "development authority" because it does not even have resources for delivering development services because of under-funding from the Government. So, the Government has to make up its mind. Either it should establish the so-called development authorities, which are chronically under-funded and, therefore, indebted and off-load that debt to the Government when they are wound up or do away with these authorities altogether and make sure that the job of development is done by agencies other than these authorities.

I am saying this because the Lake Basin Development Authority (LBDA) started off in the 1970s with very ambitious projects. However, over the years, it has not been able to deliver on these projects. It cuts down on these projects because of under-funding, and the Government keeps on blaming development authorities that do not perform. However, the chronic problem is with the Treasury itself. If you look at the Report of the LBDA, you will see that it can be used as a prototype for all other development authorities. I would like to urge the Government to heed the Report of the PIC and make up its mind about the under-funding of development authorities and all public corporations, particularly those which are supposed to deliver on development services.

With those few remarks, I beg to second.

*(Question proposed)*

**The Assistant Minister for Transport** (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. I would like to take this opportunity to congratulate you on your new job as the Temporary Deputy Speaker. I am sure we will benefit from your wide experience in matters of this House.

Let me also take this opportunity to congratulate the Chairman of the PIC, hon. Justin Muturi, a good friend of mine and a classmate, for a job well done. It is very clear that the Committee has done a fantastic job. It had more than 62 sittings. They interviewed many people and witnesses and they have come up with various recommendations. Again, they have looked at the bad and the good corporations. For example, they have taken cognisance of the fact that the Kenya Airports Authority (KAA), under the stewardship of Mr. George Muhoho, has cleared all the burden which was there. He increased the turnover. That is now one of the most profitable investments. They have now embarked on an expansion programme worth more than Kshs3 billion. In that respect, this is a good Report. It recognises both the good and the bad corporations. It also recognises that a corporation can be good today and tomorrow, it can become bad.

However, I have a problem with the recommendation barring people from holding public office. It is important that before somebody is barred from holding public office, he is given a hearing. It is important that someone is given a chance to state his side of the story. Once that matter comes here and it is debated--- Even if a matter came here and the Speaker directed that it be expunged from the Report, you would still find some of those recommendations appearing in the newspapers. So, my only fear is that before such a heavy recommendation is made, someone should be given an opportunity to say what happened. Even if they have ceased to be public officers, the fact that they were once public officers, they should be summoned. If they refuse to appear, then the House can take all the necessary action under the Powers and Privileges Act.

With those words, I beg to support.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Thank you, Mr. Temporary Deputy Speaker, Sir. I want to commend the Committee for a job well done. While I agree that this Report should be adopted, we should note that those who are speaking loudest about issues of corruption, are the very ones named in this Report. Key members of a certain Opposition party, which is pretending to be the high priest of anti-corruption, are filling the pages of this Report. Let people not politicise the war against corruption. Let Kenyans know those who are corrupt can never be the ones to save this country against corruption. I urge Kenyans, during this time of elections, to elect people with a clean record irrespective of which party they belong. I also urge our competitors in the coming general election, who are in the Opposition, to stop double-speak and the pretence of fighting corruption when they are encouraging an assembly of corruption cartels as part of their campaign machinery!

I beg to support.

**Mr. Sungu:** Thank you, Mr. Temporary Deputy Speaker, Sir. Allow me, with a few words, to support the 15th Report of the PIC. Before I do so, allow me to congratulate the team, particularly hon. Justin Muturi, who has been the Chairman of this Committee for sometime, for the excellent work they have done and the commitment to ensuring that they fight corruption at all levels in our public corporations.

Mr. Temporary Deputy Speaker, Sir, the corporations we are talking about were established using money from public coffers and money from poor taxpayers. Majority of Kenyans are poor people and when their money is used to start a company, it is not right and proper. It is not good

that a few fat cats, who are given the responsibility of looking after these corporations, should enrich themselves at the expense of wananchi.

The Mover of this Motion, hon. Justin Muturi, has talked quite a lot, for example, on the issue of Safaricom Limited and its shareholding thereof. This is a very serious matter. I wish to urge this Government to forget about the politicking and come out clean on this. Who are the real shareholders of Safaricom Limited? We know that the Government has a shareholding. We know that Vodafone PLC has a shareholding and we also know that a company whose directors are not known to us, Mobitelea Ventures Limited, is also a shareholder. Let us know, for sure, that Safaricom Limited is a strategic company. It is a company with security implications for this country. Anybody with knowledge or control of Safaricom or any other mobile telephone or telecommunications company with a national outreach ought to be known publicly. We ought to know if it is not the Government, who then is it? This Government does not come clearly on who Mobitelea are.

Mr. Temporary Deputy Speaker, Sir, we know for certain that Mobitelea, under questionable circumstances, and there is evidence to that effect, bought 10 per cent shareholding of Safaricom when it was started. We also know that, thereafter, when the previous Government handed over power to the current Government, of which I am a member, then that shareholding suddenly reduced to 5 per cent. Who is the other holder of the 5 per cent that had been given out and for what purposes? Is it protection money? Is it shareholding given to protect certain interests, so that we can continue to be ruled by cartel after cartel of corrupt individuals? The people with questionable backgrounds who amassed wealth at the expense of taxpayers, grabbed property after property, land after land and company after company continue to collude at the expense of Kenyans, and this is not just.

It is written there that this Parliament is for the welfare of society and just government of men, and we are in it. I would like to say that this Parliament ought to be at the forefront in making sure that this kind of thing cannot happen. Therefore, I want to ask this Government to open up the Registry of Companies, so that we know who the shareholders are. The question of some companies and their shareholding being secret, some files missing and some being kept in some secret folders, because they belong to who-is-who in this country, should never arise. That is why when we approve the Estimates and allocate money for computerisation of the Registrar's Office, the Pensions Department and others, that money ought to be used properly, because it is important and imperative that we ensure that we have transparency, not just by words but also by action.

Mr. Temporary Deputy Speaker, Sir, there are a number of issues that I will just mention in passing. There is the example of the Kenya Medical Research Institute (KEMRI). I have been an hon. Member of this Committee. The question of the stalled housing project is a shame to us, as a country, a people and a Government. It has been going on for too long. It started in the previous Government. So many people in the previous Government were involved in it, and it has continued up to now. The houses continue to rot, yet there is a shortage of housing in this country. The KEMRI staff continue to live somewhere else. I want to agree with the Committee, wholeheartedly, that these houses be now revamped. If someone has committed a crime, whoever it is, let him be taken to court. I sat in this Committee then when we discovered - in fact, I am one of those people who discussed this - that a law firm, or law firms, obtained false receipts from the Ministry of Lands showing that they had paid rates of up to Kshs27 million. When Commissioner of Lands was brought before the Committee, she confirmed that those receipts were fake. There were two things here. First, there was loss of Government revenue, and secondly there was an obvious forgery. Thirdly, there was alteration of documents, which is a crime. Someone should have been charged. What is Makhandia and Makhandia Company doing as advocates? They are still registered and practising! Some of them have even been promoted! What are we doing in this

country? That is why I want to agree with the Chairman of the Public Investments Committee (PIC) that we ought to blacklist some of these fellows, so that they should never hold public office.

If the person who was in charge of Makhandia and Makhandia Company Advocates - I want to say here now that the Standing Orders do not allow me to name the names - is currently a Judge of the High Court of Kenya, what kind of judgement do we get from that kind of a person? My heart bleeds when I have to go to such people for them to judge over me, when we know what they have done, and we have looked at their cases in the PIC. It is wrong!

**The Temporary Deputy Speaker** (Mr. Maore): Order, Mr. Sungu! I think it is not appropriate to make that kind of an innuendo against a sitting judge!

**Mr. Sungu:** Mr. Temporary Deputy Speaker, Sir, that is why I said that I was not going to name names!

**The Temporary Deputy Speaker** (Mr. Maore): Order! When you mention the law firm, it somehow might carry the name.

**Mr. Sungu:** Mr. Temporary Deputy Speaker, Sir, I stand corrected; I would not want to name the name because I know and respect the Standing Orders of this House.

But I want to say that there are even others like the Kenya Ports Authority (KPA), where a lot of money was lost; up to Kshs500 million was paid to individuals. Some of them sit with us here. This money was paid with the connivance of the then company secretary, who later on became a judge. I do not want to name names but these are facts, which will stay with us forever! Indeed, these people are the ones who are going to judge you and there can never be confidence. I am talking about the judges in the courts only. Everywhere, you name it, people have been promoted. It appears that in Kenya, if you want to be promoted, you need to be corrupt first. You need to have stolen some money first then you are promoted. I want to urge this Government to appoint people like the young Minister for Finance, who has a clean background in private practice, and others because there are many Kenyans who are qualified. Kenya is full of highly-qualified and competent people who can do the job. You do not have to go forever to the corrupt to man positions. At this rate, we will never end corruption, because some of these things will go to them and they will be the ones to decide where to take them. So, I want to urge this Government to ensure that this housing estate for the KEMRI is completed, as recommended by the Committee.

Mr. Temporary Deputy Speaker, Sir, I used to be an insurance man and know the importance of insurance. Insurance is a service! No insurer uses his money to do anything. They get money from the public, the so-called policy holders and they use this as a pool. Out of that pool, they pay claims. So, essentially, money handled by insurance companies, whether owned by the Government or privately, is public money. That is the kind of business that cannot work if there is no confidence in it. When you find that at the pinnacle of that industry, the Kenya Reinsurance Corporation (Kenya-Re), which is owned by the Government, and which receives a mandatory 25 per cent ceding from any business done in Kenya, automatically, therefore, they do not even need to do any marketing. This company goes to a private audit firm. It is audited, the audit is not certified, and then it turns out that there are losses to the extent that this very Government sacked the CEO only the other day. This is a very sorry state of affairs. If we want to help this country, we need to create confidence of the people in the public institutions that we run, so that in the event that there is money lost, somebody is prosecuted. That is why I am saying that we need to put our house in order, because some of these actions can lead to monumental losses.

Mr. Temporary Deputy Speaker, Sir, there is evidence of gross mismanagement of some of the corporations as evidenced in this report by the PIC. It is imperative that we make sure that this does not become just a yearly exercise, where we read, debate but nothing is done about these reports. The element of taking action to make sure that, at least, somebody answers to something is clearly wanting. It is necessary for the Government to take action. This Parliament, under the

Powers and Privileges Act, can summon, talk about a lot of things and question people, but does not have the power to implement recommendations. It is only incumbent upon the Government to do that.

Therefore, I want to recommend that those CEOs who have been proved to owe money to the firms that they were entrusted with the management of, for example the Capital Markets Authority, there is no a reason why those they should not be compelled to pay that money. I do not see what the Attorney-General is waiting for in the face of this report. This report will continue to exist until action is taken. It is important that we deal with some of these issues. We will never get anywhere, as a nation, if we do not get into these issues and deal with them accordingly. It is like saying that we must hold the bull by the horns.

With those few remarks, I beg to support.

**Mr. Kipchumba:** Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to support this very important Motion. But I should not be given conditions by this Minister here.

Mr. Temporary Deputy Speaker, Sir, I think it is very clear now from this Report that, indeed, the Safaricom Initial Public Offer (IPO) should actually be stopped, if you read the Report very well. Read the agreement that was there between Safaricom and Vodafone. Vodafone should have disclosed who they were selling the 10 per cent to, and at what price. To the extent that, that was not done it, therefore, means that there was a breach of certain regulations. The Government should revisit that, if it is transparent as it claims to be. I think it is imperative that, that IPO should be stopped until all those disclosures are made. Hon. Muturi has put that very clearly.

Mr. Temporary Deputy Speaker, Sir, I have read through this Report. What comes out very clearly in many parastatals is that title deeds for many pieces of land that they own should be processed. I think it is the duty of the Government, and especially every parent Ministry, to ensure that every parastatal has all the title deeds.

Mr. Temporary Deputy Speaker, Sir, I have read the Report on Water Conservation and Pipeline Corporation (WCPC). That particular corporation, in my view, should be wound up. With the reforms that have been undertaken in the water sector, I think it does not make sense to continue funding such corporations. They are a drain to the Exchequer. Every region now has a water board that oversees the development of its water resources. The Committee should recommend in future that, that corporation be wound up altogether.

Mr. Temporary Deputy Speaker, Sir, I have also read the Report on the National Cereals and Produce Board (NCPB). If you look at the amount of money that NCPB is given every financial year, it is actually running on a deficit. Many farmers who delivered their produce last year in our region have not been paid. There are no funds! I think the Government should make one decision. Either NCPB should hold stock for strategic reserves or it should do business. If it has to do business, then it has no business holding stocks and holding people's money. The corporation now, given the financial status obtaining, is unable to meet its financial obligations.

Mr. Temporary Deputy Speaker, Sir, given that the world has become a global village, instead of increasing the strategic reserves that NCPB has--- If you want cereals today, you can get them from South Africa in two or three days! Therefore, I think the Government should be reasonable. NCPB should reduce its reserves so that it could free most of its funds. I have seen that they are willing to undertake reforms. They should reduce some of the depots that they have. Some of the depots that exist in various parts of the country, like those in Turkana and so forth, are not necessary! If you want cereals to move from Eldoret, where we produce cereals, to Turkana, you can move them in a day! Therefore, it makes no sense for the Government to keep on holding on to all the depots in the country, spending money on labour and personnel for things which can be managed. We can build strategic depots in Nairobi and Eldoret and wipe out all the others.



Mr. Temporary Deputy Speaker, Sir, the Pyrethrum Board of Kenya (PBK) has totally failed! I can see many directors---

**Mr. J.M. Mutiso:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I hate to interrupt the contributor, Mr. Kipchumba. But this Report has been debated for a long, long time. I would like to request the Mover be now called upon to reply.

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Maore): Now, I thought we were to have about five minutes or so for the official Government Responder. Are you comfortable with that?

**Mr. Kipchumba:** Mr. Temporary Deputy Speaker, Sir, while I do not want to challenge your ruling, he has just arrived! He does not even know how long we have been debating this issue.

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Maore): I would like to close the issue. But you just finish your contribution!

**Mr. Kipchumba:** Mr. Temporary Deputy Speaker, Sir, I was making my final contribution before being interrupted by this late-comer.

Mr. Temporary Deputy Speaker, Sir, what I was saying is that NCPB, which is in the heart of many farmers in my place, should be recapitalized. I think the Minister should give it sufficient funds so that our farmers do not loan the Government. They should be paid in cash. I can see the Minister from Kitale is smiling because I know he is suffering! His farmers have not been paid because the Government has no funds! So, I want to urge the Minister that in the next financial year, please, release funds for our farmers. They will not vote for you! They do not have money! They cannot send their children to school. We cannot talk about the economy improving when people's money is being held by the Government and NCPB through the stocks.

With those few remarks, I beg to support.

**The Minister for Finance** (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir. I will be very brief because the Committee has been very thorough in its work. I wish to commend them from the outset and support the Report and the good work that the Committee has been doing.

Mr. Temporary Deputy Speaker, Sir, I think the only thing that I need to put into proper perspective is the timing we are talking about. A number of things that have happened are historical. But there is a temptation, especially when people hear about them, to actually think that they are happening now. Those are issues which happened in 1997, 1998, 1999 and up to the year 2002. I would like to encourage the Committee to actually come up to date and look at the current reports. I am talking about the reports of 2005 and 2006. It will become very clear that, within the last four-and-half years of the Kibaki Administration, the management of our parastatals and State corporations has greatly turned around. An example was given of Kenya Airports Authority (KAA). We could give many examples like Kenya Ports Authority (KPA). Despite the problems that we are having at the Port, it is one of the best performing corporations. Indeed, the congestion problems have nothing to do with corruption, as was alleged earlier on. It is actually due to the improvement of the economy not just in Kenya, but within the hinterland. I mean in all the other countries. There is more cargo coming in through and yet, the rate of uptake in terms of railway and road transport. We have not done any new railway. We have not expanded the roads. So, there is congestion at the Port because of the uptake of the cargo and not because of inefficiencies at KPA. Just to assure the House that, indeed, there have been measures that have been taken to avert

that crisis, we have been pushing some of the cargo to two of the dry ports.

I think the story is very clear, literally, about every parastatal. As you look at it, you will see improvements with performance contracting. There is now more accountability. But, more importantly, and I think this is very significant, not just in terms of what the Kibaki Government has done, but in terms of setting the standards for what other Governments should be doing, not just here, but in the region. This is the delinking of the politicization of the management of parastatals by ensuring that there are no more "orders from above" and that parastatals heads are not waiting for a call from State House to determine when they should call a board meeting or to determine whether they should procure something. That has greatly changed the way things are being done and we are seeing profitability.

Mr. Temporary Deputy Speaker, Sir, from where I sit at the Treasury, I am very encouraged to see what our parastatals are doing. Instead of coming for subventions or grants from the Treasury, they are actually calling and asking: "When can we deliver a dividend cheque to Kenyans?" We have seen that happening. Safaricom is, probably, the best example. The Kenyan public has 60 per cent ownership. It is the most profitable company in East and Central Africa. That, basically, shows you what giving people the latitude to actually manage as they should without political interference can lead to. We are very happy to actually move one step further and share those great benefits with the Kenyan people.

But, obviously, some people have not been happy with that. I do not want to discuss that because there are matters in court. I believe there will be a ruling tomorrow on that issue.

Mr. Temporary Deputy Speaker, Sir, the issue of Safaricom IPO has been raised here. It is not safaricom that is issuing shares. It is the Kenyan Government that is divesting part of its shareholding. Part of the 60 per cent that we own on behalf of the Kenyan people, 25 per cent is what we are saying that we do not have to own on behalf of Kenyans when they can own it directly. So, I think that is the important thing. We should distinguish between---

**The Temporary Deputy Speaker** (Mr. Maore): Order, Mr. Minister, I think it is only fair for the Minister to address himself to other parastatals in that list he is referring to. He should resist the temptation of helping the judges with the ruling on the Floor of the House! Let us wait for tomorrow!

**The Minister for Finance** (Mr. Kimunya): Mr Temporary Deputy Speaker, Sir, I was trying to figure out how to respond to the issue without interfering with the courts. Thanks for your assistance on that.

Mr. Temporary Deputy Speaker, Sir, when we look at the Kenya Reinsurance Corporation, it has been mentioned here a couple of times. It is one of the State corporations that we have turned around with new management. We admit that there were challenges. There were some cases, but looking at a corporation whose base is billions of shillings, we considered Kshs36 million exposure as immaterial. Nevertheless, because it is public money, we went ahead and commissioned some in-depth investigations to dig deep and see what exactly was the problem at Kenya Reinsurance Corporation. How do we avert it in future and how do we send a message to all the other corporations? Regardless of the amount involved, we shall get in, investigate, get the culprits and return the money. I am very happy that in this case, eventually there would not be a single loss of any money or asset by the corporation. I believe that, that is what the Kibaki Administration is all about; protecting the public assets.

We know the history, in this country, of assets being plundered. State corporations being turned into cash cows. However, over the last four-and-a-half years, that has been totally reversed. We can move into the future with confidence knowing that the next PIC Report will be a summary of issues like what was said about the Kenya Airports Authority (KAA) in terms of progress, and visible and tangible results.

Mr. Temporary Deputy Speaker, Sir, as we put the issues in proper perspective, I also want to echo the sentiments expressed by my colleague, the Minister for Justice and Constitutional Affairs. Indeed, what we are saying here is the work of masters who were there in the 1990s, in the period that they reviewed and who were responsible for turning these State corporations into cash cows. They were responsible for bringing them down on their knees. Now, they are moving up and down on political platform telling us how clean they are and how good they can be in turning around this country.

Mr. Temporary Deputy Speaker, Sir, I shudder when I look at what future this country would have if those people were to come back anywhere near public resources based on their past performance. We almost see them salivating at the money and resources that the Kibaki Government has put together, so that they can come and plunder it. I hope that Kenyans will be far much wiser to use their votes to ensure that some of those people never come anywhere near the public resources or kitty. That would be where---

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear the Minister for Finance say that they have put up funds for some people to come and plunder? What truth does he have that somebody will plunder these funds? This Government is guilty of the Anglo Leasing scandal and other things! How can he accuse others without any prove whatsoever? Could he substantiate?

**The Temporary Deputy Speaker** (Mr. Maore): Minister, I think you get what you ask for! So, could you be brief and conclude?

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I believe that what I said is that we have done very well in terms of ensuring that all our parastatals are profitable. We have also noted that there are people who have been named in these reports who are now campaigning to come back to public life. We need to make sure that the public is protected by ensuring that those people do not come anywhere closer to public resources that we have conserved by turning around these corporations. I just wanted to mention that danger.

Mr. Temporary Deputy Speaker, Sir, in terms of the Kenya Cereals and Produce Board (KCPB), I had hoped that Mr. Kipchumba would be aware that the role of the Board is to manage the strategic grain reserves on behalf of the Government. We are commissioning them to manage three million bags of grains. We have provided them with the money in this Budget. I am very happy that the Appropriations Bill has been passed and so we can release the remaining monies. In terms of the other marketing arm, they are also responsible for ensuring that they can get money from the farmers, consolidate in buffer stocks and sell it to the market so that we do not have a situation where this country is flooded with cheap imports at the expense of our farmers. President Kibaki's Administration has been ensuring that farmers get the benefit of their toil.

Mr. Temporary Deputy Speaker, Sir, I could go on and on but like I said, the Committee has done a good job. We need to commend them. We hope that the next Committee would embark on updating the figures from where we are, so that we can bring to the House the good work and successes of the Kibaki Administration. It should not confuse the public with the bad deeds that happened before the Kibaki Administration took over, including the genesis of Anglo Leasing whose seed was planted in 1997 when they contracted 13 contracts. Contracts were awarded between 1997 and 2002. Basically, we are being crucified for things that were done when we were not there.

I beg to support.

**The Temporary Deputy Speaker** (Mr. Maore): Mr. Wamunyinyi, you have two minutes! After that, the Mover will be called upon to reply.

**Mr. Wamunyinyi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the two minutes to contribute.

I will start from the point where the Minister talked about the people who have looted and who should not come anywhere near the funds. It is the responsibility of the Government to implement recommendations of the PAC and the PIC. When those recommendations are made and adopted by this House, then the Government fails to implement them, whom do you blame? The same people who are now running around, you refer to some of them as luminaries and members of the pentagon, have been let loose by you. You are now allowing them to campaign around the country. It is you to blame as members of the Government! The Treasury is responsible for implementation. If that is fixed, we will ensure that members of the leadership are brought to sanity and do not get involved in looting again.

The other issue which I had is that of Safaricom. If the evidence is anything to go by, there was a concerted effort by the witnesses who appeared before the PIC to mislead, withhold information and even at some instances quoted fictitious documents. One of the documents Mr. Michael Joseph attempted to present before the Committee was a letter dated 26th, May, 2000. It has an address of Mr. M/s Gavin Darby Advocates. It was purported to be Vodafone (K) Ltd. address. Obviously, the letter was not signed. When the Committee pushed for the reasons as to why it was not signed, the evidence which was inconsistent from Mr. Joseph demonstrated that obviously, he was to mislead the Committee and quote false documents. There are cases when we feel that the Committee should have to take action against such people in terms of being hostile to members of the Committee or to the Committee itself in terms of the evidence being presented. I do not understand how the Capital Markets Authority (CMA) also acted in terms of allowing this Initial Public Offer (IPO) to go on when there are issues which have not been resolved about Mobitelea Ventures Limited. As you are aware, while we were in Mombasa drafting this Report, one of the Members of Parliament came to where we were and told us that we were trying--- I will quote what he said. He said:-

*"Nyinyi mnaketi hapa; mnataka kumwaga mchanga kwa chakula changu."*

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. You have heard the hon. Member make a very serious statement about an hon. Member of this House. Could he name that hon. Member because some of us are concerned that we could be implicated? We want to know who this hon. Member is? Could he tell us?

**Mr. Wamunyinyi:** Mr. Temporary Deputy Speaker, Sir, you know that I always speak the truth and I do not fear even saying anything when I am asked to. This was hon. Gideon Moi! He came to the Committee while it was sitting and said: *"Nyinyi mnamwaga mchanga kwa chakula changu,"* over the Safaricom Limited and Mobitelea Ventures Limited issue. So, it is important that when we bring out these issues, they should be addressed.

**Mr. Poghiso:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think our Standing Orders would definitely disallow this kind of thing where an hon. Member names another Member of Parliament without bringing a substantive Motion. So, would I be in order to ask that the hon. Member withdraws and apologises to the House?

**Mr. Wamunyinyi:** Mr. Temporary Deputy Speaker, Sir, I am not debating the hon. Member. I was merely asked to name the person who came to the Committee's sitting and said that *tunamwaga mchanga kwa chakula chake!* I was just saying that he came and I was not alone in that Committee!

**The Temporary Deputy Speaker (Mr. Maore):** Hon. Wamunyinyi, it is possible to be that accurate and right, but the procedure is that before you can put another hon. Member's name into that kind of category, you need to bring a substantive Motion.

**Mr. Wamunyinyi:** Mr. Temporary Deputy Speaker, Sir, I was contributing to this Motion and you heard me say that the hon. Member came where the Committee was sitting. You should then have asked hon. Sungu to stop challenging me. He challenged me and you allowed him and

you asked me to name the hon. Member. So, it is not my fault, and I think I understand also!

**The Temporary Deputy Speaker** (Mr. Maore): Mr. Wamunyinyi, I ask you to keep off that topic for now! You do not have any reason to mention somebody's name without bringing a substantive Motion, especially an hon. Member of this House!

**Mr. Poghiso:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think it is only fair that casting aspersions on a Member of Parliament--- I think by naming the hon. Member, he has already committed---

**The Temporary Deputy Speaker** (Mr. Maore): Order! I think the other issue that we can actually revisit is that it is inappropriate to name another hon. Member without bringing a substantive Motion. You are the one who challenged him actually to name the hon. Member. Being an experienced hon. Member of this House and you challenged him to name the hon. Member, you should have raised the issue that he cannot name another hon. Member without bringing a substantive Motion.

**Mr. Wamunyinyi:** Thank you very much, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Maore): Order! The issue is that an hon. Member of this House inadvertently has been named without a substantive Motion. He can use the Floor of the House to defend himself.

**Mr. Poghiso:** On a point of order, Mr. Temporary Deputy Speaker, Sir. If the hon. Member gets away with this, you will have actually destroyed the Member of Parliament. This is because if we are allowed to just name hon. Members without bringing a substantive Motion, it is actually against our own rules. The hon. Member should, first of all, withdraw that naming and then---

**The Temporary Deputy Speaker** (Mr. Maore): I would have been glad if somebody else actually raised that issue and not hon. Sungu who actually challenged the hon. Member. You are the one who provoked him and I overlooked it.

**Mr. Poghiso:** No, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Maore): It is you!

**Mr. Wamunyinyi:** Mr. Temporary Deputy Speaker, Sir, I know the rules and I was not even going to name that hon. Member until I was asked to do so!

**The Temporary Deputy Speaker** (Mr. Maore): Could the Mover now reply?

**Hon. Members:** Yes!

**Mr. Wamunyinyi:** Mr. Temporary Deputy Speaker, Sir, thank you for the two minutes. I beg to support.

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, I want to thank all the hon. Members who have contributed to this debate on the adoption of this Report. I also want to thank the Government Responder, the Minister for Finance, for recognising that we really took our time to compile this Report.

I just wanted to raise the point that we have already addressed the issue of witnesses who have been summoned by the Committee to appear before it and they have not done so. I think it is fair that Mr. Speaker has already ruled on that matter, so that the Office of the Clerk does not in future hinder Committees whenever they desire to meet certain witnesses.

Mr. Temporary Deputy Speaker, Sir, as I conclude, I also want to confirm what the hon. Wamunyinyi has just said; that while writing this Report at Whitesands Hotel, it is, indeed, true that the said hon. Member walked into the room - and Dr. Rutto is also here and he can confirm - and said to all of us: "*Nyinyi mnamwaga mchanga kwa chakula changu.*" It is, indeed, true.

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

*(Applause)*  
*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Mr. Maore): Next Order!

**BILL**

*Second Reading*

THE BIOSAFETY BILL

**The Minister for Science and Technology** (Dr. Wekesa): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Biosafety Bill be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir, before I go into the details of the Bill, I want to use this opportunity to thank His Excellency the Vice-President and Minister for Home Affairs for fast-tracking this Bill. This Bill is very important to Members of Parliament and all Kenyans, in general. It is, therefore, high time that we get into the nitty-gritty of the Bill and make sure that it is passed to give Kenya a place in the global world. The first objective of the Bill is to facilitate responsible research and minimise the risks of harm that may be caused by Genetically Modified Organisms (GMOs). The second objective of the Bill is to ensure that there is an adequate level of protection for the self-transfer, handling and use of GMOs that may have an adverse effect on the health of the people and the environment. Finally, the Bill is also meant to establish a transparent and predictable process for reviewing and making decisions on the transfer, handling and use of GMOs.

Mr. Temporary Deputy Speaker, Sir, hon. Members should know that we are living in a technologically advanced world. The field of biotechnology is very wide now. The industry is so big that unless Kenya gets a legal framework, it will be left behind. We will reach a stage where we will have to buy products of technology and pay a lot of money without knowing that we could have saved that money if we had a legal framework in place.

This is a very important Bill for Kenya. Kenya is trying to domesticate an international agreement that we signed in 2000 and ratified two years later. This is the Cartagena Protocol which has been ratified by 144 countries including Kenya. Therefore, the new law is aimed at regularising the study process in biotechnology so that Kenya can make informed decisions on whether or not to accept any type of genetically modified products or genetically modified organisms (GMOs).

Mr. Temporary Deputy Speaker, Sir, the new law aims at creating the necessary human resource in this area of knowledge to enable Kenya filter all information on GMOs or its products. It prevents the possibility of importing and trafficking of any GMOs without strict quarantine or supervision. The new legislation will create mechanisms for destruction of anything harmful to Kenyans and provide penalties for unauthorised importation and/or trafficking of genetically modified products. It provides for the development of human resource to enable this process to take place. This legislation does not seek to introduce any new GMOs, any products or modified organisms as we have been told.

Mr. Temporary Deputy Speaker, Sir, this legislation is for the protection of Kenyans from careless escape or dispensation of GMOs in strict accordance with the Cartagena Protocol. This law will also legalise the entire existing proposed infrastructure, quarantine facilities, inspection equipment, specialist committees, biosafety committees in the interest of the average Kenyans. The new law aims at protecting all our traditional crops and natural biodiversity from adulteration by strange materials and organisms from within and outside the country. This is why it is called a

National Biosafety Bill. Therefore, my Ministry would feel greatly honoured if the hon. Members of this august House could pass the proposed legislation. In this Bill we are creating a national authority to make sure that it is responsible of making sure that the provisions of the law are followed. I do not want to go into the nitty-gritty of the Bill. I would like to ask Mr. J.M. Mutinda to second this Bill.

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. May I know if it is in order for an hon. Member who is not a Minister to second a Government Bill?

**The Temporary Deputy Speaker** (Mr. Maore): Order, hon. Sungu! In fact, if you remember very well, the Media Bill was seconded from that side!

**Mr. Sungu:** Mr. Temporary Deputy Speaker, Sir, I stand corrected.

**Mr. J. M. Mutiso:** Thank you, Mr. Temporary Deputy Speaker, Sir. First of all, let me thank the hon. Minister for Science and Technology, Dr. Wekesa, for successfully bringing this Bill before this House. Biosafety issues have been very controversial. This country has never had a comprehensive framework on it. We have had *ad hoc* institutions which deal with these issues. I am actually part of the team which was invited by the International Services for the Acquisition of Agri-Biotech Applications to familiarise themselves with biotechnology issues. We came to find out that this country is one of those countries in the world which do not have a biosafety law. Right now, we have more than 22 countries in the world, including six in developing countries, which have a biosafety law. Therefore, this Bill is timely. Again, I would like also to congratulate the Government for increasing in this year's Budget the allocation for agriculture to beef up the setting up of the biosafety and biotechnology institutions to curb the biosafety issues in this sector.

Mr. Temporary Deputy Speaker, Sir, without much elaboration, this country has suffered chronic food shortages occasioned by lack of appropriate technologies. Once this policy framework is put in place, I think we shall be able to feed our people and also enter into the international arena of competition as far as food surplus is concerned. This country has been importing enormous amounts of food and agricultural products because of competitiveness as far as productivity is concerned. A Biosafety law will be able to actually open up the institution for investors to come in and for people to engage in productive capacities. Therefore, this Bill is timely. I truly believe that our competent Departmental Committee on Education, Research and Technology whose report has been tabled before this House will be able to guide this House when it comes to the Committee Stage.

With those few remarks, I beg to second.

*(Question proposed)*

**Mr. Sungu:** Thank you, Mr. Temporary Deputy Speaker, Sir. From the outset, I want to congratulate the Minister for finally bringing this Bill to the Floor of the House. On many occasions, we have sat at various fora discussing the question of biosafety. The questions of health of our citizens and use of technology to ensure that we solve some of our problems are very important and preeminent in our times. It is important and incumbent upon the current Parliament to ensure that this Bill is properly debated, so that we can enact it into law and provide guidelines on how this Genetically Modified Organisms (GMOs) can be dealt with.

Mr. Temporary Deputy Speaker, Sir, in the Memorandum of Objects and Reasons the Minister says that:

"This Bill lays down a framework on how activities related to Genetically Modified Organisms (GMOs) are to be dealt with. To implement this policy, the Ministry has formulated the Biosafety Bill, 2007, which it intends to be the legal framework governing activities related to GMOs. This Bill seeks to domesticate the provisions

of the Cartagena Protocol, one of the protocols constituted under the Convention on Biological Diversity to which Kenya is a signatory."

That was in the year 2003.

Mr. Temporary Deputy Speaker, Sir, I for one have pushed for a Bill on the question of tobacco use and on that occasion also the Government had ratified the protocol called the Framework Convention on Tobacco Control (FCTC) under the auspices of the World Health Organisation (WHO). Therefore, when a country through the Cabinet ratifies a protocol, then it means that it is necessary to domesticate it. This can only be done in Parliament by it enacting laws that can ensure that the provisions of such protocols can be observed in Kenya.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Maore): Order, hon. Members! Hon. Sungu, you have 28 minutes when we meet next time over this Bill. It is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 3rd October, 2007 at 9.00 a.m.

The House rose at 6.30 p.m.