

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 18th April, 2006**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

The Annual Report and Accounts of KWAL Holdings, East Africa Ltd for the year ended 30th, June, 2004, and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for  
Trade and Industry)*

The Annual Report and Accounts of Lake Basin Development Authority for the year ended 30th, June, 2003, and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Trade and  
Industry on behalf of the Minister  
for Regional Development Authorities)*

The Annual Report and Accounts of Maseno University for the year ended 30th, June, 2003, and the Certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of Maseno University for the year ended 30th, June, 2004, and the Certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of Moi University for the year ended 30th, June, 2002, and the Certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of Moi University for the year ended 30th, June, 2003, and the Certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of Moi University for the year ended 30th, June, 2004, and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Trade and  
Industry on behalf of the  
Minister for Education)*

The Annual Report and Accounts of Moi Teaching and Referral Hospital for the year ended 30th, June, 2004, and the Certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of the National Hospital Insurance Fund (NHIF) for the year ended 30th, June, 2004, and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Trade and  
Industry on behalf of the  
Minister for Health)*

The Annual Report and Accounts of National Housing Corporation (NHC) for the year ended 30th, June, 2003, and the Certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of the National Housing Corporation (NHC) for the year ended 30th, June, 2004, and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Trade and  
Industry on behalf of the  
Minister for Housing)*

The Annual Report and Accounts of the National Museums of Kenya (NMK) for the year ended 30th, June, 2004, and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Trade and  
Industry on behalf of the Minister  
for National Heritage)*

The Annual Report and Accounts of the National Water Conservation and Pipeline Corporation for the year ended 30th, June, 2000, and the Certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of the National Water Conservation and Pipeline Corporation for the year ended 30th, June, 2001, and the Certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of the National Water Conservation and Pipeline Corporation for the year ended 30th, June, 2002, and the Certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of the National Water Conservation and Pipeline Corporation for the year ended 30th, June, 2003, and the Certificate thereon by the Controller and Auditor-General.

*(By the Minister for Trade and  
Industry on behalf of the Minister  
for Water and Irrigation)*

The 2005/2006 Supplementary Estimates, Recurrent Expenditure.

The 2005/2006 Supplementary Estimates, Development Expenditure.

*(By the Minister for Finance)*

**Mr. Speaker:** Thank you, Mr. Minister.

Next Order!

**Capt. Nakitare:** On a point of order, Mr. Speaker, Sir. This is a matter of national

importance. We lost six Members of Parliament and I would like---

**Mr. Speaker:** Order, Capt. Nakitare! Could we proceed as per the order stipulated in the Order Paper?

Mr. Minister, please, proceed!

**Capt. Nakitare:** Mr. Speaker, Sir, I would like to remind the House---

**Mr. Speaker:** Mr. Minister, please, proceed!

### NOTICE OF MOTION

#### APPROVAL OF SUPPLEMENTARY ESTIMATES (RECURRENT AND DEVELOPMENT) 2005/2006

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, I beg to give notice of the following Motions:-

THAT, a sum not exceeding Kshs12,536,446,290 be granted from the Consolidated Fund to meet expenditure during the year ending 30th, June, 2006, in respect of Supplementary Estimates of the 2005/2006 Financial Year (Recurrent) having regard to the proposed reduction of Kshs4,983,986,530 therein appearing.

THAT, a sum not exceeding Kshs8,245,146,348 be granted from the Consolidated Fund to meet expenditure during the year ending 30th, June, 2006 in respect of Supplementary Estimates of the year 2005/2006 Financial Year (Development) having regard to the proposed reduction of Kshs15,784,941,614 therein appearing.

Mr. Speaker, Sir, the President has given his consent to these Motions.

**Mr. Speaker:** Thank you. Capt. Nakitare, what was it?

**Capt. Nakitare:** Mr. Speaker, Sir, with regard to what happened last week, I feel remorseful because the House should have stood in silence in respect of our deceased brothers before we start business.

**Mr. Speaker:** Where were you last week?

**Capt. Nakitare:** Mr. Speaker, Sir, this is our first sitting after we buried them!

**Mr. Speaker:** Order! Capt. Nakitare! Apparently, you need to revisit our traditions again! Please, we only do it once! But I would like to thank all hon. Members and Kenyans for rallying together in mourning and putting our colleagues to rest. Thank you, hon. Members. You were wonderful!

*(Applause)*

Next Order!

### QUESTIONS BY PRIVATE NOTICE

#### RELEASE OF REPORT ON FOOD ASSESSMENT SURVEY IN KILIFI DISTRICT

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

(a) Could the Minister table the report of the recent food assessment survey in Kilifi

District?

(b) Could he explain why an international Non-Governmental Organization (NGO), World Vision, has been given the responsibility of distributing relief food in the district instead of the Ministry?

**The Minister of State for Special Programmes** (Mr. Munyes): Mr. Speaker, Sir, I beg to reply.

(a) A joint mission between the Government, the United Nations World Food Programme and the Non-Governmental Organizations recently carried out a survey to assess the impact of the 2005/2006 short-rains on food security in Kilifi District, amongst other districts affected by drought in the country. The coast region field assessment took place between 14th and 31st January, 2006. The report of the mission indicated that food security in Kilifi District is mainly affected by increased drought as a result of erratic rainfall patterns, over-dependence on rain-fed agriculture and wildlife menace.

The mission recommended that food distribution in the worst affected divisions, emphasizing on food for assets/food for work, be undertaken. This should specifically target Chakama, Dongo Baya and Jilore in Malindi Division and Adu Bugale and Garashi in Marafa Division where a total of 96,271 people are in need of food aid. The mission also recommended that school feeding programmes in schools in the above mentioned areas be established and drought resistant and early maturing varieties of seeds be provided to the farmers for planting in the coming short rains.

(b) In order to efficiently and effectively distribute relief food stuff, it has been agreed that only one lead agency per district be appointed by the various District Steering Groups (DSG).

In Kilifi District, the World Vision was appointed the lead agency in the distribution of relief food to the affected households. This was because it had the necessary capacity to undertake the task. The decision was made in a DSG meeting held at the DC's office on 10th March, 2006. The Ministry of Special Programmes still provides guidelines in the distribution of food, necessary resources and also co-ordinates and supervises the whole exercise.

**Mr. Khamisi:** Mr. Speaker, Sir, the copy of the written answer I have from the Minister indicates that the DSG meeting was held at the DC's Office in Malindi on 10th March, 2006. I would like to inform the Minister that Malindi is a different district from Kilifi District. In any case, food is a strategic resource for this country. I do not understand why the Government should go ahead and appoint a foreign agency to determine the fate of Kenyans. Could the Minister tell this House the reasons why a local agency could not be appointed to do the job that the World Vision is doing?

**Mr. Munyes:** Mr. Speaker, Sir, we all know that working with the development partners in food distribution is a standard international system. I think NGOs are efficient and have the capacity to distribute food. They spend a lot of time and resources in the distribution of food. The Government, with the help of the NGOs, has always distributed relief food to Kenyans well.

**Mr. Mukiri:** Thank you, Mr. Speaker, Sir. Year in, year out, the Government has to come out and bail out Kenyans who face hunger. What policies has the Minister put in place to stop the culture of giving relief food to starving people but instead, make those areas self-sufficient in terms of food security?

**Mr. Munyes:** Mr. Speaker, Sir, the long-term solution does not fall under my docket, but under the Ministry of Agriculture. The Ministry of Agriculture is coming up with those policies. It is also mobilising resources in the ASAL areas to ensure that we suppress drought.

**Mr. Rotino:** Mr. Speaker, Sir, the Minister has indicated that they carry out frequent surveys to determine the extent of drought in some areas of the country. Could he lay those reports before the House? This is because those reports form the basis of us, as hon. Members from those

areas, to visit his office and request him to increase the food ration. Could he be courteous enough to lay those reports on the Table of this House? I know they are done all over the Republic.

**Mr. Munyes:** Mr. Speaker, Sir, I do not think that is a problem. We can present those reports to hon. Members.

**Mr. Khamisi:** Mr. Speaker, Sir, part "a" of the Question wanted the Minister to lay on the Table the Report of the Assessment of Kilifi District which he has not done. Nevertheless, and I think he will do that, I also expect some of those assessment exercises would be done with reference to local hon. Members. I have never seen anything in Kilifi District that indicates that hon. Members are involved in any way.

**Mr. Munyes:** Mr. Speaker, Sir, I am willing to present those reports, including the Kilifi Report, before this House so that hon. Members can look at them. However, I do not agree with the idea of hon. Members being part of the assessment team. I think that is a tedious exercise which is done scientifically.

RELIEF FOOD FOR TIGANIA  
NORTH DIVISION RESIDENTS

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

(a) Is the Minister aware that residents of Buuri, Karama, Muthara and Antuanduru locations in Tigania North Division are on the verge of starvation and schools are about to close due to the drought ravaging the area?

(b) Is he further aware that the half-a-kilo of maize given to each family in the area once a month is not enough to meet the food needs of these people?

(c) Why has the Ministry persistently refused to provide enough food to the residents of this area like other drought stricken areas in the country?

**The Minister of State for Special Programmes (Mr. Munyes):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware of the fact that some areas of Tigania North Division in Meru North District have been affected by the drought currently ravaging several parts of the country. However, the district is not among those that have been severely affected.

(b) I am not aware that each family is given half-a-kilo of maize per month. However, I am aware that the quantities recommended per person per month are as follows; the amount of maize given out is 13.8 kilogrammes, beans - 2.4 kilogrammes and vegetable oil - 0.7 litres.

(c) Tigania North Division is not among the areas that are adversely affected by drought. However, recognizing that there are pockets in the division that require support, the Government has continued to meet such needs.

**Mr. Munya:** Mr. Speaker, Sir, I would like to thank the Minister for visiting the area and increasing the food ration, even though he has not said that. I request him to maintain the current food ration now that he has increased it, throughout the rainy season until the people harvest and have food to feed on. Otherwise, he is one of the best Ministers who intervenes when hon. Members request.

*(Applause)*

**Mr. Munyes:** Mr. Speaker, Sir, I also thank the hon. Member for that comment. I increased the ration from 4,000 bags of maize to 8,000 and 2,000 bags of beans to 4,000. I think that will cover the whole of Meru North.

**Mr. Mwanzia:** Mr. Speaker, Sir, I also want to thank the Minister because he is very

responsive to the Questions that hon. Members ask. Since this is the rainy season in the whole country, as the hon. Member for Tigania East has said, could the Minister consider supplying planting seeds to the people of Mwala, the lower parts of Machakos District and Tigania East Constituency because they lack them?

**Mr. Munyes:** Mr. Speaker, Sir, we will spend Kshs820 million to provide planting seeds all over the country. We hope to provide six tonnes of planting seeds per division.

**Mr. Speaker:** Mr. Munya, ask your last question!

**Mr. Munya:** Mr. Speaker, Sir, I am satisfied with the Minister's reply.

**Mr. Speaker:** That is very good, Mr. Munya!

Next Question by Mr. C. Kilonzo!

ALLOCATION OF FPE MONEY  
TO MBANDA SALAMA  
PRIMARY SCHOOL

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that Mbanda Salama Primary School, A/C No.166124090, has not received any money under the Free Primary Education Programme?

(b) What is the Minister doing to ensure that the school receives its allocation?

**The Assistant Minister for Education (Dr. Mwiria):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Mbanda Salama Primary School in Machakos District has been receiving Free Primary School Education allocations, except on two occasions; that is April and August, 2005.

(b) The Ministry will credit a sum of Kshs102,490 through electronic transfer to the Free Primary School Education General Purpose Account No.166124090 at the Kenya Commercial Bank, Matuu Branch, by or before tomorrow.

The problem arose because the account number that was provided last year had some mistake. We are now able to send the money that had not been sent to the school, since that problem had been rectified.

**Mr. C. Kilonzo:** Thank you, Mr. Speaker, Sir. On many occasions in my constituency and other constituencies, there seems to be a big problem of remittance of funds for the Free Primary Education Programme. Why does it have to take a whole year to get an error like that corrected?

**Dr. Mwiria:** Mr. Speaker, Sir, sometimes we do not realise the mistake until a cheque has bounced and we write to the school. It also depends on how quickly we get the responses before we react. However, we have improved on this and hope that we will not take a whole year before such responses are made.

**Mr. Khamisi:** Mr. Speaker, Sir, could the Assistant Minister tell the House whether he has a list of all the schools that have not received their Free Primary Education Programme funds?

**Dr. Mwiria:** Mr. Speaker, Sir, we update the list on the basis of the returns. So, we have that list. We ask the relevant questions to the schools concerned, in case of non-payments.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, around September, 2005, I asked a similar Question about Masewani Primary School and I was given a similar answer to this one. I was told that the funds would be sent to the school the following day after I had asked the Question. However, todate, the same school has not received any money.

Mr. Speaker, Sir, could the Assistant Minister tell us why that school has not received the money, and whether, indeed, Mbanda Salama Primary School will receive the money by tomorrow?

**Dr. Mwiria:** Mr. Speaker, Sir, I am not aware that that school has not received the money. In any case, I was not asked that question. So, I have to check that and as soon as I know the situation, I shall respond accordingly.

**Mr. Speaker:** Next Question by Private Notice by hon. Ochilo-Ayacko!

MEASURES TO HARVEST OVER-MATURE  
CANE AT SONY SUGAR COMPANY

**Mr. Ochilo-Ayacko:** Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that there is excess and over-mature cane grown by farmers for South Nyanza Sugar Company Ltd. (SONY)?

(b) What is he doing to ensure the cane is harvested and farmers paid promptly?

**The Minister for Agriculture (Mr. Kirwa):** Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that there is excess and over-mature cane grown by farmers for SONY.

(b) In order to ensure that both timely harvesting of cane and improved rate of paying farmers, the following measures have been in put in place:

(i) SONY has embarked on expansion of its factory cane crushing capacity from the current 3,000 tonnes of cane per day to 6,500 tonnes of cane per day. Towards this direction, a due diligence exercise on the financial and technical aspects by Ms. Dyer and Blair have commenced today, the 18th of April, 2006.

(ii) SONY has recruited more contractors to transport cane from the farmers' fields to the factory.

(iii) In March this year, the Government, through the Kenya Sugar Board (KSB), advanced SONY Kshs54 million to assist towards repayment of farmers' arrears.

**Mr. Ochilo-Ayacko:** Mr. Speaker, Sir, the issue of expanding SONY has been there for the last five years. The reply the Minister is giving does not indicate any sums of money proposed by the Government or a time for commencement of this exercise of expansion. Could the Minister inform the House where the money will come from, how much it is and when this expansion will be put in place?

**Mr. Kirwa:** Mr. Speaker, Sir, as I said, the due diligence exercise by the said company is being carried out on behalf of SONY and the Government, through Treasury, have jointly awarded the contract. It is until that is done, that we shall be able to assess the amount of money that is required to effectively implement the expansion programme.

**Mr. Angwenyi:** Mr. Speaker, Sir, could the Minister consider establishing a new sugar processing factory in South Mugirango to decongest SONY?

**Mr. Kirwa:** Mr. Speaker, Sir, we do not deal with constituencies when it comes to issues of expansion or setting up of new factories. Nonetheless, my Ministry last year, did an assessment of the entire SONY area to see whether there is suitability for a new sugar factory. We have established beyond any reasonable doubt that, indeed, we need two factories. One in Trans-Mara and another in Gucha District.

**Mr. Omamba:** Mr. Speaker, Sir, a lot of cane has been decaying in the fields in my constituency for the last three years. Could the Minister consider paying interest to the farmers whose cane has passed the normal harvesting period due to congestion at SONY?

**Mr. Kirwa:** Mr. Speaker, Sir, while I do sympathise with the predicament of farmers in that particular area, the way forward is for us to expand, otherwise there are no legal instruments through which I can implement the suggestion by the hon. Member.

**Mr. Ochilo-Ayacko:** Mr. Speaker, Sir, the Minister is certainly aware of the ending of the

COMESA safeguards that are safeguarding the sugar industry. He is further certainly aware that the over-mature cane in the SONY area is in excess of one million tonnes as opposed to what the factory can crush which is 800,000 tonnes. What urgent measures is the Minister putting in place to encourage the harvesting of cane and the payment of farmers other than what has been said here?

**Mr. Kirwa:** Mr. Speaker, Sir, I read two parts in that question. The first part is the issue of fast-tracking the initiatives that are being started today so as to be able to expand SONY. I will give my commitment to that by saying that any initiatives that are being started are going to be fast tracked for the purpose of attaining the same. The second part concerns farmers arrears. Unless there are arrears arising out of the cane that they are crushing now, I have issued a directive that the Kshs2.3 billion that we inherited be reduced to Kshs200 million last year. I have also given a clear directive that there should be no farmers' arrears arising out of the cane that was delivered before I took over the Ministry. If there is any information to the contrary, the hon. Member can give it to me.

**Mr. Speaker:** Next Question by Private Notice by Prof. Anyang'-Nyong'o!

AUCTIONING OF MIWANI SUGAR  
MILLS NUCLEUS ESTATE

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

In view of the fact that the Nucleus Estate of Miwani Sugar Mills has been advertised to be auctioned on April 12, 2006, could the Minister explain the following:-

- (a) who is auctioning the land and why?
- (b) who are the secured debenture holders of Miwani Sugar Mills?
- (c) What has the Minister done to safeguard the national interest in Miwani Sugar Mills?

**The Minister for Agriculture (Mr. Kirwa):** Mr. Speaker, Sir, I beg to reply.

(a) Nyaluoyo Auctioneers, on behalf of Tujit Singh and Malkiat Singh, were intending to auction Miwani Nucleus Estate for Miwani Sugar Mills. This is to certify judgement passed against Miwani Sugar Company sometimes back.

(b) There is no secured debenture holder of Miwani Sugar Mills Limited, the debenture having been discharged way back in 1990 after the Government paid off the debts arising at that time. However, Oriental Commercial Bank are the first debenture holders on Miwani Sugar Company in 1989 and the Kenya Sugar Board being the second debenture holder.

(c) To safeguard the national interests of Miwani Sugar Mills Nucleus Estate, the Minister in the year 2004 filed a caveat under Section 65 of the Registration of Titles Act to protect the public interest on the two titles. The caveats as of now are still in place. The debenture holders have also proceeded to court and obtained a court order stopping the sale of the said land.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, let me thank the Minister for providing this answer but the sugar industry is in a big problem and the problem in Miwani is the confusion of who owns the land and who owns the factory. The names which appear here were given in a judgement by Justice Mbaluto who was dismissed with disgrace from the Judiciary and his judgement has been argued to be invalid in law.

So, can the Minister explain to us what stake the Singhs have in Miwani Sugar Company and what he has done to ensure that the fraudulent judgement given by Justice Mbaluto is set aside so that national interests can be safeguarded in Miwani Sugar Mills?

*(Applause)*



**Mr. Twaha:** On a point of order, Mr. Speaker, Sir. Prof. Anyang'-Nyong'o has just referred to a judgement of the High Court of Kenya as fraudulent. Is he in order to do so?

**Mr. Speaker:** Prof. Anyang'-Nyong'o, did you refer to a judgement of the High Court of Kenya as fraudulent?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, the judgement given by Justice Mbaluto to award the Nucleus Estate in Miwani to two gentlemen called Mr. Surnjit Singh and Malkiat Singh has been argued to be invalid in law. Justice Mbaluto himself was dismissed with disgrace from the Judiciary. If I may offer my---

**Mr. Speaker:** Order, Prof. Anyang'-Nyong'o! Has that judgement been overturned by the Court of Appeal?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, the judgement has been argued in court to be invalid in law. If you look at the facts in the case of Miwani Sugar Mills (MSM), you will, as a lawyer, realise that Justice Mbaluto had no grounds whatsoever to award the Nucleus Estate to somebody who did not have a say in that investment.

**Mr. Speaker:** Order, Prof. Anyang'-Nyong'o! Hon. Members, sometimes you must reflect on what you say when you complain about the collapse of our society and institutions. This does not just happen. This happens because we do not respect institutions. This Parliament must lead from the front by strengthening every institution in this country.

So, until a judgement is overturned, no hon. Member is allowed, on the Floor of this House, to call it fraudulent. It means the hon. Member is sitting on an appeal or a matter of the High Court of Kenya, which he is incompetent to do so. He is not authorised by the Constitution. So, please, let us respect every institution in this country.

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

**Mr. Speaker:** Mr. Raila, as always, what is it?

*(Laughter)*

**Mr. Raila:** Mr. Speaker, Sir, perhaps we need your guidance on this matter. As you know, there was a commission of inquiry appointed by the Chief Justice, which found seven judges to have been fraudulently influenced in their rulings in certain cases. Those rulings were actually the cause of those judges being suspended. How does the House treat this matter? What is the fate of those cases which were fraudulently determined?

**Mr. Speaker:** Mr. Raila, you are at it again; you are using the word, "fraudulently"!

*(Laughter)*

**Mr. Raila:** Mr. Speaker, Sir, I am saying that corruption was the reason behind this. What is the fate of those cases?

**Mr. Speaker:** Order, Mr. Raila! Hon. Members, there were allegations made against judges of the High Court of Kenya and the Court of Appeal by a committee set up the Chief Justice---

*(Loud consultations)*

Order, hon. Members, can you follow this?

Hon. Members, there were allegations made by a committee constituted by the Chief Justice. As a result of that, several judges were suspended in accordance with the Constitution. However, only one case has been concluded by a tribunal created by His Excellency the President

in accordance with the Constitution. That is the case of Justice Waki. To the best of my recollection, no judge to date, has been found guilty by the tribunal set up by the President. The judges who left the Judiciary, according to my recollection, did so on their own volition, not because they were found guilty. Even if that be the case, to contemplate what the two hon. Members want to urge, would be to invite total chaos and mayhem. How many cases have those judges decided on in their long careers on the Bench? The fact that a judge has been found guilty of impropriety in one particular case, and you consider all other judgements that, that judge has made in his or her lifetime career to be wrong, that is chaos. It would not work. It simply cannot work in a civilised society. So, let us keep it that way. That is the fact, not a single judge so far has been found guilty of corruption by a constitutional tribunal created by His Excellency the President.

Proceed, Mr. Minister!

**Mr. Kirwa:** Thank you, Mr. Speaker, Sir, for your guidance on the second part of my colleague's question. The first part was to remove the confusion arising on who is holding what parcel of land. The information available to my Ministry is as follows:-

The MSM and 50 acres surrounding the sugar company premises is under Oriental Bank. The balance of the land is Government land and a decree was given to Mr. Surnjit Singh & Brothers sometime back. That is the issue in court.

**Mr. Sungu:** Mr. Speaker, Sir, I want to declare my interest on this matter because this is ancestral land, which belongs to my great grandfathers. Even the hon. Minister knows this because he comes from that area. The said Mr. Surnjit Singh and Malkiat Singh were given this factory to run by the Government. They used the opportunity to run down the factory through fictitious debts so that they could grab this land. Mr. Surnjit Singh operates from Bungoma and Kisumu. He filed a case in Bungoma and the file was following the judge wherever he went. I would like the Minister to assure this House that he will take all the necessary measures to protect this land. If he does not do so, my people will occupy this land by force, if necessary!

**Mr. Kirwa:** Mr. Speaker, Sir, before the hon. Member occupies the land, I just want to set the record straight. The subject matter in court is specifically on the grounds raised by the hon. Member. We are dealing with it. We are confident that the lawyers that we have will be able to deal with the case in a way that will be favourable.

**Mr. Speaker:** Hon. Members, we must move on to the next Question.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, notwithstanding---

**Mr. Speaker:** Prof. Anyang'-Nyong'o, could you try and move closer to the microphone?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, notwithstanding the legal complexities in this case, which have been made complicated deliberately to ensure that corrupt deals are carried out in this company to ground it to a standstill so that the people of Kenya do not make wealth from this company, I would like to say that this has been going on for about 10 years.

Mr. Speaker, Sir, these are some of the problems we have in the sugar sector in this country. It is quite clear to us---

**Mr. Speaker:** Order, Prof. Anyang'-Nyong'o! Could you ask your question?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, I have to give some background information. This is a very serious matter. It is quite clear to us that in spite of the efforts the Minister and the Permanent Secretary are making, elements in the Ministry and the Kenya Sugar Board (KSB) are colluding with the Singhs and Delphis Bank of Kenya (DBK) to ensure that neither the factory nor the Nucleus Estate operate.

**Mr. Speaker:** Order, Prof. Anyang'-Nyong'o! Will you, please, ask your question?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, can the Minister tell this House what steps the Government is taking to ensure that MSM is operational this year and not in years to come because some of these cases are forever in the courts, and they are never concluded? One of the ways in

which this economy is being sabotaged is by cases going on and on in court and yet they are never concluded. What steps is the Minister taking to ensure that this company is operational this year and not next year?

**Mr. Kirwa:** Mr. Speaker, Sir, we have prepared a common paper for the purpose of sending it to the Cabinet on the revitalisation of the sugar industry in which specific proposals on Miwani as a factory have been made for the Cabinet to consider. These proposals include, among others, cleaning of the balance sheet to attract a strategic investor for the revival of Miwani Sugar Factory. Secondly, we are in discussion with one of the debenture holders for purposes of off-loading the debenture to the Kenya Sugar Board for ease of operations.

**Mr. Speaker:** Very, well. The Question by hon. Balala.

**An hon. Member:** Mr. Speaker, Sir, he is not there.

#### MEASURES TO AVERT COLLAPSE OF MWEMBE TAYARI RETAIL MARKET

**(Mr. Balala)** to ask the Minister for Local Government:-

(a) Is the Minister aware that Mwembe Tayari Retail Market is on the verge of collapse?

(b) What urgent steps is the Minister taking to avert an impending disaster by repairing and redesigning the market?

(c) Could the Minister assure the House that once the market is rebuilt, the registered vendors will be guaranteed their stalls?

**Mr. Speaker:** The Question is dropped.

*(Question dropped)*

#### ORAL ANSWERS TO QUESTIONS

**Mr. Speaker:** Hon. Members as we go to ordinary Questions, I invite you to look at your Order Paper. Question No. 031 is deferred to Thursday. I think that is the only Question for which I received a notification. The Minister is not here. He is representing me and you in the funeral of those Government officers who died in the Marsabit plane crash. So, that is a good reason for deferring it.

*Question No.031*

#### ELECTRIFICATION OF MARKET CENTRES IN TESO DISTRICT

*(Question deferred)*

*Question No. 002*

#### GOVERNMENT EXPENDITURE ON SAMBURU DISARMAMENT EXERCISE

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

(a) how much money was utilised in the disarmament exercise in Samburu District

in 2005; and,

(b) how many guns were recovered.

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

(a) A total of Kshs8.3 million was utilised for the disarmament exercise in the year 2005.

(b) A total of 1,166 assorted firearms were recovered.

**Mr. Lesrima:** Mr. Speaker, Sir, this disarmament exercise was carried out in a very selective manner. My constituents were disarmed, or rather they voluntarily surrendered the guns they acquired in 1996, following a promise that the Government would protect them. However, pastoralists from the neighbouring district of Baringo were never disarmed. Is the Assistant Minister aware that as a result of his selective action, my people are now exposed to a grievous danger posed by armed gangsters, who are terrorising them? What measures is he putting in place to protect the people, who were disarmed by the Government?

**Mr. Kingi:** Mr. Speaker, Sir, the initial stage was to carry out a campaign by talking to the people and leaders in those areas to voluntarily surrender any arms they had. In the process, the number of guns I have given above was received. The next phase will be to carry out the actual disarmament. But I want to assure this House that we did not do that exercise selectively. All the communities were talked to, and each of them surrendered a number of guns.

Mr. Speaker, Sir, when we go to the second phase we will conduct it fairly and not selectively. Otherwise, as of now, we have sent out security forces to the areas hit by clashes. The reports we are receiving from those areas indicate that the situation is under control.

**Mr. Cheboi:** Mr. Speaker, Sir, disarmaments have been done from time immemorial, but they do not seem to have achieved any good result. Could the Government consider arming communities, so that each community will be deterred from attacking another community? We are opening up communities to attacks from outside the country.

Could the Government consider arming our communities as is the case in the neighbouring countries?

**Mr. Kingi:** Mr. Speaker, Sir, definitely, no. As I have already said, the exercise started with a campaign. That is why we are calling upon leaders and hon. Members to join the Government in its serious campaigns to persuade the people to voluntarily surrender arms.

As we get into the second phase of disarming people, we should be together in the whole exercise.

**Mr. ole Ntimama:** Mr. Speaker, Sir, considering the insecurity in places like in Samburu, Laikipia and on the borders of Marsabit and Moyale Districts, could the Government tell us what it is doing to protect the people of these areas? It looks as if it is incapable of protecting the citizens of this country!

**Mr. Kingi:** Mr. Speaker, Sir, as a Government, we have started a series of peace missions. Hon. Members are aware that these peace missions are going on. We have teams in my office that have been visiting clash hit areas. So, what I am saying is that as we go on with peace missions we will talk to people through their leaders. We want the leaders to help our people to realise that conflicts only hinder development. If we work together, we will achieve development for our people. I think we were in a very solemn mood last week, and do not want what happened to occur again in this country.

**Mr. Sambu:** Mr. Speaker, Sir, there are two types of conflicts here. There are conflicts among our own communities and conflicts caused by forces from outside the country. We have seen in the media incidents of conflict that occurred as late as last night. Could the Government consider using our armed forces to prevent external aggressors from killing our people and stealing their livestock?

**Mr. Kingi:** Mr. Speaker, Sir, I have already said that the Government is using all available

resources to ensure that those activities in those areas come to an end.

**Capt. Nakitare:** Mr. Speaker, Sir, the issue of insecurity in our country is being dealt with in a chocolate manner. This is so, when one community is disarmed, another is encouraged to arm itself. That is not good. The Assistant Minister has not answered this Question well. Why can the Minister of State, Office of the President in charge of Defence not speak on behalf of the army, and the Minister of State, Office of the President in charge of National Security speak on behalf of the police, so that we know whose responsibility it is to protect the borders of Kenya?

**Mr. Kingi:** Mr. Speaker, Sir, we have said that the exercise was not done selectively. We are now getting into the second phase. Please, allow us to get into the second phase. We need your support to ensure that the subversion comes to an end.

**Mr. Lesrima:** Mr. Speaker, Sir, the Assistant Minister has not given a satisfactory answer. I still feel that the disarmament exercise to disarm people in northern Kenya---

*(Loud consultations)*

**Mr. Speaker:** Order, order, hon. Members! This issue shocked me and you. In fact, we skipped our Sittings last week after our colleagues died owing to what we are talking about, yet we are not paying any attention.

Mr. Lesrima, Proceed!

**Mr. Lesrima:** Thank you, Mr. Speaker, Sir. The fact of the matter is that disarmament will not succeed until we disarm everybody and patrol the borders. We feel shortchanged in the whole exercise. We were promised the Kenya Police Reserve (KPR), but we were instead given guns that cannot fire. They cannot fire because they have no bullets and they are not manufactured any more.

Mr. Speaker, Sir, is the Assistant Minister aware that by moving to the next stage, indeed, we will be opening trade in small arms? We have plenty of small arms in the neighbouring countries. Is he aware that by going into the next stage, we will have to go into forceful disarmament? What will the Assistant Minister do to replace the 500 rifles which cannot fire and had been given to our home guards? There was also Kshs8.3 million which was supposed to train the KPR to protect the community? How much of that money was used and was there any training that took place?

**Mr. Kingi:** Mr. Speaker, Sir, it has not been brought to our notice that some of the guns we took there cannot fire. If the hon. Member wants to assist us, let him bring the information to us and we will undertake the corrective measures.

Otherwise, we want to assure him, and the rest of Kenyans that when we get into the second phase of the exercise, we will do it thoroughly and there is no need for him to fear for himself or for his people.

**Mr. Speaker:** I am afraid that I have to stop there. The rest of the Questions will be asked between today and next week.

Next Order!

*Question No.024*

RETIREMENT OF TEACHERS  
IN MID-TERM

*(Question deferred)*

*Question No.036*

NON-COMPLETION OF ROAD WORKS  
IN BUNGOMA MUNICIPALITY

*(Question deferred)*

*Question No.006*

IMPROVEMENT OF LIFE IN  
NAIROBI SLUM AREAS

*(Question deferred)*

*Question No.010*

REVIVAL OF SIGUTYET  
WATER PROJECT

*(Question deferred)*

*Question No.017*

PROGRAMME TO COMBAT POVERTY  
AMONG THE YOUTH

*(Question deferred)*

*Question No.031*

ELECTRIFICATION OF MARKET  
CENTRES IN TESO DISTRICT

*(Question deferred)*

**BILLS**

*First Readings*

THE SEXUAL OFFENCES BILL

**Ms. Ndung'u:** Mr. Speaker, Sir, I beg to move that, in accordance with Standing Order No.101(a) Sub-section (1), the Sexual Offences Bill be referred to the Departmental Committee on Administration of Justice and Legal Affairs.

THE HIV AND AIDS PREVENTION  
AND CONTROL BILL

**Mr. Speaker:** Where is the Minister for Health?

**The Minister for Trade and Industry:** Mr. Speaker, Sir, I beg to move that, in accordance with Standing Order No.101, the Bill be referred to the relevant Departmental

Committee.

*(Orders for First Readings read -  
Read the First Time - Ordered  
to be committed to the relevant  
Departmental Committees)*

THE CONSTITUTION OF  
KENYA (AMENDMENT) BILL

**Mr. Speaker:** Where is hon. Keter? Sorry, we cannot refer Constitutional matters to a committee of the House because they cannot be amended on the Floor of the House or even in a committee. The laws are exactly that way.

*(Order for First Reading read -  
Read the First Time - Ordered to  
be read the Second Time tomorrow)*

**MOTIONS**

ADOPTION OF PAC REPORT ON  
SPECIAL AUDIT ON PROCUREMENT  
OF PASSPORT ISSUING EQUIPMENT

THAT, this House adopts the Report of the Public Accounts Committee on Special Audit on Procurement of Passport Issuing Equipment by the Department of Immigration, Office of the Vice-President and Ministry of Home Affairs, laid on the Table of the House on Tuesday, 28th March, 2006.

*(Mr. Kenyatta on 5.4.2006)*

*(Resumption of Debate  
interrupted on 18.4.2006)*

**Mr. Speaker:** Mr. Billow, how much time did you have left?

**Mr. Billow:** Mr. Speaker, Sir, I had 25 minutes left.

**Mr. Speaker:** Proceed!

**Mr. Billow:** Thank you, Mr.---

*(Loud consultations)*

Sorry, Mr. Speaker, Sir. It has been a while since we were here.

Last week, I talked about the peculiar nature of the Anglo Leasing contract. In particular, all the contracts had certain characteristics which were uniform. They all involved supply and finance of contracts. The people who were suppliers were the same ones who were arranging for the finances. The second aspect is that they were all camouflaged as security contracts, even where the contract involved non-security matters. For instance, where it involved the meteorological and postal services. Those were all camouflaged as security contracts.

I want to dwell a bit on the genesis of the contracts. The first of its kind was carried out in

1997 in a project which is shown on the chart on page 52, by the LBA Systems of Scotland. The contract on the Digital Multi-channel Security Telecommunications Network worth 24.6 million dollars was signed in 1997. The second one was in 1998 for the Kenya Police Airwing in which four helicopters were purchased at 36 million dollars and financed by Sound Day Corporation.

Mr. Speaker, Sir, the interesting thing is that in 1997 and in 1998, they were again involved in the contracts in later years. However, my colleagues who have contributed previously from the Government side said that there was a Cabinet approval for the Anglo Leasing contracts in 2001. I want to clarify that at the earliest opportunity.

What the Cabinet did on 27th July, 2001, was to formally authorise the use of lease finance and suppliers credit, which had been used in 1997 and in 1998. In 2001, the Cabinet gave a formal approval of what we refer to as Special Purpose Finance Vehicles. We did not see anything wrong with the approval of that. The Cabinet did not approve any specific projects or contracts, according to the information which was availed to us. This is very important.

In 2003, we were informed, and read it in the dailies, claims that the Cabinet, in fact, approved some of the contracts. When we investigated, we found out that none of the projects which were approved in 2003, were in fact, brought before the Cabinet. Therefore, we requested those who came before us, including the Head of Public Service, to present an extract of the minutes which showed that---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Order! We cannot continue that way. There must be order! Sit down and listen. Are you already bored with the issue? If you are, I will dispose of it right now.

Proceed!

**Mr. Billow:** Mr. Speaker, Sir, we, indeed, asked for the minutes of the Cabinet which showed that it sat to approve projects relating to Anglo Leasing and Finance Company in 2001.

Mr. Speaker, Sir, the contract that has been mentioned about the Forensic Science Laboratories was, indeed, signed on 15th August, 2001. We carried out an examination of the Controller and Auditor-General's Report on the passport issuing equipment deal. When it comes to examining the Controller and Auditor-General's Report on the Forensic Science Laboratories contract, anybody who has copies of the minutes will, indeed, appreciate that they show the fact that the Cabinet approved the Forensic Science Laboratories contract. Therefore, it is important to clarify that we were not able to obtain any evidence to the effect that the Cabinet approved specific contracts relating to Anglo Leasing and Finance Company.

However, we were able to verify and obtain evidence that some of the senior civil servants knew who was behind the Anglo Leasing and Finance contract. A good example is one senior public servant who is mentioned in the Report, Mr. Oyula. He actually admitted on HANSARD that he had full knowledge that Mr. Deepak Kamani was the principal agent of Anglo Leasing and Finance Company. This information, apparently, was given to us by the officer and yet the Government has been telling Kenyans for a long time that there is no known person who is involved in the Anglo Leasing and Finance Company scandal. However, this confirms what Mr. Githongo has been telling us in his dossier, which is also covered here, that the Minister for Finance at one time asked Mr. Oyula to call Mr. Deepak Kamani and asked him to refund the money that was paid out to Anglo Leasing and Finance Company. Mr. Oyula's confirmation that he knew Mr. Deepak Kamani as the principal agent of Anglo Leasing and Finance Company proved the point made by Mr. Githongo.

Mr. Speaker, Sir, we found out that there was a deliberate ploy by the Government to protect those people who were behind the Anglo Leasing and Finance scandal. A good example



with regard to the passport issuing equipment by the Department of Immigration is when the former head of that department, Mr. ole Ndiema was actually asked to approve the payment of Kshs91 million. He declined to do so. He was invited by the then Permanent Secretary to his office. It is strange that when he came in the boardroom, the contract was pulled out by the Permanent Secretary and showed to Mr. ole Ndiema, his clerks, an auditor and an accountant so that they could sign the payment vouchers. Clearly, there was an attempt to make sure that this information was not known to all the parties who should have known. At the same time, we were told that there were strange things such as the Permanent Secretary, Mr. Mwaliko, telling the Committee that the contract documents were sent to London for Anglo Leasing Officials to sign and then sent back. Therefore, they claimed that they did not know who the principals of Anglo Leasing and Finance Company were. All these were attempts to divert attention.

Mr. Speaker, Sir, was Anglo Leasing and Finance Company a mysterious company? Was it known to the Government? This Government was fully briefed on the Anglo Leasing and Finance Company projects which had been started and were ongoing when they took over power. This briefing was done in February, 2003. This Government has the detailed brief which was given specifically to the Permanent Secretary, Office of the President on those jobs which were ongoing by the time they took over power and those which had been proposed. Therefore, it is strange for the Government to say that it was not aware. That brief contained the name of Anglo Leasing and Finance Company which was handling the Forensic Science Laboratories contract. It also included the name of Sound Day Communications and Apex Finance Corporation. All these names were listed as part of the brief. All the credit pre-NARC contracts which were going on were provided to them. So, the Government wanted to investigate and find out whether those contracts should be stopped or not. They had an opportunity to do exactly that.

Secondly, the Government also knew this company. In fact, we have a memo that was provided to us and it forms part of the evidence laid on the Table together with this Report. This document was prepared in June, 2004 by the Office of the President. It had a list of all the 18 projects and under each project names of the people who were believed to be directors, shareholders or owners of the company are listed. This document was presented to His Excellency the President for discussion in June, 2004. Mr. Githongo referred to this document as one of the things that disturbed him most. He wondered that in spite of the Government telling Kenyans for months on end that it did not know anything about Anglo Leasing and Finance Company, it, indeed, had a document prepared by its senior officers which showed the names of the people who were behind each of the companies. Therefore, it is painful and misleading to Kenyans when the Government pretends that it is looking for Mr. Deepak Kamani today and yet, two years ago in June, 2004 it knew that Mr. Kamani was one of the principal agents of the Anglo Leasing and Finance Company. It is a case of trying to shut the stables after the horses have bolted.

Mr. Speaker, Sir, the total value of this contract is a staggering Kshs62 billion for the 18 projects. The money was paid in a short period between 2001 and 2003. In fact, by May, 2005 Kshs18 billion had been paid out to Anglo Leasing and Finance Company. Only Kshs1 billion was refunded to this Government. It, therefore, means that Kshs17 billion was paid to the Anglo Leasing and Finance Company contract and has not been recovered yet.

It is also important to note that the 12 ongoing projects which had not yet been cancelled by the Government have a liability. The total liability as at February, 2006, with regard to the 12 ongoing projects amounts to Kshs16 billion according to the estimates made by the Permanent Secretary, Ministry of Finance. So, if, today, payments were to be made as at February, 2006, this Government would be having a liability of Kshs16 billion to pay and yet no attempt has been made to cancel those contracts formally despite the claims that were made in 2004 that all payments with regard to the 18 Anglo Leasing-related contracts had been stopped. This was not the case. In fact,

some payments were made as late as May, 2005. The contracts have not been cancelled and are still going on. In particular, we have been able to verify that US\$4.75 million was in fact, paid to Universal Satspace in May, 2005. This is a year after the Government had announced that it had suspended all payments.

Mr. Speaker, Sir, it is important to note that the Anglo Leasing and Finance Company financing actually amounts to the Government financing itself indirectly. What happens is that money is paid upfront and the same money is used to pay suppliers. A good example is where we were informed by one of the witnesses, Mr. Oyula, that Anglo Leasing and Finance Company actually paid Euro 1 million to a French company with regard to this passport issuing equipment deal. If you look at it carefully, that amount of money actually represents the commission that was paid upfront by the Government to Anglo Leasing and Finance Company in 2003 when they signed the contract.

With regard to political capability, there is no way we can fight corruption in this country unless we deal with it from the top. Unless we take political responsibility for our actions, we cannot deal with corruption. This is the same message that was given out by the Deputy Leader of Government Business when she spoke here. In our view, the Constitution is very clear that Government Ministers have general direction and control over their departments. In other words, they have to deal with matters regarding direction and control. They are the ones who are in charge of those Ministries.

The Constitution is very clear that the secretary is responsible for supervision. There is a whole lot of difference between a supervisor and a director or controller of an institution. This general direction and control has been exercised in various ways. A good example is the approval of contracts. Each of the contracts approved by the Minister for Finance were preceded by a full written brief to the Minister. There is no approval of a contract that has been made by the Ministers without a written approval that has been given with regard to the contract.

Approval by the Ministers and the Vice-President were in writing. Therefore, I want to mention here that several Permanent Secretaries have confirmed to us that they often take the trouble to brief the Ministers regularly on important projects such as these. They said that they normally put this in writing so that they are aware. They also look at all the circumstances relating to the project.

Mr. Speaker, Sir, the practice we have seen in this country is that most of the Ministers do exercise more or less executive authority in some of their Ministries today. We have seen Ministers approving the appointment of CEOs, appointing senior officers and playing a more executive role in this regard. The important thing is to---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! We are really not in the same House. Looking across the House, I think we have about six or seven separate meetings which are unauthorised by the Chair. Could we please cease holding any other meetings except this one which I preside over? Please listen to what is being said. I thought when we were away on prorogation, hon. Members demanded the House to be recalled so that you could talk about Anglo Leasing. The Motion is here before the Floor, but you are not interested in it. If you are not interested, please give way to those who are interested.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

**Mr. Billow:** Mr. Deputy Speaker, Sir, the issue of political culpability and the role of the Ministers lends credence to what has been said by Mr. Githongo in the evidence that he provided to us, that several Ministers knew about the irregularities of these contracts and attempted to either cover them up or block investigations.

Mr. Deputy Speaker, Sir, I also want to deal with the role of the Treasury or the Ministry of Finance in these Anglo Leasing contracts. The PS admitted in evidence submitted before this Committee that his Ministry has more or less abdicated its responsibilities with regard to securing of external loans and credit. This Ministry is, however, charged with the overall responsibility of financial management in the country.

Mr. Deputy Speaker, Sir, when we find that there is financial mismanagement in various Ministries in this country, there is clear indication that the Ministry has indeed abdicated its responsibilities with regard to external loans and finance. In particular, we found out that the Ministry was unable to carry out due diligence on lease finance contracts. The Attorney-General's office was only concerned with legal matters. They clearly said they have no capacity to carry out due diligence on financial contracts, yet the Ministry of Finance did not at any one time attempt to do any due diligence on the lease finance contracts. For instance nothing was looked at with regard to the terms of the contracts, the period of repayment or terms of repayment.

Mr. Deputy Speaker, Sir, this Ministry was also notorious for approving single sourcing method of procurement when it came to anything to do with security contracts. I mentioned earlier that there were so many projects which were hidden under security. A good example is the contract related to the post offices by Universal Satspace and the one to do with the Meteorological Department. There are many contracts which had nothing to do with security, including purchase of vehicles, yet the Ministry of Finance routinely approved single sourcing if the request came for this kind of contract without being justified in law.

The other aspect of the Ministry of Finance failure, is the off-budget financing. In the last three years we have been given pledges that this Government would not allow off-budget financing. That is, the financing of any project outside approval by this House. Under Section 99, this House is the only one mandated to approve budgets yet we have seen circumstances where none of the 18 projects were presented to this House for approval. It was all done outside this House. There is also failure to report to Parliament in accordance with the External Loans and Credit Act.

Mr. Deputy Speaker, Sir, the CBK which is responsible under the CBK Act for administering payments relating to loan agreements was not consulted as required by law. The law is very clear that the CBK shall be consulted by the Government in negotiating any loan agreement, yet in all these agreements, the CBK was not consulted. It is also interesting to note that the Attorney-General's office advised at one time that the Anglo Leasing type of contracts which are called lease finance or suppliers credits do not actually qualify to be under the External Loans and Credit Act.

That advice was given in writing on 15th June, 2001, and this was from the Attorney-General's office. They said that this matter does not fall within the External Loans and Credit Act. Therefore, in their opinion, the transaction fell under the Government contract Act. If Anglo Leasing contracts today were viewed under the Government Contract Act, all this would not have happened because the manner of dealing with those contracts is entirely different from the way we deal with loans. I think it is very important that this Ministry takes its responsibilities more seriously and ensures that the advice given to them is actually taken on board in future contracts.

Mr. Deputy Speaker, Sir, if an Accounting Officer misuses his powers, the Ministry of Finance has the power to withdraw his appointment as an Accounting Officer. They did not utilise

that responsibility. Therefore, we found that Ministry singularly responsible for most of the things that have happened.

We tried to find out from those who gave evidence before us what sort of person Mr. Githongo was before he fled the country. We tried to find out the credibility of Mr. Githongo. We were told by none other than Amb. Muthaura who is the Head of the Civil Service that he could vouch for the integrity of Mr. Githongo. We then asked why it is that after he left service, some hon. Members are now saying that this man is a liar, irresponsible and a spy?

It is very clear that without the decision by this gentleman to stand up and tell us the truth about this matter, we would be groping in the dark. This country would be losing billions of shillings today. This country owes him an apology for the way he has been vilified by some of our hon. Members of this Government, for speaking out. Public servants need to emulate him. This Government should approve the Witness Protection Bill so that we can encourage public servants to come forward and give us information which is very important.

Mr. Deputy Speaker, Sir, as we speak here, we do not know how many Anglo Leasing contracts are going on out there. If anyone stands up and speaks, he will be dealt with.

Mr. Deputy Speaker, Sir, Parliament, as an institution, needs to assert itself. We cannot allow situations whereby, year in, year out, Government departments carry out projects worth billions of shillings without the approval of this House. Parliament must assert itself by amending the Financial Management Act. Those who flout financial regulations must be dealt with.

Mr. Deputy Speaker, Sir, we need to uproot that system of organised crime whereby a few people execute gigantic fraud against this nation with impunity. The Deputy Leader of Government Business was very clear. She agreed that there was need to clean up the system. But we want the Government to walk the talk. The Government has assured Kenyans many times - since June, 2004 when we brought the first Report here - that investigations were going on. But today, two years down the road, we are still being told that investigations are going on. We want this Government, this time round, to give an assurance to Kenyans that it will implement the recommendation that we will adopt. The main message in our recommendations is for individuals who have been mentioned in our Report to be investigated.

The Deputy Leader of Government Business needs to demonstrate her call for dialogue by taking the lead. We are calling for dialogue even on national issues like the Constitution. We should not dialogue on corruption only.

With those few remarks, I beg to support.

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity. I would like to start by congratulating the Leader of Official Opposition for the excellent way in which he presented this Report. Likewise, I would like to congratulate the Government Responder for the fluency in which she dealt with the matter.

Mr. Deputy Speaker, Sir, the Government's determination to fight corruption is total. I am part of that Government and I abhor corruption. If I stood here and tried to oppose the adoption of this Report, I would be sending out the wrong signal that the Government has no resolve to fight corruption.

But when the Leader of Official Opposition moved this Motion, he emphasized the fact that, he and his Committee were interested in nothing but the truth. I was very encouraged by those words. We should seek only the truth, with no conjecture or perception. We should seek nothing but the truth. But I get into a problem when I find that there is a lot of conjecture, perception and inconsistencies in this Report. So, what am I going to do?

Mr. Deputy Speaker, Sir, I have read the Report very carefully. I seek your indulgence to use my notes very extensively. I will be referring to the Report and back to the notes. Therefore, it

should not be taken as if I am reading a statement. I will simply be moving from my notes to the Report.

Mr. Deputy Speaker, Sir, there are so many errors of fact, distortions and mis-findings. The whole thing, without any evidence, leaves the credibility of the whole Report to me. Let me start by looking at page 43 where it states:-

"The Vice-President and Minister for Home Affairs read a Ministerial Statement in Parliament in which he exonerated himself from any wrong-doing in respect of the contracts, and further informed Parliament that the passport contract with Anglo Leasing was valid."

Mr. Deputy Speaker, Sir, that is totally false. It is also a distortion of facts. The correct position is very simple. In the Ministerial Statement that I read, I said quite clearly that the Government entered into a contract with a company whose name is very difficult for me to read, but it is a French company. The Statement further stated that, that entity entered into a financial arrangement with Anglo Leasing Finance Company. Therefore, I am unable to understand why the Committee chose to distort what I read and twist it to appear that the Statement was referring to a contract between the Anglo Leasing Company and the Government. At the same page, the Report further states:-

"The Vice-President and Minister for Home Affairs misleadingly defended the reputation of Anglo Leasing in his Ministerial Statement."

Again, that is plainly and definitely false. It is a distortion of the facts. In the Ministerial Statement, which is before this House, I did not, at any stage, defend the reputation of Anglo Leasing. My Statement referred entirely to the supplier; the French company.

As regards the reputation, the Statement limits itself entirely to the reputation of the French company, which was the supplier. It simply says that, that company is an internationally reputable firm which has undertaken similar projects elsewhere.

Mr. Deputy Speaker, Sir, again, it is difficult for me to understand why the Public Accounts Committee (PAC) distorted true facts and twisted the evidence to make it appear like I was defending the Anglo Leasing Company.

Mr. Deputy Speaker, Sir, on page 44, in the same paragraph, the Report states:-

"The Vice-President and Minister for Home Affairs must take responsibility for recklessly asserting that Anglo Leasing was a company of good repute when evidence available is in the contrary."

Mr. Deputy Speaker, Sir, for the very same reason that I have already stated, the findings and the recommendations by PAC is a distortion of facts without any factual foundation. I have never, at any time, asserted before this House that Anglo Leasing was a company of good repute. Just to make that clear, I have the HANSARD of 27th April, 2004. A paragraph on page five reads:-

"---that being an important security project in the country, and in view of the urgency of the project, the Government scouted for possible alternative source of funds, as donors were not forthcoming. Consequently, Franchois-Charles Obethur Fiduciare of France offered to supply the enhanced and integrated immigration information management system, and to apply credit financing through Anglo Leasing and Finance. That company, which is the supplier, is an international reputable company which has undertaken similar projects."

Mr. Deputy Speaker, Sir, if I was referring to Anglo Leasing as reputable company, I would have talked of that company having made financial arrangements for any other projects. In whichever way you look at it, my statement referred entirely to the supplier. That is the only time in

the Statement that the name "Anglo Leasing" comes out. So, for them to say that I was reckless in giving repute to a company like Anglo Leasing is to distort the facts and to refuse to accept the meaning which I gave when I read the Statement.

Mr. Deputy Speaker, Sir, it is further stated on page 43 of the Report:-

"If the Vice-President and Minister for Home Affairs wanted the Committee to believe that he only had a peripheral role in the processing of the Anglo Leasing contracts, this would be an abdication of his responsibility. As a Minister, Section 22, Item 3 of the Constitution requires that he exercises direction and control over his Ministry."

The accusation that I failed to exercise direct control over my Ministry is definitely false. It is proved false by the Committee's own findings of facts on page 38 of the Report. It gives the sequence of events as follows:-

On 5th September, 2003, the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs wrote to the Permanent Secretary, Treasury, seeking authority for direct procurement of ISDCS. Treasury granted authority by its letter dated 23rd November, 2003. On 5th September, 2003, the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs wrote a separate letter to the Permanent Secretary, Treasury, providing the details of Anglo Leasing's proposal, and requesting for a technical review of the proposed systems. Simultaneously, the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs wrote to the Attorney-General seeking legal comments and advice on the financing agreement submitted by Anglo Leasing.

"...On the 8th September, 2003, the Vice-President and Minister for Home Affairs wrote a memo in response to Mr. Mwaliko's memo of 5th September. The Vice-President's memo authorised the Permanent Secretary to go ahead and submit the proposals to the Treasury for technical evaluation, submit the proposed contract document to the Attorney-General for legal opinion; and finally, to request the Ministry of Finance to consider and approve the project if it found it viable."

A summary of this sequence of events is as follows. On the 5th of September, 2003, my then Permanent Secretary wrote to me a memo with a reference to this project. On the 8th of September, I responded to the memo and gave specific instructions on the procedure to be followed before conclusion of the intended contract. These were to seek advice from the Attorney-General on the legal aspects of the contract and to get approval of the Treasury on the viability of the intended project. For avoidance of any doubt, my memo reads as follows:

"I refer to your memo on the above subject (Immigration security and document control systems project). Will you, please, go ahead and submit the proposal to the Treasury for technical evaluation; submit the proposal and contract document to the Attorney-General for legal opinion and finally request the Ministry of Finance to consider and approve the project if it finds it viable. The only point that may need to be re-looked at is the interest rates; perhaps 4.7 per cent would be more acceptable to the Treasury."

Mr. Deputy Speaker, Sir, I issued specific instructions for the Permanent Secretary to follow. Therefore, I exercised control as the Minister in charge and gave specific instructions.

Mr. Deputy Speaker, Sir, on page 44, the report states;

"The Committee accepts the evidence of Mr. Githongo that he warned the Vice-President before the contract with Anglo Leasing was signed, that this was a questionable contract. Notwithstanding his warning, he abdicated his responsibility which allowed Anglo Leasing to sign a contract that was outrightly disadvantageous to public interest."

Mr. Deputy Speaker, Sir, I am dismayed with this accusation. A casual glance at the Report clearly demonstrates and proves that this is a deliberate distortion of facts. The Committee's own findings disclose the following sequence of events.

**Mr. Muturi:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Vice-President and Minister for Home Affairs to read what appears to be like another Ministerial Statement as opposed to contributing to the debate on the Floor?

**Mr. Deputy Speaker:** Order! I think the Vice-President has been extensively quoting the memo and I am observing him very closely. So, I think to that extent, he is quite in order.

Proceed, Mr. Awori.

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. I do not want to interrupt the Vice-President and Minister for Home Affairs, but he started his speech by saying that he was supporting the Motion. But he is proceeding to contradict what he said. Is he in order?

**The Vice-President and Minister for Home Affairs (Mr. Awori):** Mr. Deputy Speaker, Sir, on page 10 of the Report, the Committee finds that Mr. Githongo received information on the 3rd of March, 2004 that a questionable company called Anglo Leasing and Finance Ltd had been awarded a contract at Immigration Department worth Kshs2.7 billion, and had even been paid Kshs90 million. On the same page 10, the Committee further finds that on the 10th of March, 2003, Mr. Githongo immediately telephoned the Vice-President and Minister for Home Affairs to inform him of his discovery. At page 11, the Committee further finds that on the 4th of May, Mr. Githongo was invited for lunch at the Vice-President's home. The invitation was sent through hon. Murungi. Then, on page 39, the Committee finds that the contract for the ISDCS project was signed on the 4th of December, 2003, between Anglo Leasing Finance and the Government of Kenya, the Permanent Secretary to the Treasury and that of Home Affairs signing on behalf of the Government.

*[Mr. Deputy Speaker left the Chair]*

*[Mr. Speaker resumed the Chair]*

Mr. Speaker, Sir, it is plain from the Committee's findings that Mr. Githongo first knew of this contract on the 3rd of March, 2004, exactly three months after the contract had been signed. It had been signed on 4th of December, 2003. When he came to know about the contract, already Kshs90 million had been paid.

Furthermore, Mr. Githongo informed me of this discovery on the 10th of March, 2003, already three months and seven days after the contract had been signed. He came to lunch at my house on the 4th of May, 2004 exactly five months after the contract had been signed.

In the face of this, it is indeed, very wrong, unfair and malicious for the Committee to state that I had been warned by Mr. Githongo before the signing and that I participated in the implementation of the contract, when in their own findings, they find that Mr. Githongo was not even aware of this until three months after it had been signed. For record purposes, I wish to state quite clearly that Mr. Githongo, in fact, first talked to me about this only after I had made my Ministerial Statement in this House on the 27th of April, 2004.

Mr. Speaker, Sir, it is further stated in the Report on page 43 that there is abundant evidence on record that the Vice-President and Minister for Home Affairs was, contrary to his evidence before the Committee, sufficiently involved in the implementation of Anglo Leasing contract as to take responsibility for its shortcomings. This statement is without foundation. After my above memo to the Permanent Secretary on the 8th of September, the contract was signed in December, 2003 without ever having been referred to me. The Report does not contain any

allegation, let alone evidence, that I took any action or participated in any way in the implementation of the project. In the absence of any such evidence, the accusation levelled against me appears to be very malicious and without foundation. I was never involved in the implementation of the contract, because, having given directions as to how it should be done, nothing else ever came to me.

Mr. Speaker, Sir, I want to also touch a little on something on page 44, where it is stated that the Vice-President and Minister for Home Affairs did not make any effort to defend his Principal Immigration Officer. The Principal Immigration Officer was not transferred because of this particular issue. Secondly, the Principal Immigration Officer was a senior officer with whom I worked in a very friendly manner. He is a person I admired. He was transferred just like any other officer.

Mr. Githongo was not a trained investigator. He was an advisor to the President. So, really, I find it odd that his conclusions can be accepted against anyone else. The Members of the Committee want to refuse to accept the statements from three Members of Parliament and the Head of Public Service and Secretary to the Cabinet, but they are very happy to accept Mr. Githongo's word. Mr. Githongo is not credible. That is what I have to say.

Mr. Speaker, Sir, it has been stated here that a case has been established against me. But what case has been established against me? The HANSARD that I have read clearly states that I did not mislead this House. I did not say that the Government had entered into a contract with a lease finance company. I did not defend the Anglo Leasing and Finance Company. I was not reckless and at no time did I say that Anglo Leasing and Finance was a reputable company. I fulfilled my mandate as a Minister under Section 22 (3) of the Constitution, when I gave specific instructions to the line Permanent Secretary who, under the same sub-section, is clearly made the supervisor of the the Ministry I headed.

Mr. Githongo could not have warned me about the Anglo Leasing Finance and Company contract, since it was in December, 2003 and he was not aware of it until March, 2004. Equally, Mr. Githongo could not have warned me about this contract during the lunch in my house in May, 2004, because the contract had already been signed five months earlier. So, how was I completely involved in the implementation of this contract? I have not seen any evidence other than a conjecture without any supporting evidence or foundation.

Mr. Speaker, Sir, I want to move to the page referring to Ambassador Muthaura, because he is not here and so he cannot speak for himself. Page 47 states that Ambassador Muthaura misled the country by putting an advertisement in the Press. However, he was not speaking for himself. As the Head of the Public Service and Secretary to the Cabinet, he was acting for the Government. It is further stated here that he did that without consulting Mr. John Githongo. Obviously, Mr. Githongo was an advisor to the President and he had nothing to do with this issue. Ambassador Muthaura was in full control and that was why he issued that statement.

The other point that has been brought against Ambassador Muthaura is that he stated quite clearly that the Government had stopped all payments, while, indeed, one or two other payments were continuing. Only one payment was made after Ambassador Mathaura's statement. This happened after the Permanent Secretary, Treasury, gave a clearance for it, because the postal system was to be cut off. In order to keep the country still connected, an exemption was given. That is the only time when further payments were made after Ambassador Muthuara had stated that the payments had been stopped. Therefore, really, to condemn Ambassador Muthaura on that, is very unfair.

**Mr. Speaker:** Hon. Members, I am afraid I will have to give this opportunity to hon. Members who have been adversely mentioned. I will call upon Mr. Mwiraria to make his contribution.



**Mr. Mwiraria:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute to this Motion. Let me start off by stating clearly that I support the Motion. I would also like to state that I resigned as the Minister for Finance because of the constant harassment through the Press, and not because I felt I was guilty.

Mr. Speaker, Sir, I would like to repeat something I said in this House earlier on, namely, that the Anglo Leasing affair exposure was a blessing in disguise. This is because it, at least, brought to my attention, as the then Minister for Finance, the fact that the system which was being used could be open to abuse. As soon as I noticed that, I took systematic steps to see what could be done to change the whole system.

During the sitting of the Committee, I informed it that after coming across the second Anglo Leasing contract, that is, the one on the Forensic Science Laboratories, and finding that a similar system had been used, I ordered the audit by the Controller and Auditor-General of all the 18 projects which we were paying for. I also suspended temporarily payments for this subject pending urgent audit, so that we could save money. As a result of the audit which was carried out, the country saved over Kshs1 billion, which was returned by the companies involved.

Mr. Speaker, Sir, the other action I took, which I would like to mention here, was to get assistance from the World Bank and the IMF to strengthen the External Debt Section. We invited a team of experts from the two institutions, who came and studied the system we had in place. The team recommended that the Debt Management Office at the Ministry of Finance should be established properly, with three divisions. I believe that the implementation of those recommendations is on-going.

At the same time, I called for assistance from the Central Bank of Kenya (CBK), which provided us with two very senior officials, who had dealt with debt management, to take charge of debt management at the Treasury. The Minister for Finance will confirm that those officers are doing an excellent job at the Treasury.

Mr. Speaker, Sir, I would, finally, like to thank this House for the assistance it gave me when I was preparing the Public Procurement Bill, which it finally passed. While preparing that Bill, I took into account the need for proper management of purchases of security and defence items. As a result, the present Public Procurement Act, in Section 133, provides as follows:

"For avoidance of doubt, defence and national security organs shall comply with this Act, subject to Sections 2 and 3."

Section 2 of the Act reads as follows:

"The defence and national security organs shall manage their procurement and disposal on the basis of a dual list covering items subject to open and restricted procurement and disposal methods respectively."

Section 3 of the Act, which I will not bother to read out, talks about the fact that for the restricted items, which will not be open, the Controller and Auditor-General will have access to them. He will be auditing and presenting his report on the restricted list.

I am making these points to indicate that I did everything possible to make sure that nothing was hidden. As the Minister for Finance then, I could have said: "As far as Anglo Leasing is concerned, let us stop there." I did not do so. Instead, I invited audit of all the projects which we were paying for, clearly indicating that I did not mind uncovering whatever was wrong. That is why I fully support this Motion. I would like to say in no uncertain terms that while I was doing other duties, I paid attention to security purchases and did what I thought was best for this country and in very good faith.

Mr. Speaker, Sir, on the issue under discussion right now, I would like to take a few minutes and explain what happened. I was here last week when Mr. Okemo spoke about the system

which was in use, and about the role of the Treasury. I do not intend to repeat his words.

Let me start off by saying that the NARC Government had made certain promises to the people of Kenya. Things that the NARC administration wanted to do urgently included free primary education, improvement of the security situation in the country, improvement in provision of health services, creating 500,000 jobs annually, *et cetera*.

Two weeks after taking over the leadership of this country, the NARC Government decided to implement the free primary education programme. The Government also decided to improve the security situation in the country. Insecurity was, and still is, a matter of great concern to this nation. So, when we took over and found that there were certain projects in the pipeline, many of which had been assessed by the previous Government and which were, in the view of the new Government, necessary, when they were brought to me, I felt that it was my duty to approve them because we needed additional security.

In the case of procurement of the passport kitty, it is true that I got a memorandum from my Permanent Secretary then, which made certain points. I will quote just a few. The first point raised in the memo states as follows:-

"Legal opinion from the AG's Chambers on the suppliers and finance agreements was sought, resulting in recommended revisions that were discussed with the supplier and the necessary revisions have been undertaken."

Regarding the choice of the company which was to provide the systems, the memo says as follows:-

**"Qualification of the Systems                      Provider**

The systems provider is one of the reputable outstanding suppliers of security printing and systems services on a global basis and brings significant experience in currency, passports, visa

and other security documents on worldwide basis, including Africa and this region."

On reading this memorandum for the first time, I did not have any reason to doubt the competence of the company or that the company was unregistered.

Mr. Speaker, Sir, through the same memorandum, I was also informed as follows:

"The Ministry of Home Affairs and National Heritage has correspondence with the supplier on finance terms and related issues, agreement on revisions that are favourable to the Government and will allow the urgent implementation of this high priority project."

Mr. Speaker, Sir, there are so many things I could quote from this memorandum. At the end of my contribution, I will table it so that anybody who wishes can read it and see the information on which I based my decision to approve the project in question.

Mr. Speaker, Sir, let me now turn my attention very briefly to the "Githongo Dossier" or what I may call the gospel according to Saint Githongo because it is being taken as the gospel truth. I must say that my relation with Mr. Githongo while he was here was cordial and healthy except when I found out, as we moved on, that whatever information he got, reached foreign diplomats before it even got to the President. What surprises me is that in his dossier, he has told a lot of untruths. In fact, if I was not concerned about the use of bad language, I would have used---

**Mr. Speaker:** You had better be concerned!

**Mr. Mwiraria:** Thank you, Mr. Speaker, Sir.

**Mr. Raila:** On a point of order, Mr. Speaker, Sir. All the time, you have ruled that we need to be fair to people who are not here to defend themselves. The former Minister is alleging that whatever information Mr. Githongo got, got to foreign diplomats before it got to the President. Mr. Githongo has said that he briefed the President all the time. Is the former Minister in order? Would I be in order to ask him to substantiate his allegations?

**Mr. Speaker:** He must be allowed to express his opinion!

**Mr. Mwiraria:** Mr. Speaker, Sir, Mr. Githongo is not in this House and yet we are being accused of things that he said. A Committee of this House left Kenya to go to London to hear from him because he dares not come back home.

That is not the point that I wanted to make. I wanted to say that Mr. Githongo, for some reason which I do not understand, chose to tell untruths about me.

**An hon. Member:** That is unparliamentary!

**Mr. Speaker:** Order, hon. Members! Sometimes you must appreciate the difference between an hon. Member making general contributions to a Motion that he has no particular interest in, and a very rare one where hon. Members are directly accused. The hon. Members are not only contributing, but they are also entitled to defend themselves. So, please, Mr. Mwiraria, contribute and defend yourself!

**Mr. Mwiraria:** Thank you, Mr. Speaker, Sir. I was saying that Mr. Githongo chose to tell untruths. He stated, and this is what the Committee said that it accepts, that I told the then acting Permanent Secretary who was the Financial Secretary to pick up the phone and call Mr. Kamani. The Committee only needed to look at its own report to find out that Mr. Oyula told them that he did not call Mr. Kamani and did not even get those instructions. He only sent a fax to the bankers in Zurich. That is the first untruth from Mr. Githongo.

The second untruth is that he accuses me of telling him that a Mr. Perera had financed the President's treatment in London. I am not given to just saying things that I do not know. Mr. Githongo once again chose to make up a story to smear my name and the name of the President for reasons which he understands or for reasons that the hon. Members of the Committee who went to talk to him understand.

Mr. Speaker, Sir, another surprise was with regard to the conversation I am supposed to have had with Mr. Githongo over a cup of tea during a seminar in Mombasa, where we talked about a Mr. Jimmy Wanjigi wanting to kill him. This is another untruth. There are so many untruths, but I do not want to go into the trivialities. He even talked about myself, hon. Murungi and himself flying to London to see the Kroll and Associates people. The truth of the matter is that I was on my way from Washington after attending the April meetings when I heard that they were in London, and I met them. The fact that he cannot even remember that, although he used to tape-record everything, surprises me a little.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker resumed the Chair]*

It is really sad that somebody who was appointed and given such a responsible position has turned the way that Mr. Githongo has.

Mr. Deputy Speaker, Sir, over Easter, and as we continue after Easter, I hope that those of us who are Christians, and even Muslims, will pray for him to see the light and to understand that his country is more important than any individual benefits and personal glory.

Let me, very briefly, turn to the Report of the Committee on page 44. I have already stated that I asked Mr. Oyula to see if he could get back the money for the following reasons:- When I looked at the Forensic Laboratories Contract in May, 2004, I realised that it was signed in 2002 and had to run for two years, by which time, everything would have been done and the laboratories installed with equipment. The two years had run out and nothing had been done. So, I felt that this nation should not lose the money, not even the administrative fee that they had paid. Since some other payments had already been made, I ordered that the money be returned and it was all

returned.

Mr. Deputy Speaker, Sir, I have already dealt with the accusation in this Report that I was happy once the money was returned, I just kept quiet and that I did not do anything else.

**Mr. Ojode:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the former Minister for Finance to mislead the House by saying that the money was returned? Payments were made to the tune of Kshs4 billion. Only the commitment fees were supposedly returned!

*(Applause)*

**Mr. Deputy Speaker:** Mr. Ojode, you realise that this is Mr. Mwiraria's opportunity to state what he knows about the matter. I think to be fair, we ought to give Mr. Mwiraria, and anyone else who has been mentioned in this Report, an opportunity to state what he or she wants.

Mr. Mwiraria, please, continue!

**Mr. Mwiraria:** Mr. Deputy Speaker, Sir, I am prepared to get information from the Central Bank of Kenya (CBK) to state clearly what amounts of monies were returned for the four projects which were cancelled and reimbursements made.

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

**Mr. Deputy Speaker:** Order, Mr. Ojode! I will rule you out of order!

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

**Mr. Deputy Speaker:** Mr. Ojode, stop interrupting! Would you sit down?

**Mr. Ojode:** It is a serious matter, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order, Mr. Ojode! Sit down!

Mr. Mwiraria, please, continue!

**Mr. Mwiraria:** Mr. Deputy Speaker, Sir, if the hon. Member cared to read what Mr. Githongo told the Public Accounts Committee (PAC) in London, he said that all the money had been returned by June. However, Mr. Deputy Speaker, Sir, I am not here to argue with him. Please, protect me.

**Mr. Ojode:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Member is misleading this House! There is a letter which he, himself, wrote to His Excellency the President on 29th, May, 2004. In that letter he said: "So far, they have paid over Kshs4 billion." Why is he now misleading the House by saying that all the money had been returned?

**Mr. Deputy Speaker:** Mr. Ojode, you may catch the Deputy Speaker's eye and counter what the former Minister is saying using your facts!

Mr. Mwiraria, please, continue!

**Mr. Mwiraria:** Mr. Deputy Speaker, Sir, I have already stated the actions I took. But because I am running out of time, let me comment on the accusation that, since I was not able to name the company, I was either incompetent or hiding something.

Mr. Deputy Speaker, Sir, when I took over as the Minister for Finance at the beginning of 2003, I set certain targets for myself. One of them was improving revenue collection. In two years only, I increased revenue collection by over Kshs100 billion.

*(Applause)*

Secondly, through the assistance of this House, we changed the entire financial management system in the country. That is by passing the Kenya National Audit Act, the Kenya Financial Management Act, the Public Procurement and Disposal Act and the Privatisation Act.

Besides that, when we took over, commercial banks interest rates were between 24 per cent and 32 per cent *per annum*. We brought them down to a single digit. Today, the rates are at about 17 per cent *per annum*.

Mr. Deputy Speaker, Sir, before we took over, this country was not getting any funds from the donors at all! We restored donor support. We turned the economy round and it is now growing at a reasonable rate, given the fact that we have drought. Today, although some people say yes and others no, we have a stronger shilling.

Mr. Deputy Speaker, Sir, I would like to mention one or two things before I sit down. We have improved systems of control. We have introduced a new internal audit for the Government. The Ministry is now doing things which it could not do before, before we took over.

Mr. Deputy Speaker, Sir, let me state the following: I served Kenya as the Minister for Finance for just over three years. During that period, I gave the job my very best. I did not do anything to favour anyone, any company or even myself. I am saying that knowing that I have thrown everything open for investigations.

Mr. Deputy Speaker, Sir, I want to conclude by saying that, as a Minister, I may have made some mistakes. Mistakes are human. For any mistakes I made, I give this House and the Kenyan nation my sincere apology.

*(Applause)*

However, let me repeat that, whatever mistakes I made in the course of duty, I made them in good faith and not in the interest of trying to assist anyone; least of all, to assist myself.

**Mr. Angwenyi:** On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to request you to call upon the Mover to reply?

**Hon. Members:** No! No!

**Mr. Deputy Speaker:** Fine! I am tempted to do that, but the Chair rules that the debate continues!

Mr. Mwiraria, please, continue! Actually, your time is up!

**Mr. Mwiraria:** Mr. Deputy Speaker, I thank this House and the Committee for the Motion and, as I said, I support.

**Prof. Anyang'-Nyong'o:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the Motion. I personally took a very keen interest in the Anglo Leasing issue and my former colleague in the Cabinet, my friend hon. Murungi, has actually said that I have gone the extra mile to contribute to the debate on Anglo Leasing in public which is true.

Mr. Deputy Speaker, Sir, it is also true that I have had discussions with Mr. John Githongo. In my presentation today, I will have to inform the House why I thought these discussions were important. I am going to divide my discussion on the Report of the Public Accounts Committee (PAC) into five parts.

First, I would like to establish from the point of view of the Report whether there was indeed an obstruction of justice by obstructing investigations by Mr. Githongo.

Secondly, again from the point of departure of the Report, I would like to see how the Civil Service that we inherited from the previous regime when I was in Government did indeed fudge the law to facilitate corruption.

Thirdly, it has been said in the Report that Mr. John Githongo was instructed or pleaded with to go easy on the investigations he was carrying out on Anglo Leasing. Did this going easy involve presidential complicity in the cover-up? Fourthly, I would like to find out from the point of departure of the Report whether what is called resource mobilisation was a pseudonym for corruption carried out or encouraged by senior people in Government and whether this too was

done with presidential complicity.

Finally, the Government on the other side has argued very painstakingly that money was returned and it is my former colleague in Government, hon. Mwiraria, who has just said today that money was returned. If money was returned, so argues the Government, no offence or crime was committed. I would like to argue that when a thief steals your hat and returns it because he fears the police is coming to get him, theft is still done.

*(Applause)*

However, before I make my five major contributions to discussing the Report, I am rather intrigued by the Government "devilising" Mr. Githongo. The hon. Member of Parliament has just said that Mr. Githongo chose to coin a lot of untruths and then subsequently said that Mr. Githongo has confirmed in the Report that all the money was returned by June 2004. Is that also an untruth, and if so, does Mr. Githongo only say untruths when what he says is unfavourable, but when it is favourable it becomes the truth?

*(Applause)*

Mr. Deputy Speaker, Sir, was there an obstruction of justice by obstructing the investigations by Mr. Githongo? The answer is yes. The PAC has interviewed all the persons involved and the Report has been written. A good part of the Report corroborates what Mr. Githongo said. Indeed, it will be very surprising that a man of Mr. Githongo's stature can actually concoct dates and discussions systematically for a whole year. If those discussions did not occur and if the calendar was not existing, I would like to submit to the House that unless we are trying to attribute to Mr. Githongo a very strange ingenuity that does not exist to humankind, then indeed what he writes in his dossier, which comes from his diary, and what he has systematically presented to the PAC bears most truths than untruths. It is indeed true that the hon. Members of Parliament have not denied all the encounters date by date by Mr. Githongo but they have denied some.

**Mr. Murungi:** On a point of order, Mr. Deputy Speaker, Sir. Our Standing Orders do require a Member of Parliament who has a personal interest on a subject matter being discussed before the House to declare his interest. Hon. Prof. Anyang'-Nyong'o, according to the HANSARD, is the one who went, sat down and concocted this Report with Mr. John Githongo in London for political purposes. Could hon. Prof. Anyang'-Nyong'o declare his interests in this Report?

**Mr. Deputy Speaker:** Order! Mr Murungi, could you let the Chair know what interest should the professor declare so that I am in a position to determine?

**Mr. Murungi:** Mr. Deputy Speaker, Sir, it is on record that Mr. Githongo himself said that Prof. Anyang'-Nyong'o is among those people who were putting pressure on him to release this Report when the Cabinet was dissolved, so that it might influence the decision of the President in the appointment of the new Cabinet. That is the interest that my friend had, to make sure Mr. Murungi and others cannot be reappointed.

*(Laughter)*

**Mr. Deputy Speaker:** Order, Mr. Murungi! I cannot really rule on that. Proceed, Prof, Anyang'-Nyong'o!

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, when the hon. Murungi was making his contribution, I never interrupted him. I plead with him as a matter of natural justice to also accord

the same respect to me. That notwithstanding, I had already said, at the beginning of my contribution, my interest in this matter. So, I was very transparent about the matter. However, to correct hon. Murungi I met Mr. John Githongo much earlier in June 2005, well before the Cabinet was dissolved. So, my meeting with Mr. Githongo was not after the Cabinet was dissolved. So, your facts are just wrong.

Mr. Deputy Speaker, Sir, let me go to what I was saying. I have said that if we ask ourselves whether there were obstructions to justice by obstructing investigations by Mr. Githongo, the answer is yes. How was this obstruction undertaken? The Report is very clear that hon. Murungi and hon. Dr. Murungaru and Mr. Alfred Getonga, the President's personal assistant, were indeed very actively involved in obstructing the course of justice. This is a criminal offence.

Mr. Deputy Speaker, Sir, if you look at the Penal Code, Sections 106, 107, 300, 393, 394, 395, 396, 397 and 388, it is very clear that under any of these sections, the gentlemen I have referred to should be apprehended by the police for criminal investigations.

*(Applause)*

Mr. Deputy Speaker, Sir, I would like to read from Section 106 of the Penal Code. It states the following and I quote:-

"Whoever holds out any threat or injury to any person employed in the public service or to any person in whom he believes that person employed in the public service to be interested for the purpose of inducing that person employed in the public service to do any act or delay to do any act connected to the exercise of public functions of such a person employed in the public service, is guilty of a misdemeanour".

Mr. Deputy Speaker, Sir, I can quote from all other sectors and indeed I will lay the sections of the Penal Code I am referring to on the Table subsequently, and indeed they are available in the courts to show that the references made in Githongo's dossier and in this PAC's Report in these investigations do demonstrate within---

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Order! Hon. Members, could I ask that you consult in low tones?

Proceed, Prof. Anyang'-Nyong'o!

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, let me quote from page 12 of the Report, which quotes extensively from Mr. Githongo's dossier, starting at paragraph four. It states as follows:-

"On 17th May, 2004, according to Mr. Githongo, Hon. Murungi, MP, informed him that "they" were planning to attack him through his father. The conversation between the two had established "they" to mean Hon. Murungaru, MP, and Mr. Getonga. Mr. Githongo said he was getting increasingly concerned about the discomfort that the Anglo Leasing inquiries were causing to a small group of politicians and businessmen.

Mr. Githongo then related an incident, which he said---

**Mr. Deputy Speaker:** I am sorry, Prof. Anyang'-Nyong'o; which page are you referring to?

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I am referring to Page 12 of the Report. Please, check Paragraph four at the middle of the page. This section goes on to say:-

"Mr. Githongo then related an incident, which he said took place on 20th May, 2004 in the office of Hon. Murungi, MP. Hon. Murungi, MP, had invited Mr. Githongo for a meeting on that day in his office. When he entered, Hon. Murungi, MP, showed him a case file from the office of a Nairobi advocate, Mr. A.H. Malik, which related to Mr. Githongo's father. The senior Githongo had obtained a loan from Mr. Malik more than ten years previously, which he had used to purchase and develop property within Nairobi. The property was currently his home. Later, the senior Githongo had defaulted in his repayment of the loan from Mr. Malik, who had obtained a court judgement on the loan against the senior Mr. Githongo. Hon. Murungi, MP, then told Mr. John Githongo that the loan had not been advanced by Mr. Malik as Mr. Githongo believed, but by a Mr. Anura Perera, a businessman. Further, evidence on Mr. Perera is covered later in this Report. Hon. Murungi, MP, informed Mr. Githongo that Mr. Perera had called him about the loan matter and was willing to discuss an amicable settlement. He was proposing that in return, Mr. Githongo goes easy on the inquires on Hon. Murungaru, MP, and Mr. Getonga, which were holding up money owed to him by the Government. Mr. Perera would be prepared to go easy on the loan or to Mr. Githongo senior."

Mr. Deputy Speaker, Sir, if you look at the Penal Code, as I have quoted, you will realise that this was a criminal offence. The fight against corruption must not only be fought in the courts, but this fight---

**Mr. Murungi:** On a point of order, Mr. Deputy Speaker, Sir. I am sorry to keep on interrupting my friend. However, what Prof. Anyang'-Nyong'o says constitutes a criminal offence would only be so if those facts were true.

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I think this is very unfair.

**Mr. Deputy Speaker:** Order, hon. Members! Order! Mr. Murungi, please, what you have just said is okay if you were contributing, because you would be countering what he is saying. However, that definitely is not a point of order.

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I hope the hon. Member can give me my time because, as the Chair said when Mr. Mwiraria was speaking, I have been accused by the hon. Member interrupting me of fuelling an Anglo Leasing scandal that never existed. I am trying to prove to the House that it existed.

*(Applause)*

Mr. Deputy Speaker, Sir, on pages 13 to 14 of the Report, Ambassador Muthaura, the Head of the Civil Service, and Mr. Dave Mwangi, who was then Permanent Secretary in the Office of the President, told Mr. Githongo that they were prepared to deal with the issue of Anglo Leasing administratively. This was a message to Mr. Githongo that his investigations were not in the interest of the Government because the two could deal with the matter administratively. When a civil servant speaks like that, especially these two, administratively essentially means fudging the law. A civil servant can fudge the law by pretending to apply the law to the latter, but circumventing the issues that need to be dealt with. Indeed, in a lot of presentations from the other side of the House in defence of Anglo Leasing and the actions taken by Government Ministers, most of the presentations, I would like to admit, are a fudge of the law.

Mr. Deputy Speaker, Sir, on 5th April, 2005, while submitting the status report on the Anti-Corruption Agenda on the Government of Kenya, the Director of the Kenya Anti-Corruption Commission (KACC) is on record on that date of arguing that he had investigated the infamous Anglo Leasing matter on the CID Forensic Science Laboratories and the terrorist passport systems



to conclusion. This is on record in black and white. I have tabled the document here. Investigating a matter to conclusion means that you have determined the people who were involved, you have taken them to court and you are convinced that no other person is involved in the matter but those taken to court. However, we realised, just last week when I was reading the newspapers, that Anglo Leasing Finance Limited was being investigated by the KACC. When the former Minister for Finance went to the KACC, he was asked a question that I asked last year, and which is: "How could you involve yourself in a company on which the Government had not done due diligence?"

Mr. Deputy Speaker, Sir, the letter that Mr. Ojode was referring to, dated 29th May, 2004, that was written as a memo to His Excellency the President by the Minister for Finance says quite clearly at the end, that:-

"Since the project is delayed and no work has commenced; that is with regard to the forensic laboratories affair, from the time the agreement was signed, I recommend that we establish who Anglo Leasing and Finance Limited are, and negotiate for the termination of the agreement."

Mr. Deputy Speaker, Sir, in the meantime, we did not know who Anglo Leasing Finance Limited was, but to this entity, loads and loads of dollars were paid out.

**Mr. Syongoh:** On a point of order, Mr. Deputy Speaker, Sir. This is the second time a document is being referred to, which seems to contain very fundamental information. Would I be in order to ask that, that document referred to by Mr. Ojode before and now by Prof. Anyang'-Nyong'o be tabled before the House?

**Hon. Members:** Yes!

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, as usual, I was to table the document after referring to it. So, I do not think there is anything unusual about it.

Mr. Deputy Speaker, Sir, by 29th May, 2004, we did not really know who Anglo Leasing Finance Limited was. However, in November, 2003, US\$1,922,22.22 had been paid out to the same firm. In March, 2004, just before Anglo Leasing was declared to be unknown, another US\$1,922,22.22 was paid out. Unless the Kenyan Government is so rich and collected so much revenue that it paid out money without knowing who it was paying it to, then somebody must own up to some fudging of the system somewhere.

Mr. Deputy Speaker, it raises a lot of curiosity that this memo only came up after Mr. Maore reported the matter to the House in April, 2004. This means that it is this House and not the commitment on the other side to fight corruption that made it possible finally for the Minister to tell the President that they were paying loads of money to an entity that apparently they did not know.

If we were to manage Government finances prudently, it is our responsibility to ascertain that we can account for every single cent we pay to anybody, if called upon to do so.

If it is in the interests of Kenyans, then they are entitled to know who received every single cent from the Exchequer.

Mr. Deputy Speaker, Sir, in fact, the whole of page 15 refers to the arrest of a lawyer called Mr. Ojiambo. Mr. Ojiambo was arrested because he refused to obey summons of the Kenya Anti Corruption Commission (KACC), who wanted to know why he had put an advertisement in the Kenyan newspapers on a company called Anglo Leasing and Finance Company Limited, which the Government was investigating. The KACC called upon Mr. Ojiambo to report to it, so that they could know this creature called Anglo Leasing and Finance Company Limited. Somewhere in that page the Report says:

"Hon. Mwiraria then said that he has spoken to His Excellency the President and he felt that it was the President's view that they should now go easy on the matter since the money had been returned. Hon Murungi walked in and said the same thing.

Hon. Mwiraria, in his testimony, admitted that he was not interested in following up on Anglo Leasing and Finance Company Limited beyond the recovery of the money".

Mr. Deputy Speaker, Sir, I want to raise some very fundamental questions. Was Anglo Leasing and Finance Company being given an amnesty because the money had been returned? Was the Government not interested in getting to the bottom of the matter, so as to avoid any future occurrence of such matters, simply because the money had been returned?

**Mr. Mwiraria:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to say that the Government had no more interest as the money was returned, when people were taken to court for the same offence?

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I am going by the evidence in this Report. I am raising my questions based on what is in the Report. The Report says that hon. Mwiraria, in his testimony, admitted that he was not interested in following up on Anglo Leasing and Finance Company Limited beyond the recovery of the money. It is in this Report. So, hon. Mwiraria may be right, but I am simply discussing this matter in the context of the Report.

**Mr. Mwiraria:** On a point of order, Mr. Deputy Speaker, Sir. The statement I made to the Public Accounts Committee (PAC) is in the HANSARD. Could the hon. Member produce the HANSARD to back his point?

**Mr. Deputy Speaker:** Mr. Mwiraria, I think Prof. Anyang'-Nyong'o has made it very clear that he is referring to the Report. Indeed, the sentence reads exactly as he is putting it. Let us stop interrupting him for the sake of it. He is referring to the Report and he says so. He says you may be right, but he is referring to the last sentence of paragraph 12.

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I think my time will be extended because I am being unduly interrupted.

It is clear that on 5th June, 2003 the then Comptroller of State House, Mr. Matere Keriri, wrote to the Permanent Secretary in the Ministry of Finance informing him of these Anglo Leasing contracts. The list of items projects was detailed in the letter to His Excellency the President. The items are in this letter, which I will make available to the House. So, the Questions I am asking are very pertinent. You cannot purge them from my speech. They are very pertinent.

The other issue that needs to be raised is with regard to further interest in following up the matter. At that very moment I remember that I used to go round the world promoting the Government. We said that we would leave no stone unturned to deal with corruption. Mr. Githongo briefed His Excellency the President on who was behind the Anglo Leasing contracts. The brief to the President is contained on page 15 of the Report. On the 12th of June, he briefed the President on the scandal. The President asked him who he thought was behind the affair. Mr. Githongo said Mr. Murungaru, Mwiraria, Magari, Oyula, Mwaliko and, possibly, Mr. Mwangi. This is in this Report, and is not what Prof. Anyang'-Nyong'o is saying.

If you go to page 17, you will see that there is yet another character involved in the Anglo Leasing affair, whose identity the Government denied. But he is somebody they knew. This was a man called a Mr. Merlyn Keterring, who was closely associated with the Anglo Leasing affair. He seems to have had the protection of Mr. Muthaura, Mr. Mwangi and Mr. Gitonga. So it is said in law if a foreigner commits a crime in your country and escapes to his country of origin, you can issue what is called "letters rogatory", and the former Minister for Justice and Constitutional Affairs knows it. This will facilitate an inquiry into the identity of the person, or seeking that he be extradited and so on. The American Government knows where Mr. Keterring is. The American Government is a friendly Government, and has an embassy in Nairobi. All this time that we have been trying to leave no stone unturned, this "stone" called Mr Keterring, has never been turned.

*(Applause)*

What stops the Government from issuing letters rogatory, however difficult it is to issue them? It could, indeed, hire an expatriate to prepare them for it, if it cannot prepare them. What stops the Government from issuing letters rogatory for Mr. Keterring to appear before KACC, so that we can get the truth about the Anglo Leasing Affair? I know for certain that the American Government will be more than willing to receive letters rogatory and act on them. But the letters rogatory cannot be written on the other side, and so the stone must remain unturned.

On the issue of resource mobilisation, I must confess that I totally believed in my President. I must confess that I totally believed that we were committed to fulfilling the objectives of Economic Recovery Strategy, which my former Ministry championed. I must confess that I travelled around the world with my friend, hon. Kituyi, promoting investments into this country. But in June, 2005, when I was in Germany, following an invitation by the Chancellor, to prepare with the Germans for the Gleaneagles conference, and as I was speaking about my country, the boss of Transparency International embarrassed me by saying that a Kenyan Minister who joined the Government with a commitment to fight corruption could not stand there and defend a Government that was corrupt. So, during dinner we got together and I asked him why he had told me that. Of course, I defended myself gallantly, as you would expect. He revealed to me that it had been revealed to him by an hon. Minister of the Government then, who knows himself, that Anglo Leasing Affair was a Government project and His Excellency the President knew about it. I was dumbfounded. It was then, that I went to see Mr. Githongo to find out more about Anglo Leasing. When I found out more, I was deeply hurt that I should have been taken down the lane of untruths and deceit; that, in defence of my Government---

**The Minister for Environment and Natural Resources** (Prof. Kibwana): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to say that he was told a certain Minister said that Anglo Leasing was a Government project, without substantiating who that was?

**Prof. Anyang'-Nyong'o**: Mr. Deputy Speaker, Sir, my time has really been wasted!

**Mr. Deputy Speaker**: Proceed!

**Prof. Anyang'-Nyong'o**: Mr. Deputy Speaker, Sir, on the issue that the money was returned, even if it was returned, it should have been returned with interest.

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

**Mr. Deputy Speaker**: Let Prof. Anyang'-Nyong'o finish what he is saying!

**Prof. Anyang'-Nyong'o**: Mr. Deputy Speaker Sir, this House has a right to know if the money was returned with interest. If it was not, then this country lost a lot of money. I have calculated the amount of money which was lost and what was returned, and it came to over Kshs400 million.

**Mr. Deputy Speaker**: Your time is up!

**Prof. Anyang'-Nyong'o**: Mr. Deputy Speaker, Sir, my speech was interrupted and I have a right to interrupt the rest, minute after minute!

**The Minister for Finance** (Mr. Kimunya): Thank you, Mr. Deputy Speaker, Sir. Let me start by recognising the work that has been done by the PAC on the Anglo Leasing issue, and also recognise the contribution by hon. Members in this House. There is renewed commitment to fight corruption of the past, present and hopefully, there will be no more in the future. In the course of our Debate, I looked at the issues that were raised, that may give the wrong impression on exactly what was supposed to have happened at the Treasury, and may not, therefore, give the right impression when the report is read by the future generations.

The issues that relate to the Treasury, and which were raised in the PAC report were well covered in a written submission which was passed to the Committee by the Treasury. However, despite that, there are some observations that have been made, which I would like to clarify for the record. One of the observations by the PAC has been that the Treasury did not give stopping instructions for the security contracts and the payments went on. That has come out even in the course of today.

I wish to clarify for the record that, indeed, the Treasury stopped payments on the contracts which are covered within the 18 contracts. As of now, there are arrears amounting to Kshs14 billion, which have not yet been paid. It is true that there were two payments which were made after the stoppage of the payments between November 2004 and April 2005, which His Excellency the Vice-President and Minister for Home Affairs mentioned. Apart from those two exceptional payments which were made due to the threat of stoppage of the postal system and the immobilisation of the telecommunications system in the country, all the other payments have actually been stopped.

The other observation that was made was that the Treasury needed to give some form of payment instruction to the Central Bank of Kenya. For the benefit of hon. Members and for future generations, the procedures that we use for external debt payment are as follows: Allow me to refer to them for proper sequence.

The first thing that happens is that a demand notice is received at the Treasury from a creditor. The next step is that the Public Debt Section, the Public Debt Department confirms that the amount is due, as per the loan agreement signed by the Government and the creditor. The third step is that a payment advice is prepared and signed by two authorised signatories at the Treasury. The fourth step is that the advice is forwarded to the Permanent Secretary, Treasury, who is the final signatory. Finally, the final advice is submitted by the Treasury to the Central Bank for payment. Until the payment advice is submitted to the Central Bank of Kenya for payment, the CBK has no basis of making any payments. Even if we say that the Treasury did not issue instructions to the Central Bank of Kenya to stop payments, that issue is superfluous. We do not need to issue stop-payments when we have not been issued with a payment advice. That needs to be appreciated and when you are reading the report in the future, that concept needs to be corrected.

The other observation that was made and is contained in the report is that the Treasury had delayed the submission of the report by the Controller and Auditor-General to Parliament. The impression created is that the Controller and Auditor-General carried out an audit and the Treasury delayed in submitting it to this House. For the record, and as hon. Mwiraria said, the special audit was initiated by the Treasury in a letter dated 12th August, 2004, which was signed by the Permanent Secretary, to the Controller and Auditor-General, specifically to help the Treasury in determining which of the 18 contracts was due for payment. It was a specific report demanded by the Treasury. In the process, the Controller and Auditor-General called for evidence from the Accounting Officers. Some gave evidence while some did not give the information. In the process, there was a delay in the finalisation of the report.

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

**Mr. Deputy Speaker:** Mr. Okemo, please, be seated!

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, following the interest that has been generated by this debate in the House, we requested the Controller and Auditor-General to finalise the report. I am happy to report that the report has now been finalised. I will be laying it on the Table, formally, tomorrow morning. The House can now base its investigations on a formal report, in accordance with the law and not use a dossier that was prepared out there by

somebody, which we have started quoting here as the gospel truth.

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to refer to a civil servant who was appointed by the President, as Permanent Secretary, Governance and Ethics, as "somebody out there"?

*(Applause)*

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, the hon. Member knows that Mr. John Githongo is not a civil servant. He was a civil servant, but of know, he is a Kenyan residing out there.

**Mr. Deputy Speaker:** I do not think it is a matter of arguing about whether we know who Mr. John Githongo is. We all know who he is. Prof. Anyang'-Nyong'o, you promised that you will interrupt hon. Members, but the Chair will not allow you to do that. Before you sat down, you said that you were going to interrupt Members as much as you can. I still remember that statement of yours and wish to tell you that the Chair will not allow you to do so.

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

**Mr. Deputy Speaker:** What is it, Mr. Kamotho?

**Mr. Kamotho:** Mr. Deputy Speaker, Sir, is the Minister in order to anticipate debate on a report that has not yet been laid on the Table of this House?

*(Applause)*

**Mr. Deputy Speaker:** Order, Members! Order, Mr. Minister! All I can say is that, that report will be laid on the Table of this House tomorrow. We do not know its contents and, therefore, please, do not refer to it because it has not been formally laid before the House.

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I will be careful not to refer to its contents which the hon. Members will read for themselves.

The point I was making is that he created the impression--- It is a matter of principle that anyone could leave the Government today, go out there and prepare a report and then make us come here excitedly to discuss it and pass it as the truth. We have formal institutions that have been created by law and I believe that is the direction we should be moving. If we are to fight corruption within legal means, we should start looking at the legal institutions which we need to use to generate reports that can then be debated in this House so that we avoid a situation whereby after Mr. Kimunya has left Government service, he goes to prepare a report on all the things he knew when he was serving at the Treasury and then brings it here to be debated and passed as the truth simply because Mr. Kimunya was the Minister for Finance.

**Mr. Sungu:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to actually challenge the Chair? This is a matter that was ruled upon by the Chair when we began debating this Motion which is properly before this House.

**Mr. Deputy Speaker:** I do not think the Minister is doing that, but I want to remind him that this PAC Report is correctly before this House.

**The Minister for Finance** (Mr. Kimunya): Thank you, Mr. Deputy Speaker, Sir. I think that the other observations that have been made generally contain allegations that the Treasury abdicated its responsibilities. It has been stated in the Report that the Treasury failed to detect anomalies. In fact, it has been stated that there exists discontentment between Treasury, Central Bank of Kenya (CBK) and procuring Ministries over the manner of making payments. So many other things have been said in this Report.

Hon. Okemo and others explained very clearly in their submissions what the role of Treasury was in such circumstances. The secret nature of those contracts meant that the Treasury had no way of knowing what was happening although they were made to bypass the normal procedures. However, the important thing that I would like to bring to the attention of this House, and which was alluded to by hon. Mwiraria, is that we now have, in place, the procedures to stop our taxpayers' money from disappearing under the guise of security. I share the view raised by hon. Mwiraria that the Anglo Leasing and Finance Company saga was a blessing in disguise for this country.

Mr. Deputy Speaker, Sir, we now know that all security-related contracts will undergo the normal budgetary processes. Security contracts will be subjected to the Public Procurement and Disposal Act that we passed in this House. These are the facts that we need to look at instead of highlighting only the negative aspects.

In terms of stoppage of the payments, Treasury stopped further payments to save the taxpayers' money from disappearing. Some of that money had disappeared even before we got into Government. However, on discovering that there was something unclear about those contracts, Treasury decided to stop payment. Instead of us being congratulated for having stopped the haemorrhage, Treasury has since then been vilified that it did not stop everything. Never before have payments been stopped before people have gone to court and cases delayed many times. We saved Kshs1 billion and all the promissory notes were cancelled. I know arguments have been advanced on the Floor of this House that, perhaps, the promissory notes out there will be discounted. I want to give comfort to this House that the process that we have put in place will not allow any promissory note that is out there with anyone to be honoured. As Treasury, we are the ones to give the final say whether a promissory note is valid for payment or not. The ones that were returned have been cancelled.

As regards the ones that are out there, we have made sure that they will not be presented simply because we will not honour them.

Mr. Deputy Speaker, Sir, I will reserve my comments with regard to the nature of this Report. I wish not to touch on the issues that are contained in a report that I will be laying on the Table of this House. It is, however, important to note that we are committed, as a Government, to the fight against corruption. At the Treasury, we have been accused in this very House of being very high-handed and interfering with other Ministries by questioning what they are doing. What I am hearing is the opposite in this House. I hope that, as we move on, we will not be accused of stifling efforts of other Ministries.

With regard to the refunds, it is true that in respect of four contracts, a refund worth Kshs1 billion was made. I wish to confirm that because it seemed to have created a different impression. It is also true that payments were being made and for each of the contracts, we can avail information with regard to the specific nature of each contract. I believe that, that information was given to the Public Accounts Committee (PAC).

Mr. Deputy Speaker, Sir, lastly, we sat in the Cabinet Sub-Committee on Anti-Corruption with my fellow Ministers including Prof. Anyang'-Nyong'o, Messrs. Raila Odinga, Kiraitu Murungi---

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

**Mr. Deputy Speaker:** What is it, Mr. Kajwang?

**Mr. Kajwang:** On a point of order, Mr. Deputy Speaker, Sir. Will I be in order to ask the Minister to confirm that he went all the way to Oxford and tried to persuade Mr. Githongo not to

release this Report until after the Referendum?

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I fail to see the relevance of that. As I was saying---

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

**Mr. Deputy Speaker:** What is it, Mr. Kajwang?

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, I asked the Minister to confirm or deny whether he actually went there and persuaded Mr. Githongo not to release this dossier before the Referendum!

**Mr. Deputy Speaker:** Mr. Kajwang, that is not a point of order because you are asking him to confirm or deny! That is now a question which he is not obliged to answer.

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, is it in order for him to mislead the House that he is actually speaking the truth when he opposes this Report and yet he persuaded Mr. Githongo not to release it until they won the Referendum?

*(Laughter)*

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I am not sure whether I should respond to those allegations.

The point I was making is that, we sat in a sub-committee for two years. We debated corruption and how to fight it. John Githongo was our secretary. We debated the issues of Anglo Leasing and no single day did these issues come to that committee. I am surprised, now that it is out there, our former colleagues in that committee have seen it fit to say that they have been fighting corruption yet for two years they never said a word. They even never told anyone that they were concerned. If anything, it is only in the run-up to the Referendum, that I was told---

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Minister to say that those of us who are now on this side of the House did not raise the issue of Anglo Leasing when he knows that I requested for a special Cabinet meeting to discuss Anglo Leasing?

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I am discussing within the context of the committee at which point we discussed the nitty gritty of these things and not a single day did I hear any concerns that perhaps we need to do these things. Had we done that, we would have saved this nation a great deal of pain because this issue would have come up then. The fact that it is coming up now, shows that perhaps there is much more than meets the eye.

**Mr. Angwenyi:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Minister in order to insinuate that some Cabinet Ministers could not discuss this matter in that Cabinet committee because they preferred their positions instead of preferring the position of Kenya?

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, all I said is that we sat, six of us, in a sub-committee. We discussed these issues and agonized over how to fight corruption in this country. Not a single day did I hear any one of them saying: "Could we finish this ghost of Anglo Leasing"?

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. Let us get the calendar correct. Is it really in order for the Minister to say that we never discussed Anglo Leasing, when he knows very well, that after the High Commissioner raised the issue of Anglo Leasing, that Committee was never called after May, 2005?

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I believe what I said

has not been challenged. It still remains the fact. I started by saying that we recognise the efforts of the Committee in unravelling the mystery that is Anglo Leasing. I also recognise the contributions by hon. Members. As a Government, we have already supported the Report because we believe, it is one of the building blocks in the fight against corruption. It is not the end. A lot more will still need to be done. As we move on, there will be many more things coming up and we hope that as the truth comes out, we will support them with the same vigour so that we can uncover and remove the evil of corruption from this country.

With those few remarks, I beg to support.

**Mr. M. Kilonzo:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this debate.

Allow me to say, at the outset, that I support the Motion. Allow me also to say that it surprises me, that at this point in time, it seems that the Government has forgotten that we are debating this Report in the backdrop of a country that enjoys an anti-corruption law that we passed in May, 2003.

Mr. Deputy Speaker, Sir, it seems to me that the Government has forgotten the various offences and violations of the law that this House put down on paper and in the statute books. It pains me when it seems that similarly, the Government has forgotten that for the first time in history, this country has got the Public Officers Ethics Act. It interests me in the sense that it is the Government that introduced that particular law. It is my submission that much of the support that the Government side says it will advance to this proposal is tainted by cynicism.

Mr. Deputy Speaker, Sir, as I listened to this debate, it appeared that the Government has forgotten that under Legal Notice No.51 of 2001, this country enacted the Exchequer and Audit Public Procurement Regulations, 2001. These, as I will demonstrate, have been violated, left, right and centre. Under Legal Notice No.161 of 2002, the Government yet again introduced an amendment to the same Procurement Regulations.

With utmost humility, could I ask the Chair for permission to read paragraph 8 at page two of this Report. It reads as follows:-

"On 1st August, 2003, a firm by the name Anglo Leasing and Finance Limited of Alpha House, 100 Upper Parliament Street, Liverpool, L19 AA UK, submitted to the Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs what appears to be an unsolicited technical proposal, for supply and installation of an immigration security document control system. In its proposal the firm indicated that it could supply and instal the system through its officially-designated systems sub-contract, in the name of Francois Charles Oberthur Fiduciare of France (FCOF). The firm also submitted, alongside the proposal, a proposed financing agreement explaining the contract and financing terms and conditions."

The offer in the agreement proposed a facility of Euro31 million for the systems repayable at 5 per cent *per annum* quarterly, commencing after three months. The Committee says and I quote:-

"It is not clear how the financing firm could have prepared and submitted a detailed proposal for a project similar to the one recommended by GITS before a request to do so had been officially made to it by the Government. But the indications are that the firm may have had fore-knowledge of the recommendations to enhance and expand the system."

Mr. Deputy Speaker, Sir, I say that without fear of contradiction because I have them here. That, in itself, is a violation of the procurement regulations of 2001/2002. That is because in paragraph 9 they say:-

"Nevertheless, the Ministry accepted the proposal and, in a letter dated 5th September,



2003, addressed to the Permanent Secretary, Treasury and Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs, sought for Treasury's authority for direct procurement of the equipment, and the authority was granted in a letter dated 26th November, 2004."

Mr. Deputy Speaker, Sir, as a matter of fact, the Government is lucky that this Committee was chaired by Mr. Uhuru Kenyatta, a man of very good temperament. If it was chaired by anyone else, the arguments would have been extremely harsh! That is because the fact of the matter is that paragraphs 8 and 9 clearly confirms that the law was violated. How? The fact of the matter is that there is no need for further investigation. The moment it appears that two Ministers in the name of His Excellency the Vice-President and Minister for Home Affairs - a man I respect -and the Minister for Finance colluded in the process of securing a single sourcing process in violation of Regulations 19, 3 and 35 of the Procurement Regulations--- The law is very clear on procurement. Allow me again, with your kind permission, to read the Regulations, because it is this House which passed them. We owe an obligation to this country to be clear on what we are saying. First of all, let me read the following: \_

"These regulations shall apply to all public procurement by public entities."

Regulation 3(2) reads:-

"These regulations shall not apply where the Minister shall, in consultations with the Head of the procuring entity, decide that it is in the interest of national security or national defence to use a different procedure in which case, the Minister shall define the method of procurement to be followed in order to secure the interest of the economy and efficiency."

You can see what I am saying! I am saying that Anglo Leasing, even before the Minister could decide to exempt that procurement from the regulations, is already making what you might otherwise call "un-solicited proposals for the supply". Clearly, the regulation was violated. The reason I take off my hat to Mr. Uhuru Kenyatta - the Chairman of this Committee - is simply that they should have given us the two letters by way of an addendum; the letter dated 5th September, 2003 and the letter dated 8th September, 2003, in which the so-called authority was obtained. I dare say that, the fact that those letters have not been referred to even by the Ministers themselves, suggest to me that those Ministers are aware that those letters would not qualify under the provisions of Regulation No.3(2) of the Procurement Regulations that I have read. Let me also show you something else.

Mr. Deputy Speaker, Sir, in paragraph 11, the Committee has said as follows:-

"The Attorney-General's Office was requested for comment and advice."

What the Attorney-General's Office did was to recommend due diligence be carried out. That appears clearly in paragraph 11. You would be surprised that, ultimately, that advice was totally ignored. The meaning of due diligence is whereby, if a young man has come to your home and wants to marry your daughter, the due diligence is to say: 'Go and come with your parents! I want to know where you come from. In due course, arrange a visit!' In that particular instance---

*(Applause)*

In fact, in the African traditions, there are dual visits. One from the girl's parents and one from the boy's parents.

**The Assistant Minister for Roads and Public Works** (Eng. Toro): On a point of order, Mr. Deputy Speaker, Sir. I hate to interrupt Mr. M. Kilonzo, but since both sides of the House are supporting this Motion, would I be in order, this time round, to ask the Mover to reply?

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

**Mr. Kenyatta:** Thank you very much, Mr. Deputy Speaker, Sir. I beg to reply. I would like to begin by thanking all those who have contributed to this debate. I want to thank all hon. Members for the general sobriety in which---

*(Loud consultations)*

**Mr. Deputy Speaker:** Order, Mr. Syongo and Mr. K. Kilonzo!

**Mr. Kenyatta:** Mr. Deputy Speaker, Sir, as I said from the very onset, the purpose of our Committee was not to engage in witch-hunt and mudslinging. But as you, yourself, put it when you allowed this Motion to be debated by this House, you indicated that this is a matter of national interest. That is why you gave a careful consideration and said that we needed to debate this particular Motion in order to deal with the issue of corruption; corruption not of an individual, but that of a systematic method that has been used to defraud the people of this Republic.

Mr. Deputy Speaker, Sir, a number of issues have been raised by those who have contributed, with some questioning, especially, the integrity of Mr. John Githongo and the dossier which a good portion of this report is based upon. Indications that our agenda was possibly malicious--- I can say that the credibility of Mr. Githongo was, up until the time of his dossier, never put to question. Mr. Githongo was recruited by the NARC administration from Transparency International. I want to believe that he was recruited according to his credentials. I would like to reiterate that everything we put in our report was based on evidence. It was not on conjecture or anything else.

When I moved this Motion, I said that I have had a great deal of respect for His Excellency Vice-President and Minister for Home Affairs. But today, the credibility and intention of the Committee was, once again, put to task over some of the content of the Report, especially with regard to His Excellency the Vice-President and Minister for Home Affairs. I wish to clarify and state that, although in all the evidence we received from His Excellency the Vice-President and Minister for Home Affairs, he consistently referred to the French company that was involved in the implementation of that project. What was clear to the Committee is that this Government did not contract with the French company but rather, contracted with Anglo Leasing who, in turn, sub-contracted to the French company. Based on the evidence that we received, it was not the French company that approached the Government. The Government did not approach the French company. It was Anglo Leasing that approached the Government and then, in turn, approached the French company.

Mr. Deputy Speaker, Sir, I said from the outset that our Committee was not a team of investigators. It was not our business to determine guilt, because that duty is vested on those who are better equipped to do it.

Mr. Deputy Speaker, Sir, our first recommendation is that the Director of the Kenya Anti-Corruption Commission should liaise with the Attorney-General, the Commissioner of Police and other relevant bodies with a view to prosecuting persons who were involved in the negotiations, approval and procurement of passport issuing equipment. When we did that, we were opening the door for further investigations.

Mr. Deputy Speaker, Sir, what concerns this House more is how to ensure that the system of security-related procurement in future is done in a much more transparent and accountable manner. The bulk of our recommendations are about that.

Mr. Deputy Speaker, Sir, we adjourned for the whole of last week to mourn our colleagues

and other Government officers who died in a plane crash on Monday last week. This House is fully aware that there is a lot of loss of human life in this country. Our security forces are having a very difficult time controlling and containing insecurity. It makes sense if we, as a House, ensured that whatever monies are put to provide security and ensuring our security forces are better equipped and money is spent properly, rather than those monies finding their way into the pockets of a few individuals who have no interest in this country or its people.

*(Applause)*

Mr. Deputy Speaker, Sir, what we desire is to root out corruption. There are no angels or saints. But there can be an intention to do good. To that extent, I would like to commend the hon. Mwiraria for the statement he made on the Floor of this House as he was contributing. He said he supported the Report and said let the investigations be done. But he also had the courage to say that he had very good intentions in whatever he did and that if he had made a mistake, he stood ready to apologise to the people of this Republic. It is that spirit that creates healing and allows issues to be dealt with, and removes vindictiveness and witch-hunting from the process of nation building.

*(Applause)*

Mr. Deputy Speaker, Sir, the Minister for Finance has indicated that the other 18 reports are ready. I am encouraged to hear that he will table those reports before this House tomorrow.

It is my hope that we will also deal with those reports with the same degree of sobriety and understanding and that our desire is to ensure better management of the resources of this country.

Mr. Deputy Speaker, Sir, I do not wish to speak for too long, given the fact that we have chosen, as a House to support this Motion. But let the truth be said. As we find the truth, let us deal with the issues and not personalities. I believe that this country will be much better off with that spirit of debate and willingness to handle the issues concerned.

With those few and brief remarks therefore, I movethat this House adopts this Report and the recommendations therein contained. It is, indeed, my hope that this Government moves expeditiously to implement those recommendations. I also hope that this House too, will move expeditiously to implement the contents of this Report.

With those remarks, I beg to move.

*(Applause)*

*(Question put and agreed to)*

#### ADOPTION OF CDF COMMITTEE REPORT

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Constituencies Development Fund Committee pursuant to Section 27 (4) (d) of the Constituencies Development Fund Act (2003) laid on the Table of the House on Tuesday, 28th March, 2006.

Mr. Deputy Speaker, Sir, the Constituencies Development Fund Act was passed by this House in December, 2003 and it became operational in 2004, and we are now in the third year of its operation. Among the provisions in the CDF Act is the establishment of a Select Committee of this House, otherwise referred to as the Constituencies Development Fund Committee. I wish to thank the House for electing me as the Chair of that Committee.

Among the several responsibilities of that Committee is to oversee the implementation of

the Act. In this respect, after every two years, it will table a report before the House to indicate the operations of the Fund and recommend the various amendments to the Act that it feels are necessary.

Mr. Deputy Speaker, Sir, this is the first Report of that Committee. Allow me to mention the hon. Members who have run that Committee until now. They are:-

Mr. C. Kilonzo, Eng. Nyamunga, Messrs. Y.M. Haji, L. Maitha; Mrs. J. Kihara; Prof. C. Mango; Messrs S. Manoti, H. Kosgey, A.S. Dahir, S. Koech and Eng. K. Muriuki.

I wish to take the earliest opportunity to thank the Members of that Committee for the tireless effort they have put into putting the Constituencies Developing Fund (CDF) where it is.

Mr. Deputy Speaker, Sir, as I said, this is the first Report of the Committee. It covers an overview of the operations, policy framework and the many challenges and shortcomings of the Fund which we have gone through so far. It also highlights the areas of concern to the Committee and other hon. Members which we picked through our deliberations and interactions both with the hon. Members and the public.

It also points out certain provisions in the Act which we have, in due course, found either unworkable or undesirable. It also gives the Committee's recommendations on the review of the Act. The salient points of the proposed amendments are all highlighted in Part VI of this Report and, in due course, we will go through them. But the Report itself has more details than just those salient points.

Mr. Deputy Speaker, Sir, the first year of the operation of the CDF was 2003/2004, although the actual disbursements were not done until August, 2004. This is the third year of the provisions in the Budget and the operations of the CDF.

Mr. Deputy Speaker, Sir, in the first year, 2003/2004, a total of Kshs1.26 billion was disbursed. I am happy to report that all 210 constituencies received equal amounts of the monies which were set aside for every one of them. Each constituency received Kshs6 million.

In the year 2004/2005, the total amount of the CDF money was Kshs5.6 billion. Again, I am happy to report that a total of 208 constituencies received their money. However, two constituencies have not received their second tranche of the same due to various reasons which the Committee is looking into.

Mr. Deputy Speaker, Sir, in the year 2004/2005, a total of Kshs7.246 billion was set aside for CDF. Again, I am very happy to report that as at the time we took the count - this is a couple of weeks back - a total of 197 constituencies had received, at least, the first tranche of their 2004/2005 Financial Year allocation.

Out of 97 constituencies, 53 constituencies have received their full allocations for the Financial Year 2005/2006. That means up to June, 2006, a total of Kshs14.1 billion has been allocated to constituency-based projects through the Constituencies Development Fund (CDF).

Mr. Deputy Speaker, Sir, when the CDF was created in 2004, one of the major issues we had to deal with was procurement. Hon. Members will appreciate that CDF money is public money and, therefore, the public procurement law has to be followed to the letter. However, we found that the peculiarity of the CDF was such that some aspect of negotiation was needed between the CDF Committee and the Treasury, because the projects we were undertaking and the amounts of money involved was such that although some of the procurement procedures were being followed, they had to be moderated.

We never broke any rules but we had to moderate the system of procurement, the essence of it being recognition of project committees as the procuring entities. So, if some money is, for instance, allocated to a secondary school by the CDF Committee, that school's Board of Governors would be the procuring entity. Therefore, the cheque from the CDF will be written to that school's

Board of Governors.

Mr. Deputy Speaker, Sir, I appreciate hon. Members' desire to finish this debate today. However, there are a number of issues I would like to point out to hon. Members, so that they can vote for or against this Report having understood those issues.

Kenya is made of diverse regions, climatic zones, ethnic groups, religions, *et cetera*. Therefore, the inclination as to how the CDF money is supposed to be utilised varies from one region to another, or from one constituency to another. We have, however, noted that a number of sectors appear to be consistently favoured, irrespective of which constituency one comes from. The education sector has taken the lion's share of the CDF money. This is closely followed by the health and water sectors.

The roads sector is also a major cause of outcry throughout the country. Whenever we tour the constituencies, the roads sector emerges to be of greatest concern to the people. However, submissions from the various constituencies show that very little money goes into this sector. When we inquired to establish why this has been the case, we established that the reasoning by the various CDF committees appears to be that the roads are so bad, that putting CDF money in them does not solve the problem.

Hon. Members and their CDF committees have realised that they can spend, for example, Kshs2 million to construct school buildings successfully. However, the same amount of money can be used to grade only one or two kilometres of a road. It is, perhaps, for that reason that CDF money tends to go into sectors other than the road network. Money from the CDF has also gone to the road sector but not in a major way.

Mr. Deputy Speaker, Sir, my Committee has taken the initiative of briefing hon. Members regularly. Whenever we have a problem, we communicate to hon. Members through the normal *kamukunji* system, which has become popular within Parliament Buildings. I would like to take this opportunity to thank the Speaker and the administration of the National Assembly for facilitating *kamukunjis* on several occasions, and for organising a workshop which was held away from Parliament, where concentration was much better. We had the last briefing session at Safari Park Hotel.

Mr. Deputy Speaker, Sir, I would like to thank hon. Members for attending that session. During that session, we managed to get many comments on this Report. Therefore, I would like to keep my contribution short because we have already heard most of the sentiments. Nonetheless, because of the proposed amendments, allow me to give notice that I will be asking Mr. Speaker to set aside one morning Sitting for us, so that these amendments can be discussed. What I am moving now is the Motion for the adoption of the Report. The actual amendments will come in form of a Bill, which we hope will be given priority by the House Business Committee, so that it comes to the House within a week or two, for debate and adoption.

Mr. Deputy Speaker, Sir, one of the issues which we have had to deal with, as a Committee, was the long list of complaints by the members of the public and the Press. Our observation has been that the majority of the complaints are basically coming from politicians, political competitors and people who have interests in politics. The other people who have complained are those who have not bothered to read the Act. All the complaints which have ended up as court cases have been thrown out by the courts of law because they come from people who have not bothered to read the Act and file cases on flimsy grounds.

Mr. Deputy Speaker, Sir, however, in order to formalise the system of receiving those complaints and to avert a situation where every Tom, Dick and Harry ends up in court, we have recommended a system of arbitration, such that when one has a complaint against a given constituency development fund, he or she can go to an arbitration panel before he or she is allowed to go to a court of law. You will remember that the Constituencies Development Fund Act was challenged in the High Court. This is the second year that the case has been in court. We have spiritedly put our case forward. There is a three-Judge panel and the case has been going on. We

have had about seven or eight hearings. The next hearing take place in July. However, we have won in all the various cases. The complainants have put a number of requests to the High Court and we have won all of them. I think we are now fighting over the last battle and I hope the High Court will see the point that everybody else is seeing.

Mr. Deputy Speaker, Sir, over and above dealing with the CDF submissions as a Committee at the desk level, we have also taken the trouble to visit various constituencies around the country.

In fact, we have visited one or two constituencies in each of the eight provinces, and everywhere we have gone, we have heard about success stories and, indeed, witnessed full acceptance of the CDF by the public. I am sure that even if the High Court was to decide otherwise, the public would not accept to do away with the CDF.

One of the issues which we have come across around the country is the issue of affirmative action. Quite often, we use the term "affirmative action" in relation to gender issues, but in this case, our Committee observed that some parts of this country have simply been forgotten by the Government.

*(Applause)*

There is a Greek saying that says that once a ship sinks, everybody then becomes an expert on how it should have been saved. Even as we talk, we cannot forget the recent tragedy when we lost a number of our colleagues. However, the truth of the matter remains that if you look at the area where some of our colleagues come from, you feel sad. The CDF Committee is, through this Motion, requesting the Government to take up some issues like education and water as serious issues that require affirmative action.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow Wednesday, 19th April, 2006, at 9.00 a.m.

### ADJOURNMENT

**Mr. Deputy Speaker:** Order, Eng. Muriuki! You will continue tomorrow with your contribution.

The House rose at 6.30 p.m.