

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 29th June, 1999**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

## PRAYERS

## PAPER LAID

The following Paper was laid on the Table:-

Report of the Kenyan delegation to the 101<sup>st</sup> Conference of the Inter-Parliamentary Union held in April, 1999, in Brussels, Belgium.

*(By hon. Musila)*

## NOTICE OF MOTION

### ADOPTION OF INTER-PARLIAMENTARY UNION CONFERENCE REPORT

**Mr. Musila:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, this House adopts the Report of the Kenyan delegation to the 101<sup>st</sup> Conference of the Inter-Parliamentary Union held in Brussels, Belgium, from the 10th to the 16th of April, 1999, and laid on the Table of the House on 29th June, 1999.

## ORAL ANSWERS TO QUESTIONS

**Mr. Speaker:** Mr. Njeru Kathangu's Question?

*Question No.208*

### SURRENDER OF GK VEHICLES BY MINISTRIES

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

(a) how many Government vehicles have been surrendered by the respective Ministries since the directive to do so after 1998/99 Budget; and,

(b) if he could give details on which Ministries adhered to the directive and which vehicles they

surrendered.

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

(a) I am ware that due to heavy rains, River Gucha burst its banks---

**Mr. Speaker:** Which Question are you answering? We are on Question No.208; regarding how many motor vehicles were surrendered.

**The Assistant Minister, Office of the President (Mr. Haji):** Mr. Speaker, Sir, I have no answer.

**Mr. Speaker:** Order, Mr. Haji!

**Mr. Ndicho:** On a point of order, Mr. Speaker. Due to the fact that hon. Haji is not prepared to give an answer, can we go to the next Question as he prepares to sort out his answer?

**Mr. Speaker:** Order! Order! Mr. Haji, you have no answer. Well, I will come back to that Question later.

Next Question!

*Question No.018*

NUMBER OF KISII STUDENTS  
IN PUBLIC UNIVERSITIES

Mr. Obwocha is not here? Next Question, Mr. Mohammed Weyrah!

*Question No.173*

IMPLEMENTATION OF GARISSA WATER SUPPLY

**Mr. Weyrah** asked the Minister for Water Resources:-

(a) how much money was paid by the Saudi Arabian Government in aid of Garissa Water Supply; and,

(b) when Garissa residents will benefit from the said water project.

**The Minister for Water Resources (Mr.**

arap Ng'eny): Mr. Speaker, Sir, I beg to reply.

(a) The Government has just concluded negotiations for a loan of Kshs510 million with the Saudi Fund for Development for completing the remaining works on Garissa Water Project, Phase II. In view of this, the Saudi Arabian Government has not yet paid any money for the said project.

(b) Garissa residents are already benefitting from the existing Garissa Water Supply which is operational.

**Mr. Weyrah:** Mr. Speaker, Sir, I am not satisfied with the answer given by the Minister because we are aware that Kshs200 million has been paid for this project. The contractor for project is a very powerful man in this House and that is why it has failed. So, I want the Minister to tell this House whether he is fearing the Minister who was a director in that construction company or he has no answer to this Question.

**Mr. arap Ng'eny:** Mr. Speaker, Sir, I am not aware of the amount which has been mentioned by the hon. Member. All I am aware of is that, the contractor of Phase I of the project passed away and that is why the project stalled.

**Mr. Shill:** On a point of order, Mr. Speaker, Sir. The Garissa Water Project is a stalled project and some money has already been used. I asked this same Question in this Parliament last year and I was told by the same Ministry that the money is available but the Saudi Arabian Government cannot release that money. They can only release it on condition that they get more information about the Mombasa Sewerage Project which was mismanaged. Is it in order for the Minister to say that the Garissa residents are benefitting from the said water project while we know that, there is no water on the ground? Even this morning when I left Garissa, I did not have a shower because there was no water. Is it really in order for the Minister to mislead this House?

**Mr. arap Ng'eny:** Mr. Speaker, Sir, it is true that the present water supply is grossly inadequate for Garissa people. That is why the Government went into Phase II of the project which stalled due to the death of the main contractor in 1994. Otherwise, the project was expected to be completed by 1994. The cancellation of the project was done in 1995 and, therefore, it is true that the project has stalled.

**Mr. Shidie:** Mr. Speaker, Sir, it is very sad, because in Garissa District there is no water supply, and yet the Minister is telling us that we are benefitting from the water supplied by the Ministry. As far as I know, we are using donkeys to fetch untreated water from the river. The Government has sank a lot of money into this project; Kshs200 million. I am very happy that when the President toured the area, he saw the state of the project and promised us that funds through the Saudi Government will be availed for the project. Could the Minister assure us that when that money comes, it will be properly utilised? The Government should not lose money through unscrupulous contractors like Adlar.

**Mr. Ng'eny:** Mr. Speaker, Sir, I would like to assure the House that when funds from the Saudi Government are brought in for the implementation of the project, the Ministry will take absolute care to ensure that Garissa people get adequate water supply.

**Mr. Speaker:** Next Question!

*Question No.179*

## ISSUANCE OF TITLE DEEDS TO KANYONI RESIDENTS

**Mr. Kiunjuri** asked the Minister for Local Authorities, whether he could consider issuing the squatters of Kanyoni Village of Nanyuki Town with letters of allotment, since they have occupied the plots for 30 years.

**Mr. Speaker:** Anybody from the Ministry of Local Authorities? Nobody! Next Question!

*Question No.180*

## GAZETTEMET OF NEW COUNTY COUNCILS

**Dr. Kulundu** asked the Minister for Local Authorities what urgent steps he is taking to gazette the new county councils of Lugari and Mumias/Butere districts in order to serve the public better.

**Mr. Speaker:** Minister for Local Authorities! Not here! Next Question!

*Question No.064*

## TARMACKING OF ROADS IN KISUMU DISTRICT

**Mr. Sungu** asked the Minister for Public Works and Housing what plans the Ministry has for tarmacking the Kibos-Chinga-Rabuor, Water Works-Dunga and the Chinga-Miwani-Kibigori roads within Kisumu District.

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

The Government does not have immediate plans to tarmac Kibos-Chinga-Rabuor; Water Works-Dunga, and the Chinga-Miwani-Kibigori roads within Kisumu District as there are no funds at the present moment.

**Mr. Sungu:** Mr. Speaker, Shir! Mr. Speaker, Shir---

*(Laughter)*

**Mr. Speaker:** What are you saying, Mr. Sungu?

**Mr. Sungu:** Sorry! Mr. Speaker, Sir, I am shocked to hear the Assistant Minister say that there are no funds available for the construction of roads in Kisumu, when I know from the records that the residents of Kisumu District contribute at least 20 percent to the Exchequer's total income. The population of the area, and even the Budget that was read here, proves it.

The Dunga Road is very important for the fishing industry, because there is Dunga Beach which supplies fish to the whole of Kisumu Town and beyond. The Chinga and Kibigori roads are main agricultural arteries connecting Miwani Sugar Factory. Could the Assistant Minister consider upgrading these roads which are currently impassable?

**Eng. Rotich:** Mr. Speaker, Sir, the roads in question will be maintained to motorable conditions during the next financial year. This financial year, the Government allocated Kshs7 million to Kisumu District, for maintenance of roads only.

**Mr. Achola:** Mr. Speaker, Sir, could the Assistant Minister explain to the House why the *El Nino* funds have not been used to assist in the rehabilitation of Dunga Road, since Dunga Fish Landing Beach is one of the most important beaches in Kisumu?

**Eng. Rotich:** Mr. Speaker, Sir, the *El Nino* funds are under the Office of the President and not the Ministry of Public Works and Housing.

**Mr. Achola:** On a point of order, Mr. Speaker, Sir. That is what I am asking: Why are the *El Nino* funds under the Office of the President when they should be given to the Ministry of Public Works and Housing to fix roads?

**Mr. Speaker:** Is that not a supplementary question?

**Dr. Oburu:** Mr. Speaker, Sir, could the Assistant Minister tell us how much of the Road Maintenance Levy Fund is going to be spent on this particular road? We would like to know how much money has been set aside specifically for this road and not for Kisumu District as a whole.

**Eng. Rotich:** Mr. Speaker, Sir, assuming that the hon. Member is talking about the Fuel Levy Fund, the programme has not been approved by Treasury, but I can forward the submission to Treasury, if he so wishes.

**Mr. Sungu:** Mr. Speaker, Sir, the Ministry for Public Waste is very famous for misusing funds. Since we

approved the Budget for the last financial year, no road has been done in Kisumu District. There has neither been gravelling nor levelling by tractor, despite the co-operation. Could the Assistant be very clear as to whether this road will be done this financial year?

**Eng. Rotich:** Mr. Speaker, Sir, there is no "Ministry for public waste".

**Mr. Speaker:** Very well! Next Question!

*Question No.165*

REGISTRATION OF TEA/COFFEE GROWERS ORGANIZATIONS

**Mr. Gatabaki** asked the Attorney-General:-

(a) why the Registrar of Societies has delayed in registering the Kenya Union of Small-Scale Tea Owners (KUSSTO) which is recognized and approved by the small holder tea owners nationally as their legitimate representatives; and,

(b) why the Registrar of Societies has further delayed in registering the Coffee and Tea Parliamentary Association (COTEPA) which was launched in 1995 by Members of Parliament from tea growing areas of Kenya.

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

(a) The Registrar of Trade Unions refused to register Kenya Union of Small Scale Tea Owners (KUSSTO) vide notification of refusal to register, dated 6th June, 1996, addressed to the interim Secretary-General of the proposed union. The grounds stated include the ground that the Union had not complied with the provisions of Section 29 of the Trade Unions Act, Cap.233, of the laws of Kenya.

Pursuant to the said refusal, Mr. George Kinyua, on behalf of himself and other interim officials of the said Union, filed an appeal against the refusal in the High Court of Kenya at Nairobi vide High Court Civil Appeal No.172 of 1996. The appeal has been heard and judgement is awaited. The matter is therefore, *sub judice*.

(b) The Registrar of Societies refused to register the Coffee and Tea Parliamentary Association (COTEPA) by notification of refusal to register, dated, 10th April, 1996 addressed to the Secretary of the Association by the Registrar of Societies.

The interim officials lodged an appeal against the refusal which is under consideration.

**Mr. Speaker:** Well, Mr. Gatabaki, you can proceed and ask a supplementary question on part "b" of the Question.

**Mr. Gatabaki:** Mr. Speaker, Sir, I am horrified by the answer given by the Attorney-General. I am horrified by the words he has used. Tea is the leading income earner for this country. Hon. Members of this House from tea growing areas formed the Coffee and Tea Parliamentary Association. The reason given by the then Minister was that, he could not register it on security grounds. This Government said that it could not register the association for hon. Members who represent this essential cash crop economy for security reasons. Could the Attorney-General tell this House what security reasons there were, to refuse the registration of a lobby group by hon. Members of this House?

**Mr. Wako:** Mr. Speaker, Sir, the refusal by the Registrar of Societies and not by the Attorney-General, if I may inform the hon. Member, was on security grounds. I believe he had information to that effect. But as I have told this House, there is an appeal against that decision which is under consideration.

**Mr. Ndicho:** Mr. Speaker, Sir, we are living in the era of liberalisation. In 1991, we liberalised politics in this country when KANU used to be the only party and blocked others from being registered. If politics was liberalised, and we have more political parties in this country, in fact, 27 or so, why is the Attorney-General, or the Government, refusing to register other associations which would like to detach themselves from the draconian unions? Could the Attorney-General tell us whether he is going to register all the pending applications of unions and such organisations, including the Kenya National Union of All Workers which wants to detach workers in this country from the Central Organisation of Trade Union (COTU) and the Kenya National Union of Teachers? Could he liberalise every sector in this country?

**Mr. Speaker:** Mr. Ndicho, your question is full of repetitions!

**Mr. Wako:** Mr. Speaker, Sir, the question he has just put is currently a subject of a separate Question altogether. I am now concerned with an applicant who applied to be a trade union and was refused on specified grounds under the Act.

**Mr. Speaker:** Mr. Attorney-General, I thought I told you to forget about part "a" which is *sub judice*.

**Mr. Wako:** Yes, Mr. Speaker, Sir, it is only part "a" which concerns the trade union. Part "b" does not concern the trade union, it concerns a society. As I said, it is a matter which is under consideration.

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. The Attorney-General is deliberately refusing to address my question. I asked him why he cannot liberalise all the sectors of our economy including trade unions and those members who want to detach themselves from organisations like COTU, KTDA and so on?

**Mr. Speaker:** I suppose, with regard to COTU, of course, Mr. Ndicho, you are aware there is a pending Question, I think, by yourself?

**Mr. Ndicho:** But, Mr. Speaker, Sir, it is touching on this matter.

**Mr. Speaker:** Order! Order! You should not anticipate your own Question; let it come.

**Mr. Gatabaki:** Mr. Speaker, Sir, could the Attorney-General tell the House why the Government was in such a hurry to register a Government-sponsored Kenya Small-Scale Tea Growers Association (KSSTGA) within two weeks and yet the same Government cannot recognise a legitimate representative of the coffee and tea farmers; Coffee and Tea Parliamentary Association (COTEPA)? Could he tell us about the hurry in registering a Government and KTDA sponsored association to represent the farmers?

**Mr. Wako:** Actually, there are two questions there in one---

*(Loud consultations)*

**Mr. Speaker:** Order! Order! Hon. Members, we cannot follow the proceedings. Can we consult in low tones? There are two questions there, leave the one that is *sub judice* and deal with the second one on COTEPA.

**Mr. Wako:** In dealing with COTEPA, as I said, the appeal is under consideration and the officials of COTEPA are, in fact, in close consultation with me on the matter.

**Mr. Muihia:** On a point of order, Mr. Speaker, Sir. Is it in order for the Attorney-General to stand before this House and tell the whole world that Members who have been elected by coffee and tea farmers are a security risk? Are they a security risk towards the growth of tea or coffee?

**Mr. Speaker:** That is not a point of order!

**Mr. Wamae:** Mr. Speaker, Sir, when we had the Inter-Parties Parliamentary Group (IPPG), the aim was to liberalise this country. How can the Attorney-General and the Registrar of Societies refuse to register a society like COTEPA by giving fake grounds of insecurity? Why does he consider Members of Parliament to be a security risk in this country?

**Mr. Wako:** Mr. Speaker, Sir, as I have said, the registration was at that time refused on security grounds by the Registrar of Societies, and he must have had some information not to register them on security grounds. But, as I have said, there has been an appeal---

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

**Mr. Speaker:** Order! Order, Members! Mr. Gatabaki, the hon. Attorney-General was replying to Mr. Wamae. I think it is in the interest of the House that we do hear answers. But in any case, even if you are on a point of order, you can just rise on a point of order, but do not begin speaking before you are given the Floor. It would be a nice thing to uphold the dignity of the House. You refer to yourself as "dignified Members", so, can we be dignified?

**Mr. Wako:** Mr. Speaker, Sir, as I have said, there has been an appeal against that decision which was made on security grounds. One of them is that Members of Parliament are not a security risk, but there are others. As I have said, I have been in consultations with the officials of the COTEPA and the matter is under consideration.

**Mr. Gatabaki:** Mr. Speaker, Sir, is the Attorney-General not misleading this House about the reason why the Government has refused to register COTEPA? The only reason is that this is a "Central Province Association" and the hostility of the Government towards the Central Province farmers is well-established and well-known. Could he deny or confirm that?

**Mr. Wako:** Mr. Speaker, Sir, it is good that the hon. Member for Githunguri has come out and said that this is a "Central Province Association". I was not aware of it because the Constitution of COTEPA is open to all Members of Parliament who have an interest in tea and coffee.

**Mr. Murungi:** On a point of order, Mr. Speaker, Sir. Is it in order for hon. Gatabaki to mislead this House that COTEPA is a Central Province Association when I am the Vice-Chairman of COTEPA which has Members of Parliament from all the tea and coffee growing areas in Kenya?

**Mr. Gatabaki:** Mr. Speaker, Sir, I want to clarify that Coffee and Tea Parliamentary Association is an association sponsored by members from all over the country, but the main growing areas of tea and coffee are Central Province.

**Mr. Speaker:** Order! Order, Members! Mr. Gatabaki, you made a categorical statement which has been challenged by hon. Murungi that "COTEPA is an organisation of Central Province and the Government has such hostility towards Central Province organisations". Mr. Murungi is saying that you are misleading the House that, that

organisation is for Central Province. It is for all tea and coffee producing areas of Kenya. The hon. Member is asking you, if you, indeed, have misled the House, whether you would have a big heart to apologise to the House?

*(Applause)*

**Mr. Gatabaki:** Mr. Speaker, Sir, I must express satisfaction about the interest the Members have shown on this Question. COTEPA belongs to all Kenyans like the Vice-President!

*(Laughter)*

**Mr. Speaker:** Order! Order! Mr. Gatabaki, look at the mood of your colleagues, they are of the view that you have misled the House. You owe it to this House to apologise profusely. Will you withdraw and apologise profusely?

**Mr. Gatabaki:** Mr. Speaker, Sir, I want to categorically apologise for the insinuation that Coffee and Tea Parliamentary Association is a Kikuyu or Central Province affair. But the major tea and coffee growing area in Kenya is Central Province!

**Mr. Speaker:** Order! Order, Members! I think the apology was sufficient. The other rider was uncalled for, but I will ignore that, nevertheless.

For the second time, I will call Question No.208 by hon. Kathangu.

*Question No.208*

SURRENDER OF GK VEHICLES BY MINISTRIES

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

(a) how many Government vehicles have been surrendered by the respective Ministries since the directive to do so after the 1998/99 Budget; and,

(b) if he could give details on which Ministries adhered to the directive and which vehicles they surrendered.

**Mr. Speaker:** Is there anybody from the Office of the President?

**The Assistant Minister, Office of the President** (Mr. Haji): I have no answer, Mr. Speaker.

**Mr. Speaker:** Mr. Kathangu, you are being told that there is no answer to your Question.

**Mr. Kathangu:** Mr. Speaker, Sir, on Thursday last week, the Minister of State, Office of the President, hon. Sunkuli, stood here and told us that the answer was not ready and he would bring it this week. Therefore, this is the second time that I am asking this Question. We would like to know how many cars have reverted to Ministerial use, because they were supposed to have been returned.

**Mr. Speaker:** Order, Mr. Kathangu! You find yourself in the same situation that I find myself because the Minister who made the undertaking last time is not there. The one who is present says that he has no answer and I think, the best that I can do is to order that this Question be put on the Order Paper for Thursday and the Minister will be told to come and reply.

**Dr. Kituyi:** On a point of order, Mr. Speaker, Sir. Normally, we will expect that if a Minister is not ready, he gives some semblance of an acceptable reason why he is not ready. When hon. Awori was an Assistant Minister in the Office of the President, he would explain that "the answer is not satisfactory" or something to that effect. But what does "there is no answer", mean to the House? Could you beg the Assistant Minister to explain why there is no answer?

**Mr. Speaker:** I will even go further. I think courtesy demands that when a Minister is not ready to reply to a Question, he should get in touch with his colleague who has asked the Question and the Chair so that we all know that the reply to a certain Question is not ready. So, I will defer it to next Thursday.

*(Question deferred)*

Next Question; for the second time, hon. Obwocha?

*Question No.018*

## NUMBER OF KISII STUDENTS IN PUBLIC UNIVERSITIES

**Mr. Obwocha** asked the Minister for Education and Human Resource Development:-

(a) whether he could give annual breakdown of students admitted to public universities from Nyamira and Kisii Districts during the years, 1993 to 1998; and,

(b) the causes of variation, if any, in admissions.

**The Assistant Minister for Education and Human Resource Development** (Mr. Awori): Mr. Speaker, Sir, I beg to reply.

(a) I have only figures from the year 1995/96 onwards. We have no figures for 1993/94 and 1994/95. The figures are as follows: Kisii, (1995/96) 262 students; Nyamira-147 students. In 1996/97 in Kisii District, there were 216 students and in Nyamira there were 149. In 1997/98 in Kisii District there were 269 students and in Nyamira, there were 164 students. In 1998/99, Kisii District had 289 students and Nyamira had 174 students.

(b) The causes of variations depend entirely on registration and the meeting of the minimum requirements.

**Mr. Obwocha:** Mr. Speaker, Sir, these figures are deplorable because one school in Nairobi, Starehe Boys Centre, takes 300 students to public universities and yet, one district, Nyamira, is able to take only 174. Now, let me know from the Assistant Minister whether he knows that the poor performance of this district is due to the laxity of the District Education Officer (DEO), who has been there. What is he doing to transfer this DEO who has lowered the education standards of Nyamira District, such that we are not able to even take 300 or 400 students to university? Some of the headmasters have stayed in these schools for a very long time, like the one in Nyachogochogo Secondary School who has stayed there for 17 years, without even taking one student to university. What is he going to do to this headmaster?

**Mr. Speaker:** Mr. Obwocha, would you like to be answered?

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

**Mr. Awori:** Mr. Speaker, Sir, I agree entirely with the Questioner that the numbers of students going to universities from those two districts are deplorable, particularly in comparison as he said, with certain schools. However, to lay the blame on one individual who is the District Education Officer, is what I cannot accept. There are very many factors that contribute to their poor performance, one of which the Member of Parliament himself must pay serious attention to.

**Mr. Obwocha:** Mr. Speaker, Sir, I think the Assistant Minister is evading the question. Could he assure this House that he is going to investigate this poor performance? One of the major causes of this poor performance is that officer, and he has admitted it, amongst many other reasons. I know there are many other reasons and everybody knows about them, but this is the major one. Are you going to investigate the activities of the DEO?

**Mr. Awori:** Yes, Mr. Speaker, Sir. I will most certainly investigate, but I would like to advise my colleague that he had better look at various other factors and he is in a very key position to help improve the standard of education in his district.

**Mr. Anyona:** Mr. Speaker, Sir, I think the problem of the DEO, among others, is well-known even to the Ministry and to the people of Nyamira. But, Mr. Assistant Minister, it is true that there are other more serious problems, that are hindering education in Gusii generally. Could the Assistant Minister undertake that when I bring to this House, a report based on information from members of the public; that is, parents and other people, he will take action on specific suggestions made by the parents? I will give that report when he answers my next question.

**Mr. Awori:** Mr. Speaker, Sir, I will do better than that. Instead of waiting for hon. Anyona to bring here specific reports, I will act on what hon. Obwocha has requested. I intend to investigate the activities of this official and if what is stated is true, then action will be taken against him.

**Mr. Muithia:** Mr. Speaker, Sir, the standards of education are going down in a very notorious way, particularly in the districts. Could the Assistant Minister assure this House that his Ministry will discontinue giving medals to education officers who are responsible for the decline of the standards of education, particularly in Gatundu where the Education Officer was to be given a medal while in Gatundu the schools have been doing very, very poorly? Is the Government not encouraging the poor performance by giving those medals to those teachers and other officers?

**Mr. Awori:** Mr. Speaker, Sir, I do not know the circumstances under which this particular official was given a medal and I even do not know whether he was given a medal. I cannot see how a medal can be given to an officer, specifically because he or she has brought the standards of education down!

**Mr. Obwocha:** Mr. Speaker, Sir, there is a question I asked when I stood up the first time. Could the Minister assure this House that he is also going to investigate the activities of the Headmaster of Nyachogochogo Secondary School because for the 17 years that he has stayed at that school, no single student has joined university? What is that man doing there? We have asked for his transfer, but he said: "I know everybody, including the big man in Nairobi".

Does he want us to close that school? The parents of that school have threatened to close it. Could you assist me to direct the Assistant Minister to investigate the activities of that headmaster with a view to not only transferring him, but also demoting him?

**Mr. Awori:** Mr. Speaker, Sir, I definitely intend to investigate the said headmaster. However, I cannot tell the House what action will be taken until the results of the investigations are out.

**Mr. Speaker:** Very well, let us go to Mr. Kiunjuri's Question for the second time!

*Question No.179*

ISSUANCE OF TITLE DEEDS TO KANYONI RESIDENTS

**Mr. Kiunjuri** asked the Minister for Local Authorities whether he could consider issuing the squatters of Kanyoni Village of Nanyuki Town with letters of allotment since they have occupied the plots for 30 years.

**The Assistant Minister for Local Authorities** (Mr. Sasura): Mr. Speaker, Sir, I beg to apologise for coming late.

Mr. Speaker, Sir, I beg to reply.

The land that is occupied by squatters in Kanyoni Village, Nanyuki Town, is Government land, and not Trust Land. Therefore, I have no powers to allocate it to squatters. However, the issue of settling the squatters of Kanyoni Village has already been discussed by the area District Development Committee (DDC), which has recommended to the Government that the squatters be settled on that land.

**Mr. Kiunjuri:** Mr. Speaker, Sir, may I, first, remind the Assistant Minister that the Government is supposed to follow the recommendations of the DDC. Secondly, may I advise him that the land belongs to the people, and not to the Government, and that the Government is only a trustee to the people? Thirdly---

**Mr. Speaker:** Order! Order, Mr. Kiunjuri! Mr. Sasura, would you like to answer what Mr. Kiunjuri has asked so far?

**Mr. Sasura:** Mr. Speaker, Sir, the hon. Member was just advising me. He did not ask any question.

**Mr. Speaker:** Mr. Kiunjuri, do not address him; ask him questions!

**Mr. Kiunjuri:** Mr. Speaker, Sir, I think I advised the Assistant Minister that if a Kenyan stays on a piece of land for 12 years, he is entitled to that land. Now that he is saying that the land belongs to the Government, and the Government is the people, then, could this Government consider giving the land to the "Government"?

**Mr. Sasura:** Mr. Speaker, Sir, if the hon. Member heard me clearly, I said that the DDC, of which the hon. Member is a member, has recommended to the Commissioner of Lands to settle the squatters on that land. So, I do not know what the hon. Member's bone of contention is.

**Mr. Muchiri:** Mr. Speaker, Sir, the problem of squatters in this country is common within local authorities. Could the Assistant Minister confirm that squatters who have lived in local authorities for more than 12 years will be allocated the pieces of land they occupy by the Ministry of Local Authorities?

**Mr. Sasura:** Mr. Speaker, Sir, there is a process of settling squatters on land that is under the jurisdiction of the Ministry of Local Authorities, just like the case of the squatters of Kanyoni Village of Nanyuki Town. The process involves the local authorities, where councillors represent the people. The problem is the genuineness of the squatters. That is why, like in this specific case, leaders are called upon to identify the genuine squatters for settlement.

**Mr. Speaker:** The last one, Mr. Kiunjuri!

**Mr. Kiunjuri:** Mr. Speaker, Sir, I have two other questions. The answer the Assistant Minister has given is quite misleading. In his reply, he said that the land in question belongs to the Government, and that he has no authority to allocate it. He, however, went on to say that the DDC has recommended to the Government to settle the squatters on that land. Now, who is the Government in this case? Could the Assistant Minister give a straightforward answer?

**Mr. Sasura:** Mr. Speaker, Sir, I do not know why the hon. Member is being confused by my answer, because it is very straightforward. I said very clearly that the Minister for Local Authorities cannot settle the squatters because the land is under the Commissioner of Lands. I also said that the DDC has recommended to the Commissioner of Lands to settle the squatters, and the hon. Member is a member of the DDC. Maybe, he was in that meeting; I think he should have been.

**Mr. Speaker:** Very well, let us go to Dr. Kulundu's Question!

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



*(Loud consultations)*

**Mr. Speaker:** Order! Order, hon. Members! Today it is absolutely impossible to proceed with the business of the House. There are very many barazas! Now, Mr. Kiunjuri, I am afraid to tell you that you have also contributed by not having asked enough questions; you speak too much! Look at the time. There are Questions by Private Notice to be answered and one Ordinary Question to go. So, I must proceed. Let us go to Dr. Kulundu's Question!

*Question No.180*

#### GAZETTEMMENT OF NEW COUNTY COUNCILS

**Dr. Kulundu** asked the Minister for Local Authorities what urgent steps he is taking to Gazette the new County Councils of Lugari and Mumias/Butere Districts in order to serve the public better.

**The Assistant Minister for Local Authorities** (Mr. Sasura): Mr. Speaker, Sir, once again, I would like to apologise for not having answered the Question the first time it was asked.

Mr. Speaker, Sir, I beg to reply.

I have already signed the Gazette Notice for the creation of the new county councils of Lugari and Mumias/Butere Districts. The notice is with the Government Printer for publication.

**Dr. Kulundu:** Mr. Speaker, Sir, while I appreciate that answer, it appears to me that the gazettelement of those county councils was done in response to my Question. However, could the Assistant Minister assure this House that when those two county councils are constituted, the property of Kakamega County Council will not be taken away, as was done 13 years ago, when Vihiga District was curved out of Kakamega District?

**Mr. Sasura:** Mr. Speaker, Sir, the issue of the gazettelement of a new council and the sharing of the assets and liabilities are two separate issues. In response to the hon. Member's Question, assets and liabilities of councils are shared in a specified manner, in the sense that the Provincial Commission and the Provincial Local Authorities Officer, in conjunction with the councils, will sit together and divide the assets and liabilities. I do not know what is involved in that specific exercise. So, I cannot promise that the property of Kakamega County Council will, or will not, be transferred to the other local authorities.

*(Mr. Shitanda, who was sitting next to Dr. Kulundu, stood up in his place)*

**Mr. Speaker:** Proceed, Dr. Kulundu!

**Mr. Shitanda:** Mr. Speaker, Sir, my name is hon. Shitanda.

**Mr. Speaker:** Yes, Mr. Shitanda, why did you respond when I called out Dr. Kulundu?

**Mr. Shitanda:** It is because I was standing up, Mr. Speaker, Sir.

*(Laughter)*

**Mr. Speaker:** Well, proceed! But you were not the only one who was standing!

**Mr. Shitanda:** Mr. Speaker, Sir, could the Assistant Minister assure this House that the revenue due to Kakamega County Council from the Mumias Sugar Factory, which has been withheld for the last eight months, will be remitted to Kakamega County Council, and that it will not be retained by the new county council?

**Mr. Sasura:** Mr. Speaker, Sir, I think that issue will be clearly specified after the gazettelement of the county council and the relevant committee sits to share out the assets and the liabilities of the county council.

#### QUESTIONS BY PRIVATE NOTICE

##### CONTROL OF FLOODS IN KADEM

**(Mr. Onyango)** to ask the Minister of State, Office of the President:

(a) Is the Minister aware that due to heavy rains, River Kuja has burst its banks and, as a result, parts of the Central, South and West Kadem have been greatly affected by flooding, resulting in destruction of farms, schools and roads, thereby forcing closure of schools and displacement of over 13,000 families?

(a) If the answer to "a" above is in the affirmative, what urgent steps is the Minister taking to control flooding

in the affected areas?

(c) Could the Minister state what assistance the Ministry has given to the people who were affected?

**Mr. Speaker:** Very well; Mr. Onyango's Question by Private Notice is dropped.

*(Question dropped)*

**Mr. Speaker:** Let us go to Mr. Anyona's Question by Private Notice.

**Mr. Anyona:** Mr. Speaker, Sir, first of all, I have not received a written answer to this Question. In any case, I have an indication from the Minister that, he wants some more time, and I would not have any objection if that is done.

#### ASSASSINATION ATTEMPT ON HON. ANYONA

**(Mr. Anyona)** to ask the Minister of State, Office of the President:-

In view of the current spate of political incitement, intrigue and thuggery in the Abagusii Community, could the Minister tell the House:

(a) The circumstances in which hired political thugs made an assassination attempt on my life in the compound of Kisii Hotel at about 8.00 p.m. on Sunday 20th June, 1999?

(b) The motive(s) behind the assassination attempt?

(c) The identity of the thugs involved in the assassination plot?

(d) What measures the Government has, and will institute, against the prevalent incitement, intrigue and thuggery in the Abagusii Community to protect innocent and law-abiding citizens?

**Mr. Speaker:** Very well; the Question is deferred!

*(Question deferred)*

#### IMPORTATION OF PLANTATION WHITE SUGAR

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

(a) Is the Minister aware that Messrs Sinnar Trading Company of P.O. Box 48784, Nairobi, has imported 3,000 metric tonnes of plantation white sugar and that the vessel M.V. Caribbean Express had docked at the Port of Mombasa awaiting to off-load?

(b) Could the Minister confirm whether this company has paid all duties, including suspended duty of 70 per cent, on this commodity, and if so, how much?

(c) What urgent steps is the Minister taking to protect local sugar industries from massive sugar imports?

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

(a) I am aware that there is a consignment of 3,000 metric tonnes of white sugar on the vessel M.V. Caribbean Express which docked at Mombasa Port on 26th May, 1999.

(b) No duties, including the suspended duty of 70 per cent, have been paid on the consignment and this is because no documents have been presented to the Customs for processing. Since no documentation has been presented for processing, there cannot be any duty and neither do we know how much that duty will be until the documentation has been presented.

(c) A number of measures are being implemented by the Government through the Customs and Excise Department, to address the problems of sugar imports, and indeed, the diversion of transit untaxed imported sugar into the domestic market. These measures include the following.

(i) The maintenance of the normal *ad valorem* duty of 25 per cent;

(ii) The suspended duty of 70 per cent on imports of sugar.

Additional measures for preventing transit goods from diversion into the domestic market include the following:-

(i) The provision to account for transit cargo within seven days after the expiry of the transit period;

(ii) The provision to account for transit period being reduced to 30 days from the previous period of 45

(iii) The provision to execute cash deposits of bank guarantee equivalent to the duties payable;

(iv) Conducting a credibility assessment for senior management handling sugar importation and directors of clearing and forwarding firms to ensure that they have clean records with Customs and Excise Department before renewal of transit operators licenses; and;

(v) Enforcement of stringent penalties where provisions of the law are breached.

**Mr. Kombo:** Mr. Speaker, Sir, I appreciate the answer by the Assistant Minister, we are aware that the reason why there is such a long delay in presentation of documents, is because there has been heavy lobbying, including from senior Cabinet Ministers, that 70 per cent suspended duty be waived for this particular consignment. Will the Assistant Minister assure this House that in spite of that lobbying, he will ensure that he does not waive the suspended duty because importation of sugar has caused the collapse of the sugar industry in this country?

**Mr. Keah:** Mr. Speaker, Sir, I give that assurance.

**Dr. Kituyi:** Mr. Speaker, Sir, arising from the original reply from the Assistant Minister that he intends to blacklist companies that are involved in illegal importation activities, since he established that Mr. Sajjad imported sugar without paying duty and made him pay duty subsequently, could he tell this House that he will show by example; by denying him any chance to import sugar in this country?

**Mr. Keah:** Mr. Speaker, Sir, we are not talking about Mr. Sajjad in this Question!

**Dr. Kituyi:** On a point of order, Mr. Speaker, Sir. I am talking about the principle enunciated from the answer by the Assistant Minister, that the Government will blacklist offending companies. I can use his words: "A number of measures are being implemented by the Government through the Customs and Excise Department, to address the problems of sugar imports, and diversion of transit untaxed imported sugar into the domestic market". And one of them is "Conducting a credibility assessment for senior management handling sugar importation and directors of clearing and forwarding firms to ensure that they have clean records". I have given him an example of one where they found out that he did not have a clean record. Could he show us by example that such a person will not be allowed to import sugar again?

**Mr. Keah:** Mr. Speaker, Sir, I will go further than just one; I said "all" people and the answer is "all".

**Mr. Osundwa:** Mr. Speaker, Sir, could the Assistant Minister consider re-exporting this sugar because the information I have is that a certain Minister from the Rift Valley is trying to pressurise the Minister for Finance to waive this duty?

**Mr. Keah:** Mr. Speaker, Sir, the information I have from the Ministry is that we are not allowing this sugar into the country.

## COMMUNICATION FROM THE CHAIR

### PROCEDURE IN COMMITTEE OF WAYS AND MEANS

**Mr. Speaker:** Hon. Members, just before we go to the next Order, I wish again to give an explanation as to what happens. Hon. Members will recall that in the last seven days since the Financial Statement, we had a Motion:- "THAT, Mr. Speaker, Do Leave the Chair".

That Motion was carried last Thursday. That, in effect, means that in obedience to that resolution of the House, that Mr. Speaker do leave the Chair, when the next Order is called out, Mr. Speaker will actually leave the Chair. The Chairman of Committees will take the Chair and the House will go to the Committee of the Whole House to consider the proposals on taxation as set out in the Financial Statement. We talked about policy issues on the Financial Statement. When we go to the Committee, Members will look in detail, as we do when we look at Ministerial allocations, at the various taxes set to be levied or varied. You are not allowed to go on policy issues, but you will be allowed to say whether this tax should remain or it should be reduced. You must also understand that under the Standing Orders, you cannot move an amendment to increase tax, at the Committee level, but you can move an amendment to reduce tax. So, I hope Members understand, and with that understanding, we will now go to the next Order.

### COMMITTEE OF WAYS AND MEANS

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Mr. Musila) took the Chair]*

### MOTION

#### APPROVAL OF TAXATION MEASURES

**The Minister For Finance** (Dr. Masakhalia): Mr. Temporary Deputy Chairman, Sir, I beg to move the following Motion.

THAT, the proposals relating to:-

- (a) Customs Tariff
- (b) Excise Duties
- (c) Value Added Tax---

*(Loud consultations)*

**Mr. Temporary Deputy Chairman** (Mr. Musila): Order! Order, hon. Members, would you please consult quietly and if you want to leave, please leave! Mr. Minister, you may continue.

**The Minister for Finance** (Dr. Masakhalia): Mr. Temporary Deputy Chairman, Sir, I beg to move the following Motion.

THAT, the proposals relating to:-

- (a) Customs Tariff
- (b) Excise Duties
- (c) Value Added Tax---
- (d) Income Tax
- (e) Miscellaneous Fees and Taxes.

Contained in the Financial Statement for the year of Account 1999/2000 be approved.

*(His Excellency the President has signified  
his consent to this Motion)*

Mr. Temporary Deputy Chairman, Sir, hon. Members have now had the Financial Statement and the Finance Bill for quite some time.

Mr. Temporary Deputy Chairman, Sir, I will, therefore, make very brief remarks on the taxation measures covered in those two documents. I will begin by restating the fact that the principal objective underlying the Budget of 1999/2000 has been: Economic recovery leading to sustainable development. The taxation measures, therefore, have been formulated to support that principal theme.

I will first begin with the Customs and Excise measures. I would like to note three points on that. The first point relates to the general thrust of changes in the tariffs relating to the raw materials and inter-mediate products which enter our production process. These items have been earmarked for reduction. You will see in the Finance Bill and the Financial Statement those items which have been subjected to reduction. Now, the second category of items under the customs and excise measures that we have modified relates to those items which have faced excessive competition from imports. We have, in selected cases, raised to a significant level some of those tariffs.

The third category relates to the suspended duties for items which are virtually important for our economy; for instance wheat and barley. We will impose protective tariffs on a temporary basis to ensure that local producers can market their produce. Let me elaborate further on that. To improve the competitiveness of the Kenyan goods in our own domestic market, we have raised, for example, the tariffs on textiles, from the previous level of less than 22.30, and with a suspended duty of five per cent. For electronic goods, import duty on the Completely Knocked Down (CKD) kit, has been lowered to 10 per cent. For the agricultural and livestock products which have also faced some unfair competition from abroad, we have raised duty to 25 per cent. We are also taking measures that should help us to fight the menace of dumping goods in the country. But we are doing that in conformity with the World Trade Organisation (WTO) rules. We have extended the exemption of duty payment on equipment for power generation plants. That was done with the objective of promoting investment in the power generation sector.

Mr. Temporary Deputy Chairman, Sir, let me move to the issue of Value Added Tax (VAT). We have reduced VAT from 16 per cent to 15 per cent. Although this might seem a modest reduction, in terms of prices of

normal consumer goods, it has got a very favourable impact on consumers. You will also note in the Financial Statement that we have raised the minimum amount of turnover that will qualify a small business to get into the VAT payment bracket. We have raised that from Kshs2.4 million to a turn-over of Kshs3.6 million. That is intended to promote small-scale enterprises. Now, to place coffee at the same level with tea, we have zero-rated coffee deliveries to the auctions.

Now, on Income Tax, Mr. Temporary Deputy Chairman, Sir, you will find that in the Financial Statement, tax reliefs have been increased from a lower level to Kshs9, 6000 per annum. It implies that it is only individuals with a monthly income of more than Kshs8,000 per month that qualify to pay income tax. Hon. Members have raised some issues relating to the Presumptive Income Tax (PIT). Let me again elaborate that it was the wish of the majority of farmers that the PIT be introduced, because of the difficulties of coping with the submission of quarterly returns and preparation of Profit and Loss Accounts for the Income Tax Department. I should also indicate the desirability of the income tax returns being made on time. We have placed a penalty of five per cent on payable tax for those returns which are submitted late.

Let me now go to the issue of the Miscellaneous Fees and Taxes, and other measures. First, I should indicate that the road maintenance levy on petrol and diesel was increased by one Kenya Shilling. That had the objective of raising revenue for the maintenance of our roads. The aim of that is to raise last year's collection by Kshs1.2 billion to Kshs7.7 billion. We did also raise the fees to be charged on work permits, visas and passports. The fee for citizenship and naturalization was also raised by 50 and 30 per cent respectively. We have also raised the core capital required by banks, mortgage finance companies and non-bank financial institutions. That was motivated by the desire of making the core capital available to these institutions, to be at appropriate levels and to avert the bank failures that we have witnessed in the near past. Of course, there are other factors that have led to bank failures, but then the capital base of our financial institutions or banks is a material point that has to be taken into account. We have also raised the levels of resources that are needed for brokers and life insurance businesses to Kshs1 million and Kshs15 million respectively. The core capital for general insurance businesses was raised to Kshs100 million.

Mr. Temporary Deputy Chairman, Sir, let me conclude by indicating that, in net terms, these measures actually lead to the reduction of the tax base.

With those few remarks, I beg to move.

**The Minister for Agriculture** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I rise to second the taxation proposals that have been put forward by the hon. Minister for Finance.

Very briefly, I will highlight that it is significant to note that there is a measure of protection being put in effect when it comes to agricultural produce; so that the duty on those products rises from 15 per cent to 25 percent. It will also be significant for the House to note that a lot of the agricultural products currently have suspended duty, over and above the current duty; so that in effect, the overall effective duty is much higher than indicated here. That is geared towards protecting the local farmers.

Secondly, I would also like to support the hon. Minister here in the sense that the additional duty on barley and malt is also very important. Currently, the barley industry in this country is worth about Kshs1 billion on an annual basis and the duty structure as it was before, was favouring the importation of malt for the manufacture of beer and other brews of that nature at the expense of the local barley farmers. So, this move, I believe, will now make all the beer producers and manufacturers operate on a more equal basis. We would like to encourage those who would like to get into the brewing business to also contract their own barley farmers in this country the way Kenya Breweries has been doing over the years so that there is competition and support to the farming community in this country. This is particularly important because I am aware that some of the local brewing industries and more particularly Kenya Breweries has been going through a very difficult time and in certain areas, they have been considering not balling some of their plants because the duty differential was creating an uneven playing field and, therefore, rendering it difficult for them to compete. So, I think this is also a very important measure.

Mr. Temporary Deputy Chairman, Sir, very briefly, I will also just touch on the aspect of Income Tax. Here, I would particularly like to focus on the issue of Presumptive Income Tax (PIT). I would urge the hon. Minister to reconsider this particular taxation proposal because this House has been playing a sea-saw with the PIT. One year, it is brought in and in another year, it is deleted. I think we are creating a level of uncertainty and confusion within the farming community. So, I would suggest that when it comes to the debate of the Finance Bill, this particular provision of the PIT should be reconsidered so that farmers, like all other business people just present their Income Tax returns. I think with time and as farmers become more educated and so forth, they will not have any difficulty in filing their returns. I can tell him that speaking from a position where farmers are conveying a lot of messages, they are not particularly happy with the PIT, therefore, that should be reconsidered.

Mr. Temporary Deputy Chairman, Sir, the other aspect that I would also like to say is very commendable is that, systematically, the Minister is removing a number of people with lower income out of the tax bracket and that is

very important, particularly in this extremely difficult time. So, we hope that come the next financial year, as the economy continues to improve, this can also be adjusted appropriately.

Mr. Temporary Deputy Chairman, Sir, the other area which I think is of extreme importance and significance is that which relates to the Road Maintenance Levy on petrol and automotive diesel. One can say that progressively, the Government is beginning to raise a lot of revenue through this tax proposal. I think the challenge that behooves us now is: How well are we distributing and utilising these resources? I recollect that there is, indeed, a proposal within the Treasury and also the Ministry of Public Works and Housing to ensure that there is a quarterly presentation or a half-yearly presentation which is made public to show which roads are being maintained throughout the Republic, through the utilisation of the Road Maintenance Levy. I think this particular obligation has not been fulfilled appropriately. So, it is particularly important that the Minister, jointly with his counterpart in the Ministry of Public Works and Housing ensures that the decisions that were made some years back to publish and show how many kilometres have been covered, whether it is murrum or to bitumen standards or what has been maintained on annual basis throughout the country. Otherwise sooner or later, we could start draining away the confidence the people have in this particular revenue measure. So, I would suggest that this should be looked at very critically.

The other area that I think needs caution also although I know that it is towards improving financial management and prudence is the provision that relates to the banking sector; where other capital standards are being put in place so that the banks are well capitalised and so forth. This is particularly important and I think it is essential that it is enforced appropriately so that we ensure that all the banks we have in this country are sound.

The other thing which I would like to draw the attention of the House to - and I hope this will be given due attention when we come to debating the actual Finance Bill - is that there are indeed, some changes that are being proposed in the context of the Banking Act which could have far reaching implications in a number of ways in the banking industry in this country. So, I would like to flag it at this point in time, that it is an issue that hon. Members should take seriously and acquaint themselves with so that by the time we get to that particular stage, we can give it the due justice and ensure that this House takes the measures that are most appropriate for this country.

I would also like to commend the Minister for Finance because in the area of insurance, he is also increasing the paid-up capital or share-capital of insurance companies. This is something that is extremely important because the figure of Kshs50 million has been in place for a very long time and we all know that there are so many insurance companies today that are notorious when it comes to making settlement claims for those who have insured with them. So, this provision is very important because it is going to ensure that those insurance companies are better capitalised. At the same time, this measure will ensure that these organisations or companies do not release any insurance cover unless the premium has actually been paid. This is an area where, if we recollect very carefully, when we look at our national statistics, the insurance industry controls billions of shillings and we have never really been able to account whether these resources are adequately invested or not. So, it is an area which needs the very measures that the Minister has put in place. The measures are geared towards improving that particular industry.

The other thing that I would like to point out is with regard to stamp duty. Some arrangements are being made to exempt stamp duty levied on transfer of property between husband and wife. However, in future, I think we are likely to gain more if the Minister can consider lowering the stamp duty further. This is because the level of property transfers and the cost to this country, and the amount of revenue that we really earn from it, is not very significant, unless we can have large volumes of transactions in this area.

With those few remarks, I beg to second the taxation measures by the Minister for Finance.

*(Question proposed)*

**Dr. Kituyi:** Thank you, Mr. Temporary Deputy Chairman, Sir. Notwithstanding the fact that I would have wanted to delay a few moments before I start contributing, there are a few preliminary things that I would like to say.

First, I have problems with the re-introduction of the Presumptive Income Tax (PIT). There are a number of fundamental problems that I would like to highlight. The first one is that, every person in this country, who pays tax to the State knows that, when the State decides that you are supposed to pay a certain amount of money as tax, they come to collect it instantly. When they discover, or you prove to them that they have collected too much, they never reimburse what they owe you. Since the State arbitrarily assesses what is taxable of you in PIT, and once you prove that they have asked far too much, you cannot get that money reimbursed back to you, there is a fundamental problem of confidence among ordinary producers in this country, regarding the PIT.

But there is a second and even more worrisome problem with PIT by the primary producers. Let us take the worst scenario; the case of the sugar cane farmers. If you are a sugar cane farmer, you are likely to harvest and hand in your sugar cane after 23 to 28 months, depending on whether you are near Muhoroni or Mumias. There is no guarantee of how soon you are going to be paid for your sugar cane crop, depending on how many Sajjads have

brought or dumped sugar in this country. When you are assessed for PIT, you are made to pay. You are providing to the State in anticipation of an income over the next three years. That is double punishment for the poor peasant producers!

It may not be just sugar cane farmers! They may be the worst hit, but the others are also suffering. Even now, although it is relatively more predictable with tea and coffee farmers, there have been incidents where coffee farmers are uncertain about their anticipated payments. With tea, it is mostly the anticipated payment of bonuses. But with coffee sometimes, it is unanticipated payments and even the level of returns on the crop from year to year. There is the problem of taxing the primary producer in a way that there is no recompense over the short-term, which might be unfair, but that cannot be just done by a State which does not know how to reimburse what has been collected as taxes.

Mr. Temporary Deputy Chairman, Sir, that is one of my main areas of concern. The second area of concern is on the matter of the imposition of a 50 per cent duty on donations for charitable organisations. I can understand the spirit of this desire from the Minister. There have been very many groups which have been abusing the privilege of duty-free importation of donations for charity. We know, and we have demonstrated before this House before, many cases of cereals imported into this country duty-free, on pretence that they are donations. Some, involving what are supposed to be very credible and respectable Non-Governmental Organisations (NGOs), including church-based NGOs.

But that should not blind us from the reality, that there are some very genuine international organisations, with a very clean track record, which have been making donations to people afflicted with different problems. Nobody can doubt the credibility of organisations like: The Red Cross, OXFAM and Action-Aid, which have been very significant in reducing the pain of victims of unanticipated calamities, from the floods of Budalangi to the famine stricken neighbourhoods of Wajir and Kitui. These organisations have partly, and to a large extent, ameliorated the suffering of the poor, beyond the competence and capacity of the Government. That assistance has only been possible because the Government did not impose a certain duty on the donations.

Now, we are in a dilemma. If you say we give a discretion to the Minister to say: "These are *bona fide* donations; I should not have duty imposed on them", we run a risk of the Minister selling duty waivers. Before he earns our respect that he cannot sell duty waivers, and before this House legislates for the discretion to decide whether imported charitable donations will be taxed at 50 per cent or duty-free, there is a possibility that senior personnel in the Ministry of Finance will corruptly sell duty waivers. On the other hand, we would like to find a way of assisting *bona fide* charitable organisations which bring in genuine donations to this country.

Mr. Temporary Deputy Chairman, Sir, my proposal would be the following:

*(Hon. Biwott and Dr. Masakhalia consulted quietly)*

If hon. Biwott would allow the Minister for Finance to hear my genuine proposals---

**The Minister for East African and Regional Co-operation** (Mr. Biwott): You are supposed to address the Chair!

**Dr. Kituyi:** I will address the Chair and hope that the Minister for Finance will listen to me.

First, we would have to identify the areas of charitable donations that have been most abused by unscrupulous businessmen, claiming to be bringing things into the country as charitable donations. Importing, clearing and forwarding agencies have never been charitable organisations. There has been an anomaly where you find a trading company bringing a cargo of cereals and claiming that it is famine relief! We saw that in the last Parliament. So, what we could do is for the Minister for Finance to publish in the Kenya Gazette, a list of credible NGOs which would be allowed to bring in untaxed donations with a rider that if any organisation in the list flouts the rules, and it is known to be an accomplice in irregular importation of commercially disposable merchandise, a penalty of 100 per cent shall be imposed on it. This is because if you are doing it at the 50 per cent duty, the thieves who have been bringing things duty-free can now still bring, but pay the 50 per cent of the duty, in competition with groups which genuinely bring in commercial goods, and pay the 100 per cent duty. So, you would still be rewarding the thieves! The recommendation of the 50 per cent duty does not solve the problem. Let us have a public schedule of which groups can be considered as charitable organisations and which are allowed to make donations in this country. Let the Government enhance its capacity to monitor the movement and disbursement of charitable donations.

Secondly, there are things like mitumba which should be removed from any schedule of charitable donations in this country. There is no section of the Kenyan population will die, if it does not receive mitumba duty-free. The abundance of mitumba, otherwise called "Marehemu George clothes", has reached such a level that even the poorest can access them. The provision for some people to bring mitumba duty-free as donations is a route clearly used by people to flout the opportunity, and give a bad name to all the people importing second-hand clothes. So, I would like

to recommend to the Minister to have a proper schedule of which groups can genuinely import things and remove certain things from the schedule of goods that should be imported duty-free. This way, it will be much better to say: "Any importer who is found to be flouting these rules is stopped from ever, importing those category of goods", and then impose 100 per cent duty, instead of imposing a 50 per cent duty that is going to discourage charitable organisations from assisting genuine needy cases in this country.

Mr. Temporary Deputy Chairman, Sir, I want to thank the Minister for recommending a reduction in the VAT rate from 16 to 15 per cent. At a time when the domestic investor confidence is very bleak, it is very helpful to reduce the burden which will actually translate into higher collections because the more reasonable the tax, the more compliance you expect from the people. I hope that there will be more compliance on this tax.

But there is something that is worrisome. This afternoon in this House, we have been dealing with the matter of a consignment of sugar, ostensibly originating from Kenana Sugar Factory in the Sudan which is at the port in Mombasa. I have shared some information with hon. Members of this House in the recent past, about a consignment of rice which arrived in this country the week before the COMESA summit, ostensibly a produce of Egypt. Before we start lowering our tariff relationships with certain countries, whether through the East African Community or COMESA, there is a fundamental problem that we have to deal with. For example, have we enhanced our competence in analyzing and scrutinising the rules of origin? We will get a lot of cargo being dumped into Kenya whose bill of origin has been altered or doctored on the high seas so that the goods appear like they are coming from COMESA countries in order to attract reduced tariffs. While we are celebrating greater integration in the region, I want to caution that the Government has to be very careful. Soon we will be seeing countries that are deficit zones for cereals and sugar being net exporters of cereals and sugar to Kenya basically because of doctoring documents in order to accede to reduced tariffs.

With those few remarks, Mr. Temporary Deputy Chairman, Sir, I beg to support.

**The Minister for East African and Regional Co-operation** (Mr. Biwott): Thank you, Mr. Temporary Deputy Chairman, Sir. I rise to support the Financial Statement as contained in the Order Paper. First of all, I would like to congratulate the Minister for presenting the Financial Statement which in all, appears to approximate what can be done under the present situation. He has lowered and streamlined some taxes so as to simplify the process in order to enable the tax payer to respond to tax proposals quite easily.

With regard to COMESA and East African Co-operation tariffs, it is very important for Kenyans to understand the process, implications and responsibilities attached to such movements in terms of integration. The count down to zero-tariffs is from July this year and October, the year 2000. This has far reaching trends which must be understood because they have very serious implications on the economy.

The previous speaker who spoke before me highlighted quite correctly the problem of the knowledge about the origin of the commodities that are traded in this region. The only way which we can determine whether the product is genuinely produced in the COMESA or the East African Co-operation region is through the certificate of origin. It is to that certificate of origin that Kenyans must pay particular attention, especially those who administer tax documentation. There are dangers associated with the certificate of origin. There is a problem of trans-shipment; this involves the trans-shipment of a product which is 100 per cent produced elsewhere and is simply marked "made in such and such country" for purposes of trade within that region. That product should not qualify for duty exemption. The only people who can determine this are those who administer the certificate of origin. There is also a problem of contents or value of a product in order to qualify it for trade within the region.

It is true that Egypt is a full member of the COMESA. Egypt has enough capacity to supply the COMESA region with a variety of items. These items must be products from Egypt. The administration that deals with the certificate of origin must be thorough and free from corruption. It must ascertain that, that product is indeed from the COMESA region. Otherwise, there is a danger of destroying our own industries through the purchase of other products. On South Africa, I am very pleased that the Minister has taken action to ensure that the products from outside the COMESA region are not accorded the same privileges. However, we are confident that there are enough safeguards in the trading regimes to enable us to deal effectively with those products that originate from the COMESA region because the principle of reciprocity applies. If a country does not give us the same tariff reduction and it does not fulfil the terms of the treaty, then the country has a right to impose suspended duty or excise any retaliatory action that it deems necessary to correct that mal-practice.

I would, therefore, encourage Kenyans to think positively in terms of regional markets. It is only in those regional markets that you can get the capacity to produce large quantities which will create an impact on the economy, especially in the employment opportunities. This will also raise the level of incomes in order to enable the Government to reduce taxes.

On the East African Co-operation, I was of the opinion that the Minister and other Ministers for Finance in other countries, would have announced a zero-tariff. But that did not happen. We are currently pursuing that process



to ensure that at some point we get a convergence so that, by the time we call ourselves the East African Community, we will have already achieved a considerable measure of convergence. That is being undertaken at the moment and I do not want to talk more about it because I do not want to prejudice the final outcome of the negotiations that are going on between the experts.

Indeed, the committee which deals with foreign affairs, trade and regional co-operation has been very active. I am very pleased that it has been very meticulous in looking at the details of the draft treaty. I am also pleased that they have been paying attention to the actual trading practices that have been in existence in this particular country. I would like to encourage it to be more critical so that at the end of the day we can give Kenyans what is necessary.

Mr. Temporary Deputy Chairman, Sir, on the presumptive taxes, I hope that the Minister will continue to pay attention to the welfare of the ordinary mwananchi, who is a farmer. This is because at the moment, the farmer, especially the one in the Rift Valley Province, is in a very difficult situation. The farmers in this particular province are suffering at the moment, and I think they have been marginalised to some extent.

**Dr. Kituyi:** Have they been marginalised by the Nyayo Government?

**The Minister for East African and Regional Co-operation** (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, they have been marginalised by the process of liberalisation, which has nothing to do with the Nyayo Government. In fact, this is the best Government that this country has had.

*(Applause)*

This is because the Nyayo Government is sensitive to the wishes of mwananchi. Indeed, very recently, the Head of this Government rescued the dairy farmer, and we encourage him to continue supporting our farmers.

**Dr. Kituyi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Could you oblige the hon. Minister to talk about taxation measures?

**The Temporary Deputy Chairman** (Mr. Musila): Dr. Kituyi, you are the one who made the Minister make that statement. Mr. Minister, you can continue.

*(Laughter)*

**The Minister for East African and Regional Co-operation** (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I would like to thank you for coming to my rescue. This is because I believe that Dr. Kituyi, in particular, requires some education on the Nyayo Philosophy of being mindful of other people's welfare, including the welfare of mwananchi.

There is also need to strengthen banking regulations. I think each bank should be scrutinised fully so that it meets the requirement of good governance, but at the same time preserve the very fundamental basis of the banking sector, in which the customer/bank relationship is maintained. This should be done in a manner that is commensurate with the standards that are applied internationally. We should not measure ourselves against the standards that are given to the third world countries, but we should measure ourselves against the highest standards which are practised by the Europeans and the Americans. This is because if we do not do that, then we are likely to be played around with.

Mr. Temporary Deputy Chairman, Sir, with these few remarks, I beg to support.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Chairman, Sir, I would like to contribute to this discussion in the Committee. To pick up from what the Minister for East African and Regional Co-operation has talked about banking, I would like to say that the Finance Bill proposes several amendments to several laws regarding the collection of revenue and its expenditure by the Government.

I would like the Minister for Finance to be very careful when guiding the House in regard to the amendments to various laws which are being proposed in the Finance Bill. This is so because quite often, the Finance Bill is not very easy to comprehend by hon. Members of Parliament (MPs), especially when laws are being amended, and one does not have before him or her the law which is being amended. All he or she has is the amendments. So he is not quite clear what the import of the amendments is. But having gone through them, I would like to emphasise---

**The Temporary Deputy Chairman** (Mr. Musila): Prof. Anyang'-Nyong'o, we are not on the Finance Bill.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Chairman, Sir, these things cannot be discussed if we do not pass the Finance Bill.

**The Temporary Deputy Chairman** (Musila): Prof. Anyang'-Nyong'o, I am not telling you not to discuss the Finance Bill, but I just want to remind you where we are. Just look at that.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Chairman, Sir, I know where we are, but what the Minister

mentioned is very important. I am just trying to draw the attention of the Minister for Finance to the importance of what the Minister for East African and Regional Co-operation has said. I would like to say that when we come to discuss the Finance Bill, just mentioning the amendments in themselves might not be very useful to the House. The Attorney-General is here and I think he should direct you to the import of what I have said instead of you starting to interrupt me.

Mr. Temporary Deputy Chairman, Sir, I would like to mention something about the pension funds. Pension funds are an important source of Government revenue, particularly with regard to investment funds. I will not talk about raising revenue through custom tariff, excise duty, Value Added Tax (VAT), income tax and miscellaneous fees and taxes. This is because quite often, these taxes go to finance the Recurrent Expenditure. If you are a farmer and you do not know how to rear a cow that gives you the milk and you just continue milking it, very soon, you will find that the productivity of that cow goes down. In this regard, the investment funds that are available to this Government, so that the economy can be productive enough and be taxed in these various forms is very important. I am sorry to refer to this, but I noticed that in the Finance Bill, there are proposals to amend the Pensions Act. I want to draw the attention of the Government that the status of pension funds in this country is very deplorable. I know it as a fact, for example, that the Kenya Posts and Telecommunications Corporation (KPTC) pension fund to the tune of Kshs14 billion has gone down the drain. This is the amount of money that was invested in all kinds of non-financial institutions and banking institutions which went under. The KPTC workers who are retiring now have no access to their pension funds because the manner in which pension funds are invested in this country is deplorable.

In this particular proposal that the Minister is making, I would have liked it to be clearly stated that the manner in which pension funds are invested is safeguarded in law. The practice in the past, where political financial institutions, particularly banks, have had access to pension funds and wasted them should be stopped.

Further, I also noticed that there are proposals to have punitive laws on those who misuse public funds or taxes. It is very important when it comes to pension funds that these punitive laws be clearly spelt out so that we can safeguard them.

Secondly, I would have wanted part of the proposed miscellaneous fees and taxes be a tax on land. This will be in tandem to the proposals which are being made in the Finance Bill regarding the amendment to the Government Lands Act. That is why I am saying that it is very difficult for one to discuss these proposals unless he or she refers to the Bill that gives them life. It will be futile and pretentious to discuss this thing without referring to the mother Bill.

Mr. Temporary Deputy Chairman, Sir, I would like to propose that in order for the Government to find a sure way of raising revenue, it is high time Kenya had a land tax, as part of the taxes being proposed at this Committee stage. The land tax will be a source of revenue to the Government. It will also discourage hoarding of land in this Republic and hence land lying idle and unproductive. At this point in time, land tax has not been proposed because the hoarders of land are those people who make policies and sit in the front benches. Therefore, they do not want to impose a tax which will affect them. But were we to introduce the land tax, a lot of land in this Republic would be put to productive use and this Government would have a wider tax base. The tax so raised would also go towards investment in land to raise the productivity of that land. I think that is the proposal that the Government should take seriously. In spite of the interests of the people in the Front Bench, I would like to refer to the avoidance of paying tax that has been introduced into this Republic through what I call "forced taxation". There is too much "forced taxation" which the Minister has not put among these taxes. I do not think that it is being honest to Kenyans to talk about custom tariff, excise duty, VAT, income tax, miscellaneous fees and taxes without talking about another category of taxation in this country which is called "forced taxation".

Forced taxation comes in the form of harambees. That also comes in the form of all kinds of briefcases carried to State House by people who are looking for favours. Once you carry these briefcases to State House, you have bought a passport for avoiding taxes here. The Minister for Finance should be honest enough and say that these kinds of forced taxation should come to an end, so that these taxes he is proposing here are properly collected. I know many brief case carriers to State House, who do not pay these taxes that the Minister wants to collect. How is he going to collect these taxes if another section of taxation called forced taxation is not discussed and laws made against it in this House? It is extremely important that this form of forced taxation that is discouraging business in this country--- People in the business community are complaining in this country, that while they are quite willing to pay the taxes that are proposed by the Minister at this time of every year, they are not going to do so because they are already taxed and that tax cannot go to the Exchequer because it goes to another pot altogether. That pot is not controlled by this House or the Minister, it is not controlled by any law or any regulation, yet it is depleting the business community of the revenue they get.

Therefore, I am proposing that before we pass these taxes, we should make an amendment to what the Minister is proposing. We get a section called forced taxation and we discuss it with proposals from the Minister on how he is going to deal with it in this House, before we approve it.

Mr. Temporary Deputy Chairman, Sir, let me also come to another form of taxation. Banks maintain with the Central Bank, what is called a cash ratio. This is money put in the Central Bank by bankers which the Central Bank uses without paying interest to those who have put it there and then, finally gives it to the Government as a cheque. Quite often, we hear the Governor of Central Bank of Kenya saying they have given the Government Kshs14 billion taken from this cash ratio. It would be much better if in these proposals, this cash ratio is used to contribute towards the Depositors' Protection Fund. It is not in keeping with the realities of our economy that the Depositors' Protection Fund pays only Kshs100,000 to depositors when banks collapse. The minimum paid by the Depositors' Protection Fund should be raised to Kshs500,000. When it is raised to that amount, the Central Bank of Kenya can afford to pay it because it has money received from Banks in terms of cash ratio, which is clean money it did not work for and it can use it to pay towards the Depositors' Protection Fund. The Government has no reason whatsoever, to simply get clean money from the Central Bank, which it never worked for. I think this cash ratio fund should be used to support the banking institutions in this country and to support those who lose their money when banks go burst in terms of the Depositors' Protection Fund. I would propose to the Minister that, that is an extremely important matter and indeed, our---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Musila): Order! Order, Professor! I would like to appeal to hon. Members to consult quietly. Continue Professor!

**Prof. Anyang'-Nyong'o**: Mr. Temporary Deputy Chairman, Sir, the hon. Members on the other side are consulting loudly because they do not understand the importance of what I am saying. They are the people who raise the cash ratio and use it for other things and when they come here, they cannot listen to important things affecting this nation. But time is on our side. Very soon, we will not have to deal with them. Mr. Temporary Deputy Chairman, Sir, I would like to propose those amendments to my dear friend, hon. Francis Masakhalia who is a very good Minister by the way, but I think he needs the space in his Ministry to do what this nation wants him to do and not listen to what those characters tell him.

**The Temporary Deputy Chairman** (Mr. Musila): Your time is up, Professor. Well, I do not see any hon. Member willing to contribute and I think at this point in time, I can call the Mover to reply.

### QUORUM

**Prof. Anyang'-Nyong'o**: On a point of order, Mr. Temporary Deputy Chairman, Sir. You cannot call upon the Mover to reply when we have no quorum in the House.

**The Temporary Deputy Chairman** (Mr. Musila): Ring the Division Bell.

*(The Division Bell was rung)*

**The Temporary Deputy Chairman** (Mr. Musila): We now have a quorum. Do we have any Member willing to contribute to the Motion? I see none and, therefore, I will now call upon the Mover to reply.

**The Minister for Finance** (Dr. Masakhalia): Thank you, Mr. Temporary Deputy Chairman, Sir. I will be brief. I want to begin by reiterating again that this Budget focuses attention on the need to get the economy to have an up-turn. This calls for certain aspects of management to be involved. Although it was not mentioned, I would like to emphasise on the need to improve the investor environment. For us to have an up-turn, we need to plough our resources which do not go to consumption, into investment. It is so desirable and I hope that we can support the creation of an environment that will lead to investment. On our part, we will try to maintain some management practices which will lead to the maintenance of macro-economic stability. For instance, we want to do everything that will avert double-digit inflation. We will do everything that will maintain the interest rates at the right levels.

The depreciation of the Kenya shilling is a double-edged instrument. It is enabling us to effectively compete and to have an edge over what is imported in the sense that what is imported as finished goods is not as expensive as it was because of the depreciation of the shilling. It also helps us in the external market. It improves the prices of Kenyan made goods which have become cheaper. We maintain, of course, the process of reforms.

I want to touch on those issues which were raised this afternoon. First there was the issue of Presumptive Income Tax of which I feel we need to look at again. I would like to say that some of the taxation proposals that are reflected in the Finance Bill cannot be changed overnight. We need to have a process. I think the comments were made in relation to the level of VAT exemption that is given to charitable organisations. That is something we can think of, hopefully in the next Budget. We can put in place some measures that will enable us to implement the Presumptive

Income Tax without harming the well being of the farmer. I hope that the zero tariff position will be arrived at not before long, as far as our East African Co-operation is concerned. There is something to benefit from co-operating in a larger market that we are not benefiting from now because of catering for our domestic markets in the three East African States. The zero tariff will enable us to share the markets more efficiently. It will enable us to invest in the entire East African market instead of investing within one territory. I hope that, that development will not be postponed for too long.

I take seriously the need to manage pension funds prudently. Pension funds are assets which have been saved by people who have devoted a working career in getting savings that go towards catering for their well being. If, indeed, there has been misuse or abuse of these funds, then we must take all measures possible to avert that situation. The Depositors' Protection Fund is in place and some of the proposals that were made by hon. Anyang'-Nyong'o could be considered and subjected to analysis. It is our intention to ensure that the depositors protection fund is strengthened.

With those few remarks, I beg to move.

*(Question put and agreed to)*

**The Minister for Finance** (Dr. Masakhalia): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Resolution and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Deputy Speaker in the Chair]*

## REPORT

### APPROVAL OF TAXATION MEASURES

**Mr. Musila:** Mr. Deputy Speaker, Sir, I am directed to report that the Committee of Ways and Means has considered that the proposals relating to Customs, Tariff, Excise Duties, Value Added Tax, Income Tax, Miscellaneous Fees and taxes contained in the Financial Statement for the year of Account 1999/2000 and approved the same without amendment.

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

**The Minister for East African and Regional Co-operation** (Mr. Biwott) seconded.

*(Question proposed)*

*(Question put and agreed to)*

## ADJOURNMENT

**Mr. Deputy Speaker:** Hon. Members, there being no other business, the House stands adjourned until tomorrow, Wednesday, the 30th of June, 1999 at 9.00 a.m.

The House rose at 4.40 p.m.