

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 3rd May, 2001

The House met at 2.30 p.m.

[*Mr. Speaker in the Chair*]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

The Report of the Select Committee on Televising and Broadcasting of Parliamentary Proceedings.

(*By Mr. Kirwa*)

NOTICE OF MOTION

ADOPTION OF THE SELECT COMMITTEE'S
REPORT ON LIVE COVERAGE

Mr. Kirwa: Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, this House adopts the Report of the Select Committee on Televising and Broadcasting of Parliamentary Proceedings.

ORAL ANSWERS TO QUESTIONS

Question No.058

PAYMENT OF DUES TO RETIRED ASSISTANT CHIEF

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

(a) whether he is aware that a former Assistant Chief of Upper Kiugone Sub-location was verbally ordered to retire by a chief at a chief's *baraza* on 19th September, 1974;

(b) whether he is further aware that the said Assistant Chief has not got his retirement letter or benefits to date and that he still keeps his Government uniform and a pair of handcuffs; and,

(c) when he will pay the said Assistant

[**Mr. Shidiye**]

House? How did he come in with that pair of handcuffs?

Chief his terminal dues and retirement benefits and collect the Government property held by him.

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

(a) I am not aware that the Assistant Chief of Upper Kiugone Sub-location was verbally ordered to retire.

(b) However, I am aware that the Assistant Chief received his retirement letter, Ref. No. C/182629 dated 21st August, 1974, forwarded to him via registered mail. By the time the said Assistant Chief was retired, he had not qualified for payment of any benefits. He is illegally in possession of Government uniforms and a pair of handcuffs.

(c) The Assistant Chief cannot be paid any terminal dues and retirement benefits since he does not qualify. I hasten to add that he should hand-over all Government property illegally in his possession.

Mr. Murungi: Mr. Speaker, Sir, what the Assistant Minister has stated is not true because the Assistant Chief was dismissed by a chief. Under the law, a chief has no powers to dismiss an assistant chief. This man was dismissed in a public *baraza* and nobody has ever communicated with him. That is why he still keeps the uniforms and this pair of handcuffs which he gave to me. He told me not to give them to the Government until he gets a cheque to his terminal dues. So, could the Assistant Minister tell the House when they are going to write a cheque to this Assistant Chief, and then I will hand over the handcuffs to the Assistant Minister?

(*Mr. Murungi displayed a pair of handcuffs*)

Mr. Shidiye: On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to carry illegal handcuffs to this House, unless he wants to arrest himself? Is this not a dangerous precedent? Is he in order to bring handcuffs illegally to this

Mr. Speaker: Order, Mr. Murungi! Proceed forth to the Bar and give those handcuffs to the Serjeant-

at-Arms.

(Applause)

Mr. Murungi: Mr. Speaker, Sir, I gave an undertaking to the Assistant Chief that I will retain the handcuffs until I get the cheque. Am I assured that I will get back the handcuffs once I surrender them to the Serjeant-at-Arms?

Mr. Speaker: Order, Mr. Murungi! Between the Chair and the Assistant Chief, whom do you obey? Now, proceed! This is not a question of negotiation. Take it there!

(Mr. Murungi proceeded to the Bar and handed over the handcuffs to the Serjeant-at-Arms.)

Mr. Murungi, I have not sent you out of the Chamber! Just hand over the handcuffs to the Serjeant-at-Arms, come back and ask your question!

Mr. Maitha: Mr. Speaker, Sir, in view of the fact that the Assistant Minister has now known the truth, what action is he going to take to have this Assistant Chief paid his benefits?

Mr. Samoei: Mr. Speaker, Sir, I have not learnt any truth from what has just transpired. I have stated my position, that the Assistant Chief was properly retired in public interest and for gross misconduct. On 26th November, 1974, the District Officer, South Imenti Division wrote a letter to the Assistant Chief asking him to surrender to the Government the following items: Seven buttons, one crown and a pair of handcuffs, property of the Republic of Kenya. The former Assistant Chief did not comply with the contents of that letter. Unfortunately, the handcuffs were given to Mr. Murungi, sometime in March this year. However, I advise Mr. Murungi that he is in illegal possession of Government property and he risks facing the full force of the law.

Mr. Murungi: Mr. Speaker, Sir, I deny holding Government property illegally. The property was handed over to me, legally as a Member of Parliament, to come and demand just dues from this Government. This Assistant Chief has suffered so much. He fought for Independence and he was imprisoned in Manyani for seven years and the Government cannot turn its back on him! The Assistant Minister has said the Assistant Chief was dismissed in public interest because of gross misconduct. Could he tell this House what acts constituted gross misconduct on the part of this Assistant Chief? Could he also tell this House which address was used to send the letter he has referred to, to the Assistant Chief? This Assistant Chief has never received any official communication from the Government!

Mr. Speaker: Is it the case, Mr. Samoei, that you actually gave this Assistant Chief a letter of retirement? If that be the position, it would help the House if you tabled a copy of that letter! Indeed, Mr. Murungi will be quite happy!

Mr. Samoei: Mr. Speaker, Sir, indeed, there was a

letter of retirement, retiring this Assistant Chief in public interest and for gross misconduct. I will be able to table the letter of his retirement in this House. I have given the reference number for that letter. There was another letter written to him, on 26th November, 1974, from the District Officer in his area of jurisdiction ordering him to surrender Government property in his possession.

As to whether this Assistant Chief fought for Independence and jailed for seven years in Manyani Prison, that has no relevance at all to his gross misconduct and eventual dismissal. I am going to table the letter in this House but I still insist that Mr. Murungi could do himself a favour by surrendering what was illegally in the possession of that Assistant Chief, who was dismissed, to the Government.

Mr. Maitha: On a point of order, Mr. Speaker, Sir. The Assistant Minister has misled this House. He has threatened the hon. Member that he is in possession of Government property illegally. But he has not tabled the letter of dismissal to the Assistant Chief! Could the Chair rule whether the Assistant Minister is in order to say that when he has not even tabled that letter?

Mr. Speaker: Order, Mr. Maitha! I do not think you are really on a point of order. Do you want to draw the Chair into the argument, between Mr. Murungi and the Assistant Minister? I refuse to be drawn into that argument.

Mr. Wamalwa: Mr. Speaker, Sir, given what the Assistant Minister has said, it leaves one wondering whether, in fact, there was any letter written to this Assistant Chief. When the Question was asked, any sensible Minister coming to answer such a Question, the first thing he would have looked for would have been evidence of a letter of retirement! I would like to put it to the hon. Assistant Minister that I think these letters are going to be written today and back-dated. He really ought to have had these letters with him today!

Mr. Samoei: Mr. Speaker, Sir, on close scrutiny of my papers, a copy of the letter of retirement to the Assistant Chief, dated 21st August, 1974 is right here. I will go ahead and table it. I am also going to table the letter written by the District Officer South Imenti demanding Government property from this Assistant Chief, dated 26th November, 1974. On top of that, I am going to table **[Mr. Samoei]** evidence that this letter was actually sent via registered post.

(Mr. Samoei laid the documents on the Table)

Mr. Murungi: Mr. Speaker, Sir, if the Assistant Minister is insisting that the Assistant Chief has been keeping these handcuffs illegally, why has the Government not taken any action since 1974 to recover the handcuffs from the Assistant Chief? I am not going to return the handcuffs to the Assistant Minister. I am

going to return them to the Assistant Chief. He can go and arrest the Assistant Chief if he wants!

Mr. Samoei: Mr. Speaker, Sir, now that I have tabled the documents in this House, to show that this Assistant Chief was dismissed, I think it would only be fair for Mr. Murungi to also comply and hand over Government property in his possession illegally. Mr. Murungi, being a lawyer, knows very well what the consequences of his actions could be.

Mr. Kajwang: On a point of order, Mr. Speaker, Sir. I am getting two words which do not mean the same thing from the Assistant Minister. At one point, he said this Assistant Chief was "retired" in public interest; another time he said he was "dismissed" for gross misconduct. What actually happened?

Mr. Samoei: Mr. Speaker, Sir, the bottomline of this matter is that this gentleman is no longer in public service. He was dismissed on grounds of gross misconduct.

Mr. Speaker: Next Question, Mr. Shidiye!

Question No. 065

EXPENDITURE ON POVERTY ERADICATION SEMINARS

Mr. Shidiye asked the Minister for Planning:-

(a) how much money the Government has spent on poverty eradication seminars in the country; and,

(b) how much the Government has allocated for the implementation of the above exercise.

The Minister for Planning (Mr. Ndambuki): Mr. Speaker, Sir, I beg to reply.

(a) The Government has not spent any money on poverty eradication seminars.

(b) According to the Budget for 2000/2001 Financial Year, no money was allocated for poverty eradication seminars.

Mr. Shidiye: Mr. Speaker, Sir, the Minister happens to be my friend, but I will not forgive him for this. I have two different answers with me. The first one states:-

(a) According to unaudited accounts, the Government has so far spent Kshs49,207,300 on poverty eradication seminars.

The second answer states:-

(a) The Government has not spent any money on poverty eradication seminars.

Mr. Speaker, Sir, both answers are signed. Could the Minister, instead of taking the House for a ride, tell us which is the correct answer?

Mr. Ndambuki: Mr. Speaker, Sir, the correct answer is the one which I have personally signed. I am not aware of the other written reply.

Mr. Shidiye: Mr. Speaker, Sir, both written answers are signed. One was signed in Treasury on 17th

April, 2001 and I was given a copy of it by the Serjeant-At-Arms. The other one was signed on 3rd May, 2001. I do not know whose signature it is, maybe he should let us know.

Mr. Speaker: Mr. Shidiye, how would he know if he has not seen them?

Mr. Shidiye: Mr. Speaker, Sir, I can lay them on the Table.

(Mr. Shidiye laid the documents on the Table)

Mr. Speaker: Give them to the Minister!

Mr. Ndambuki: Mr. Speaker, Sir, the correct one is the one I signed on 3rd May, 2001. I am not aware of the other one dated 17th April, 2001.

An hon. Member: Who signed it?

Mr. Ndambuki: You cannot tell whose signature it is.

Mr. Speaker: For the benefit of the House, because I do not know what happened --- Mr. Ndambuki, were the two written replies tabled by Mr. Shidiye signed by you?

Mr. Ndambuki: Mr. Speaker, Sir, I only signed one.

Mr. Speaker: Who signed the other one?

Mr. Ndambuki: Mr. Speaker, Sir, I do not know the person who signed.

Mr. Speaker: Mr. Shidiye, do you know who signed it?

Mr. Shidiye: Mr. Speaker, Sir, this letter is from the Treasury, or the Ministry of Finance and Planning. I was given the copy by the Serjeant-At-Arms. Maybe it is his Assistant Minister who signed it. The Minister should be frank, and maybe we could forgive him.

Mr. Anyona: Mr. Speaker, Sir, in the first place, I think the Minister is taking the House and the Chair for a ride. The Minister is required, under the Standing Orders, to submit answers to the Clerk. So, if those answers were received by the Clerk, [Mr. Anyona] they must have originated from his Ministry. If he were to insist that he does not know about the other reply, then I think it is only fair that the Chair institutes investigations to find out who is taking the House for a ride.

Mr. Speaker, Sir, is the Minister then saying that there was not a single seminar held? If no money was spent, then there was no single seminar held. Was there any seminar held at all?

Mr. Ndambuki: Mr. Speaker, Sir, first, I would like to clarify the issue of the two written replies. The correct answer is the one I signed, and I would like to ask the House to believe that. Why should I lie to the House? The correct answer is the one I have read out.

In reply to his question, it is true seminars were

held, but they were not funded by the Government. Funds were provided by our partners.

Mr. Sambu: On a point of order, Mr. Speaker, Sir. I seek your indulgence and request you to give direction on this issue of Ministers submitting two different answers, because this is not the first time. If answers are going to land in the House without originating from the Ministries, then the House and the nation are going to be at a total loss because these are serious issues. I presume that answers go to the Clerk or relevant Deputy Clerk who signs upon their receipt. So, why is the Minister misleading the House? Those two answers came from his officers who signed them and submitted them to the Clerk.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! You want my direction, and you do not want me to find out how to direct you! So, please, relax!

I have perused the two documents purported to be replies to this Question; one signed on 30th April, 2001 and submitted to the Office of the Clerk and another one dated 3rd May, again given by the Minister to the hon. Member and to the House. The two signatures look different, but they all purport to be from Treasury. I think I will have to find out what actually happened. I will find out the source of the two replies, because it looks like the signature on the reply that has been tabled by the hon. Member just now looks quite different from the one dated 30th April, 2001. On the face of it, it looks like they were signed by two different people. So, let me find out.

Mr. Shidiye: Mr. Speaker, Sir, since we have two Ministers in that Ministry; the Minister for Finance and the Minister for Planning, could the Minister for Finance, who is here, tell us whether that is his signature?

Mr. Speaker: Could you let me investigate?

Dr. Ochuodho: On a point of order, Mr. Speaker, Sir. I really appreciate the Chair's offer to the House to investigate, but I think the problem is much bigger than just finding out which is authentic and which is not. The problem is that, the Government has two types of people; those who want to tell the country the truth and those who want to conceal the truth.

Mr. Speaker: How do you know that?

Dr. Ochuodho: Mr. Speaker, Sir, that is---

Mr. Speaker: Order! Order! Supposing I held you to your words now under Standing Order No.69 would you be able to substantiate? These are the kind of utterances that lower the dignity of this House. So, please, do not engage us in that. I will investigate and come to the House. Mr. Ndambuki, you will help me to investigate. Mr. Clerk, will you immediately begin the investigations?

The Question is deferred to Thursday next week.

(Question deferred)

Question No.030

MEASURES TO SALVAGE KPCU

Mr. Speaker: Mr. Kihoro is not in? We shall come back to his Question later!
Next Question!

Question No.043

EARNINGS FROM PYRETHRUM EXPORTS

Mr. Gatabaki asked the Minister for Agriculture:-

(a) how much the country earned in foreign exchange from pyrethrum exports in the last five years;

(b) which were the main export markets in terms of export revenues and how much the farmers got in specific districts of production during the said period.

The Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo):
Mr. Speaker, Sir, I beg to reply.

(a) Between 1995 and February this year, the country earned a total of Kshs7,442,692,058 from pyrethrum exports.

(b) The following were the main export markets in terms of export revenues: The United States of America, Europe, Japan, Australia, New Zealand, South America, India, South Africa, Canada, South East Asia, plus Malaysia, Philippines [**The Assistant Minister for Agriculture, Livestock and Rural Development**] and Singapore.

Mr. Speaker, Sir, the earnings of each producer district for the last five years are as follows:-

Nakuru -	Kshs1,882,239,500
Bomet -	Kshs100,302,800
Kericho -	Kshs142,093,200

Mr. Gatabaki: On a point of order, Mr. Speaker, Sir. If I could remind the House, the same answer that was given by the Assistant Minister last week, and which necessitated the Chair to order the Assistant Minister to go back and prepare a credible answer, is being given by the Assistant Minister now. In his answer he states that in five years the total earnings from exports in Nakuru were Kshs1.87 billion. This is mass production.

Mr. Speaker: Order! Mr. Gatabaki, what are you complaining about?

Mr. Gatabaki: Mr. Speaker, Sir, I am complaining about the same answer given by the Assistant Minister last week which necessitated the Chair to order the Minister to go back and consult

further, because it is the same one being read out today. How can a district produce more pyrethrum than the entire country.

Mr. Speaker: Order! Order! How do we know? You have not even allowed him to finish giving the answer. Maybe the difference is coming at the end of his answer. So, why do you not be patient? Let us get the whole of it. Could we hear what he has to say in full?

The Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo): Mr. Speaker, Sir, I had hoped the hon. Member would be patient, because last time, it was a typing error that we needed to correct. The figure that we are giving today as the total earnings, comes to Kshs7,442,692, but during last week's answer, it was Kshs1 billion. So, I will give a breakdown per district and the total amount comes to Kshs7 billion.

Koibatek-	Kshs56,583,000
Narok	- Kshs86,516,400
Laikipia -	Kshs11,423,400
Uasin Gishu	- Kshs209,539,700
Marakwet	- Kshs86,616,000
Keiyo/Marakwet	-Kshs178,681,300

West Pokot District earned Kshs99,401,500; Nandi District -Kshs3,546,200; Trans Nzoia District - Kshs1,580,900; Kisii District - Kshs158,753,600; Nyamira District - Kshs75,819,400 and Nyandarua District got the largest share of Kshs303,512,760 and Kiambu District, from where Mr. Gatabaki comes, earned Kshs23,833,800. Nyeri District earned Kshs19,746,100 and Murang'a District---

Mr. Speaker: How long is your list?

The Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo): Mr. Speaker, Sir, I have about three items remaining.

Murang'a District earned Kshs1,600, Meru South earned Kshs20,754,200, Meru North - Kshs493,900, Meru Central - Kshs2,721,300 and Mount Elgon District earned Kshs6,653,800. Unlicensed, which means earnings from those people who have not registered in any district, earned Kshs18,455,00. The total amount, as I have already stated, is Kshs7,442,692,058.

Mr. Gatabaki: Mr. Speaker, Sir, I cannot understand what the Assistant Minister is talking about. I have to go for a test for my eyes. First he has given us a figure of Kshs1,076,621,058, which is very different from what he has talked about. In the same list, one particular district, Trans Nzoia earned Kshs22.247 billion. Any calculation, by even somebody who went to school up to Standard One, will show that these figures are grossly inaccurate. It is the same reason why the Assistant Minister was sent back to his office to come to the House with credible answers. Not only are we getting incredible answers, but the answers are incomprehensible.

Mr. Speaker: Mr. Gatabaki, you are now making a speech! What is your question?

Mr. Gatabaki: Mr. Speaker, Sir, could this Assistant Minister do his homework and bring credible

answers to the House? The answers show that these people are incapable---

Mr. Speaker: Order! Mr. Gatabaki, if you do not want to ask the Assistant Minister a question, open the Floor to the other hon. Members. Maybe there are other hon. Members who want to ask questions. Is there any hon. Member interested in this Question?

Mr. Mutahi: Mr. Speaker, Sir, if we can talk about Kshs7 billion for such a period, after five years we will talk, maybe, of triple the amount, which will be about Kshs21 billion. The agricultural sector has been run down by the Government. How does the Government benefit when it runs down sectors such as the pyrethrum, coffee, tea and the sugar-cane sectors? What is the Assistant Minister doing to rehabilitate the agricultural sector, which is already run down? We are talking about poverty eradication, but we cannot eradicate poverty when we have the same Government running down such sectors. What will the Assistant Minister do about rehabilitating these sectors?

Mr. Sumbeiywo: Mr. Speaker, Sir, if I heard Mr. Mutahi correctly, he said that the Government is "running down". I do not know whether we are running--

Mr. Speaker: Order! You see, Mr. Sumbeiywo, we all have our own mini dialects. I am [Mr. Speaker] sure you live in Kenya and you understand these things. I understand what Mr. Mutahi means. He means "running down"!

Mr. Sumbeiywo: Thank you, Mr. Speaker, Sir. In actual fact, the pyrethrum sector has done very well because the graph that is showing its performance at the moment is progressive. The reason why there was a decline in the production of pyrethrum was because there was competition from the cheap synthetic materials. Now, the world has changed and it has gone back to the old system of using natural pyrethrum to produce this chemical, which is in great demand. The percentage of the sales of the crop as it is shown here--- In 1995/96, the sales grew by 30 per cent and during the following financial year, the percentage went up to 38 per cent. During the following financial year, it went up to 53 per cent. In 1998/99, the figure shot up to 75 per cent. I am told that there was a decline in 1999 and the figure went down to 59 per cent. This percentage went up during last year, and this year, to 65 per cent. So, it is wrong for anybody to say that this sector has been run down. The Ministry is doing its best in supplying seeds to the farmers so that pyrethrum production is increased.

Mr. Gatabaki: Mr. Speaker, Sir, I am unable to put a supplementary question because the whole purpose of asking Questions is to get proper answers. In view of the figures given here in response to my Question, that one district earned Ksh225 billion, the whole answer is not correct and I cannot ask a

supplementary question. The Assistant Minister should come again with a more credible answer, considering that pyrethrum has been earning foreign exchange for the Rift Valley Province. It is specifically grown in areas where the ruling party is very strong, such as Baringo Central Constituency. In view of the fact that there has been a considerable decline in the production of pyrethrum, could the Assistant Minister confirm or deny that the policy has been to destroy the entire agricultural industry, considering that the production of other crops such as coffee, tea, wheat and sugar-cane show a declining trend? Now we have seen the production of pyrethrum, which is produced by people from the ruling party's stronghold areas, declining. Could the Assistant Minister confirm or deny that the Government has been deliberately destroying the agricultural sector?

Mr. Sumbeiywo: Mr. Speaker, Sir, Mr. Gatabaki has refused to go by the amended answer. Last week, we gave a figure of Kshs1 billion but today, we came here with the correct figure of Kshs7 billion. So, I do not know what his argument is! When he talks about political problems in farming, I deny that! The Ministry does not recognise that kind of situation.

Mr. Achola: On a point of order, Mr. Speaker, Sir. I rise on a point of order to seek clarification from the Assistant Minister. Could he be kind enough and tell us how much money was earned in Trans Nzoia District? According to the figures that we have here, the figure is Kshs227 billion!

Mr. Speaker: Just forget it! That is a supplementary question. He hijacked! Mr. Achola, you have no business hijacking the Chair under the guise of a point of order! Your point of order is overruled!

Mr. Anyona: Mr. Speaker, Sir, it is true that last week, the Assistant Minister juggled his figures and he was told to go and sort them out. That problem does not seem to have been solved, and I do not think it can be solved!

Those who come from pyrethrum-growing areas would like to know what the Assistant Minister is doing to ensure that pyrethrum, which is enjoying very good world prices at the moment, is improved in terms of production and cultivation. Could he tell us whether he will give the necessary implements like seeds to Kisii, Gucha and Nyamira? He has said that seeds were given, but we did not receive any. Could he give those three districts some seeds.

Mr. Sumbeiywo: Mr. Speaker, Sir, we are giving seedlings to the farmers.

Question No.027

CONSTRUCTION OF MOMBASA-NAIROBI-
MALABA DUAL CARRIAGEWAY

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

(a) what arrangements the Government

has made to turn Mombasa-Nairobi-Eldoret-Malaba Road into a dual carriage highway; and,

(b) whether there has been any enquiry from international interested parties on financial participation in the project.

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

(a) The Government has approached development partners for financial assistance to construct a dual carriageway along the Nairobi Airport-Machakos-Mariakani-Mombasa sections of the Mombasa-Nairobi-Malaba Road.

(b) There have been enquiries from international interested parties on financial participation on the Mombasa-Nairobi Section of the road on concession arrangements.

Mr. Michuki: Mr. Speaker, Sir, could the [Mr. Michuki]

Assistant Minister tell this House and the country at large, how far the negotiations, if any, have gone in getting the works started; and, if not, why not?

Eng. Rotich: Mr. Speaker, Sir, there is no "if not." We have done something after receiving the enquiry that concerned the World Bank. That is because we have not done that kind of thing before! We sent out requests for participation and got five interested persons. At the moment, we are analysing those responses and one of them will be chosen to participate.

Mr. Munyao: Mr. Speaker, Sir, the answer from the Assistant Minister is very interesting! Is he aware that, that road has caused many deaths? For that reason, could he consider privatising the road? He could get private developers to start work on the road in question, and they would be charging some fee. If he cannot get anybody, he should learn from the DP Government! It is ready to do that sometimes in future!

Eng. Rotich: Mr. Speaker, Sir, that is exactly what we are doing. We are undertaking that process now!

Mr. Michuki: Mr. Speaker, Sir, the Assistant Minister is not telling this House the truth! There are international financiers who are interested in that work. But because they would be recovering their money from the toll stations on the road; including earnings that they would get from petrol stations, supermarkets and shops along the entire road, could he confirm that the submission from the financiers is not the reason why no agreement has been reached, and some people in the Government begrudge the financiers on what they should earn from their labour and finance?

Eng. Rotich: Mr. Speaker, Sir, I deny that because the process started recently. We have gone

very far and, in fact, in the next few months, we shall know the outcome. So, we are willing to participate in that process that the Member has queried; that is, to privatise or commercialise the road.

Mr. Speaker: Very well! Hon. Members, I think I gave too much time to the first two Questions, to the detriment of all other Questions. But, since I intend to deal with the Questions by Private Notice, I very kindly ask Mr. Muchiri, Mr. Maitha, Mr. Otita, Mr. Otula and Mr. Kihoro to agree with me that I should defer their Questions to Tuesday. So, please bear with me all of you. All the Questions are, therefore, deferred to Tuesday.

Question No.030

MEASURES TO SALVAGE KPCU

(Question deferred)

Question No.094

RECOMMENDED RENTS FOR AMANI
HOUSING PROJECT

(Question deferred)

Question No.156

REPAIR OF TEZOROKA-KAKANJUNI ROAD

(Question deferred)

Question No.157

DELAYED SALARY PAYMENTS BY
NYANDO COUNTY COUNCIL

(Question deferred)

Question No.237

TELEPHONE FACILITY FOR PUBLIC TRUSTEE'S OFFICE

(Question deferred)

QUESTIONS BY PRIVATE NOTICE

TERMS OF EMPLOYMENT OF
CBK GOVERNOR/DEPUTY GOVERNOR

Mr. Kaindi: Mr. Speaker, Sir, I would like to bring to the attention of the Chair that I have not received a written answer. However, I beg to ask the Minister for Finance the following Question by Private Notice.

Could the Minister table the contract documents on the terms and conditions of employment of the Governor and Deputy Governor of the Central Bank of Kenya (CBK)?

The Minister for Finance (Mr. Okemo): Mr. Speaker, Sir, I sent the answer to this Question to the Clerk yesterday. So, if it has not reached the hon. Member, I am surprised! But I have an answer here! So, I do not know whether I should go ahead and answer the Question or he would like to have the written reply first!

Mr. Speaker, Sir, I beg to reply.

Mr. Kaindi: On a point of order, Mr. Speaker, Sir. That is a document and I do not know whether I will be able to ask any supplementary questions, without having the benefit of looking at the contract terms!

Mr. Speaker: I understand! But the Minister has said that he sent the answer to us yesterday! I do not know what happened!

[**Mr. Speaker**]

*(Mr. Speaker conferred with the Clerk
of the National Assembly)*

I understand that we do not have a copy here! So, Mr. Kaindi, could I defer it until Tuesday?

Mr. Kaindi: Yes, Mr. Speaker, Sir!

Mr. Speaker: Meanwhile, could everybody concerned give a copy of that document to Mr. Kaindi?

(Question deferred)

REVENUE ALLOCATION TO CONSTITUENCY
-BASED PROJECTS

Eng. Muriuki: Mr. Speaker, Sir, I beg to ask the Minister for Finance the following Question by Private Notice.

(a) Is the Minister aware that on Wednesday, 29th November, 2000, the House resolved that before the next budget statement, the Minister should table proposals for appropriate mechanisms to ensure that 2.5 per cent of the Government revenue is allocated to constituency-based development projects?

(b) Could the Minister table the proposals at least before the presentation of the 2001/2002 Budget?

The Assistant Minister for Finance (Mr. Arap-Kirui): Mr. Speaker, Sir, before I answer this Question, I should apologise to the House because I had meant to answer this Question yesterday, but was unavoidably delayed and arrived just at the end of Question Time.

However, I beg to reply.

(a) I am aware that on Wednesday, 29th

November, 2000, through a Private Members' Motion, the House resolved that the Minister for Finance tables in the House, proposals for an appropriate mechanism to ensure that 2.5 per cent of the annual Government revenue is allocated to constituency-based development projects.

(b) The proposals to implement the above mentioned Motion are being worked out. However, because of the complexity of the arrangements that need to be put in place, and the need to make radical changes from the current budgetary process, which is sector-based and not constituency-based, the proposals may not be ready for tabling in the House before the presentation of the 2001/2002 Budget. Nevertheless, the proposals will be tabled as soon as they are ready and when the necessary infrastructure has been put in place.

Eng. Muriuki: Mr. Speaker, Sir, you appreciate that for the fifth time, there has been a serious attempt by the Assistant Minister to answer this Question. After these resolutions were made, some Members of Parliament, who included myself, Messrs. Donde and Angwenyi, held a meeting with the Minister for Finance, Mr. Okemo, together with the gentleman he introduced to us as the person in charge of Budgets. At that meeting, in February, the Minister confirmed to us that the said arrangements were ready and that he would invite Members of Parliament to attend a workshop to discuss poverty eradication. I am now surprised that the Assistant Minister says that the said proposals are not ready. Could he tell us whether the Minister did not tell us the truth when we met him? Since hon. Members are interested in seeing that projects at the constituency level are funded, could the Assistant Minister simply set aside 2.5 per cent of the Budget provision, divide it by the number of constituencies, which works out to Kshs23 million per constituency, and ask the respective Members of Parliament the sectors they would like their money spent on?

Mr. Arap-Kirui: Mr. Speaker, Sir, I wish the process was as simple as the hon. Member has put it. As we all know, the process we are talking about has a long history. I am sure that the Minister made that promise expecting that all would be worked out in time. That was indicative of the Minister's good intention. However, practically, that has not been possible. Now that we find ourselves in this situation, we intend to comply with the resolution of this House. The problem is that time will not allow us to do it. Otherwise, we intend to abide by the resolution to the letter.

Mr. Kariuki: Mr. Speaker, Sir, because the Motion in reference was based on the same concept that created the Kenya Roads Board (KRB), could the Assistant Minister assure us that in respect of this resolution, we will not find ourselves in a situation similar to that when Mr. Harun Mwau went to court and blocked the operations of the KRB despite the fact that the whole exercise was well intended?

Mr. Arap-Kirui: Mr. Speaker, Sir, obviously, we cannot give any assurance in this House on behalf of any

citizen of this country.

Mr. Raila: Mr. Speaker, Sir, the Assistant Minister should not be vague in answering this very important Question. He says that there are problems being experienced in trying to comply with this resolution. Could he be specific and tell us whether those problems are arithmetical, infrastructural or whatever they are. Every constituency has elected leaders and others who can sit down and decide how the money that is going to be allocated to it will be spent. What are the difficulties in an era where the Government accounting system is completely computerised?

Mr. Arap-Kirui: Mr. Speaker, Sir, as I explained in my reply, for a long time, our Budget has been sector-based. We work it out from the [Mr. Arap-Kirui]

bottom upwards. As hon. Members know, currently, everything is put together under the district. Within each district, there are issues relating to various sectors. It would entail putting that arrangement apart and arranging everything according to constituencies. Unfortunately, we do not have sufficient time to do that between now and the time of presenting the next Budget. Hopefully, before the Budget after the next, we will have worked the details of this arrangement.

Mr. Speaker: Could you ask the last question, Mr. Kirwa?

Mr. Kirwa: Mr. Speaker, Sir, if I heard the Assistant Minister right earlier on, he said that he was not ready with the proposals before the next Budget. But has he considered this for inclusion in the Budget for the Year 2001/2002?

Mr. Arap-Kirui: Mr. Speaker, Sir, probably, I and Mr. Kirwa are talking about different Budgets. The Budget I am talking about is that for the Year 2001/2002 which will, in fact, be presented to this House next month. The arrangements resulting from the resolution in reference will not be ready by then.

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

Mr. Speaker: I am sorry. Next Question!

REGISTRATION OF COFFEE FARMERS' BANK

Mr. Anyona: Mr. Speaker, Sir, I beg to ask the Minister for Finance the following Question by Private Notice.

(a) Is the Minister aware of any existence and registration of the Kenya Coffee Farmers Bank Limited of P.O. Box 16872, Nairobi, under the provisions of Sections 3, 4 and 5 of the Banking Act, Chapter 488 of the Laws of Kenya?

(b) Is he further aware that the purported Kenya Coffee Farmers Bank Limited obtained Kshs85,000 by fraud from Girango Farmers Co-operative Society Limited through the Coffee Board of

Kenya as ordinary bank shares on 4th August, 2000 (Receipt No.006656) without the authority, consent or knowledge of coffee farmers?

(c) What legal measures has the Minister taken against those involved in this fraud and when will the money be refunded to the farmers with accrued interest?

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

(a) I am aware of the existence and registration of the Kenya Coffee Farmers Bank Limited, Nairobi, which was incorporated under Certificate of Incorporation No.C8/98, dated 3rd July, 1998, in accordance with the provisions of the Companies Act, after obtaining consent from the Central Bank of Kenya, under Section 3 of the Banking Act, for the use of this name. However, after analysis of its viability, the Kenya Coffee Farmers Bank Limited was not recommended by the Central Bank of Kenya for licensing to transact banking business under Sections 4 and 5 of the Banking Act. The Kenya Coffee Farmers Bank Limited has, therefore, never been issued with a banking licence.

(b) I am aware that the proposed bank was collecting funds from would-be shareholders to cater for the minimum share capital for setting up a bank. I am, however, not aware that the Coffee Board of Kenya, or the proposed bank, used fraudulent means to obtain the funds from its would-be shareholders, and possibly from Girango Coffee Farmers Co-operative Limited. By July, 2000, the Kenya Coffee Farmers Bank Limited was holding over Kshs250 million in the form of Treasury Bills, all of which were later redeemed. I am reliably informed that the proceeds are held in the Barclays Bank of Kenya.

(c) Since no fraudulent act has been established, I do not intend to take any legal measures against the Coffee Board of Kenya or the Kenya Coffee Farmers Bank Limited. However, the aggrieved Girango Coffee Farmers Co-operative Society Limited is at liberty to approach the Kenya Coffee Farmers Bank Limited and the Coffee Board of Kenya for the refund of its money with its accrued interest since the intended investment in the Kenya Coffee Farmers Bank Limited did not take place.

Mr. Anyona: Mr. Speaker, Sir, there is a contradiction in the Minister's answer. In his response to part (a) of the Question, he seems to imply that banks can be registered under the Companies Act. I thought it is quite clear that any banking business is done under the Banking Act. The Minister says that the Central Bank of Kenya approved the registration of the Kenya Coffee Farmers Bank Limited and that, thereafter, it did analysis of the licensed bank. Clearly, that does not make sense. The Central Bank of Kenya should have done the analysis of the proposed Kenya Coffee Farmers Bank Limited and found it either viable or not viable and then given appropriate recommendations. It appears that something dubious was going on. Could the Minister explain the circumstances under which the Central Bank of Kenya allowed a bank to

be formed under the Companies Act, gave consent for its registration and, later on, changed its mind and decided that the bank was not viable? Could he explain that contradiction before I put the question I have to him?

Mr. Okemo: Mr. Speaker, Sir, I think those two issues are different. Before you actually register a company under the Companies Act, consent has to be given for the name. I think that is what the

[Mr. Okemo]

Central Bank of Kenya gave, but the licensing was not given. According to the terms of the Central Bank Act, the establishment of a commercial bank, a mortgage company or any financial institution is licensed by the Minister for Finance on recommendation by the Central Bank of Kenya. So far all the recommendations that we have received at the Ministry of Finance have been to dissuade us from licensing the Kenya Farmers Bank.

Mr. Michuki: Mr. Speaker, Sir, the Minister, in his eloquence, does imply that his powers of licensing banks are so much dependent on the recommendation of the Central Bank that there is nothing he can do. Could he confirm or deny that?

Mr. Okemo: On the contrary, that is not what I am saying. I am saying that for the Minister for Finance to license a bank, he would need to have professional competent advice before he can make his well-balanced decision to license the bank.

Mr. Murathe: Now that the Farmers Bank has been registered and the licence has been denied and the Kenya Coffee Farmers Bank is holding Kshs250 million in Barclays Bank, what will happen to this money?

Mr. Okemo: Mr. Speaker, Sir, I think there should be no problem with the money collected. It should just go back to where it came from. There is no difficulty because they have records of where the money came from.

Mr. Anyona: Mr. Speaker, Sir, in the second part of the answer the Minister talked about money having been collected. He said "possibly including Girango" as if that was in doubt. If the Minister is in doubt, I would like to table here the receipt and application form.

(Mr. Anyona laid the document on the Table)

If you look at the application form, this process of collecting money was confined to 1998. Even after being denied the licence, these people have continued to collect money from unsuspecting Kenyans up to 4th August, 2000, in the case of Girango and possibly beyond that time. Is that not a fraudulent act that after a proposed bank has been denied a licence, they still continue to collect money? In that event, could the Minister ensure that this money is paid back to the original subscribers including Girango Farmers Co-

operative Society?

Mr. Okemo: Mr. Speaker, Sir, I am sure the continued collection of the money must be in anticipation that the bank will eventually be licensed. There is nothing to indicate that that money has been collected fraudulently. It is very difficult to take legal action against them.

Mr. Speaker: Next Question!

NON-APPROVAL OF MP'S VISIT TO KAMITI PRISON

Mr. Muiruri: Mr. Speaker, Sir, I beg to ask the Minister for Home Affairs, Heritage and Sports the following Question by Private Notice.

(a) Could the Minister explain why the Member for Gatundu North was denied permission to visit Mr. Stephen Mwangi Gitau, a prisoner at Kamiti Maximum Prison, on 30th and 31st March, 2001?

(b) Could the Minister ensure that Members of Parliament are not barred from visiting their constituents in jail?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports (Mr. arap Choge): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the hon. Member for Gatundu North was denied permission to visit Mr. Stephen Mwangi Gitau, a prisoner at Kamiti Maximum Prison on the 30th and 31st of March, this year.

May I draw your attention to paragraph two of my reply which I presented to Parliament yesterday. The preservation of Public Security Act Cap.57 of the laws of Kenya has absolutely no relevance to the question by the hon. Member for Gatundu North. The correct reply is as follows:

Under Cap.90, Laws of Kenya, which governs the operations of prisons, the Commissioner of Prisons is empowered, under Section 5(2) to make Standing Orders and give administrative directives. Consequently, under the Prisons Standing Orders Cap.61 Section 22, Members of Parliament are required to seek permission from the Minister for the time being responsible for prisons, to visit a prisoner. The hon. Member for Gatundu North did not seek such permission. The Government has no intention of preventing hon. Members from visiting their constituents in prisons. However, it is in the interest and convenience of hon. Members who wish to make such visits to notify the officer in charge of their intentions so that he may inform the Minister in charge of prisons in order that their visits can be organised and arranged to avoid any inconvenience that may arise to the hon. Member.

Mr. Muiruri: Mr. Speaker, Sir, the person I was going to see was not a convicted prisoner; he was a remand prisoner. When I went to Kamiti Maximum Prison I was first told to wait. Thereafter, I was told that they were carrying out a head count of all the policemen and prisoners. I was advised to come back the next day. I went there the next day and insisted on seeing the officer in charge who

denied me permission to see this man. I do not

[Mr. Muiruri]

understand what the Assistant Minister is saying because I personally sought permission from the officer in charge and I was kept there for two days while waiting to see the prisoner. Since this man was a remand prisoner, and not a convicted prisoner and I am his Member of Parliament, is it not my constitutional right to visit him?

Mr. arap Choge: Mr. Speaker, Sir, the same regulations are applied to every visitor and, therefore, he is not immune to them.

Mr. Anyona: Mr. Speaker, Sir, this very Assistant Minister has been in prison in Kamiti. We have also been there and we were visited. There is no law which says that a convicted or non-convicted prisoner cannot be visited by anybody. The regulations talk about visits. They do not talk about Members of Parliament or anybody. Could the Assistant Minister first of all table the regulations he is referring to which seem to conflict with the law and explain the authority of those orders? I thought that the orders concern his askaris, but the prisoners are controlled by law. They act under resolutions. Could he table them here?

Mr. Speaker: Order, hon. Members! Although I do not want to help Mr. Anyona, I am just curious. Why is there discrimination against Members of Parliament?

Mr. arap Choge: Mr. Speaker, Sir, there is no discrimination as such. An hon. Member might go to a prison and find a prisoner somewhere else either working or in the field and that will inconvenience him. We are in order in suggesting that the hon. Member gets permission so that he is accorded all his rights in prison.

Mr. Muiruri: On a point of order, Mr. Speaker, Sir. The Assistant Minister must understand very clearly that the person I was going to see was a remand prisoner. Therefore, the question of him going to work is irrelevant!

(Loud consultations)

Mr. Speaker: Order! There is too much consultation! We cannot follow the proceedings. Could we follow the proceedings? Mr. Assistant Minister, in the event you did not hear what the hon. Member said, this was a remand prisoner who, by law, cannot be taken to labour anywhere in prison.

Mr. arap Choge: But Mr. Speaker, Sir, he was in a remand home, and that was not his home!

(Laughter)

Mr. Anyona: On a point of order, Mr. Speaker, Sir. First of all, I asked the Assistant Minister

to lay on the Table of this House those Orders. I believe those Orders are illegal, if they exist at all. And he has not done so. When we talk about remand homes we are not talking about the remand. The remand in Kamiti Maximum Prison is Block E. The Assistant Minister knows it because he has been there. It is not anybody's home.

Mr. arap Choge: Mr. Speaker, Sir, the person is no longer in his home. He is in a remand home within the prison.

Mr. Raila: Mr. Speaker, Sir, the Assistant Minister is being very trivial about what he knows to be a very serious matter because he himself has been an attendant of the remand home sometime back. He knows the injustices that are meted out on people who are innocent. The law says that you are innocent until you are proved guilty by a court of law. You are remanded purely for custody purposes only. Is it right for the prison authorities to deny remanded prisoners, who are innocent people, the right to be visited by relatives? This is a right that they should be enjoying like anybody else if they were remanded outside the prisons.

Mr. arap Choge: Mr. Speaker, Sir, we have not stopped any relative from visiting a person in a remand home. But the hon. Member for Gatundu North did not follow the laid down procedures.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, two weeks ago I was stopped when I tried to visit my co-convicts in Kodiaga Prison. If the Assistant Minister is telling us that he is not discriminating against hon. Members, why is he discriminating against ordinary Kenyans? Why is he favouring hon. Members by denying them a chance to visit inmates without permission from the Minister? In any case, if these Standing Orders are subordinate to the Constitution, why are they going against the Constitution which says there should no be discrimination whatsoever?

Mr. arap Choge: Mr. Speaker, Sir, no ex-prisoner shall be allowed to visit a prisoner, except with the written permission of the officer in charge. Dr. Ochuodho, you are one of them!

(Laughter)

Mr. Obwocha: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to refer to hon. Members as ex-prisoners when he himself is an ex-prisoner?

Mr. Speaker: Order! Mr. Obwocha, you must be serious. If you think the Assistant Minister is out of order because of referring to an hon. Member as an ex-prisoner and you tell him directly to his face that he is an ex-prisoner, then I do not think he has committed any breach. How else would you call them?

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

Mr. Speaker: Order! Time up for that Question!

NUMBER OF CASES INVESTIGATED BY KACA

(Mr. Sambu) to ask the Attorney-General:-

(a) How many cases had the Kenya Anti-Corruption Authority investigated before its dissolution?

(b) How many of these cases had reached prosecution stage and could the Attorney-General table the list of those charged and the crimes committed?

(c) How many had been concluded and how many are pending investigation.

Mr. Speaker: Hon. Members, by mutual agreement, between Mr. Sambu and the Attorney-General, the Question is deferred to Tuesday. Next Question, Eng. Toro.

(Question deferred)

THEFT OF DOCUMENTS AT KANDARA TOWN COUNCIL

Eng. Toro: Mr. Speaker, Sir, I beg to ask the Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that the offices of Kandara Town Council were broken into on the night of Tuesday, 3rd April, 2001 and various important files and documents stolen?

(b) What steps is the Minister taking to ensure safety of the remaining documents and files?

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

(a) Yes, I am aware the offices of Kandara Town Council were broken into on the night of Tuesday, 3rd April, 2001. However, no files or documents were stolen. The thieves stole other things. A suspect was arrested and the case is pending in court.

(b) The Town Council has instituted several measures, including deploying two night watchmen, to boost security.

Eng. Toro: Mr. Speaker, Sir, today I received a signed reply, therefore, I will proceed to ask a supplementary question. When the President visited Kandara on 20th March, 2001, he dissolved Kandara Town Council. What is happening now is that the officers and the councillors are determined to destroy any evidence that will incriminate them when the audit team visits the council to find out whether there were any illegal transactions. When the Assistant Minister says that nothing was stolen or destroyed, he is misleading the House. I am sure he never made any investigation---

Mr. Speaker: Order! Eng. Toro, this is not debating time. Will you ask the Assistant Minister a supplementary question? By the way, if you know all those details, why bother the House with the Question?

Eng. Toro: Mr. Speaker, Sir, the Assistant Minister is supposed to tell the House the truth. Could he now tell this House which other things were stolen because he said "other things were stolen?"

Mr. Kiangoi: Mr. Speaker, Sir, these were; telephone exchange equipment, telephone hand set, one calculator and several office curtains.

Eng. Toro: Mr. Speaker, Sir, on part "b" of the Question, the Assistant Minister says that the council is taking measures to improve security. These measures will not be effected because Kandara Town Council was dissolved. The council is no longer collecting revenue. Therefore, they have no money to implement any of those security measures. Where will the council get the revenue to improve security?

Mr. Kiangoi: Mr. Speaker, Sir, the hon. Member is referring to Kandara County Council, which, therefore, means it is in existence and able to carry out its activities, including taking such measures as to beef up security as already indicated.

Eng. Toro: On a point of order, Mr. Speaker, Sir. The Assistant Minister knows very well that, with effect from March this year the council was dissolved. The Assistant Minister was supposed to have implemented the directive by gazetting the dissolution. However, he has not done so. He knows the residents of Kandara County Council are not paying any for any licences. So, the council will have no revenue. I am referring to the former county council of Kandara. Is he in order to mislead the House that the council is in existence when it is not?

Mr. Kiangoi: Mr. Speaker, Sir, Kandara Town Council is in existence until legally dissolved, if such measures are taken as provided for dissolution of a town council.

Mr. Speaker: Time up! Next Order!

MINISTERIAL STATEMENT

IMPROVEMENT OF NYALI AND MTWAPA BRIDGES

The Minister for Roads and Public Works (Mr. W.C. Morogo): Thank you, Mr. Speaker, Sir. Yesterday I undertook to give a Ministerial Statement at the request of Mr. Maitha [**The Minister for Roads and Public Works**] on the improvement of New Nyali and Mtwapa Bridges in Mombasa. The Ministry of Roads and Public Works has contracted a Japanese firm, M/S Sumitomo Construction Company Ltd., to undertake repair works on the New Nyali and Mtwapa Bridges in Mombasa. Oriental Consultancy of Japan are supervising the project on behalf of the Ministry.

Mr. Speaker, Sir, the works are estimated to cost

Japanese Yen 496,700,000 (Kshs314,870,000). The projects are funded by the Government of Japan under the Grant Aid Scheme. The construction commenced in January, 2001, and it is estimated to take 14 months. Repair works on the bridges will go on simultaneously. In order to extend the lifespan of the two crucial bridges, my Ministry will undertake the following works on them: One, on the New Nyali Bridge, sealing of cracks on the concrete surface using special fillers which will prevent deterioration of concrete by salty water and, therefore, prevent any damage to the reinforcement layers. Two, replacement of worn out expansion joints with New ones. Three, removal of rust on the bridge bearings and coating with corrosion-resistant material. Four, repair of damaged guardrails and installation of drainage pipes. Fifth, replacement of bitumen surface with a New one.

Mr. Speaker, Sir, on New Nyali Bridge, the contractor will use a movable steel frame structure mounted on rollers. This structure will span across the dual carriage and can move from one end of the bridge to the other. This kind of structure will enable the contractor to move to the sides and the bottom of the bridge where repair works are to be carried out. The structure has a restriction height clearance of 4.2 metres. However, this is also the legal height clearance limit under The Traffic Act, Cap.403. The width of this frame structure can accommodate two lanes, hence the traffic lanes will be reduced from three to two on each carriage way. When the expansion joints and servicing of the bridge will be carried out, the bridge will be closed lane by lane, hence only one lane will be available for use by motorists. These repairs are expected to be carried out within the last four months of the project.

On the New Mtwapa Bridge, Mr. Speaker, Sir, similar works anticipated to be carried out on the New Nyali Bridge will also be carried out. There will be extra works to be carried out on this bridge which will include strengthening of the bridge by using external tracing cables and steel plates. The cables and the plates will be placed inside the box guarder which forms the bridge deck. The contractor will use two different methods of erecting scaffolding for the improvement works on the two bridges to minimise interruptions to the regular traffic flow and navigation under the bridges at various stages of improvement. The contractor will use two cranes to fix hanging scaffolding at the sides and bottom of the bridges. This kind of arrangement will enable the contractor to work on both sides and bottom of the bridge deck. In this case, the restriction on the height clearance will not arise. However, motorists will be allowed to use one lane on the bridge since the cranes will be occupying a portion of the lane and the bridge on fixing the scaffolding. The exercise will last for about 45 days starting from May this year. The cranes will be removed once the scaffolding are fixed on either side of

the bridge. Replacement of expansion joints and servicing will be done lane by lane.

In conclusion, Mr. Speaker, Sir, the two different methods of erecting temporary scaffolding will be employed on the improvement of the two bridges because they have different carriageways. Nyali Bridge is a dual carriageway, and Mtwapa Bridge is a single carriageway. For all vehicles with clearance heights greater than the legal requirement of 4.2 metres, they will be required to use alternative routes as follows: For Malindi-Mombasa bound traffic, motorists will use Kilifi-Mavuani-Kaloleni-Mazeras-Mombasa routes. For Malindi-Nairobi bound traffic, motorists will use Kilifi-Mavuani-Mariakani-Nairobi routes. The Ministry will put up the necessary public notices in the media and at the construction sites for the awareness of the general public on these traffic interruptions which will be effective from tomorrow, 4th May, 2001, to the end of February, 2002.

Mr. Speaker: Order! Order! It is four o'clock and we are half-an-hour behind our schedule. I will ask Mr. Maitha to seek clarification on Tuesday next week because we are already too late. I think I will only reach out for now a Member who has, in my view, an urgent matter; Mr. Omingo. Then, I will go to Mr. Poghismo on a question of privilege.

POINTS OF ORDER

TRIBAL CLASHES ALONG TRANS MARA-GUCHA BORDER

Mr. Omingo: Thank you, Mr. Speaker, Sir, for giving me this chance. I stand on a point of order to ask the Minister of State, Office of the President, in charge of Internal Security to issue a Ministerial Statement on the deteriorating security situation along the Trans Mara-Gucha border. On 17th February, 2001, clashes erupted along the Gucha-Trans Mara border and so far, 15 lives have been lost. I had a chance to walk through the border where tension is quite high and people are not even doing their normal activities day by day, because of uncertainty caused by the insecurity along border. As **[Mr. Omingo]** we are talking now, the police have been given orders to shoot anybody suspected to be a perpetrator. On Saturday evening, one gentleman lost his life through a bullet from the police. It is against this background that I rise to request the Minister of State, Office of the President in charge of Internal Security to issue a comprehensive Ministerial Statement on what he is doing and which way forward for the people of Trans Mara-Gucha border.

(Applause)

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I am aware of the tension along the border and I will issue a comprehensive Statement next week on Wednesday.

Mr. Speaker: Very well!

MISREPORTING BY THE PRESS

Mr. Poghismo: Mr. Speaker, Sir, I would like to draw the attention of the Chair that yesterday, the ruling from the Chair was directed to the *East African Standard* Newspapers to make correction on what was misleading reporting on the rulings of the Chair. They have not done so. In today's Newspaper, they have gone ahead to make matters worse. I was not in that Chair in my capacity as the Member for Kacheliba or a person from West Pokot District. I was chairing the Session and I believe that, that was a slight on the Chair that the Press begins to supervise the Chair and make moral judgement on what goes on from the Chair. I believe that your ruling will probably put this matter to rest once and for all concerning the Press and the proceedings of this House.

COMMUNICATIONS FROM THE CHAIR

DISTINGUISHED GUEST FROM SOUTH AFRICA

Mr. Speaker: Very well! Just before I make that ruling, I would like to make the following communication to hon. Members. I wish to welcome Ms. Tassinim Esopo, Member of Provincial Parliament to Western Cape, South Africa, who is seated in the Speaker's Row. She is visiting Kenya as a resource person in the on-going workshop for Finance Committees being held in Nairobi. On your own behalf and that of mine, I wish her a fruitful stay in Kenya. Thank you, hon. Members.

(Applause)

After the matter raised by Mr. Poghismo, perhaps, what is a reporter's role in the House? The reporter's role is to report as accurately and fairly as possible, the proceedings of the House as they happen. It is not an opportunity for a reporter to pretend to be a Member of Parliament. Any reporter who wishes to express his or her own opinion in this Parliament must convince some constituency to elect him or her.

(Applause)

Before that happens, they have no audience in this House. They will report what has transpired. Much worse, when reporters purport to supervise the Chair, they are insulting the very authority that has given them the privilege to sit literally over my head. So, they will not be allowed to sit on my head.

(Applause)

Order, hon. Members! That is a very serious issue. It is not only the *East African Standard* newspaper. It does appear to me that parliamentary reporters somehow get agitated on what they think ought to happen in the House, which is not happening. So, they get frustrated. So, take your frustrations elsewhere. Please, report what happens. If you want to politically comment on what happens in the House, that is allowed. You can write a political commentary, and state that it is a political commentary; it is your view and you are entitled to it. Please, go full blast, but do not use the House to express your opinions and say that they are the opinions of the House. So, that is my warning, and worse still, when the Chair was categorical that this particular newspaper must apologise and rectify the situation, they did not take heed. I now direct and order that the *East African Standard* newspaper does apologise to the Chair for the very [Mr. Speaker]

Thank you hon. Members. I hope that is clear.

(Applause)

POINTS OF ORDER

STATEMENT ON MR. GARETH GEORGE

Mr. Ojode: On a point of order, Mr. Speaker, Sir. The Minister for Finance, Mr. Chris Okemo, was supposed to make a Ministerial statement in the House pertaining to a Question which I raised in this House, and he was given up to day. There he is; would I be in order to compel him to give the Ministerial Statement on Mr. Gareth George, the Managing Director of the Kenya Commercial Bank?

Mr. Speaker: Order! First of all, you have no powers to "compel" anybody. So, you are totally out of order! Secondly, I think I had sought the indulgence of the House - because of the time lapse - not to get into other points of order, including yours. As a matter of fact, the Minister for Finance, Mr. Okemo, had come to see me, asking me to give him the chance to give a Ministerial Statement, and because of the time lapse, I told him that I will accord him the time on Tuesday. So, please be available on Tuesday and let us transact that business. Meanwhile, we will not continue beyond this time. We have a lot of business to transact.

So, can we proceed now.

Thank you everybody. Next Order!

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

Mr. Speaker: Yes, Mr. Murungi.

ARREST OF MR. MAINA KAMANDA

Mr. Murungi: On a point of order, Mr. Speaker, Sir. I rise on a point of order, to raise a grave matter which has befallen one of our colleagues, Mr. Kamanda. As we are

misguided opinions of its reporters; that, "the Chair lost control and the Chair had no legs to stand on and had to submit to the pressure of a section of the House." They must do that, at least, before Tuesday next week. That is an order; it is not a request. So, please---

(Loud consultations)

Order, hon. Members! I think those are the sentiments of the House. Please, I repeat: If a member of the Press wishes to be a Member of Parliament, he or she should get elected. Please, give the Chair its due respect because you hold the Press Card signed by the Chair as strangers to enter these premises, which can be withdrawn at any time. So, please, do not play with the House any more.

talking now, Mr. Kamanda is being held incommunicado by the police at Embu, and he has been refused access to both hon. Members who had accompanied him and lawyers who were instructed to represent him at Embu. Could the Minister of State, Office of the President explain why an hon. Member is being denied access to legal representation at Embu just now and why he is not being taken to court as we were promised in the morning when he reported at the CID Headquarters?

Mr. Speaker: Order, Mr. Murungi! Are you now telling me that I have to stop the business of the House?

(Laughter)

Mr. Murungi: Mr. Speaker, Sir, Mr. Kamanda is one of your voters so that you can be Speaker. We think that he is important business for this House. So, please spare some two minutes.

Mr. Speaker: Order! All hon. Members here are my voters, as you all appreciate. But you see, even when the Speaker still wants votes, he cannot subvert the business of the House. The House must proceed, but nevertheless, Mr. Minister, do you have anything to say?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I thought that he was supposed to be charged this morning. So, maybe, that is a new development. I will have to check on it.

Mr. Speaker: Very well. Next Order!

BILLS

First Reading

THE INDUSTRIAL PROPERTY BILL

(Order for First Reading read - Read

*the First Time - Ordered to be read
the Second Time tomorrow)*

Mr. Mboko: On a point of order, Mr. Speaker, Sir. I stand under Standing Order No.101 A(2), and I beg to move that the Industrial Property Bill be referred to the relevant Departmental Committee of the House.

(Applause)

Mr. Speaker: Order! You see, automatically, the Bill is referred to the Committee when the Minister requests for it. But when he does not---

Mr. Mboko, are you a Member of that Committee?

Mr. Mboko: Yes, Mr. Speaker, Sir.

*(Question, that the Bill be referred to
the relevant Departmental Committee,
put and negatived)*

Hon. Members: Division! Division!

Mr. Speaker: Order! Mr. Clerk, could you count them! Keep on standing! Now, you can sit down. You have the necessary support for a Division. Therefore, I will order for the Division Bell to be rung. Ring the Division Bell!

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! We are just about to go to the Division. I now order that the Bar be drawn. No further Member will be allowed in or out. Now, the next thing that happens---

(Members knocked at the door)

Order! Mr. Serjeant-At-Arms, will you proceed behind there and get rid of the hon. Members making noise there as quickly as you can! Now, the Tellers for the Ayes are Messrs. Shambaro and Kibicho. For the Noes are Messrs. Kitur and Mwakiringo. Now, when you go to the vote and I will read you the relevant Standing Order No.55 (1) so that you follow the procedure which states:-

"When the doors have been locked and the Bar drawn, the names of the Tellers shall be announced, Mr. Speaker shall put the question again and then direct the Ayes into the lobby on his right and the Noes similarly to his left and the doors of each lobby shall be locked ten minutes thereafter."

So, the Ayes will proceed to the lobby to my right and the Noes to the lobby to my left. I will go on to read to you Standing Order No.55(2).

"(2) Mr. Speaker or the Chairman of the Committee shall, fifteen minutes after the locking of the lobby doors, call the House to Order, and any Member who shall not have voted then shall forfeit his right to

Mr. Speaker: Order! If so then, the relevant provision of the Standing Order which is 101A (2), states as follows:-

"Where the designated Minister does not move a Motion of committal under paragraph (1), a Member of the relevant Committee may move that the Bill be so committed, and Mr. Speaker shall put the question thereon forthwith."

So, the Minister has refused to request and a Member of the relevant Committee has requested that it does go. Therefore, I will put the question straightaway.

vote."

In the meantime, any hon. Member who does not want to vote either "Yes" or "No" has the right to abstain provided he or she registers his or her name with the Clerk-at-the-Table.

Proceed to vote!

Order! Order! I am just about to close the voting booths. So, you have five minutes left.

DIVISION

(Question put and the House divided)

(Question carried by 58 votes to 54)

AYES: Messrs. Achola, Angwenyi, Prof. Anyang'-Nyong'o, Messrs. Anyona, Galgalo M.A, Gatabaki, Kaindi, Kajwang, Kanyauchi, Kariuki, Ms. Karua, Messrs. Karume, Katuku, Kibicho, Kihoro, Kikuyu, Kimeto, Kirwa, Kiunjuri, Kombo, Kones, Dr. Kulundu, Messrs. Maitha, Mbela, Mboko, Michuki, Muchiri, Mugeke, Muiruri, Munyao, Murungi, Mwakiringo, Mwenda, Mwiraria, Ndwiga, Mrs. Ngilu, Messrs. Nyachae, Nyagah N., Obwocha, Dr. Ochuodho, Messrs. Odongo, Ojode, Omamba, Omingo, Onyango, Opopo, Otula, Parpai, Sambu, Mrs. Seii, Mr. Shitanda, Mrs. Sinyo, Mr. Sungu, Eng. Toro, Messrs. Wafula, Wamalwa, Wanjala and Dr. Wekesa.

Tellers of the Ayes: Messrs. Shambaro and Kibicho.

NOES: Messrs. Affey, Arap-Kirui, Biwott, Ekirapa, Dr. Godana, Messrs. Gumo, Kalweo, Kamotho, Khaniri, Col. Kiluta, Mr. Kimkung, Mrs. Kittony, Messrs. Kitur, Kochalle, Kosgey, Leting, Lotodo J.D., Maj. Madoka, Messrs. Maizs, Maundu, Mkalla, Mokku, Morogo E.T., Morogo W.C., Muchilwa, Mudavadi, Musyoka, Ms. Mwachai, Messrs. Mwakalu, Nassir, Ngala, Ng'eny, Ngutu, Nooru, Ntimama, Capt. Ntwiga, Messrs. Nyagah J., Nyenze, Obure Okemo, Prof. Ongeru, Messrs. Osundwa, Poghio, Ruto, Prof. Saitoti, Messrs. Samoei, Shambaro, Shidiye, Sumbeiywo, Sunkuli,

Tarar, Too, Dr. Wako and Dr. Wamukoya.

Tellers of the Noes: Messrs. Kitur and Mwakiringo.

Abstentions: Nil.

(Applause)

(Loud consultations)

Mr. Speaker: Order! Order, Members! The result of the Division are as follows: Ayes 58, Noes 54, and abstentions nil. The Ayes have it!

The Bill stands, hereby committed to the relevant Departmental Committee.

The Minister for Tourism, Trade and Industry (Mr. Biwott): On a point of order, Mr. Speaker, Sir. I support fully---

Hon. Members: On what? Sit down! You are wasting time! The matter is concluded! We should move to the next Order!

Mr. Speaker: Order! Order, Members! I think there is really nothing now to do. I think the matter is over and we will proceed now to another Order.

The Minister for Public Health (Prof. Ongeri): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Is it in relation to the Division?

The Minister for Public Health (Prof. Ongeri): Mr. Speaker, Sir, now that the decision of the House has been made, would I be in order to request the Departmental Committee, because the intention of the Business Committee last night, and the introduction of this Bill in the House, was to enable it to be debated expeditiously so that we can be able to have a law in place in order to access Kenyans to generic drugs and save lives---

Mr. Speaker: So, what do you want?

The Minister for Public Health (Prof. Ongeri): Could I, therefore, be in order to request the Committee to sit before Tuesday?

(Loud consultations)

Mr. Speaker: Order! Order! There is really nothing for us as a House to be agitated about this issue. You have made your decision and the decision of the House is always obeyed.

If I understand the Minister, he is asking the Committee to expedite this matter. There is no problem with that because the Chairman of the relevant Committee is there. Mr. Minister, you can liaise with the Chairman of the relevant Committee. I know as a fact that sometime last year, when we had the Kenya Roads Bill, the relevant Committee sat even over the weekend. So, if the Minister can liaise with the Chairman of the relevant Committee and Members of that Committee, we have no problem.

So, please, proceed!

Next Order, now.

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

Mr. Speaker: Order! Not on this matter any more!

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

Mr. Speaker: Order, Mr. Achola! Mr. Achola, Mr. Speaker is on his feet and you pretend to be another Speaker there. Sit down!

Anyway, hon. Members, can we now proceed?

Mr. Achola: On a point of order, Mr. Speaker, Sir. This Bill was committed to my Committee, the Departmental Committee on Education, Science and Technology during the last Session. The Committee spent many hours on that Bill and we had already even written a report. This time round, the Bill has been committed to the Departmental Committee on Tourism, Trade and Industry. I do not know why that has happened, yet we have spent hundreds of hours and shillings on it. Would I be in order to ask that this Bill be committed to the relevant Committee, which is the Departmental Committee on Education, Science and Technology?

Mr. Speaker: Order! I think you got it all wrong. The order from the Chair is that the Bill stands committed to the relevant Departmental Committee. If there is a turf war between your Committee and another Committee, obviously you know who will sort that out. So far, the Bill stands committed to the relevant Departmental Committee.

Proceed now!

The Minister for Tourism, Trade and Industry (Mr. Biwott): on a point of order, Mr. Speaker, Sir. I do not want to belabour a correct decision that has been made because we got it properly. But I think it is important for Kenyans to understand the background to and the reason for the Bill. The reason---

(Loud consultations)

Mr. Speaker: Order all of you! The rule of the House is as follows: Once the House has made a decision on an issue, no hon. Member is allowed to revisit that issue, either for or against it. So, we will not belabour the point, and by the way, no other hon. Member is now allowed to stand up on any Standing Order.

Second reading

THE CONSTITUTION OF KENYA
REVIEW (AMENDMENT) BILL

(The Attorney-General on 24.4.2001)

*(Resumption of Debate interrupted
on 2.5.2001)*

The Minister for Education (Mr. Musyoka):
Thank you, Mr. Speaker, Sir.

(Loud consultation)

I wonder whether the Chair is satisfied that I can make any useful contribution given the current state of consultations.

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

Mr. Speaker: Order! Mr. Ndwiga, I hope you are serious! What is your point of order?

Mr. Ndwiga: Mr. Speaker, Sir, my point of order is that we really want to hear what the Responder is saying, but there are a lot of loud consultations.

Mr. Speaker: Order! We must hear the [Mr. Speaker] proceedings of the House now. Any hon. Member wishing to withdraw from the Chamber, please, do so quietly.

Proceed, Mr. Musyoka!

The Minister for Education (Mr. Musyoka):
Thank you, Mr. Speaker, Sir.

Yesterday I made an attempt of replying on behalf of the learned Attorney-General to this debate. Just before the House rose, the hon. Member for "Sabatia" Constituency suggested that I was attempting muckraking. I have just looked at the definition---

Mr. Wamalwa: On a point of order, Mr. Speaker, Sir. I am the hon. Member for Saboti Constituency, but the Minister replying now is referring to me as "the hon. Member for Sabatia Constituency" when he knows that Sabatia Constituency is represented by a KANU hon. Member, and I am a FORD(K) Member.

The Minister for Information, Transport and Communications (Mr. Mudavadi): On a point of order, Mr. Speaker, Sir. I want to say that I am the hon. Member of Parliament for Sabatia Constituency and hon. Wamalwa is the hon. Member for Saboti Constituency. At no time did I use the word "muckraking".

Mr. Speaker: Order! Mr. Musyoka, what have you got to say?

The Minister for Education (Mr. Musyoka): Mr. Speaker, Sir, I am just simply thrilled. These two hon. Members for Sabatia and Saboti Constituencies look like brothers.

Mr. Speaker: Order! That may very well be the case, but it does not detract from the fact that one is an hon. Member for Saboti Constituency and the other one is an hon. Member for Sabatia Constituency. The records of this House must remain correct. Which of the two hon. Members said that you were muckraking? Was it the hon. Member for Saboti Constituency or the hon. Member for Sabatia Constituency?

The Minister for Education (Mr. Musyoka): Mr.

Speaker, Sir, it was my learned friend, the hon. Member for Saboti Constituency, hon. Wamalwa, who thought that I was doing a bit of muckraking. This morning, I looked at the Oxford Dictionary definition of this word. It sounded flowery and, in fact, I thought I had misheard him. The definition of muckraking is the activity of trying to discover things about people's backgrounds or behaviour that could damage their reputation if made public. I am very clear in my mind that I was not attempting to do any of that kind of activity. All I was trying to do was to reply to this very critical debate on behalf of the learned Attorney-General.

Mr. Speaker, Sir, I do not intend to take a very long time this afternoon. Indeed, I want to address some of the specific issues. The reason why my learned friend, hon. Wamalwa, used that word was because he thought I was trying to avoid issues, and that I was not replying to the specific issues that had been raised. As I said, issues were so involved that one could, quite frankly, be forgiven for touching a little bit on the substantive debate as opposed to replying. I feel a bit handicapped because having been an hon. Member of the Parliamentary Select Committee on Constitution Review, I felt that I was in the know about some of these things.

I want to start by reflecting a little bit on what Mr. Murungi said about pythons, so that I can avoid doubt in exactly what I said. I said that reference has been made to snakes, indeed, pythons, and other reptiles opposed to constitutional reforms in no other place than in this House itself. The reference to reptiles is not only derogatory of the persons or person to whom reference is made, but is also escapist. The people talking about reptiles do not wish to take responsibility for their irresponsible utterances.

Mr. Kihoro: On a point of order, Mr. Speaker, Sir. The Minister has been reading his reply for the last two minutes. Has the Chair given authority to the Minister to do so? Could he be in order when he has actually been reading from a written script for two minutes?

The Minister for Education (Mr. Musyoka): Mr. Speaker, Sir, yes, indeed, I was actually reading from a written script. The reason why I was reading from it was to avoid doubt because I mentioned pythons in relation to this matter. I thought it was important just to refresh hon. Members' minds. Hon. Kihoro was not here at the material time; I think he was consulting with the Criminal Investigations Department (CID) officials and did not hear what I said.

Mr. Speaker, Sir, if I could just continue, the people talking about reptiles do not wish to take responsibility for their irresponsible utterances. There is a constitutionally guaranteed freedom of expression in our country and anyone with concerns about any issue, however mundane, is allowed to express those

concerns. In no other matter than in the crucial constitutional review exercise is the freedom to express one's misgivings more relevant. Therefore, nobody has a right to brand another a python by the mere fact that the other party does not hold the same views as themselves. If, indeed, people were to be branded reptiles on the basis of holding views that run against the logical grain, then those kind of people would be found on the side that purports to occupy a moral high ground in respect of constitution-making process. Those are the people who shout themselves hoarse about the rule of law, but go on to express their full support for and vest legal powers in an extra-legal congregation of busy-[**The Minister for Education**] bodies, thereby equating it to a statutory body such as Parliament. Indeed, the hypocrisy knows no boundary.

Mr. Wamalwa: On a point of order, Mr. Deputy Speaker, Sir. I think the House, and even the Chair, must now see that the usually reticent Mr. Musyoka is going a bit too far, even if I may use the word "muckraking" again! He is now referring to the Ufungamano Assembly as illegal. He has just read that in whatever he is reading, yet, we have travelled a long rocky road to come together to merge the two Commissions, and I think at this stage of debate, it would be wrong for somebody to go out of his way to cast aspersions on the integrity or legality of those who have participated!

The Minister for Education (Mr. Musyoka): Yes, indeed, Mr. Speaker, Sir, I just want to concur in part with what my friend has just said. But, sincerely, let me say this: I had to do that because the spirit in which the remarks about pythons was made was really against the spirit that we are now trying to cultivate. Let me conclude that bit by saying the following: Cobras are known to spit venom. At least, pythons, in that regard, one would agree that their spittle is venom, but not that of the cobras. Because Mr. Murungi said that the days of the pythons are numbered, I would like to say that in my own estimation, I do not think that the cobras will ever be allowed to overthrow the pythons. That is the end of that bit.

Mr. Speaker, Sir, may I now refer to some of the specific issues that were raised by some of the Members. Dr. Kituyi, for whom I have great respect because of his sense of eloquence and articulation of the issues - he is baffling sometimes - I do remember addressed two constituencies. He talked of the constituency of the bitter and the constituency of the fearful. He said that he thought that some of us, particularly on this side of the House, lacked political will to continue with the process of constitutional reforms. I want to underline the fact that the Government is committed to the review of the Constitution. As I said yesterday, time is extremely of essence and, therefore, we will do well to progress matters as expeditiously as possible.

Mr. Speaker, Sir, Dr. Kituyi had the following to say: "We have a recent history, where Members cede the sovereignty of Parliament to entities other than Parliament." I was not a member of the Ufungamano Initiative, but that

is what came out from Dr. Kituyi. I think it is important for Members of this august House to rise to the occasion and provide the necessary guidelines to this country for, indeed, that is what they should properly do.

Mr. Speaker, Sir, Ms. Karua is concerned with the interpretation of Section 11 of the current Bill. For the avoidance of doubts, I mentioned that particular provision because Section 10 of the previous Bill stands repealed. That has got to do with the fact that after repealing Section 10, it would be expected of the House to come up with a new Parliamentary Select Committee, which will form the nexus between the people and this House. I think it is obvious that, when that comes to be, it will not just be the present Parliamentary Select Committee, but that the new Select Parliamentary Committee will have to be reconstituted. I had to say that for the avoidance of doubts.

Mr. Speaker, Sir, many other Members had a lot of useful ideas to talk about. For instance, Mr. Orengo was very concerned that Prof. Yash Pal Ghai is not an advocate of the High Court of Kenya. But I think you will agree with me that the Chairman of the Constitution Review Commission of Kenya, Prof. Ghai, has won the admiration of the great majority of Kenyans. Whether or not he is an advocate of the High Court is a different matter. I know that, at that particular time, Mr. Orengo was more concerned with what he thought the Attorney-General was trying to do; or really, was guilty of omission, according to the Member for Ugenya. But be that as it may, it is clear that we should support the work of Prof. Ghai and move on with the process, regardless of whether he is an advocate of the High Court or not. Indeed, Prof. Ghai has got a very impressive record. I am sure Kenyans may not know that he was actively involved in the constitution-making process in Fiji, a country that is a Member of the Commonwealth. I think he has won international acclaim. Therefore, I hope that we will now be able to target the next stage.

When Mr. Raila was seconding this Bill, he mentioned the understanding that, out of the 12 new Commissioners, two of them will come out, one specifically to represent the North Eastern Province, and the other one to represent the Rift Valley. It was the understanding on this side of the Parliamentary Select Committee that the other stakeholders would then be able to look at the remaining 10 Commissioners. We thought that was the understanding and I think it is important to remain committed to that while, of course, underscoring the fact that there was no written agreement. I mentioned yesterday that there was nothing like a negotiated position. What there was, was some proximity talks mainly because of the legal standpoint that was taken by the Parliamentary Select Committee on the one hand, and I think the Ufungamano Initiative had the other reason on the other

side. The end result was, indeed, to come up with the current Bill.

Mr. Speaker, Sir, I would like to conclude my remarks by saying the following: Once again, I [**The Minister for Education**]

thank all the Members and, particularly, the Members of the Parliamentary Select Committee who, I think, were very faithful servants of this House. When we came back to this House, we did not make a distinction between those who opted out of the Committee and those who decided to take their places in the Committee. We were a Committee of this House and we have embraced the concept of a people-driven Constitution, and also acknowledging the need to recognise the primacy of the place for this House, the Parliament of the people. Therefore, once again, I want to thank all the Members who served with us. I want to thank the Attorney-General for having given me, in particular, the responsibility to reply on his behalf.

Once again, Mr. Speaker, Sir, I beg to move.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House today by leave of the House)

POINT OF ORDER

DENIAL OF LEAVE OF THE HOUSE FOR COMMITTEE STAGE

Mr. Munyao: On a point of order, Mr. Speaker, Sir. I rise in accordance with Standing Order No.99 to block the Constitution of Kenya Review (Amendment) Bill from going into the Committee of the whole House. The Standing Order does not require me to give reasons for doing so. It, however, requires me to have the backing of at least three hon. Members. I have the backing of more than three hon. Members, Mr. Speaker, Sir.

(Several hon. Members stood up in their places)

Mr. Speaker: Very well! Actually, Mr. Munyao, you have used the wrong language. You can never block a Bill from coming to the House, can you? You can only deny it leave of the House and thus bar it from being discussed in the Committee.

(Mr. Munyao stood up and bowed to the Chair)

Mr. Speaker: Hon. Members, the relevant Standing Order requires an hon. Member to have the support of either Mr. Speaker or that of two other hon. Members in order for him to deny the Bill leave of the House for it to be discussed in the Committee. As you can see, Mr. Munyao has the support of more than two other hon. Members. So,

the leave is denied.

(Applause)

I am sorry, we are not going into Committee because the House has denied leave.

(Loud consultations)

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

Mr. Speaker: Order! Order! I can see that Mr. Peter Maundu is agitated. Maybe, he is agitated because he does not understand the procedure in respect of this development. The procedure is that a Bill may not go through more than one stage in one day except for those Bills which are exempted from this requirement by the Standing Orders, such as the Appropriation Bill and the Supplementary Appropriation Bill. If you wish that a Bill goes through more than one Stage in one day, you need the leave of the House. The leave of the House is granted when no hon. Member stands up in objection when the Order for the particular stage is called out. In this respect, Mr. Munyao stood up to object to the grant of leave. Three other hon. Members, or more, stood up in his support. That satisfied the provision of the Standing Order. By the mere fact that Mr. Munyao and three other hon. Members stood up in objection denied the House the opportunity to go into Committee. Unlike in other cases where we have to vote; in this case we do not have to vote because the law is clear, Mr. Munyao needed the support of only two other hon. Members to deny the leave, and he had the support of more than two other hon. Members. So, that was adequate. We will now proceed to the next Order.

MOTION

ADOPTION OF 1996/97 PAC REPORT

THAT, this House adopts the Report of the Public Accounts Committee on the Government of Kenya Accounts for the Year 1996/97 laid on the Table of the House on 4th October, 2000.

(Mr. Gatabaki on 18.4.2001)

(Resumption of Debate interrupted on 19.4.2001)

Mr. Gatabaki: Mr. Speaker, Sir, let me start by thanking the House, particularly the Opposition side, for the encouragement it has given me during the previous two days when I was moving
[**Mr. Gatabaki**]

the Motion for the adoption for the 1996/97 PAC Report.

[Mr. Speaker left the Chair]

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

Let me also thank hon. Members on the Government side, particularly those on the Front Bench, for bearing with me as I went through the accusations levelled against the Government in respect of misuse of public funds. I will give an overview of this before I proceed to the next Ministry, which is the Office of the President, to highlight similar cases of plunder.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order!

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, I was thanking hon. Members on the Front Bench of the Government side for bearing with me and for understanding my anger about the Government's habit of overspending public funds in the last 22 years. I will give an overview of this.

Mr. Temporary Deputy Speaker, Sir, as a member of the Commonwealth countries, Kenya has adopted the Exchequer system in the management of public funds. The Exchequer system maintains a Consolidated Fund into which all revenues are paid and from which all payments for running the Government machinery are made. The Exchequer system is a very important system of governance because it is regulated by a whole series of mechanisms - legal, constitutional and parliamentary - which govern its management. All public revenues are paid into the Consolidated Fund, from which all Government expenses, which are voted for by this House after being brought here by the Minister for Finance for appropriation, are paid.

However, although we have established the Consolidated Fund, like other Commonwealth countries, and put in place various mechanisms for operating the Fund, we are unique in our behaviour of wanton misuse of that same Fund in spite of establishing the necessary mechanisms to check the use of public funds without following the established mechanisms. We are unique in violating the same mechanisms, even though we have sworn allegiance to the Constitution and not to violate such legally established mechanisms.

The Office of the Controller and Auditor-General is established by the Constitution to go through Government expenditure Ministry by Ministry, and establish where there has been misuse of public funds. The Report of the Controller and Auditor-General is brought to the Public Accounts Committee (PAC), which examines it and takes evidence from the Ministries' Accounting Officers. The PAC goes through the queries of the Controller and Auditor-

General and reports back to this House about the uses and misuses of public funds.

Mr. Temporary Deputy Speaker, Sir, in the more than 100 sittings that we had in the course of our work, we found that, with the rare exception of one or two Accounting Officers, all the Accounting Officers of Government Ministries and Departments went through the saga of misuse of public funds, which I tried to elaborate when I was moving this Motion in the previous two days. I will elaborate further on this.

Between 1991 and 1997, about Kshs475 billion of public funds were looted or mismanaged or wasted by the Government. This figure works out to about Kshs68 billion per year. I compared this figure with the amount plundered during the period between 1980 and 1990, which works out to about Kshs10 billion per year. So, what makes the 1996/97 PAC Report and the corresponding implementation of recommendations by the Treasury stand out is the vastness of the waste or fraud or misuse of public funds. Before I go to the strategic Ministries, I will finalise my presentation so that other Members of the House, and particularly those I served with in the PAC, can also contribute.

I would like to concentrate on seven key Ministries which the PAC identified as the main violaters in the mismanagement of public funds. Frighteningly, the biggest waster of public funds is none other than the Office of the President. Among the seven key Ministries that mismanaged public funds in dimensions that were frightening to the Committee were the Office of the President and the Ministry of Local Government. I hope the Minister for Local Government, Mr. Kamotho, is here because he also doubles as the Secretary-General of the ruling party, KANU. The Ministry of Local Government follows the Office of the President as the biggest squanderer of public funds. This is followed by the Ministry of Education, Science and Technology. I hope that my colleague, the Minister of Education, who presented a very elaborate critique on the constitutional order is here. That guardian of our culture is the third largest squanderer of public funds. I hope the Minister for Education is here so that he can elaborate on his theological expose and tell us why his Ministry is third in the line of squandering public funds. This is followed by none other than the Ministry of Health. I wish that the Minister, who was trying to defeat the whole purpose of maintaining the Committee system by trying to skip the Committee stages, was here.

The Minister for Trade, Tourism and Industry (Mr. Biwott): On a point of order, Mr. Temporary Deputy Speaker, Sir. I thought that this matter had been put to rest by the Speaker. Now that he has raised it, he has given me an opportunity to explain why we wanted to skip that stage. The reason why we wanted to skip this stage was to enable Kenyans who are suffering from AIDS to get cheap medicine

immediately.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Biwott. That is not a point of order.

Continue, Mr. Gatabaki.

Mr. Gatabaki: If hon. Biwott would have asked for a point of information, I would have gladly given him because he is not an ordinary Cabinet Minister. He is by definition and by self-acclaim the "total man", and it is said that next to President Moi, he is the most powerful person in the country. I would have been delighted to hear what the Government wanted in this kind of Motion. Mr. Biwott, the next time you want a point of information, I will gladly give it to you.

The issue here is that the Ministry of Health is ranked fourth among the five mentioned Ministries, which we, in the PAC, identified as the major squanderers of public funds. The fifth one is the Ministry of Information, Transport and Communications. We went through the 27 Ministries and the Department of Defence, one by one, for almost one year. We found out that five key Ministries; the Office of the President, the Ministry of Local Government, the Ministry of Education, Science and Technology, the Ministry of Health, and the Ministry of Information, Transport and Communications overspent by 50 per cent of the entire budgetary provision. Let me put it clearly. Out of the Kshs50 billion of public funds that was wasted between 1996/97, Kshs20.8 billion was squandered by these five Ministries. The Office of the President accounts for three-quarters of that misuse of public funds.

QUORUM

The Minister for Vocational Training (Mr. Ruto): On a point of order, Mr. Temporary Deputy Speaker, Sir. It appears there is no quorum. Maybe the hon. Member is boring the MPs until they have all disappeared.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, it does appear like there is no quorum. Ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Gatabaki, you may continue. We now have a quorum.

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, the hon. Members on the other side of the House have indicated that they will try as much as possible to sabotage the presentation of the 1996/97 PAC Report. However, let me warn them because the Standing Orders of the House are very clear that this presentation is limitless. It is not I who wrote them, but it was our founding fathers. Every swindler of public funds or anybody connected with the misuse of public funds mentioned here will be mentioned for the history of this House.

Mr. Kiunjuri: On a point of order, Mr. Temporary

Deputy Speaker, Sir. Is the hon. Member in order to warn us when we have just saved him right now from the lack of quorum? Is he in order?

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, I can understand the fear on the other side of the House. For the first time, the PAC Report will be presented---

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to say there are fears on this side of the House? Is he in order to include me in that list? I do not have any fear!

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, I am not concerned about the distinguished Members who have been labelled "rebels" by their own political party. I am concerned about the Front Bench and their supportive sympathisers. Everybody who is mentioned in this Report will not be spared. I shall mention every squanderer, swindler and conmen of public funds. So, I hope they will bear with me; whether I take up to the next general elections to present this Report, so be it. Mr. Angwenyi, I will request you to ask your colleagues in the Front Bench to bring as many of you as possible. I might reconsider shortening my presentation if you behave very well. If you do not, you will have to bear with me.

Mr. Temporary Deputy Speaker, Sir, I did go through the HANSARD. Mr. Sunkuli stood on a point of order and wondered why the DP Chairman, Mr. Mwai Kibaki, chose me to present the PAC Report. He wondered whether there was nobody in DP or anybody else hon. Kibaki could give the role of presenting the PAC Report. I did have an opportunity of watching the BBC documentary on the murder of Father John Kaiser. I am told the Attorney-General is in London trying to file a defamation suit against the BBC. I saw hon. Sunkuli being interviewed by the BBC journalists and he was asked whether it was true that he defiled 66 minors---

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Gatabaki, whereas the Chair will not interfere with your presentation, I will definitely interfere with your irrelevance. The Standing Orders also require you to be relevant to the matter in question. If you refer to that matter, you must point out the pages in the Report where that matter has been mentioned so that you can remain relevant.

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, I was referring to the contribution in the HANSARD by Mr. Sunkuli. Allow me to point out that, maybe, the President made a mistake in appointing this distinguished gentleman with that kind of record.

(Laughter)

Mr. Temporary Deputy Speaker, Sir, having said that and gone through the five key Ministries, I must say that these Ministries account for half of the money wasted by the entire Government of the Republic of Kenya. The Office of the President is unique in many ways because it is headed by none other than the Head of State. So, when the Office of the President is in the spotlight, it is the President himself who is in the spotlight. This office has the uniqueness of having many Ministers and one Accounting Officer. The amount of money misappropriated in this office is not the kind of waste expected in other Ministries like the Treasury which I finished discussing last time. There is laxity in the collection of funds by the Customs and Excise Department and the Kenya Revenue Authority. This laxity has made this country lose over Kshs35 billion. It is sad that the Office of President takes the lead in the fraudulent misappropriation and looting of public funds.

Corruption can be defined in various categories. We talk of minor, grand or looting corruption. Minor corruption is what we witness among policemen; the culture of *kitu kidogo*. The grand corruption involves relatively very huge misappropriation of money. Money changes hands through contracts, among other things. When contractual arrangements are done and there is over-invoicing, huge amounts of money changes hands. Hyper corruption which is looting, involves deliberate connivance of senior Kenya Government officers to steal public funds. They have got a well defined mechanism of looting public funds. The Office of the President was uniquely mentioned as leading in looting of public funds. It is horrifying that all institutions where this corruption is rampant are identified with the Head of State. These include departments like the KWS and Jua kali Enterprises. The Office of the President is responsible for over 25 per cent of the total fraud or wastage of public funds. I am saying that with a lot of concern. The same Ministry is also responsible for this enormous amount of unauthorised expenditure, which runs into billions of shillings. We have the presidential jet, the Eldoret International Airport and the Government Printer taking a large chunk of this looting. It was clear that there was a deliberate intention to steal public funds.

Mr. Temporary Deputy Speaker, Sir, the Office of the Attorney-General is charged with the responsibility of guarding our institutions. Often, it is assumed that the Office of the Attorney-General is immune to the misuse of public funds. This important institution, which oversees the legal mechanism of bringing justice and remedial measures to the perpetrators of corruption, is a key violator when it comes to the spending of public funds. The Committee was abhorred by the numerous task forces that were established by the Attorney-General in 1996/97. In all, 13 task forces were established and they overspent by over Kshs60 million. Most of the findings of these task forces will never see the light of the day. What was the main purpose of establishing these task forces? Was there a hidden agenda of spending public funds in the name of

establishing task forces? They include the Task Force on the Disabled, the Task Force on the Penal Laws and Procedures, the Task Force on Public Order and Security, the Task Force on Matters Relating to Women, the Task Force on Press Laws, the Task Force on Partnership, Companies and Insolvency, the Task Force on Status of Kenya School of Law, the Task Force on Community Service Order, the Task Force on Inter-Ministerial Drug Co-ordination Committee, the Task Force on Land Laws and Tenancy, the Task Force on Auctioneers and Brokers, the Task Force on Human Rights, among others. Up to now, we have got numerous task forces and most of them, like the Akiwumi Commission on Tribal Clashes, never see the light of the day. At the end of the day, there is a lot of money spent by one department which is the guardian of morality. This is one area we do not expect to see wrongdoing and yet, the Attorney-General's Office has several cases of questionable expenditure of public funds. Again, in the overview, at the early beginning, it is the extent to which squalor, irresponsibility, mismanagement and waste have percolated from the top, the Office of the President, and going to all Government establishments.

Mr. Temporary Deputy Speaker, Sir, let me identify one Ministry that did give us hope that, maybe, indeed, this Government can be redeemed; that is the Ministry of Foreign Affairs and International Co-operation. We did have the opportunity of meeting the then Accounting Officer, Dr. Sally Kosgei, and, maybe, it is to her credit that our beloved President did appoint her as the Head of [Mr. Gatabaki] the Public Service. This is an enormous responsibility for her. She appeared before the Committee as the Accounting Officer and one by one, answers to the questions that were put to her brought to the attention of the Committee considerable degree of good housekeeping.

Sometimes there are good words to say about this Government, but they are very few. They are so isolated. We are talking about only one Accounting Officer and, maybe, because of our commendation, the President picked on that and made her the Head of the Public Service. So, sometimes the President does read some of our recommendations and act on them. There is not any other Ministry or department, including State House, that impressed the Committee with proper or reasonable management of public funds. We were shocked by the amount of imprest given to the staff of State House. There was one gentleman getting a salary of not more than Kshs10,000, who took over Kshs2 million as imprest. The Committee wondered how on earth this gentleman would be able to repay the imprest within 48 hours. Imprest regulations are established very clearly. If you take money for a specific purpose on Government duties, you are supposed to return it within 48 hours.

The Assistant Minister for Education, Science and Technology (Mr. Karauri): On a point of order, Mr. Temporary Deputy Speaker, Sir. This kind of Motion has no time limit for the Mover and Mr. Gatabaki is taking that advantage. Is he in order to keep on repeating the same things? I was in this House when he started moving the Motion and he talked about imprest at State House. Because he has talked for many days at the risk of being a demagogue, is it in order to keep on repeating the same issues that he talked about last week? Is there any way he can consider this House; that it is not fair to lecture us for two weeks at the risk of having the PAC Report not adopted this year because we have the Budget coming in June and other matters?

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, if Mr. Karauri listened to me, this is the first time I am mentioning State House and this kind of imprest. All Ministries have imprests---

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I have gone through that Report and the word "imprest" is repeated in many chapters because it relates to various Ministries and departments. Is Mr. Karauri in order to question the use of the word "imprest"?

The Temporary Deputy Speaker (Mr. Imanyara): Order! I do not think Mr. Karauri was questioning the use of the word "imprest". He was talking about repetitiveness. The Standing Orders certainly do not allow for repetitiveness. But I am not sure that Mr. Gatabaki has talked about State House. If he has, then it will be repetitive.

Mr. Karauri, I do not think he has talked about State House because I was here when he was speaking last time also, unless I was outside. Did you speak on State House, Mr. Gatabaki?

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, I thank you for coming to my aid. It is unfortunate that Mr. Karauri comes from an area which is predominantly Opposition and he has got nightmarish dreams!

(Laughter)

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Gatabaki! I will not allow you to get away with some of these remarks. I just want to caution you that, indeed, Standing Order No.87 does allow me to caution you on repetitiveness. If I establish that you are repeating yourself, I shall not hesitate to do so and should you continue, then I will definitely invoke the Standing Orders. But I will not allow you to talk about another hon. Member in such disparaging terms.

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, it is not my intention to talk disparagingly about my colleague. I encourage him to do a lot of writing.

Every Ministry and department of Government has got the same system of operation, imprest, pending bills and

classification. So, in the whole of this Report, every Ministry will have pending bills, uncollected items and undelivered goods. How can I make that kind of presentation? If you are talking about the Office of the President, there would be imprest, uncollected goods, wasted goods and stalled projects. This is the indictment of this Government, that every action by this Government, one way or the other, is guilty of one or the other crime. These crimes are many and they relate to every single aspect of Government.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order! Mr. Gatabaki, that is repetitive because I have heard that many times.

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, even if it means I read chapter by chapter, I will do so. But because I would like other Members to contribute---We made the recommendation regarding the establishment of these numerous task forces by the Attorney-General, and I am not repeating myself.

QUORUM

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. There is no quorum in the House.

The Temporary Deputy Speaker (Mr. Imanyara): Unfortunately, there is no quorum. Ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Imanyara): Order! There is a quorum now.

Proceed, Mr. Gatabaki!

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, let me again start by thanking the Opposition Members for ensuring that there is a quorum in the House so that every character from the opposite Bench--- You can see that it is only Mr. Mudavadi who is around. Every one of them will be mentioned!

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Gatabaki! You should use the term "every hon. Member," and "not every character."

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, Mr. Mudavadi is the only one sitting in the Front Bench and it must be recorded for history, that all the others ran away for fear of being exposed before the eyes of history. But I can also see my friend there, the Minister for Agriculture--- The Minister of State, Office of the President, Mr. ole Ntimama, is also there, and I am happy, indeed, because we share certain sentiments about the rights of communities. I salute you, Mr. ole Ntimama.

As I said, I had just finished the introductory part, and also the Ministry of Finance and Planning. I have also gone through the Office of the President, and

I will now quickly go through the report on the State House.

Mr. Mkalla: On a point of order, Mr. Temporary Deputy Speaker, Sir. While I appreciate the presentation by Mr. Gatabaki, which is quite good, I would like to bring to his notice that the preparation of the 2001/2002 annual Budget highly depends on the production and adoption of the Reports of the Public Accounts Committee and Public Investments Committee. I would request that he makes his presentation short so that we do not miss getting the advantage of having the input of the Reports into the Budget.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Mkalla! What is your point of order?

Mr. Mkalla: Mr. Temporary Deputy Speaker, Sir, my point of order is: Is he in order to continue repeating himself?

Mr. Angwenyi: Is that hon. Member challenging hon. Gatabaki?

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Angwenyi! If an hon. Member is on a point of order, how do you stand on another point of order to question him? He has not even finished what he wanted to say.

Mr. Mkalla, what was your point of order? I did not get it.

Mr. Mkalla: Mr. Temporary Deputy Speaker, Sir, I was asking: Is it in order for Mr. Gatabaki to continue repeating himself?

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, the hon. Member, who is a friend of mine and the Chief Whip of the other side, can rest in peace before I come to the Kenya Airports Authority. I think he will be forced to flee from the House like other Government Ministers.

(Applause)

There is one department associated with the National Assembly that horrified the Committee Members; that is, the Electoral Commission of Kenya. This is because the Accounting Officer was none other than the Clerk of the National Assembly. The behaviour of the Chairman and other Commissioners of the ECK in the use and management of public funds left a lot to be desired. We found out that the Commissioners claimed house, travelling and sitting allowances on day-to-day basis. There were still other allowances. They sat according to the claims they would make. They were paid for every single day; for 365 days, including Moi Day.

(Laughter)

The abuse of the ECK took place despite the fact that according to the Constitution, it is charged to hold and manage free and fair elections, among other duties. The words which were used by the PAC were as follows:-

"The Committee was appalled by the expenditure of K£64 million which

amounts to Kshs1.2 billion against a budgeted expenditure of Kshs500 million, an excess of Kshs787 million, which is about Kshs800 million, without the authority of this House or anybody else other than the Chairman of the ECK."

I am citing the words used the by the Committee; that:

"The Committee was appalled by the flagrant violation by the Commission of the Government's regulations and the procedures in voter registration exercises particularly at the Coast, Western, Rift Valley and Central

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Provinces. The Chairman of the Commission was singled out for condemnation by the Committee for consistently making payments of questionable nature."

Mr. Temporary Deputy Speaker, Sir, imagine the Chairman of the Electoral Commission overspending by Kshs800 million of taxpayers' money against all those regulations by the Government. This amount of money went to the repairs of hired vehicles and construction of offices. We had cases where individual returning officers took money from the Chairman of the Electoral Commission of Kenya and built offices without any regulation, or even going to the Ministry of Roads and Public Works to get designs, and without any authority whatsoever of the Chairman of the Electoral Commission. They built car parks and halls and other allowances were paid to police officers running to millions of shillings. Government officials were paid all kinds of claims running into millions of shillings without the prior approval of the Directorate of Personnel Management (DPM) in utter disregard of laid-down Government regulations and procurement procedures.

The Committee was perturbed by the revelations of the Accounting Officer that there did not appear to be any control in the management of public funds given by the DPM to the Chairman of the Electoral Commission of Kenya. I have talked about the irregular payment of subsistence allowances, commuted mileage, irregular claims on car mileage. Here are Commissioners provided with vehicles by the Commission, and they were not ordinary vehicles but four-wheel drives. Every Commissioner was provided free of charge, with a driver, a four-wheel drive vehicle - a Range Rover Discovery. All the mileage and allowances were paid for and yet the same Commissioners, who hire extra vehicles, claimed more mileage and paid for themselves extra payments and those payments were approved. In most cases, most of

them made claims of over Kshs400,000 in commuted mileages even though there were fully-maintained Government cars provided to them.

Mr. Temporary Deputy Speaker, Sir, the Committee was shocked by the report that the Chairman and members of the Commission continued to be paid sitting allowances for every day amounting to total payments of Kshs26,869,300 as at 30th June, 1997 over and above the money they ought to have been paid in allowances. Imagine payment of Kshs26 million without parliamentary approval! The same abuses were extended in accommodation and other reimbursements. Reimbursements alone amounted to over Kshs6 million despite the payments for the other claims. In their recommendation, the Committee was of the opinion that records must be kept for every sitting day because we found that there were no records. There were no minutes to this effect. We did summon the Chairman of the Electoral Commission and asked him: "How do you make your claims if there are no minutes?" He replied: "According to the terms and regulations, I am not required to do that." The recommendation of the Committee was that there should be records of sittings to justify the sitting allowances and that any payments made irregularly---

Mr. Muithia: On a point of information, Mr. Temporary Deputy Speaker, Sir. Even before the ink of the PAC dried up, that most discredited Committee of the Electoral Commission of Kenya chaired by Mr. Kivuitu as late as February 26th this year, was caught red-handed dishing out money for registration of voters in Gatundu North in order to transfer voters to Gatundu South. While Mr. Kivuitu is well aware of that information---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Muithia! That is not a point of order! Sit down! I am on my feet and you know very well that is not a point of information. You are anticipating another report.

Continue, Mr. Gatabaki!

Mr. Gatabaki: Mr. Moses Muithia, thank you very much for that information regarding the abuse of office by the Electoral Commission of Kenya. Our concern was that here is a body entrusted with the management of the electoral system and it is supposed to be above any kind of indictment; here are officers led by a chairman who are supposed to be an example to others in the management and conduct of free and fair elections. The kind of sprees they went into in the expenditure of public funds - the kind of wasteful expenditure by the Commission; the Committee, in its wisdom, gave recommendations that any amount of money unjustifiably spent without the authority of this House be repaid. Every Commissioner should be surcharged for any amount of public funds he or she used. This will come to millions of shillings. I wonder where they will get that amount of money and our worry--- With this kind of recommendation which requires that every Commissioner refunds to the Exchequer all the amount of money he or she spent within 365 days for which they claimed, a mechanism

will be found out to contain them so that their independence will be watered down.

It is a serious concern that when we have an Electoral Commission which violates the very rules and regulations which are supposed to be obeyed and be an example to others, they are among those facing indictment for misuse of public service. Issues of critical concern to the PAC was the slow rate and almost deliberate rate at which most of the Accounting Officers were implementing

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recommendations by various PAC reports. This is the concern shared by the Treasury. All those reports, that is, Treasury Memorandum on Public Accounts from 1978 to 1995/96, the concern was that all the majority and overwhelming number of recommendations made by the Committee for all those years, have not been implemented at all. This raises the question: What is the purpose of having a PAC of this House? What is the purpose of these diligent, patriotic and hardworking Members, sitting day in, day out, forsaking their holidays to take evidence and make recommendations, if all those recommendations are shelved in Government offices? What is the purpose of hon. Members spending many hours to make the recommendations, when all of them are ignored? Not only that; the culture in this Government is that whatever is recommended by Parliament can go to waste. That culture horrified the Committee Members; that whatever we recommended, however much could go to waste, nobody took it seriously. We took notice of the fact that even the Accounting Officers who serve in the Treasury were of the same opinion, that something must be done by this House to give the Permanent Secretary the authority to go through the Controller and Auditor-General's report of the accounts of the Government of Kenya one year and make recommendations. If those recommendations are not implemented year in, year out, what is the purpose of making them? It has become a critical issue which the Committee would like this House to debate and agree upon. What is the purpose of having the PAC of this House if their recommendations are ignored year in, year out?

Mr. Temporary Deputy Speaker, Sir, lack of budgetary and financial control, accuracy of financial statements and irregular investment of public funds run into billions of shillings. Again, the Committee asked itself: Did the Government care at all? Did the Controller and Auditor-General make this point again and again about budgetary, financial control and accuracy of financial statements going out of control? When a Government is accused of misleading the public in the misuse of public funds--- The loss and theft of cash at the District Treasuries run into millions of shillings. The Treasury memorandum concurs with the PAC that losses due to misappropriation run into billions

of shillings. It also concurs with pledges to implement the PAC recommendation that District Treasuries be directly under the Treasury and not be overburdened and over-established.

Again and again, because of the corruption in District Treasuries, where DCs can authorise any kind of expenditure of public money and not be accountable to any person--- I would like to say that billions of shillings were spent by the 67 DCs, who are appointed by the President and given authority to represent him in every district. Using that power to misuse public funds at will, knowing very well that nobody--- This is because no DC has ever been taken to court by the Attorney-General for misuse of public funds. In fact, about Kshs40 billion was squandered by the District Treasuries between 1991 and 1997. I would like to say that these officers are appointed by the President and not elected by people. They spend taxpayers' money and get away with it. What should we do to DCs who spend public money and get away with it?

Hopefully, the Ministry of Finance and Planning recommendations that District Treasuries be abolished and put under the Treasury and various departments would be recommended. This is because it is one of the recommendations forwarded by the International Monetary Fund (IMF), and the Government cannot get away with it.

Fourth, the unsatisfactory state of affairs regarding the issuance and surrender of imprest--- These are the critical issues that come at the end of our deliberations. So, you can take solace that I may be coming to the end of my presentation, maybe, in the next three or four weeks. I would like to talk about the unsatisfactory state of affairs regarding the issuance and surrender of imprests running into millions of shillings, which had been treated as long-term free loans by many officers.

Mr. Murathe: On a point of order, Mr. Temporary Deputy Speaker, Sir. I know that we are having a very powerful delivery of this PAC Report, but is it in order for Mr. Gatabaki to promise that he will move the Report for the next three or four weeks, when he has only to paraphrase the important points? We will support him because for the first time, the delivery system of the PAC Report is getting the message across. But is it possible for him to summarise the Report so that we can make progress? When he says that he will be here for the next three or four weeks, I think we need--

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Gatabaki, I am sure you do not mean that.

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, I would like to assure Mr. Murathe that for the goodwill, I will not take three weeks, but about three months.

(Laughter)

Mr. Temporary Deputy Speaker, Sir, I would like to send a message to Government officers in every Ministry that over a long period of time, starting from 1978 to the last

22 years or so--- I do not know who came in as the Head of State, but since 1978, imprests have been regarded as loans.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Gatabaki, on the issue of imprest, I think you are being repetitive.

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, but the recommendation by the PAC is that the regulations governing imprests must be followed to the letter. After 48 hours, every amount of money taken by anybody, irrespective of who he is, is taken back to that department or Ministry, and not to take years before it is paid. Imprests have been regarded as free loans by many officers.

The unconstitutional and illegal expenditures without parliamentary approval running into billions of shillings: The Members of the Committee put it again and again to the Accounting Officers, whether they understood the constitutional provision that forbids--- The Constitution of Kenya is very clear about the use of public funds. The Constitution provides that nobody can go to the Consolidated Fund, take money from there and use it without the proper procedures being followed. This House votes every appropriation, but every Ministry violates that requirement that any public funds be accounted for by the Parliamentary---

Mr. Obwocha: On a point of order, Mr. Temporary Deputy Speaker, Sir. I wish to inform Mr. Gatabaki that in the Report, there is a subordinate staff in State House who has taken an imprest of Kshs4 million, and yet his salary is Kshs8,810. If you divide the imprest he took by the salary, even if he was to pay the whole salary, it would take him 400 months or 80 years to pay the imprest.

(Laughter)

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Obwocha! That is a matter that Mr. Gatabaki has talked about. You are not informing him. That information is here.

Mr. Gatabaki: I thank Mr. Henry Obwocha for having had the opportunity to prepare the 1995/96 PAC Report.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Gatabaki, address the Chair.

Mr. Gatabaki: It is on record that Mr. Obwocha did present the most comprehensive and most detailed PAC Report in this House.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, follow his footsteps. He took a much shorter time than that.

Mr. Gatabaki: Yes, Mr. Temporary Deputy Speaker, Sir, but certain contributions must be made. There are contributions by Members of this House who stood above party affiliations to say: "This Government

owes the people of Kenya---" This Government has squandered millions of shillings belonging to taxpayers! If you squander public funds anywhere in the world, you must pay for it. I thank Mr. Obwocha for making that position very clear.

The sixth point is about pending bills which are running into billions. A considerable proportion of this figure is questionable as result of irregular and fraudulent awards of contracts. This Government cannot account for pending bills, which are beyond the imagination of anybody. Twelve billion shillings in the form of pending bills were squandered at one particular time! How do you manage an economy with pending bills accumulating to over Kshs12 billion? The Committee was more concerned about non-questionable pending bills in relation to work done by ordinary Kenyans in the provision of services and supplies to the Government of Kenya, but they have not been paid. Some small contractors who were supposed to get Kshs100,000, Kshs200,000 or Kshs1 million were classified and included in the pending bills list. Despite that, the "pythons", the commercial merchants and the politically-correct people presented bills worth billions of shillings and then they were paid through one cheque for undertaking contracts which are questionable.

Mr. Temporary Deputy Speaker, Sir, people like Mr. Somaia got Kshs800 million through a cheque which was drawn one morning so that he could go and bring the latest equipment to enable the Government print security documents. Up to now, 10 years later, you cannot see a single item of that printing press. Mr. Somaia got a cheque in advance, while an ordinary person in Kisumu who has constructed a stretch of road covering three miles cannot be paid his dues worth Kshs6 million up to now.

So, we made recommendations that the Committee appointed to look into the pending bills expedites the recommendations so that only genuine claimants, whose work can be seen, can be paid for what they have done and delivered. We did find that a considerable amount of money out of Kshs20 billion wasted by the Office of the President regards undelivered items and services. A contract is made of so much amount of money and the contractor is paid the money when he does not even start the construction, or does a very shoddy job and he is paid the amount in advance.

Mr. Temporary Deputy Speaker, Sir, there is inadequate control of development projects: Stalled, abandoned and delayed projects and misuse of public funds running into billions of shillings; graveyards are there! Anybody going to Nyeri, Thika or Kahawa, at the Muthiaga roundabout, will see glaring graveyards of stalled projects; the National Youth Service Flats. Flats upon flats which have been bare there, vandalised and running into billions [Mr. Gatabaki]

of shillings. Who authorized that kind of expenditure? Why would the Government spend millions of shillings for such a project? Some projects go up to 90 per cent completion and then they are abandoned. What is the rationale of

spending so much public funds which disappear? That is an indication of how hollow this regime is! Those National Youth Service flats are an indication of how this Government looks like; it is vandalised and it is an evil image of bad governance! When we talk about bad governance, you do not go far away to see stalled projects as a demonstration of a "stalled" Government. I am sorry about it. The Government is frightening, in the way it has stalled. Those stalled projects are an indication of stalled development in our country. It is a Government which is stalled and it has stalled Kenyans.

The eighth point is about uncollected revenues; unsupported adjustments; irregular entries into the cash books, failure to maintain registers, unexplained transfers; irregular advances, unauthorized overdrafts and un-vouchered expenditures.

The Temporary Deputy Speaker (Mr. Imanyara): Which Ministry are you talking about?

Mr. Gatabaki: I am making a general one so that I can---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Gatabaki, let me just caution you. Standing Order 87 says the following:

"Mr. Speaker, or the Chairman of Committees, after having called attention to the conduct of a Member who persists in irrelevance or tedious repetition, either of his own arguments or the arguments used by other Members in debates, may, after having first warned him, direct him to discontinue his speech."

I am just cautioning you now formally that I may direct you to move so that your Seconder can do so because you are being very repetitive. I have listened to you and now I am cautioning you formally from the Chair.

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. The PAC deals with public expenditure; expenditure of taxpayers' money.

The Temporary Deputy Speaker (Mr. Imanyara): What is your point of order?

Mr. Angwenyi: Is it in order for the Chair to intimidate a presenter of the PAC Report?

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order, Mr. Angwenyi! I merely brought to the attention of the hon. Member the provisions of Standing Orders, and that is my duty and obligation. I will not permit you to continue on that line.

Proceed, Mr. Gatabaki.

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, it is my wish that every Member of Parliament who serves a term of five years, 10 years or whichever number of years, does have an opportunity to serve the Public Accounts Committee or the Public

Investments Committee so that he can understand that I am not repeating myself. Every Ministry or every department has summaries, and every department has imprests, wasteful expenditure and uncollected goods. I am summarizing so that we can have some other hon. Members, particularly from the other side, to answer the indebtedness. So, these are summaries of other Ministries. I am only concerned about two or three Ministries. These are the Treasury, Office of the President, and the Attorney-General's Office. I will leave the other 25 Ministries to other Members of the Committee to cover. Otherwise, we may have to go to the year 2002.

The ninth point is on the observation of the PAC; payments for goods and services which were neither delivered, received, nor rendered respectively, and the diversion of public funds to private use which runs into billions of shillings. I will not re-emphasise this again because I am also getting angry about a Government that behaves like gangsters. How do you procure or get a tender to deliver computers, like they did at Nyayo House--- The Chair knows the history of Nyayo House because at one particular time, the Chair was a visitor there. Taking equipment to Nyayo House--- Like a colleague has said, we spent a lot of time in those horrible places. Nyayo House required computers at one particular time--- I do not know; maybe, they were meant to estimate the amount torture dispensed there. These merchants could not deliver that equipment. They received a cheque, but did not offer services and got away with it.

So, what do we do? How do we make this document to be of value to this House? How do we stop the work of the Treasury from running into this kind of volume? I did not bring the Public Accounts Committee (PAC) Report for the period when President Moi, who was then an hon. Member from the Rift Valley Province, was the Chairman. The report ran to 32 pages. This was during the late Mzee Kenyatta's Government. I did not come with it because I did not want to frighten my colleagues on the opposite side by showing them how fat they have become from stealing public funds.

So, which is the way forward? Recommendations or no recommendations, I shall summarise what needs to be done. First is the necessity of strengthening the key oversight institutions, specifically the PAC and the Controller and Auditor-General's office. The PAC should have **[Mr. Gatabaki]**

teeth. Time and again, the PAC has recommended the empowerment and strengthening of the office of the Controller and Auditor-General to make it an independent and autonomous institution under Parliament, with budgetary allocation directly from the Consolidated Fund. Currently, the department relies on the Executive for budgetary allocations and for setting terms and conditions of service for its officers. This has greatly undermined the professional capacity, integrity and independence of that office. It was the opinion of the Committee that the office of the Controller and Auditor-General should be merged, as it

was before, with the office of the Auditor-General (Corporations) in order to have one super institution in charge of monetary affairs and all public funds. That institution should be empowered by making it independent from the Executive in budgetary provisions, recruiting of staff and training. In its responsibilities, it should be accountable only to Parliament and be paid for from the Consolidated Fund.

Time and again, the Committee encountered a considerable number of problems with the office of the Controller and Auditor-General when staff members were either retired by the Executive or moved to other Ministries, deliberately to disempower and interfere with the integrity and independence of the Controller and Auditor-General. The Exchequer and Audit Act, Cap.412, should be reviewed to strengthen the control and implementation of the functions of the Controller and Auditor-General, and give him sufficient powers to block expenditures which will violate the Constitution and financial regulations. The Exchequer and Audit Act, Cap.412, as it stands today, is inadequate. It only gives the Controller and Auditor-General powers of summoning Government officials for explanations and information required in the discharge of his duties. We emphasised that the time has come for the Exchequer and Audit Act to be reviewed so that the Controller and Auditor-General has power not only of summoning Accounting Officers to give evidence, but also of looking into the banking activities of the individuals. The Controller and Auditor-General should have power to not only summon Accounting Officers to give evidence, but also to recommend punishment for wrongdoers. The amendment of the Act should provide for remedies in the event that the required information is withheld. It should empower the Controller and Auditor-General with authority to demand information from financial institutions. He should have unlimited access to any account or information required in the discharge of his duties. The amendment should also provide for very strict sanctions against errant officers, who deliberately conceal information or relevant data.

Equally, an amendment should be made to provide for quarterly and half-yearly audits and reports of the Public Accounts Committee by the Controller and Auditor-General.

As we are talking now, the 1996/97 report for which the then Committee took evidence, which is about four years back, is a postmortem which has no use at all. Most of the officers who committed crimes are either dead, have been transferred or have become very powerful in the Government! We have a Minister who literally destroyed, killed, wasted and squandered a lot of money in the former Kenya Posts and

Telecommunications Corporation (KPTC). He flies a flag, goes to court and he is still in the Government, having committed that crime.

The fourth recommendation is that the PAC should be strengthened through the amendment of Standing Order No.147, so that it is empowered to follow up and ensure timely implementation of its recommendations. The current position, whereby the Treasury is charged with implementing the PAC recommendations, is defective. The Treasury, which is the Executive arm of the Government, is among the greatest violators of the constitutional order, and laid-down Government regulations and procedures, as clearly demonstrated in my review. The Treasury, which is given the powers of implementing the PAC recommendations, falls under the Executive. So, the Executive controls the Treasury, and its independence is diminished by the extent to which the Executive controls the Treasury. So, all the recommendations by the Treasury, which is a violator and has no independence from the Executive, will not bear any fruits.

Mr. Temporary Deputy Speaker, Sir, on the *sub judice* rule, it was the feeling of the Committee that it should be repealed, as it hinders and violates the freedom of expression and free access to information. Of particular concern was the Kenyatta International Conference Centre (KICC), which was built by public funds. We summoned the Controller and Auditor-General himself and the Accounting Officer at the Treasury---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 8th May, 2001, at 2.30 p.m.

The House rose at 6.30 p.m.