

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 11th November, 2003

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### ORAL ANSWERS TO QUESTIONS

*Question No.555*

#### DEATH OF MR. NDUNG'U IN POLICE CELL

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

- (a) whether he could explain under what circumstances Mr. Joseph Kamau Ndung'u, ID No.469787, died at Thika Police Station cells on 30th September, 2001, and his body transferred to Nairobi City Mortuary the same night;
- (b) what disciplinary action he has taken against the Officer Commanding Station (OCS), Thika, and his officers; and,
- (c) what compensation the victim's family will receive.

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

(a) On 30th September, 2001, at Thika Police Station cells, a fight arose between Kamiti Prison inmates who had been booked in the cells and the newly arrived convicts who had been brought for different police cases. As a result, seven inmates died, including Mr. Joseph Kamau Ndung'u.

(b) The OCS and five other officers who were on duty on the material night were charged with the offence of negligence in the performance of their duty, contrary to Section 128 of the Penal Code. The then OCS and three other police officers were found guilty, convicted and sentenced on 5th June, 2003. The four convicts were immediately suspended from police duties pending final administrative action over their case.

(c) The matter of compensation to the family of Joseph Kamau Ndung'u will be determined after the murder case is concluded.

**Mr. Muiruri:** Mr. Speaker, Sir, the Assistant Minister has tried to answer the Question, but there are some issues which are not clear. To start with, more than 20 people were put in that small police cell, and because of their large number, they lacked enough air. So, they started banging the door at around 10.00 p.m., and by midnight, some had suffocated and died.

**Mr. Speaker:** Ask your question, Mr. Muiruri!

**Mr. Muiruri:** Mr. Speaker, Sir, on part "b" of the Question, the Assistant Minister has said that compensation will be determined after the murder case is concluded.

Mr. Speaker, sir, he has not told this House at all, the persons charged with the murder. He has just said that the police officers on duty---

**Mr. Speaker:** Order! Order! Mr. Muiruri, at that rate, you will be the only participant in Question time!

**Mr. Muiruri:** Thank you, Mr. Speaker, Sir. Which is this murder case which should be concluded before compensation can be determined?

**Mr. Tarus:** Mr. Speaker, Sir, three suspects who were involved in the fight were charged in court and their case is still being heard. The case will be mentioned again on 27th November, 2003. That is the case I am referring to.

**Mr. Muiruri:** Mr. Speaker, Sir, who are the people charged with the murder? Are they police officers or the same prisoners? Compensation cannot be held by a murder case because these people died in a police cell.

**Mr. Speaker:** Order, Mr. Muiruri! Do you know that you have to file a civil case in order to be compensated? This cannot be decided here in Parliament! You should proceed with that matter in court. Mr. Assistant Minister, could you tell this House the suspects who were charged with the murder of the deceased?

**Mr. Tarus:** Mr. Speaker, Sir, the suspects are John Mwangi Maina alias Mang'aa; Robert Mwaura Waithera, Fredrick Gicheru Kimata alias Sharu.

**Mr. Muiruri:** Were they police officers?

**Mr. Tarus:** Mr. Speaker, Sir, perhaps to make it clear---

**Mr. Speaker:** Order! Mr. Muiruri, you must be orderly! It is unlawful for you to conduct the business of the House from where you are seated. Mr. Assistant Minister, ignore that question!

*(Laughter)*

*Question No.609*

RESETTLEMENT OF MOLO ETHNIC  
CLASHES VICTIMS

**Mr. Mukiri** asked the Minister of State, Office of the President when the Government will resettle victims of ethnic clashes in Molo.

**The Assistant Minister, Office of the President** (Mr. Tarus): Mr. Speaker, Sir, could I request the Chair to defer this Question to enable us gather more information on it? I will answer it on Tuesday, afternoon.

**Mr. Speaker:** Is that okay with you, Mr. Mukiri?

**Mr. Mukiri:** Mr. Speaker, Sir, this Question is now appearing on the Order Paper for the fifth time. It has been deferred all the time it has been called out. I think this House has other pending Questions.

**Mr. Speaker:** You are right, Mr. Mukiri! This Question must be answered on Tuesday next week. You are right.

**Mr. Mukiri:** Mr. Speaker, Sir, could this Question be answered on Thursday this week?

**Mr. Speaker:** Well, there is no point of deferring it to Thursday this week, and then the Assistant Minister requests that it be deferred further. I would like to defer it to Tuesday next week.

**Mr. Mukiri:** Mr. Speaker, Sir, why is the Assistant Minister requesting that this Question be deferred to Tuesday next week? There should be a reason. I am saying this because he has had this Question for more than two months. There must be a reason why the Assistant Minister is requesting you to defer this Question. This Question cannot just be deferred because he wants to answer it on Tuesday next week.

**Mr. Speaker:** Mr. Assistant Minister, what is the reason for requesting this Question to be deferred?

**The Assistant Minister, Office of the President** (Mr. Tarus): Mr. Speaker, Sir, I indicated very well that we would like to obtain adequate information regarding clash victims. I thought that reason was adequate enough.

**Mr. Speaker:** Very well! I defer this Question to Tuesday next week!

*(Question deferred)*

Let us move on to the next Question by Mr. Lesrima!

*Question No.677*

FUTURE OF PARAMOUNT CHIEFS IN KENYA

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

- (a) whether he is aware that Mr. Letelen Lenaitorono who served as a Chief before retirement and was later appointed as a paramount chief in 1997, had his salary suddenly stopped without notice in July, 2002; and,
- (b) what the future of Paramount Chiefs in Kenya is.

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

(a) I am aware that Mr. Letelen Lenaitorono was, after his retirement, engaged on a one-year renewable contract. It was finally terminated in July, 2002, as per the terms of the contract.

(b) The Government is in the process of phasing out recruitment of special/paramount chiefs.

**Mr. Leshore:** Mr. speaker, Sir, we have had about five paramount chiefs in Samburu District and in other neighbouring districts. They have played a major role in peace negotiations in those areas and that is why we have peace there. Could the Assistant Minister consider reinstating all these paramount chiefs? **The Minister for Health** (Mrs. Ngilu): On a point of order, Mr. Speaker, Sir. We do not have paramount chiefs in this country. Could the Assistant Minister explain how we got a paramount chief in this country?

**Mr. Speaker:** Ask the Assistant Minister!

**Mr. Leshore:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to ask her colleague whether we have paramount chiefs in this country while they are serving the same Government?

**Mr. Speaker:** Well, I suppose they can always have a little tutorial between themselves!

*(Laughter)*

What is your reaction, Mr. Tarus?

**Mr. Tarus:** Mr. Speaker, Sir, unless our history is not very clear, and I hope this is not going to be contradictory, we know that there are chiefs who have served until retirement. Upon retirement, communities have requested that they be allowed to serve for a further period. I am obliged to say that those are the ones who have occasionally been referred to as "paramount chiefs". They may not be in the establishment as such, but on the basis of the roles they play in society, they have often be referred to as "paramount chiefs".

On the question by Mr. Lesrima, we have reached the stage where we have adequate human resources. We would like to utilise the existing capacity for this kind of role. Even if somebody has retired, it does not stop him from participating in peace keeping at the community level. But it is

only natural that he or she gives space to other younger people to take over.

**Mr. Leshore:** Mr. Speaker, Sir, is the Assistant Minister not contradicting the Government policy? The Government has been rehiring retired civil servants on contract basis. Why is he not willing to renew the contracts of those paramount chiefs?

*(Applause)*

**Mr. Tarus:** Mr. Speaker, Sir, I think I have been very clear. We have enough capacity to utilise.

**Mr. Kamama:** Mr. Speaker, Sir, the so-called special/paramount chiefs are having problems getting their salaries from the DCs' offices throughout the country. They get their salaries through vouchers. Could the Assistant Minister consider putting them on that payroll so that they could get their salaries like their colleagues who are hired on contract basis?

**Mr. Tarus:** Mr. Speaker, Sir, I appreciate the sentiments expressed by the hon. Member. But, occasionally, the contracts may last not longer than six months. For those that last up to one year, it may be possible to put them on the payroll. These are administrative issues and they will be dealt with administratively.

**Mr. Speaker:** Next Question, Mr. Kamotho!

*Question No.724*

TARMACKING OF MURANG'A-GITUGI-  
NJUMBI ROAD

**Mr. Kamotho** asked the Minister for Roads, Public Works and Housing:-

- (a) whether he is aware that construction works to tarmac Murang'a-Gitugi-Njumbi Road (D427) stalled nearly ten years ago;
- (b) what the estimated cost was at the time the work stopped and how much is needed to complete the road; and,
- (c) what plans he has put in place to complete the project.

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

(a) I am aware that the construction works involving the improvement of Murang'a-Gitugi-Njumbi Road to bitumen standard stalled some ten years ago.

(b) At the same time, when the contract stalled in the 1993/94 financial year, the Government had spent Kshs45,702,123.50 out of the total contract sum of Kshs99,410,842.80. It is estimated that Kshs200 million will be required to complete the project.

(c) I am aware that despite the works done and the long period they have remained stalled, the road is in a very poor condition. However, my Ministry is taking the following actions to rehabilitate the road; one, a review of the road design has commenced with a view to re-tendering the works when the designs and tender documents will have been completed. Two, some Kshs30 million has been budgeted this financial year to restart the work.

**Mr. Kamotho:** Mr. Speaker, Sir, I would like to thank the Minister for that very positive answer. However, I would like him to tell us how soon the review of the design of this road will be completed. It has taken too long in that state of affairs.

**Mr. Raila:** Mr. Speaker, Sir, this is a 26 kilometres road. In 1988, the Government awarded the contract to M/S Firoze Construction Company at a contract sum of about Kshs99 million.

Records show that by the time the works formally stalled in 1992/93, the contractor had completed works valued at Kshs45 million which had been paid in full by June, 1993. Most of the works done at the time involved site clearance 80 per cent; earth works 55 per cent; drainage works 30 per cent, and stabilised gravel road base 2 per cent. Despite these works, the long period that has elapsed has resulted in the road conditions remaining poor.

Mr. Speaker, Sir, it is, therefore, necessary to institute the necessary measures to rehabilitate parts that have already been done, before this work can be completed. That is the reason why we are re-designing the road because the works stalled over ten years ago.

I want to assure the hon. Member that we have already started work by allocating Kshs30 million and more money will to be allocated once the designs are completed.

**Dr. Godana:** Mr. Speaker, Sir, the Minister said that by the time the road construction was abandoned by M/S Firoze Construction Company, work that had been done was worth Kshs45 million, and yet he had already been paid in full. If the cost was Kshs99 million, he had just done less than 50 per cent. What effort is the Minister making to recover that money which the contractor was paid?

**Mr. Raila:** Mr. Speaker, Sir, as I said, the contractor was fully paid for the work he had already done. In fact, the contractor was not in default. The payment to the contractor was withheld. That is why the contractor abandoned the site.

**Mr. Manoti:** Mr. Speaker, Sir, we all know that the Minister for Roads, Public works and Housing is a very hard working Minister. He has given us very positive answers whenever we ask Questions here. Every day, there are three to four Questions directed to his Ministry. In many cases, he says he has set aside some money to start projects. However, it is so difficult for those projects to start. Could he tell this House the minimum period when those projects allocated some money will commence? For example, a sum of Kshs50 million has been allocated for the rehabilitation of the Kisii-Kilgoris Road, but work on this road has not started.

**Mr. Raila:** Mr. Speaker, Sir, I appreciate the point raised by the hon. Member. If he was at the Speaker's *Kamukunji* this morning, probably, he would realise why there are delays. These are factors beyond the Minister's control. There are cumbersome purchasing and procurement procedures which need to be changed. As I said, I appeal to hon. Members, when the Procurement Bill comes before this House, to scrutinise it with a toothcomb, to make sure that all those impediments that make procurement burdensome are removed so that we can move faster.

**Mr. Kamotho:** Mr. Speaker, Sir, could the Minister ensure that the Kshs30 million, which has been budgeted for the rehabilitation of this particular road, is utilised as soon as possible, and make sure that it is properly supervised, so that the road becomes motorable, even during the impending heavy rains of April?

**Mr. Raila:** Mr. Speaker, Sir, as I said, the problem does not lie on our side. However, we will move with speed to ensure that the work starts on that road as soon as possible.

#### *Question No.702*

#### ESTABLISHMENT OF ENVIRONMENTAL CONSERVATION COLLEGE

**Mr. Koech** asked the Minister for Education, Science and Technology whether considering the importance Kenya attaches to environmental conservation and the need to enhance afforestation and other environmental programmes, he could consider establishing a constituent college to Egerton University at the Forest Training College, Londiani in Kericho District, or Moi Siongiroi Girls in Bomet

District, to take care of this concern.

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

The Government has no immediate plans to establish a constituent college at Forest Training College in Londiani as this institution is an important middle level college which is providing the much needed forestry management skills to those who may have not qualified to join universities.

**Mr. Koech:** Mr. Speaker, Sir, I believe the Assistant Minister will agree with me that having a university which specializes in environmental matters is very important in this country. I would like to know which university in this country has sufficient space which can assist in carrying out experiments on the environment.

**Dr. Mwiria:** Mr. Speaker, Sir, while appreciating the hon. Member's concern, this particular college works closely with Moi University, which has a forestry department. Our future development of university education will be based on very careful planning, available resources and the fact that those who graduate from those institutions would be gainfully employed, unlike the previous tradition where constituent colleges were just being established without considering whether or not there were resources to run them. I appreciate the point, but the best I can do at this point, is to encourage a strong relationship between Moi University and the college, as we look into the possibility of establishing this college as a constituent institution.

**Mr. Koech:** Mr. Speaker, Sir, I believe the Assistant Minister will also appreciate that in most parts of Kenya, there are quite a number of constituent colleges of various universities that benefit students from those areas. When I talk about Moi Siongiroi Girls High School and Londiani, I am talking about a population of two million people who could benefit from a constituent college.

**Dr. Mwiria:** Mr. Speaker, Sir, yes, I agree that the way we developed constituent colleges was not always very even. Sometimes political values were used to determine where those institutions would be located without considering whether or not they were viable. However, constituent colleges do not only recruit students from localities because they are national institutions that recruit nationally. So, young people from that particular region benefit also from constituent colleges established elsewhere in the country. However, the point is well taken. Later on, we will be happy to look into this issue, as we generally look at where else constituent colleges could be established in the country.

*Question No.693*

REHABILITATION OF SUGAR FACTORIES

**Mr. Osundwa** asked the Minister for Agriculture:-

- (a) how much money was spent on the rehabilitation of sugar factories in the country from the Sugar Development Levy since the inception of the Fund,
- (b) what the efficiency rate of the factories so rehabilitated is; and,
- (c) whether he could table a list of the contractors who undertook the rehabilitation works and the amounts paid to them.

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

(a) A total of Kshs2,256,751,149.10 has been spent by the Sugar Development Levy since its inception for sugar factories rehabilitation.

(b) The sugar factories achieved the following efficiency levels during the 2002/2003 financial years:

Mumias Sugar Company achieved time efficiency of 88.2 per cent, Chemelil, 72.92 per cent, Sony Sugar Factory, 90.99 per cent, Nzoia Sugar Factory, 72.07 per cent, West Kenya, 69.7

per cent and Muhoroni Sugar Factory achieved 71.7 per cent. The target was 91. The overall time efficiency for the same factories respectively was 71.34 per cent, 55.21 per cent, 55.12 per cent, 48.11 per cent, 50.55 per cent and 52.58 per cent. The target was 83.

The tonnes of cane to tonnes of sugar ratio were: Mumias Sugar Factory, 8.71 per cent, Chemelil Sugar Factory, 11.63 per cent, Sony Sugar Factory, 9.77 per cent, Nzoia Sugar Factory, 9.83 per cent, West Kenya, 10.23 per cent and Muhoroni Sugar Factory, 10.87 per cent.

(c) The following is a breakdown of contractors who carried out the rehabilitation of the various factories:

West Kenya Company Limited did its own rehabilitation at the cost of Kshs163,064,420. Sony Sugar Company contracted the services of John Thompson Africa (RSA) and H & Young Company (Kenya) and it cost Kshs135,000,000. Nzoia Sugar Company carried out rehabilitation on its own, with various sub-contractors at the total cost of over Kshs420 million. Chemelil Sugar Company contracted Johnson Thompson and Fletcher Smith Limited at a cost of Kshs207,591,210. Muhoroni Sugar Company did some self-rehabilitation, together with the Mehta Group at a cost of slightly above Kshs1 billion. Miwani Sugar Company contracted services of Rajni Somaia, Sokhi International, Channan Agricultural Contractors, Kora Contractors, Hydra Parts (EA) and various other sub-contractors at a total amount of Kshs324,287,523.35 while Busia Sugar Company contracted M/s Booker Tate Limited. Further, the company contracted M/s Beardon & Sons of UK for evaluation of the proposed Busia Sugar Factory, and M/s E.A. Ngaira Advocates for preparation of debenture documents for a loan, at a total cost of Kshs5,030,226.05. The grand total is Kshs2,556,751,149.10.

**Mr. Osundwa:** Mr. Speaker, Sir, I thank the Minister for the comprehensive reply. However, I asked him to indicate the efficiency level. For instance, he has indicated that over Kshs1 billion was used to rehabilitate Muhoroni Sugar Factory, yet a lot of sugar-cane is rotting in the fields around that factory. Secondly, he has indicated that Kshs324 million was used to rehabilitate Miwani Sugar Factory, yet the sugar factory is not operational.

Mr. Speaker, Sir, could the Minister tell us the number of tonnes of sugar-cane crushed to produce a tonne of sugar? He is telling us that Mumias Sugar Factory crushes eight tonnes of sugar-cane to produce a tonne of sugar. What was this ration before the factory's rehabilitation? He should give us such details in respect of all the other sugar factories. He is only telling us the current situation. What is the previous situation?

**Mr. Speaker:** Mr. Osundwa, are you of the opinion that we sit here the whole day and listen to every tonnage from every factory?

**Mr. Osundwa:** I am through, Sir.

**Mr. Speaker:** Mr. Minister, could you try to respond to that query?

**Mr. Kirwa:** Mr. Speaker, Sir, I may not have the total figures as asked by the hon. Member, but I know that a number of factors arise, out of which rehabilitation is only one of the components. The information available to me is that there has been an improvement in the ratio of the number of tonnes of sugar-cane crushed to a tonne of sugar produced. In all the cases, there was an improvement.

**Mr. Shitanda:** Mr. Speaker, Sir, could the Minister tell us the present capacity for Busia Sugar Factory, if it exists?

**Mr. Kirwa:** Mr. Speaker, Sir, it is clear from the figures, and the calculations, that Busia Sugar Factory has never taken off.

**Prof. Olweny:** Mr. Speaker, Sir, I am concerned about the amount of money that has already been spent on this factory. Could the Minister tell us how much more money the Government needs to spend on factories like Muhoroni and Miwani Sugar Factories, on which,

already, Kshs1 billion and over Kshs300 million have been spent respectively, to bring them to acceptable levels of efficiency?

**Mr. Kirwa:** Mr. Speaker, Sir, that is a very good question. Indeed, the Ministry is very much concerned about the fact that these factories have been guzzling a lot of funds. In keeping with the Government's need to do privatisation effectively, we are re-considering the roles of some of these factories to establish whether they are still required. If not, we will take an appropriate action.

**Mr. Speaker:** Could you ask the last question on this one, Mr. Osundwa?

**Mr. Osundwa:** Mr. Speaker, Sir, the Minister has completely avoided answering the question by Mr. Shitanda. Also, he has not told us the efficiency ratio of Miwani Sugar Factory, which gobbled Kshs324 million.

**Mr. Kirwa:** Mr. Speaker, Sir, I was clear that Busia Sugar Factory has never taken off.

**Hon. Members:** What about that of Miwani Sugar Factory?

**Mr. Speaker:** Let us proceed to Dr. Wekesa's Question.

**Hon. Members:** Pole! Pole!

**Dr. Wekesa:** Mr. Speaker, Sir, before I ask my Question, I would like to appreciate the concerns of my fellow Members of Parliament on what happened to me the other day. Also, I want to pass my condolences to the Minister for Local Government for the passing away of his father.

**Hon. Members:** This is the wrong forum!

*(Laughter)*

**Mr. Speaker:** Order! Order! It is very well for hon. Members to pass condolences to each other, but in an appropriate pleasant tide. As I understand, the hon. Minister's late father has been buried more than a week ago. So, your condolences are a little late.

Proceed!

*Question No.809*

INCREASE OF COUNCILLORS' SALARIES

**Dr. Wekesa** asked the Minister for Local Government:-

(a) what the total remuneration for-

(i) mayors of municipalities;

(ii) chairmen of county councils; and,

(iii) councillors is; and,

(b) what plans he has of increasing the councillors' salaries and when the increases will be effected.

**The Assistant Minister for Local Government** (Mrs. Tett): Mr. Speaker, Sir, last time, this Question was deferred because the Minister was not around. He is still not back in town.

**Mr. Speaker:** Very well. Can I defer it to Tuesday, next week? What is your reaction, Dr. Wekesa?

**Dr. Wekesa:** Mr. Speaker, Sir, this is the third time we are waiting for the Minister to come and, as I said earlier, it is because of the passing away of his father. So, I accept that the Question be deferred to next week.

**Mr. Speaker:** Very well. The Question is deferred to Tuesday.



*(Question deferred)*

*Question No.369*

REPOSSESSION OF ILLEGALLY  
ALLOCATED LAND

**Mr. Ndolo** asked the Minister for Local Government whether, in view of the Government policy of repossessing illegally allocated public utility land, he could table a list of the number of repossessed parcels so far, in Nairobi.

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

Since the list is quite long, I would like to table it. I have already given the hon. Questioner a copy.

*(Mrs. Tett laid the document  
on the Table)*

**Mr. Ndolo:** Mr. Speaker, Sir, while thanking the Assistant Minister for that answer, I woul--

**Hon. Members:** Take us through the list!

**Mr. Speaker:** Order! Order! Hon. Members, I have a mind of going to the next Question if you do not allow him to ask the supplementary question.

Proceed, Mr. Ndolo.

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

**Mr. Speaker:** Will you sit down?

**Mr. Ndolo:** Mr. Speaker, Sir, while thanking the Assistant Minister for that answer, just recently, our Government sacked 23 judges and more than 31 magistrates. Now, the Assistant Minister is telling the House that this matter is going to be referred to court.

Mr. Speaker, Sir, as far as we know, the Government has told us that the courts are corrupt. How are we going to be sure that the land which has been grabbed by these people is going to be taken back by the Government? The Government should go ahead and repossess it.

**Mrs. Tett:** Mr. Speaker, Sir, we are going to repossess all the land that was grabbed. The law is on our side because the law was not followed when these people grabbed the land in question. The law provides that for allocation of any utility land to individuals, the Minister must sign an approval for it. The Minister for Local Government at that time did not approve the allocation of most of the land parcels in question.

**Mr. Weya:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to say that the law is on our side as a Government? The law is for the people of Kenya, and not for the Government; it is even for the Opposition!

*(Laughter)*

**Mr. Speaker:** Mr. Weya, what is that all about?

**Mr. Weya:** Mr. Speaker, Sir, the Assistant Minister said that the law is on our side as a Government, but the law is also on the side of the Opposition, as well as on the side of the people of Kenya.

*(Applause)*

**Mrs. Tett:** Mr. Speaker, Sir, I am not speaking about the Opposition. It is quite clear that I am talking about the people who grabbed the land parcels in question.

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

**Mr. Speaker:** You will have to sit down, Mr. Wanjala!  
Proceed, Mr. Sasura!

*(Laughter)*

**Mr. Sasura:** Mr. Speaker, Sir, although we do not have the advantage of---

*(Loud consultations)*

**Mr. Speaker:** Order! Order, hon. Members! Can we hear, Mr. Sasura!

**Mr. Sasura:** Mr. Speaker, Sir, although we do not have the advantage of seeing the list that has been laid on the Table, could the Assistant Minister be kind enough to tell us more about the repossessed land? Is it land that has been developed or it is it bare land? What is she going to do with the buildings if the land has been developed?

**Mrs. Tett:** Mr. Speaker, Sir, we have repossessed 101 houses in Woodley [**Mrs. Tett**] Estate; eight in Garden Estate; one in Kariobangi North-Sewerage, and one in Eastleigh Market. We have also repossessed almost 12 off-street parkings. In Old Dagoretti, we have repossessed 31 senior staff houses and the list goes on.

*(Applause)*

**Mr. Speaker:** Mr.---

**Hon. Members:** Wanjala! Wanjala!

**Mr. Speaker:** Order! Order! Proceed, Mr. Midiwo!

**Mr. Midiwo:** Mr. Speaker, Sir, I would like to ask the Assistant Minister who she is going to prosecute! The answer has no names! It only has plot numbers. Who grabbed those plots? Whom are they being repossessed from? I read a lot of mischief in this answer. Could she clarify?

**Mrs. Tett:** Mr. Speaker, Sir, as I said, the law was not followed. The City Council used short-cuts and went straight to the Commissioner of Lands to allocate the land. However, we are repossessing them through the plot numbers in Woodley Estate. There are some names that we are still getting. Those people went straight to the lands office and did not come back to tell us who was allocated the land or property.

**Mr. Maore:** On a point of order, Mr. Speaker, Sir. If you look at the Question, the Questioner has asked about the allocated public utility land. But in response to a supplementary question by the Questioner, the Assistant Minister has talked about houses. Which one are we dealing with? Is it the houses or public utility land?

**Mrs. Tett:** Mr. Speaker, Sir, we are dealing with both because they are public utility.

*(Applause)*

**Mr. Ndolo:** Mr. Speaker, Sir, as far as the Ministry is concerned---

*(Loud consultations)*

**Mr. Speaker:** Order! Can we hear the hon. Member?

Proceed, Mr. Ndolo!

**Mr. Ndolo:** Mr. Speaker, Sir, as far as we are concerned, the Ministry of Local Government has some officers who are definitely implicated in that scandal. Could the Assistant Minister tell us whether the Ministry has taken action against officers who are implicated in the grabbing of that land?

**Mrs. Tett:** Mr. Speaker, Sir, we are doing our best. As I said, we have sacked and transferred many of them. Just for the information of the House, I have named some of the people in the paper that I have laid on the Table.

*Question No.672*

ELEPHANT MENACE IN  
NDARAGWA CONSTITUENCY

**Mr. Muchiri** asked the Minister for Environment, Natural Resources and Wildlife:-

(a) whether he is aware that farmers in Y-Mungu, Raichiri and Mahianyu of Mathingira Location, Ndaragwa Constituency, are often harassed by elephants from Rumuruti Forest; and,

(b) what measures is the Ministry taking to curb the menace and compensate the farmers.

**The Assistant Minister for Environment, Natural Resources and Wildlife** (Prof. Maathai): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that farmers in Y-Mungu, Raichiri and Mahianyu of Mathingira Location, Ndaragwa Constituency, are often harassed by elephants from Rumuruti Forest. Elephants that inhabit the Rumuruti Forest occasionally move out of the forest at certain times during the year to look for food and water. The population of Kenya has significantly increased to over 30 million people today, from below five million at Independence.

The interaction between people and wildlife has also been on the increase, and because of that, most of the land outside forests and other protected areas has been converted into settlements. Human settlements have also been encroached and converted into forests, as well as parks and reserves. That has reduced the wildlife habitat enormously, thus aggravating conflict between activities of wildlife and human beings.

(b) The Kenya Wildlife Service (KWS) station at Nyahururu handles wildlife issues in those areas. A warden who is assisted by three rangers and a vehicle fitted with a radio for problem-animal control work mans the station. There is also a problem of mobility which hinders the animal-control team in the area to, attend to reported cases. The KWS station works closely with the Provincial Administration, district forest officers, community scouts and the only warden on wildlife-related issues, to reduce the conflict. There is a proposal to put up an electric fence from Salama to Marmanet, which will keep off the elephants from the settlement areas of Y-Mungu.

In 1989, the Wildlife Conservation (Amendment) Act was amended to, among others, officially outlaw compensation for crops, livestock and other related man-made farm infrastructure. As the current law stands, the only legitimate compensation is that of human death and injury. The Ministry of Environment, Natural Resources and Wildlife is not in a position to compensate farmers for the destruction of their crops by elephants from Rumuruti Forest. However, the Ministry has initiated a comprehensive review of the Act with a view to exploring sustainable options available

for compensation.

**Mr. Muchiri:** Mr. Speaker, Sir, the Assistant Minister has tried to answer the Question. Rogue elephants have destroyed crops belonging to the residents of those areas for many years. Could she tell us what measures she is going to take to provide those people with food? Their food has completely been destroyed by elephants!

**Prof. Maathai:** Mr. Speaker, Sir, as I have said many times in this House, that conflict is very persistent! But it is largely due to the encroachment on forests. As much as that answer may not be satisfactory to hon. Members, that is the main reason why elephants leave forests and destroy food crops. However, we are seriously thinking of putting up an electric fence. We have to raise funds to do that.

**Mr. Mwandawiro:** Ahsante sana, Bw. Spika. Swali la ndovu limezungumziwa mara nyingi sana mpaka wananchi wamechoka! Wanasema kwamba Serikali inalinda ndovu zaidi kuliko wanadamu. Tumeuliza Swali kama hilo huko Taita-Taveta na sehemu nyingine ambazo ndovu wanaua watu na kusababisha hasara kubwa na umaskini. Hata watoto hawaendi shuleni. Je, ni lini Serikali na Wizara hii zitachukua hatua madhubuti za kusuluhisha tatizo hilo?

**Prof. Maathai:** Mr. Speaker, Sir, one of the steps that our Ministry has taken recently was to ensure that forests are restored. For as long as forests and the habitats for these animals remain destroyed, it is virtually impossible to keep the animals in a destroyed forest. Therefore, the recent steps taken by our Ministry will ensure that forests are restored. We hope that the proposal to put up electric fences where possible, and the assistance we get from the communities in protecting local forests so as to prevent illegal logging, will ease the problem. As we have said many times, this is really a collective responsibility and we hope that the steps our Ministry is taking at this moment will contribute towards easing this conflict.

**Mr. Bahari:** Mr. Speaker, Sir, the issue of reforestation or protection of forests is, perhaps, a medium or long-term measure. The same Assistant Minister has, time and again, said here that fencing of areas where wild animals live is not an appropriate measure. Could she now tell us what short-term measures the Ministry will put in place because they do not have any short-term measures and this matter is a problem throughout the country? What short-term measures are they going to put in place to ensure that peoples' lives and property are protected?

**Prof. Maathai:** Mr. Speaker, Sir, one of the short-term measures that we have taken is to remove the foresters from the forests to ensure that illegal logging is immediately stopped. The other short-term measure has been to put up electric fences in areas where finances are available.

Mr. Speaker, Sir, our Ministry has also instructed people cultivating in the forests to get out of the forests by the 31st of December. These are all measures that we are taking to ensure that the habitat of the animals is restored and, therefore, animals will stay in their habitat and not come out and destroy people's crops

**Eng. Muriuki:** Mr. Speaker, Sir, besides the elephants destroying crops, we also have other wild animals in that area which are coming out and destroying not only crops, but also maiming people and sometimes killing them. This House sometime back passed a Motion ordering that compensation for people who are killed by wild animals be Kshs1 million from Kshs30,000. Could the Assistant Minister react to that proposal?

**Prof. Maathai:** Mr. Speaker, Sir, we had explained before that one of the reasons why this whole issue of compensation was halted was due to corruption and misuse of the resources that had been made available for compensation. However, we have also said that we are bringing this Act back to Parliament so that Parliament can give us authority to compensate these people. At that point, we shall fix the compensation package at the level that this honourable House will recommend.

**Mr. Muchiri:** Mr. Speaker, Sir, could the Assistant Minister consider increasing the number of forest rangers patrolling the area and also set up a warden office at Mahianyu among other measures?

**Prof. Maathai:** Mr. Speaker, Sir, I am quite sure that this is something that we can discuss. I have already said that there is, indeed, a KWS station in Nyahururu which is, unlike many others handled, by a warden who is assisted by three forest rangers. This is something that we can discuss with the hon. Member and see how much we can assist.

**Mr. Speaker:** Next Question by Mr. K. Kilonzo!

*Question No.679*

TERMINAL BENEFITS FOR  
MR. CHENDE

**Mr. K. Kilonzo** asked the Minister for Labour and Human Resource Development:-

(a) why Mr. Jamingo Chende and 18 others were declared redundant by Super Foam Company Limited in Ruiru; and,

(b) why the Labour Office in Thika stopped handling their case even after they perused the company records and established that the workers were paid a total of Kshs96,763; and,

(c) when Mr. Jamingo Chende will be paid his terminal benefits of Kshs9,676.

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

(a) Employment records available at Super Foam Limited Company in respect of Mr. Jamingo Chende and 18 other workers were examined and it was established that they were casual workers who were paid on a daily basis on the actual days they worked.

(b) The District Labour Officer, Thika, stopped handling their case in August 1997 after perusing employment records at Super Foam Limited Company and discovering that Mr. Jamingo and 18 others were casual workers. In other words, they were paid at the end of each day whenever work was availed to them.

(c) Mr. Jamingo Chende and the 18 other workers were, therefore, not legally entitled to payment of any terminal benefits from Super Foam Limited Company.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, you have heard the answer the Minister has given me. Mr. Jamingo and the other 18 workers have worked for this company for over five years. If there is another definition of the word "casual", then the Minister should tell us. These people, having worked for this company for over five years, are entitled to their benefits. Could the Minister confirm from the records which he has that Mr. Jamingo and the 18 other workers worked for more than five years?

**Mr. Mwakwere:** Mr. Speaker, Sir, this is a very good example of the problems that we have been experiencing. These are problems that arise from the labour laws that were in place or are still in place. Yes, casual workers should be made permanent workers after working for a certain duration which is specified, but if they are paid on a daily basis, they do not qualify for permanent appointment. We are, however, reviewing our labour laws and I am pleased to inform this House that come the first quota of next year, we will be in a position to look at the proposed new laws in the labour sector.

**Mr. Bifwoli:** Mr. Speaker, Sir, you have heard the Minister say that if you have worked even for ten years and you are paid on a daily basis you cannot qualify to be made a permanent worker, but the law is very clear that if you have worked for six months you must be made

permanent. Is the Minister right to tell us that these workers, who worked for five years and were paid on a daily basis, could not qualify to be permanent workers?

**Mr. Mwakwere:** Mr. Speaker, Sir, we are referring to casual workers and not employees employed on a temporary basis. If somebody is employed on temporary basis for six months, then one must be confirmed as a permanent worker thereafter. However, a casual worker only works on and off depending on availability of work and as allocated by the employer and this means, say in a week, one might work for a day and will be paid at the end of the day. That is the difference between a casual worker and a temporary worker.

**Maj. Madoka:** Mr. Speaker, Sir, is the Minister aware that most of these companies use casual labourers for many years and yet they are supposed to absorb them after three months? What is the Minister doing to ensure that these companies are not exploiting these poor Kenyans?

**Mr. Mwakwere:** Mr. Speaker, Sir, these companies have been exploiting our Kenyan workers and they still do because they are applying the same laws that we passed here to exploit our people. However, I did say earlier on that we are reviewing these laws. The task force is busy working and trying to put everything right and, come early next year, all the injustices that appear in our labour laws will be eliminated.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, justice delayed is justice denied. These people have worked for many years in this company. They have now been declared redundant. Could the Minister use his good office to ensure that these people are paid their money?

**Mr. Mwakwere:** Mr. Speaker, Sir, the best we can do is to request the company to pay them on compassionate grounds. But going by our laws, the company is not obliged to pay them.

**Mr. Sirma:** Mr. Speaker, Sir, the written reply was signed by somebody on behalf of the Minister. There is a name at the end of this reply and I am not sure if it is the Minister's name. It is different from the name we all know.

*Question No.711*

ELECTRICITY SUPPLY TO  
ELDAMA RAVINE RESIDENTS

**Mr. Sirma** asked the Minister for Energy when the Ministry will provide power to the residents of Eldama Ravine Constituency who had paid the 10 per cent deposit to the Kenya Power and Lighting Company Limited (KPLC).

**The Assistant Minister for Energy (Mr. Kiunjuri):** Mr. Speaker, Sir, the Assistant Minister has full authority to sign on behalf of the Minister. It has even been done before.

However, I beg to reply.

The request by the KPLC for payment of 10 per cent by applicants is in line with the company's commercial policy and is meant to cater for the survey and design costs, to enable the company to provide the applicants with an accurate quotation. By making the payment, the applicant also demonstrates some commitment to the project. In the event that the applicant withdraws and does not wish to proceed with the project, the 10 per cent deposit is refundable on request, less the cost of design and survey.

Thus the unpaid 90 per cent has to be paid in full, either by the beneficiaries on commercial basis or the Government under the Rural Electrification Program (REP) or other sources, before work can be undertaken.

Under REP, applicants are supposed to channel their requests to the Ministry, through their respective District Development Committees (DDCs) where the same are prioritized and ranked.

The forwarded projects would thereafter be considered for funding among others.

In Eldama Ravine Constituency, the Arama Health Centre and Kipkaber projects will be implemented under REP in the year 2003/2004, at an estimated cost of Kshs2 million and Kshs8.5 million respectively. It is regretted that not all projects that are forwarded by the respective DDCs are implemented due to financial constraints.

**Mr. Sirma:** Mr. Speaker, Sir, I thank the Assistant Minister for the good answer he has given us. However, you realise that he is talking about refunding those who opt to withdraw from the project. People paid for those projects almost ten years ago. We should consider paying interest on the money people have paid. There are many projects in my constituency where people have paid the 10 per cent deposit apart from Arama Health Centre and Kipkaber projects. They paid the 10 per cent deposit in 1996 yet they have not been provided with electricity even after we prioritised the projects through the DDC. We really need to be assisted.

**Mr. Kiunjuri:** Mr. Speaker, Sir, it is unfortunate that this is coming from Mr. Sirma, who was an Assistant Minister in the last Government and he was not able, for ten years, to implement these projects. However, he should be grateful that the NARC Government is working and is not discriminating against any area. Despite him being in the Opposition, we have taken action because the project was urgent. We have already taken over the two projects and we are implementing them. He should thank the NARC Government for doing so without discrimination, whatsoever.

**Mr. Speaker:** Mr. Kiunjuri, is the project in the Opposition? We are not talking about funding Mr. Sirma's constituency. We are talking about developing rural electrification projects in Kenya.

**Mr. Kiunjuri:** That is why I have told him that we are not discriminating at all because this is the Government of the people and not for individuals. We are developing each and every area in this country.

**Mr. Wambora:** Mr. Speaker, Sir, now that there exists so many community based groups throughout the country including Runyenjes and people have paid the 10 per cent deposit which is being held by KPLC, could the Ministry of Energy make it a policy that these people who have paid the 10 per cent deposit, as a matter of priority, are refunded by the Ministry?

**Mr. Kiunjuri:** Mr. Speaker, Sir, we do sympathise with that because we have inherited a part of a project that has been paid for. I agree with the hon. Members that even after the 10 per cent deposit was paid, nothing was done. What we are doing now is that we are dealing with the projects and, with maximisation, we shall be able to recover enough money to undertake the rest of the projects. Those who have paid shall be handled in accordance with the way the Ministry recovers the money.

**Mr. Sirma:** Mr. Speaker, Sir, could the Assistant Minister consider allocating each constituency its own funds so that we can be able to prioritise projects on our own and we do not keep on referring back to the Ministry because we have lost a lot of money? It is not true that it is only during the previous regime that we lost money.

**Mr. Kiunjuri:** Mr. Speaker, Sir, if this House passed, through the appropriate channels, that we allocate funds to each constituency or district, then we would be happy to do that. However, it should be remembered that even if we provide Kshs5 million to each constituency, there are some areas, for example in North Eastern and Coast provinces, where we do not have even a single line of electricity. Giving such areas Kshs5 million will not help to develop anything. Such a plan might only benefit areas like Nairobi or other urban areas where, already, there is electricity. Otherwise, in some of the rural areas, it will not be beneficial.

#### POINTS OF ORDER

## SIGNING OF PROTOCOL ON COMMON EXTERNAL TARIFF AND CUSTOMS UNION

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

**Mr. Speaker:** Is it a point of order on Mr. Kiunjuri's reply?

**Mr. Obwocha:** No, Mr. Speaker, Sir.

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

**Mr. Speaker:** Order, Members! I already have other hon. Members who have taken time to consult the Chair. I will begin with hon. Obwocha, then Mr. Nyachae and finally the Ministers.

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

I rise to seek a Ministerial Statement from the Ministry of Foreign Affairs on the tariff protocol in East Africa. We know that the protocol leading to harmonisation of tariffs through the Common Customs Union, is going to be signed soon. But hearing from the Ministry of Finance, there seems to be no or zero harmonisation and consultation between the Ministry of Finance and the Ministry of Foreign Affairs. I seek a Ministerial Statement from the Ministry of Foreign Affairs to inform this House what is happening to that extent.

*(Loud consultations)*

**The Minister for Trade and Industry (Dr. Kituyi):** Mr. Speaker, Sir, I am not the Minister for Foreign Affairs, but I am a Minister in the Government.

I have taken note of the issue raised the hon. Member, but it may be helpful for him to know that the Ministry of Finance, the Ministry of Trade and Industry and the Ministry of Foreign Affairs, at the Permanent Secretary's and Ministerial level, are going to be involved, in the last three days of consultation across the board in East Africa, before the date of the signing of the protocol on Common External Tariff and Customs Union. However, I will convey the message to the Minister for Foreign Affairs, in case there is anything he wants to add.

*(Loud consultations)*

## ARMED ATTACKS ON HON. MEMBERS

**Mr. Mwenje:** Mr. Speaker, Sir, we cannot hear one another.

As the Chairman of the Departmental Committee on Administration, National Security and Local Authorities, I am getting concerned that hon. Members of Parliament are being attacked here and there, every now and then!

*(Applause)*

Mr. Speaker, Sir, my Committee feels concerned that Members of Parliament are not safe in their own country! It is only this week when hon. Dr. Wekesa was attacked and then the following day, hon. Wario was attacked. Up to now, the only information I have is that the police have not even started investigations on hon. Dr. Wekesa's attack. They have not even been to his house again



and the matter seems to have ended and died just like that. There is no information on what is precisely happening.

We feel that it is now important that the Minister in charge of internal security comes out clean to tell the Members of Parliament how safe they are; who is attacking them; and, for what reasons. We also want to know what measures are being put in place to ensure their security.

*(Applause)*

**Mr. Speaker:** Order, Members! The Minister in the Office of the President in charge of internal security has been asked to attend our *Kamukunji*, but I think the question should be wider. It will be selfish for the Members of Parliament to say that they are insecure, when as a matter of fact, many other Kenyans are facing the same terrible insecurity. I think what we should demand is that all Kenyans, including hon. Members, must be safe. But I am, of course, concerned about the security of any hon. Member, as well as that of any Kenyan. I am sorry, Dr. Wekesa and Mr. Wario.

Proceed, Mr. Nyachae!

#### FORMULATION OF WAGE POLICY

**Mr. Nyachae:** Thank you, Mr. Speaker, Sir. I rise to seek two Ministerial Statements from the Minister for Finance. The first Ministerial Statement concerns the wage policy of this country. Wage increments in this country have been eating into the public expenditure to the extent that the Recurrent Expenditure is taking all the tax that has been collected; hence very little is remaining for development purposes. This is happening because we are not clear about the wage policy for this country. We are having all types of demands for wage increments without taking into account whether we are going to develop this country or not. Unless we spare money for development, we cannot develop.

The other point which must be taken into account on this issue is that there is no more tax that can be taken from Kenyans. The second---

*(Loud consultations)*

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

#### COST OF IMPLEMENTING NEW CONSTITUTION

**Mr. Nyachae:** Mr. Speaker, Sir, the second Ministerial Statement I seek from the Minister for Finance is in connection with the future set-up or management of the Public Sector of this country. We want to know how much money the structures that we are discussing in connection with the constitutional review process are going to cost Kenyans. We do not want to go into Bomas III without knowing how much this or that particular structure will cost the country. We cannot just move on blindly and end up drafting a Constitution that we cannot uphold. We do not want to come back to this House, after realising that the money that has been set aside is not adequate. What this would mean is that we would end up levying more taxes on Kenyans and this is not tenable.

Mr. Speaker, Sir, let me point out to the Minister here that there is no way he can levy any more taxes on Kenyans. Kenyans are already the most highly taxed people in the whole of the Sub-

saharan Africa; with a taxation rate of 22 per cent, whereas in all the other neighbouring countries, the taxation rate is between 11 and 12 per cent of the Gross Domestic Product. How can you tax Kenyans any more? Which investor is going to come into a country in which more and more taxes are being levied? Do we just blindly create such structures without knowing how much money we are going to spend on them? We tried, and I repeat, tried this thing at Independence, but it never worked. Instead, we ended up taxing people left and right, and the system collapsed. So, this House does not want to go and support structures which, when we start implementing them, we find the whole set-up collapsing. So, it is in this regard that I am seeking these two Ministerial Statements.

*(Applause)*

**The Minister for Roads, Public Works and Housing** (Mr. Raila): Mr. Speaker, Sir---

**Mr. Speaker:** All right. Mr. Raila, I am not aware of any requests for a Ministerial Statement from your Ministry.

**The Minister for Roads, Public Works and Housing** (Mr. Raila): Mr. Speaker, Sir, I do not think the Minister for Finance is the right person to issue that Ministerial Statement.

**Mr. Speaker:** Who would be the right person?

**The Minister for Roads, Public Works and Housing** (Mr. Raila): Mr. Speaker, Sir, that is an issue which should be directed to the Constitution of Kenya Review Commission (CKRC), through the Minister for Justice and Constitutional Affairs because the CKRC has the capacity to do as requested. If they lack this capacity, then they can seek help from the Ministry of Finance. But I do not think that that question really rightly belongs to the Ministry of Finance.

**Mr. Speaker:** Order! Order! You are absolutely wrong! The CKRC is not responsible to this House---

*(Applause)*

In fact, the CKRC has no capacity to come here. It is the Minister for Finance who should tell Kenyans the various costs of the various options. Where he gets that information, obviously, is a totally different issue. He may have to go to the CKRC to get the various scenarios; he may even consult the Minister for Justice and Constitutional Affairs but, surely, it is his docket to tell Kenyans what the various structures will cost them, because he will be the one to tax Kenyans. But, any way, you are all in the Government together, you can consult each other.

**Mr. Nyachae:** Mr. Speaker, Sir, I am going to lay this document on the Table so that the Minister who is not here can read it and know what I am talking about.

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

*(Applause)*

**Mr. Speaker:** I have two other Members. Who was the other Member who wanted a Ministerial Statement? Is there any other Member, Mr. Tarus?  
Proceed, Minister.

#### MINISTERIAL STATEMENT

PARTICIPATION OF NUMERICAL  
MACHINING COMPLEX  
IN TENDER FOR CRANES

**The Minister for Trade and Industry** (Dr. Kituyi): Thank you, Mr. Speaker, Sir. I wish to make a Statement concerning the matter of the participation of the Numerical Machining Complex (NMC)---

**Mr. Speaker:** Order! Can we please listen? Let us listen to what is going on. Sometimes you sit in this House and there is so much consultation, and you do not even hear what has been said until you read it in the Press; which is a great shame! You must be able to hear and understand everything from here.

Proceed, Minister!

**The Minister for Trade and Industry** (Dr. Kituyi): Thank you, Mr. Speaker, Sir. My Statement has two components. First is the clarification on the matter of the relationship between my Ministry and the NMC regarding the tendering for cranes by the Kenya Ports Authority (KPA). The other component is the matter of how this issue has been dealt with by the Members of Committees of this House.

**Mr. Obwocha:** On a point of order, Mr. Speaker, Sir. I would like to request some clarification and some direction from the Chair. You have already written to three Ministers through the Departmental Committee on Finance, Planning and Trade where three Ministers have been summoned to appear concerning this tendering issue of the KPA.

*(Applause)*

Now, apparently from the introduction of the Minister's speech, he is going to delve into the issue of the tendering; where there is a problem.

**Mr. Speaker:** Order! Order, hon. Members! Mr. Obwocha why did you, as a Committee, contrary to Standing Order No.161, go to the Press? I understand that the Chairman of the Public Investments Committee (PIC) correctly advised the Committee of the provisions of Standing Order No.161. I further understand that a particular hon. Member of that Committee insisted that in spite of the existence of the rules, they must go to the Press. Indeed, three of them went to the Press contrary to the advice of the Chairman.

**Hon. Members:** Who are they?

**Mr. Speaker:** Order!

**Hon. Members:** Name them!

**Mr. Speaker:** Order! They know themselves!

COMMUNICATION FROM  
THE CHAIR

INVITATION TO MINISTERS  
TO APPEAR BEFORE PIC

When I was out of the country, I followed this saga to my amusement that a Committee summons Ministers or any person for that matter, during a funeral, or during a Harambee. This House must retain its dignity and credibility. I get distraught when hon. Members, individually, issue summonses during funerals. Ministers also, in some strange location, say they will not appear

before a Committee of the House. What does this lead to? It simply erodes the dignity and authority of the House. This must cease!

Let me say it for the record that Parliament acts in its corporate form and not individual form. No individual hon. Member can speak on behalf of Parliament. I am the only one authorised to speak on behalf of Parliament. But Committees, duly constituted and sitting with a quorum, will act in that corporate form. So, let us understand also that when a Committee issues a summon, either to an individual or a company, that is a legally binding instrument. Anybody disobeying a duly issued summon under my direction, is guilty of a criminal offence and can be charged. So, let us not misuse Parliament.

*(Applause)*

I want to make it absolutely clear that hon. Members had better now depart from making any pretences to issue summonses from funerals or any other unlawful forum. It should be understood that summonses and other such directions will be issued under my direction by the Clerk of the National Assembly, and only then will they be binding and lawful. So, Mr. Minister, I hope you will not delve into any issue that may be a subject of the PIC summonses.

I also would like to make the following further clarification. The PIC is entitled to look at the management affairs of the Government investment corporations as and when the need arises. That is not the same case with the Public Accounts Committee (PAC). The law states that the PAC only deals with the reports of the Controller and Auditor-General tabled in the House and not before they are tabled. The relevant bodies of the House to deal with the day-to-day functions of Ministries are the Departmental Committees. I am afraid they have allowed themselves to be overshadowed by other Committees. Those Departmental Committees must get up and work!

Finally, I can now confirm here that, as a matter of fact, a request for letters of invitation to Ministers to appear before the PIC on Thursday has been made and I have duly authorised it. They are not summonses. They are letters of invitation. In the event the Ministers fail to appear before the Committee, then a request may be made to me for summonses. This should not be made at any funeral. For the avoidance of doubt, any such purported issuance of summonses at a funeral will be a ground for Mr. Speaker to refuse to issue the same. Please, let us now follow the rules.

**The Minister for Roads, Public Works and Housing** (Mr. Raila): Mr. Speaker, Sir, I want to thank you for the communication you have made. But for the benefit of the House, it would be good for you to clearly state the difference between an invitation to a Minister to appear before a Committee of the House and a summon, so that hon. Members are completely in the picture.

**Mr. Speaker:** Order! Hon. Members must understand that, as we sit in this House, we sit as hon. Members of the National Assembly, some, obviously, being Ministers and others being Back-benchers. Ordinarily, when a Committee of the House invites a Minister to appear before it and explain certain things, it calls him as an hon. Member of this House. If the Minister declines to attend such a meeting without any reasonable explanation, then the Committee may seek the authority of the Speaker for a summon. When it reaches that level, then it is the level of a stranger, because the Minister has refused to be an hon. Member of the family of Parliament. So, it has not reached that level at this stage.

**The Minister for Trade and Industry** (Dr. Kituyi): Thank you very much, Mr. Speaker, Sir. Half of my undertaking has been fulfilled by the communication you have made before the House. You are aware, and I have it upon the authority of a letter signed by you, that I will be out of this country from mid this week to mid next week. The nature of my trip out of the country is so delicate and requires that I be treated as a person of honour and integrity.

The nature in which hon. Members of this House have issued summonses through the Press or called for my firing at a function in the countryside in the name of a Parliamentary Committee, not only breaches the rules of this House as you have said, but has cast aspersions on my integrity and capacity to execute the delicate mission on which I am to travel.

On the basis of that, it becomes necessary for me that, ahead of me, it be known that I am not a person under pressure to resign because of being involved in corruption and still going to talk on behalf of a Government which is fighting corruption.

That is a matter of concern to me. I have studiously avoided any attempts to say anything about whether I have been involved in the bid of a tender or not. If there is any matter about execution of a Ministerial responsibility, at the earliest opportunity, I use the Floor of the House to clarify what we are trying to do. If the need for me to clarify is so important to be in the public domain before I undertake my trip, and that it cannot be executed through a Ministerial Statement, I will be glad if the relevant Departmental Committee would bring forward its meeting with me to tomorrow morning to sort out a matter that is casting unnecessary aspersions on my integrity.

*(Loud consultations)*

**Mr. Speaker:** Order Members! Who is the Chairman of the PIC? Is it Mr. Muturi? I am sure the sitting of that Committee is not meant to cast stones. If it is necessary to hear an hon. Member who is going elsewhere for other business, I am sure, that meeting can be brought forward.

The only other thing is that I would like to caution hon. Members, in the same line; please, do not condemn each other out there, in public, without ever giving that other person an opportunity. After all, it is in breach of our Standing Orders. You do not impute an improper motive on another hon. Member without a Substantive Motion. I would also like to say the following to those charged with the responsibility of managing our national affairs. It is the duty of Parliament to perform its central role of being a watchdog for the public.

*(Applause)*

That role, Parliament must play at all times. That is the reason why we even created the Departmental Committees. My only disappointment is that the Departmental Committees are not performing as well as they should. I will, from this Chair, say that we will try the best we can to strengthen the Departmental Committees; to ensure that Parliament performs its role as a watchdog of the public. Therefore, I am sure, Dr. Kituyi, if you met with Mr. Muturi, you could discuss this matter. Therefore, that finishes that issue now.

**The Minister for Roads, Public Works and Housing** (Mr. Raila): On a point of order, Mr. Speaker, Sir. You rightly said that PIC and PAC can deal with reports which have been presented by the Controller and Auditor-General.

**Hon. Members:** No!

**Mr. Speaker:** Order! Let him finish!

**The Minister for Roads, Public Works and Housing** (Mr. Raila): Mr. Speaker, Sir, I am talking about PAC and PIC. However, the right committee to handle this issue is the Departmental Committee on Finance, Planning and Trade, but not PIC and PAC. These two Committees deal with reports which have been tabled in this House. This issue has not been tabled before the House. Therefore, we need your clarification on this issue. Also, the Chair may take the chance to inform hon. Members that when Ministers are appearing before the Committees to give information, they

are not being grilled, but they are providing information.

*(Loud consultations)*

**Mr. Speaker:** Order! Order! I do not have to repeat. Please, listen to this. When Committees want hon. Ministers to respond to certain issues, they should invite them because we are a membership of the House. I have already said that unless, of course, any particular hon. Minister disassociates himself or herself from the friendship of the House, in which case we will summon him or her, so far, there is no reason for me to say that any hon. Minister has disassociated himself or herself from the friendship of the House.

Coming to the issue as to whether PIC or PAC should deal with those matters, I have already said that PAC cannot, by its very creation, do so. PAC performs autopsy or postmortem.

In a more refined language, it is called autopsy. It must operate on a "dead body", not a "live body." That is provided for under Standing Order No.147. It is very clear. The PIC, on the other hand, does both. It can operate on a "live body" and a "dead body" as well.

*(Applause)*

For the benefit of this House, I will read Standing Order No.148(5). It states as follows:-

"The functions of the Public Investments Committee shall be:-

- (a) to examine the reports and accounts of the public investments;
- (b) to examine the reports, if any, of the Auditor-General (Corporations) on the public investments;
- (c) to examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound business principles and prudent commercial practices:

Provided that the PIC shall not examine any of the following, namely:-

- (i) matters of major Government policy as distinct from business or commercial functions of the public investments;
- (ii) matters of day-to-day administration; and
- (iii) matters for the consideration of which machinery is established by any special statute under which a particular public investment is established"

Therefore, in my considered view, PIC can properly look into that affair, but not PAC.

So, Mr. Omingo must be brought to order by the Speaker. He must cease; from now on, politicising the matters of Committees everywhere he goes.

Finally, for all and sundry who issue summonses at funerals and Harambees to bring disrepute to this House they will be dealt with. We must now return honour and integrity back to Parliament. So, please, take note of this.

**Mr. Angwenyi:** On a point of order Mr. Speaker, Sir. The clarification you have given is very good. However, it does not clearly state the mandate of the Departmental Committees.

In this case, I thought this is the mandate of the Committee on Finance, Planning and Trade and the Committee on Energy, Communications and Public Works. These are the two Committees concerned with this transaction.

Secondly, Mr. Omingo is away in Ethiopia, therefore, your warning cannot reach him.

*(Laughter)*

**Mr. Speaker:** Mr. Angwenyi, what did you say?

**Mr. Angwenyi:** Mr. Speaker, Sir, I just want to say that Mr. Omingo is not here. He is out of the country on an official visit to Ethiopia. Therefore, he is not here today. Maybe you should give him a warning when he comes back.

*(Laughter)*

**Mr. Speaker:** Order, Order! I have nothing in particular and individual against hon. Mr. Omingo. He is the Chairperson of the Committee and that goes to all Members of the Committee and to the Chairpersons of the various Committees of this House. As for which Committee does what, that is a matter that you should bring to my attention. However, I am convinced, on looking at Standing Order No.148, the Committee that is seized of this matter has done nothing wrong absolutely. However, as I said earlier on, I want to strengthen Committees and encourage you to take active participation in the departments to which you have been assigned. Take that responsibility seriously and we will support you fully as the administration of this Parliament.

## MINISTERIAL STATEMENTS

### GOVERNMENT POSITION ON HARAMBEES

**The Minister for Justice and Constitutional Affairs (Mr. Murungi):** Thank you Mr. Speaker, Sir, I wish to make the following Statement. On Wednesday 5th November 2003, the Member of Parliament for Bahari, hon. Mr. Khamisi, requested a Ministerial Statement regarding the Government position on Harambees. I beg to make the following Statement.

The institution of Harambee as initially conceptualised was a very noble idea. It was and has been used as a rallying call in the fight against poverty and to support important social and development projects in this country.

It is our national motto to pull together resources and efforts for socio-economic development. However, over the years, Harambees have been grossly abused. This was especially so during the last regime. By the end of last year, Harambees had become synonymous with corruption. It had become an avenue for buying business favours and political power. There was little accountability and some individuals were using Harambees for their own personal enrichment. Senior civil servants used Harambees to extort money from their juniors. You recall that, just before and during elections, Harambees became the forum for competition between sitting and aspiring politicians and it reduced politics to a mere auction of goods to the highest bidder.

Mr. Speaker, Sir, it is for this reason that, in April this year, the Government appointed a task force on Harambees under the Chairmanship of Mr. Wamwere, Member of Parliament for Subukia Constituency to investigate and interlay the nature forms, linkages of corruption, extortion and other forms of abuse of Harambees. The task force has completed its work and will soon hand over its report to the Government for further consideration and action.

However, the law on Harambee, as it stands now, is contained in the Public Collections Act Chapter 106 of the Laws of Kenya and the Public Officer Ethics Act which came into force on 2nd May, 2003. Section 13 of that Act says that a Public Officer, shall not use his office or place of work as an avenue for collecting or soliciting for Harambees. It also reads that a Public Officer shall not either, as a collector or promoter of public collection, obtain money or any other property from a person by using his official position in any way as to exert pressure.

According to the *Oxford Advanced Learners English Dictionary*, the word "solicit" means

to seek by force, duty, earnest or respective requests or form of application, a favour, to do something, urge or importune or seek to influence or to incite to action or to make petition or request or as for something desired. The word "office" is capable of having at least two meanings. First, it can mean a person's position or it can mean physical premises. A mere invitation by a person who has significant power over the others might reasonably be construed to be exerting some form of pressure.

*(Applause)*

Mr. Speaker, Sir, I want to categorically state today that Harambees have not been banned in this country. Section 13 simply regulates the participation of public officers in Harambees. The Section prohibits a public officer from obtaining money either as a collector or promoter by using his official position or his physical office as a location for soliciting or collecting Harambee.

A proper interpretation of Section 13 would reduce the law of public officers in Harambees to be that of merely making a personal contribution. This applies to all the public officers and under Section 3 it includes Members of Parliament who include the President, the Speaker of the National Assembly, the Attorney-General, all Members of Parliament and Ministers.

In this regard, our interpretation of Section 13, therefore, means that all Ministers, Members of Parliament, and councillors among other public officers, should not participate in Harambees as chief guests, guests of honour or organisers. These officers should only make personal contributions. As for public servants, Regulation 12 of the Public Service Code of Ethics, clearly prohibits public servants from presiding over Harambees, playing a central role in the organisation or playing the role of guest of honour. That should be the correct interpretation of the law.

We in Government have noted that a number of Harambees have recently been conducted in contravention of this law. From now henceforth, this will not be tolerated and ignorance of the law is no defence. Whoever contravenes this law will be dealt with accordingly.

*(Laughter)*

Members of Parliament will participate in Harambees at their own risk as there are penal consequences which are specified in part 5 of the Act. Thank you.

**Mr. Speaker:** Order! Mr. Kajwang, I will come to you after Dr. Godana. It is not a debate; it is seeking clarifications. So, could we keep ourselves to that.

**Dr. Godana:** Mr. Speaker, Sir, unfortunately, the statement was very long and a subject matter of such current relevance that I think it will be in order for me to request that the Speaker exercises his latitude in allowing quite a few hon. Members to seek those clarifications. I sought to stand up on a point of order twice earlier, knowing very well that on a strict reading the Standing Orders do say that we should not interrupt an hon. Member who is on a point of order. I felt I was seeking to actually salvage the reputation of the House because I thought that the contents of the elaborate statement that the Minister has read, in a sense, do actually infringe on a key Standing Order, that is, not to discuss a matter which is before court.

We do know that a Cabinet Minister, one Mr. Tuju, has already been taken to court along with one Mr. Bongoman by Citizens Alliance Against Corruption. The case is already in court. I take it that the hon. Minister must also know that the same organisation did write to the President of the Republic questioning the validity of the proposed Harambee in Othaya. I must say I salute the President for bowing to that and calling off that Harambee. We were surprised to see the hon. Minister as obviously the chief guest, if not in name, at least, in fact at the Harambee for his own



bursary fund on Friday which we understand raised Kshs13 million. I stand corrected.

The hon. Minister has gone to great lengths in his statement to tell us that, in fact, from now onwards, anybody who will be a guest of honour at a Harambee will face the consequences of the law. I think the country needs a guarantee that the enforcement of this law will be in a fair and transparent manner. It is unfortunate that the Minister gave the Statement because the issues that we raised and on which he passed judgement about what is proper public collection and what is not proper, are bound to come up before the court which is already seized of the matter.

I would wish that in future the Minister respects matters like those which are before the court and does not seek to influence a court decision by giving judgement as Minister for Justice and Constitutional Affairs as to what is right and wrong.

*(Applause)*

**Mr. Kajwang:** Mr. Speaker, Sir, the Statement by the Minister for Justice and Constitutional Affairs was contrary to the position of the law. The Government cannot have a position which is against the law. The law is already in place and Section 13 of the Public Officer Ethics Act already provides as to what can be done and what cannot be done by a public officers in respect to Harambees. So, to come and purport to give us a Government position is to suggest that there is a Government position which is different from the legal position. The legal position is that a public officer; an MP which includes a Cabinet Minister and the President; the Speaker and all those people cannot solicit, organise, make telephone calls, promote or even advertise on radio and television like one Minister did to raise money purportedly for bursary for primary school children in his constituency.

The consequence of this is what has destroyed this country. That is why we brought this law. When this law was brought by the same Minister who is now explaining Section 13, he told us that anybody who does not obey any section of that law would go to jail. The same Minister has already collected money---

*(Applause)*

That same law provides that if you are given any gifts, or if you obtain such monies by any chance, that money must be surrendered to the State. In this case it will be surrendered to the Speaker because the Speaker is the custodian of Parliament.

Mr. Speaker, Sir, there is something else you have not seen. In that same so-called Harambee Kshs1 million was contributed by the Government. How can a Government contribute money to a Harambee? The Government runs only on taxes. If you want to provide bursaries, let us pay 1 per cent of VAT so that taxes can be equitably distributed to all primary schools. We do not want a situation where, if there is a Minister in one constituency, most heads of parastatals, heads of departments, and Government officials rush to produce money stolen from those institutions. This country must stop Harambees immediately. If not, we will bring private prosecutions against even the Minister for Justice and Constitutional Affairs.

Thank you, Mr. Speaker, Sir.

*(Applause)*

**Mr. Speaker:** Order! I think I will have one from Ford-People and that is it.

**Mr. Angwenyi:** Thank you, Mr. Speaker, Sir. It has been determined by the House that all collections made to date were against the law and that they should be surrendered to the Speaker.

Could I make a kind request that when you receive the money, you transfer it to Kitutu Chache?

*(Laughter)*

**Mr. Osundwa:** Thank you, Mr. Speaker, Sir. You have heard that over Kshs1 million was removed from the Consolidated Fund to Mr. Murungi's Harambee. Is it in order to ask that this money be returned to the Government?

**Mr. Speaker:** Order! I do not know whether the Minister wants to say anything further because I would like to say one or two things after that.

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): Mr. Speaker, Sir, first, I would like to say that the general statement on Harambees which I have made in this House today does not in any way contravene the *sub judice* rule. What is in court is a specific case against Mr. Raphael Tuju. I did not mention anything about Mr. Raphael Tuju in my statement. I would also like to state that the Harambee for the South Imenti Bursary Fund which was conducted here in Nairobi on Friday last week was actually conducted properly in accordance with the law---

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

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): Because there was no Minister, Member of Parliament or public officer who was a guest. It is true that the public officers, including the DPP, who attended the Harambee did so in their personal capacity and presented their personal donations. There is no law which prevents a public officer from giving a personal donation in a Harambee. What we received on Friday were personal donations. I am happy to report that we raised Kshs13 million in that Harambee. So, I should be congratulated.

The Kshs1 million which was given in the Harambee was not from the Consolidated Fund. The Kshs1 million came from the Ministry of Education, Science and Technology to support the South Imenti Bursary Fund. Every constituency in Kenya will receive Kshs1 million for their bursary fund. So, it is upon you to decide how you will receive the Kshs1 million. For us, we had provided a bank account.

Lastly, I would like to say as the Executive, it is our duty as Ministers to espouse the law. What I have stated before this House today is the law on *Harambee*. So, whether Mr. Kajwang' thinks otherwise, if he contravenes this law, then we will be on his neck.

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

**Mr. Speaker:** Order, hon. Members! Relax! It does not appear to me like this subject is settled.

**Hon. Members:** Yes! Yes!

**Mr. Speaker:** What I would like to ask the House is: Make up your mind one way, before you pass any law. I get distraught when I read a Minister saying---

*(Dr. Mwiria and Ms. Ndung'u  
consulted loudly)*

**Mr. Speaker:** Order! Order! The two of you will see yourselves outside this House in no time at all!

Make up your mind! It is not in good taste, for example, when you see a Minister saying that an Act which, that very Government brought to this House soliciting the votes of the House, is

oppressive. Make up your mind one way as a Government on what you want. Do you want to pass  
[**Mr. Speaker**]

these laws? If you do, you must obey! If you do not intend to obey the law, do not bring it. That applies to all hon. Members. So, please, address your minds properly to all the laws that come here, and ensure that you understand them, so that when you pass them, you have absolutely no choice in the matter. You must obey the law. Any hon. Member who gets a gift on a public function must forward it to me.

*(Applause)*

I think the only hon. Member who has reported having received a gift so far is hon. Raila, who reported to me that he went to North Eastern Province and he was given a camel. I am still waiting for him to surrender the camel to me.

*(Laughter)*

So, hon. Members, I think we need to leave this matter to lie there, because, obviously we cannot conclude it on points of order.

**Dr. Ali:** On a point of order, Mr. Speaker, Sir. I wish to seek a clarification before we are jailed. If some people invite me to a *Harambee* and put my name on it as the Member of Parliament for the area, then I go to the place and give out some money, how will I, Dr. Ali, be differentiated from the hon. Member of Parliament for Wajir North? Could the Minister clarify that issue?

**Mr. Speaker:** You know all those issues are very complicated. That is why I have said that the matter is far from settled. Maybe it is now good for me to issue a Statement from the Floor here, asking all Kenyans wherever they are to desist from inserting names of hon. Members of Parliament in *Harambee* cards as guests of honour or even asking them to preside over *Harambee*. But as the Minister says, you can go and give your personal donation. So, I think we finish there now.

*(Loud consultations)*

Order! Order, hon. Members! I do understand the anxiety of hon. Members in this particular regard. We will maybe revisit this subject at some future date.

Mr. Mwiraria, you had something to say! Could we listen to Mr. Mwiraria?

#### DEFERMENT OF THE CONSTITUENCIES DEVELOPMENT FUND BILL

**The Minister for Finance** (Mr. Mwiraria): Mr. Speaker, Sir, I stand on a point which relates to the---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! I understand the matter the hon. Minister is raising is of great moment, and is going to be of great interest to every hon. Member here. I can assure you that. If you want to consult loudly, let him make the statement because it affects all of you. I will make a ruling and if you have not heard about it, do not complain later.

Proceed, Mr. Mwiraria!

**The Minister for Finance** (Mr. Mwiraria): Mr. Speaker, Sir, I stand to make a point which

relates to the next item on the Order Paper, which is going to discuss in detail the Constituencies Development Fund Bill.

Mr. Speaker, Sir, before I make my point, let me say that I have already stated in this House that, as a Government we support the Constituencies Development Fund Bill. However, I would like to draw the attention of the House to Section 48 of the Constitution which reads:-

"Except upon recommendation of the President, signified by the Minister, the National Assembly shall not (a) Proceed upon a Bill, including an amendment to a Bill, that in the opinion of the person presiding makes provision for any of the following purposes---"

Mr. Speaker, Sir, in short, it states that if the Bill imposes taxes, alters taxation or if it seeks payment or withdrawal from the Consolidated Fund, or if it is altering composition or remission of the public debt---

The reason I am raising this issue is not to oppose the Bill, but to try and save this House's precious time. If in the hon. Members' opinion, because it states here quite clearly: "If the opinion of the person presiding makes a provision for any of the following---" If in the hon. Members' opinion this Bill provides for any of those four items, then my plea with my colleagues here is that I should be allowed to move the Bill as soon as possible. I know the House has already supported it. Let us go through the formality of getting the Presidential assent which is required under the Constitution, and then once we do that, we can move on to the stage we are supposed to move on, today.

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

**Mr. Speaker:** Order! That is not directed to anyone of you. It is directed to me. I am the person presiding. Now, Mr. Mwiraria, why did you not bring this issue to my attention at an appropriate time?

**The Minister for Finance** (Mr. Mwiraria): Mr. Speaker, Sir, I beg your pardon. I want to admit that maybe I am still learning the job, and I am reading the sections of the Constitution and other laws which I am applying, and it is with regret that I have brought up this matter at this stage, but I thought, since I am aware of it, it would be wrong of me to refuse to bring it up at this stage and allow more time to be spent on a Bill that has not gone through the right procedure.

**Dr. Godana:** On a point of order, Mr. Speaker, Sir. It looks like there has been terrible oversight on our part, all of us. I think that is because Eng. Muriuki who drafted the Bill had actually purported to sign such authorization by the President which only a Minister can do on behalf of the President.

Mr. Speaker, Sir, the last paragraph of the Bill reads:-

"--- but will involve the reorganisation of the way the budget is complied with, so as to accommodate the establishment of the Constituencies Development Fund and the accompanying framework both at the national and district level."

It is signed by N. K. Muriuki. It should have been the Minister for Finance. Even so, the wording here clearly indicates that it does not involve additional expenditure. That is because the expenditure had already been proposed in the estimates. For example, if you look at the Bill which is before the House--- The Persons with Disability Bill is by Mr. Balala and it is at the Second Reading stage. The last paragraph reads:-

"The enactment of this Bill will entail additional expenditure of public funds to be provided for through the estimates."

Whereas in this case the statement seems to be misplaced because it says the Bill will not involve additional funds because it is already---

**Mr. Speaker:** Order, Dr. Godana! I have always appealed to Members of this House to obey their intellectual honour. Do you truly believe that the passage of this Bill will not involve

additional expenditure? If you look at various amendments that seek to create various offices and equipment, are you suggesting that, that is nothing?

**Dr. Godana:** Mr. Speaker, Sir, the estimates passed by this House provided for the Constituencies Development Fund. There is a line. It is only that the Minister, at that time, said that the time was limited and that we were only opening the lines of expenditure. He said we will have to top it up in the next budget.

**Eng. Muriuki:** On a point of order, Mr. Speaker, Sir. Permit me to inform the House that, at the beginning, before this Bill was read the first time, I went to the Minister's office and raised the issue of Section 48 of the Constitution and the answer was--- I was in that office with only that agenda and asked: Was there any need to get the consent of His Excellency the President before it was read the first time? Section 48 of the Constitution requires that consent is received before the House embarks on that Bill. Now, the House has not only embarked on the Bill, but it has gone ahead and passed it. We are only talking about amendments. The Constitution again says: In the opinion of the person presiding, the House may proceed.

Last but not least, there is the issue of whether or not this Bill will call upon extra taxes or expenditure. This Bill is calling for the re-distribution of the monies that the Government will raise from taxes. The Government is already raising the monies anyway. So, under the circumstances, I request the Speaker to rule that this Bill should proceed to the Committee Stage.

*(Applause)*

**Mr. Speaker:** Order, hon. Members! Mr. Nyachae, seriously, do you want to say something?

**Mr. Nyachae:** Mr. Speaker, Sir, I do not want to put the Minister for Finance in any difficulties. I also do not want to foresee a situation where we approve this Bill in this House and it is not consented to. The Minister has explained his position and dilemma. But he has not told us the efforts he has made to have the President briefed about that, so that there could be proper understanding between his office and the President! Then, he can tell us whether the President has given his clearance. How long are we going to wait? Are we going to be told that this Bill will not go on, so that we could save our time?

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

**Mr. Speaker:** Order, hon. Members! First of all, hon. Members must understand that we are dealing with a constitutional issue. It is not a simple matter. It is a constitutional issue. That is why I have tried as much as possible to hear the legal argument, for or against. The duty is imposed upon me as the person who is presiding over the House. That is a duty and a responsibility that I share with nobody else. I take it alone. If I use it badly, history will blame me for that. I will be blamed alone. I have to make the decision. If I make the right decision, it will stand the test of time. It is just not also enough for a Bill to state on its face that there will not be additional expenditure. It must actually appear correctly that there are no additional expenses.

I think a situation has developed over several years now where, the Government has failed to cost its bills, and always comes to the House with a lazy excuse that there will be no additional expenses when, as a matter of fact, there will be. I want to look into this issue and come back to the House. I prefer to do it tomorrow. If I cannot make it tomorrow, I will come the day after. This is a very important issue that we must dispose of quickly and properly. So, I will adjourn the Committee. We will skip that particular Order for now, which is the Committee of the whole House, pending my ruling as to the matters raised under Section No.48 of the Constitution.

But may I also make an appeal to the House that, in future, if there are some constitutional

problems you foresee on any matter coming before this House, bring it to the attention of the Chair as soon as possible, so that the House does not act in vain. I also would like to say to the House: Let us look at this thing in a critical and sober manner. If we pass a law which is contrary to the Constitution and someone goes to court and strikes it out, that does not serve us well. In my view, let me have a look at it. Let us see whether we can get a proper legal foundation upon which we can proceed. So, it is adjourned.

Thank you.

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

**Mr. Speaker:** Is it on the same issue, Mr. Sambu?

**Mr. Sambu:** But I have to say something because---

**Mr. Speaker:** I have already finished!

**Mr. Sambu:** May I say something because when you make your decision, we will revisit it again. I would rather say it now, so that when you make your considered decision, it will help the House and the nation. I plead with the Chair - I know Sambu is not liked - but I plead for the sake of this nation---

**Mr. Speaker:** Order! Mr. Sambu, it is not a question of the Chair liking or disliking you. It is simply the following, and I repeat; once I have made a ruling, that is it. This issue will not be revisited by any Member, including the hon. Sambu. It is that simple. So, it rests there!

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

**Mr. Speaker:** No, Sorry; you can actually give a memorandum to me.

Next order.

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

**Mr. Speaker:** On the same issue?

**Mr. ole Ntimama:** No, no. On a different issue altogether.

**Mr. Speaker:** Yes, what is it?

**Mr. ole Ntimama:** Mr. Speaker, Sir, last Thursday, the hon. Ntutu---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Please, let us hear the hon. Member. Those who wish to withdraw, please do so quietly, so that the business of the House is not interrupted. Once again, I want to say that any Member who has any helpful opinion on this issue which can help the Chair to come to a correct decision should drop it in my office at any time between now and tomorrow. What was it, Mr. ole Ntimama?

## POINT OF ORDER

### VIOLATION OF LOCAL GOVERNMENT ACT BY NAROK COUNTY COUNCIL

**Mr. ole Ntimama:** Mr. Speaker, Sir, last week on Thursday, hon. Ntutu asked the Minister for Local Government for a Ministerial Statement concerning the acquisition of Keekorok Lodge. I will say that most of us are enjoined with hon. Ntutu on this one. It is unfortunate that we did not get the response from the Minister for Local Government because as Kenyans know, the Minister had

cancelled the lease, but it is now true, and I do not know whether the Minister knows about it, that corrupt councillors have already handed over Keekorok Lodge to that man who had a wrong lease.

Mr. Speaker, Sir, we demand that the Minister for Local Government gives this statement because there is a confusion not only in the Lodge but also in Narok County Council.

**Mr. Angwenyi:** Point of Order, Mr. Speaker, Sir.

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

**Mr. Angwenyi:** Mr. Speaker, Sir, I want to seek clarification whether the Attorney General is an advisor of the Central Government only or he is also an advisor of the National Assembly. If he was to advise the House, then we would not get into this pitfall like the one we have witnessed today.

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

**Mr. Angwenyi:** Mr. Speaker, Sir, I am saying that maybe, the Attorney General is not extending his services to this House and yet, he is the chief advisor of the government and we are part of the government.

**Mr. Speaker:** Order! For the benefit of the Attorney General, there was an issue that arose here from the Minister for Finance in relation to the Constituencies Development Fund, which falls under Section 48 of the Constitution in as far as it relates to taxation and use of funds.

The hon. Member is worried why you are not advising the House appropriately. But now that I have disposed of that issue pending my ruling, will you please give your views to the Speaker as soon as possible, between now and tomorrow morning?

**The Attorney-General (Mr. Wako):** Thank you very much, Mr. Speaker, Sir. In fact as you saw, I was consulting the Minister for Finance who was briefing me on that issue. But as usual, when I am requested for an opinion, I do give it. Now that the Speaker has requested for it, I will ensure that you have my opinion before you make your ruling.

**Mr. Sambu:** On a point of Order, Mr Speaker, Sir. Now that the Attorney General will advise the Chair, could he also advise on the fact that the Parliamentary Service Commission is exempted from those provisions of Section 48? We included in the budget of the Parliamentary Service Commission, the Constituency Development Fund, because the report which we approved advises that every constituency should have at least 20 million shillings.

**Mr. Speaker:** Mr. Sambu, you are just revisiting the issue now.

**Mr. Sambu:** I am not revisiting it, Mr. Speaker. I am only saying that the Attorney General should also advise the House as to why section 45(b), subsections (13) and (14) were flouted when the Parliamentary Service Commission budget was altered without the authority of the House.

**Mr. Speaker:** Order, hon. Members. We will now go to the next order. But as everybody else thinks about this issue, including the Minister for Finance and the Attorney General, please also address the issue of its administration and the efficacy of such administration, so that we do not have to get back to it once we decide on it.

Next Order.

## BILL

### *Second Reading*

#### THE PERSONS WITH DISABILITIES BILL

*(The Minister for Gender, Sports, Culture and Social Services on 4.11. 2003)*

*(Resumption of Debate interrupted  
on 6.11. 2003)*

**Mr. Speaker:** Yes, Mr. Mutiso?

**Mr. J.M. Mutiso:** Mr. Speaker, Sir, last time when the House was interrupted, I was contributing to the Bill before the House. My attention at that time was drawn to Clause 8 which dealt with offences and penalties. I was particularly concerned about Clause 45(1) pertaining to negligence by doctors.

I mentioned that the penalty for causing disability by a doctor is very lenient. Causing disability to a patient by a doctor is a serious issue. Under the professional practice, we have the relevant laws which regulate each profession. However, I do not think we will solve the problem of doctors causing disability, by imposing such a low fine of only Kshs 20,000 or one year's imprisonment as a deterrent.

*[Mr. Speaker left the Chair]*

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

My suggestion is that we delete this section altogether or we recommend a very stiff penalty for those doctors who cause disability. In conclusion, the problem of persons with disability is widespread in this country and I believe the National Council of People with Disabilities might not be able to deal adequately with this problem of identifying the persons with disabilities.

My suggestion is that in the informal arrangement of the District Development Committees, we should have representation of persons with disabilities on a permanent basis in those committees. We know very well that although the District Development Committees have been facing many problems, they have been very helpful in trying to steer development in our districts. The National Development Council for Persons with Disabilities, should also work closely with the District Development Committees (DDCs). Membership to the proposed Council should be made up of persons with disability.

Mr. Temporary Deputy Speaker, Sir, I do support this Bill and call upon the Mover to reply.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. J.M. Mutiso! You have just contributed to the Bill. Therefore, you cannot call upon the Mover to reply. But I agree with you that it seems there is nobody who is interested in contributing on the Bill. Is there any hon. Member who has not contributed on the Bill but would like to contribute on it?

**Mr. Kagwe:** On a point of Order, Mr. Temporary Deputy Speaker, Sir. Could I be in order to request the Chair to call upon the Mover to reply?

**The Temporary Deputy Speaker** (Mr. Ethuro): I am just checking the list to find out whether you have contributed to this Bill or not. I am satisfied that you have not contributed on it.

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

**The Assistant Minister for Gender, Sports, Culture and Social Services** (Mrs. Chelaite):



Mr. Temporary Deputy Speaker, Sir, I would like to reply.

I would like to thank the hon. Members who have actively contributed to this important Bill. I appreciate the amendments proposed on the Floor of this House. I noted all the amendments which have been proposed and I assure this House that they will be discussed during the Committee stage. Mr. Temporary Deputy Speaker, Sir, before I reply, I would like to give two minutes to the Attorney-General, Mr. Wako to contribute to this Bill.

### QUORUM

**Maj. Madoka:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is there a quorum in this House?

**The Temporary Deputy Speaker** (Mr. Ethuro): No, we do not have a quorum. Ring the Division Bell.

*(The Division Bell was rung)*

**The Temporary Deputy Speaker** (Mr. Ethuro): We have a quorum now. You may proceed, Mr. Wako.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I will not touch on the content of the Bill because as the Assistant Minister replying has stated, it has been exhaustively debated and a number of amendments which will be considered during the Committee stage have been made. I was not in the country when the Bill was being moved in this House. One of the issues which was left out is actually to express thanks to the task force which had been appointed to review the laws relating to persons with disabilities.

As you may be aware, the Government embarked on an ambitious programme for law reform in the 1990s. Part of that law reform targeted disadvantaged persons, for example, children. This House has already passed the Children Act and it is now debating the Bill on gender. The last task force was the one which reviewed laws relating to persons with disabilities. This task force was, in fact, appointed through Gazette Notice No.4993/92 dated 13th November, 1992. I launched it on 12th October, 1993. One of the unique features of this task force is that 90 per cent of its members were people with various disabilities. Some of the members were blind, deaf or paralytic. The task force was chaired by the only judge at that time who was a person with disability, Justice D.K.S. Aganyanya. The task force involved nearly all NGOs which work in the area of persons with disabilities, such as, the Kenya Union of the Blind, the Kenya National Association for the Deaf, the Kenya Society for the Disabled, the Association of Disabled Persons of Kenya, the United Disabled Persons of Kenya and so on. These organisations were well represented on this task force.

The Members were: Justice Aganyanya as Chairman, Mr. Ashiundu; Vice Chairman, Mr. Samwel Kagwe, who himself is a blind person and was then heading a department in the National Council for Churches of Kenya (NCCCK). It also included Mr. Joseph Kingarui, Mr. Mbuvi Kachenzia; an advocate, Mr. Peter Wangu Opany, Mr. Benson Owenga Anjere, Dr. Joyce Malombe and Dr. Elizabeth Mazrui. These two are persons with disabilities. They have been educated to the highest level of Doctor of Philosophy (Ph.D). They were lecturing at the university. Mr. Kamie Otiato was a senior lecturer at the Kenya Institute of Education (KIE) dealing with issues of disabled persons. Others are Mrs. Tazera Levy, who was a lecturer at Egerton University, Ms. Roselyn Wabuge who was heading the Department in the Ministry at that time; the late Moses Khaemba who used to walk in aid of the Rhino Fund, Mrs. Mary Wambua, Mr. Wilfred Nzuki, Mrs. Ndolo Muthuga and Mr. Eliud Mahihu.

Mr. Temporary Deputy Speaker, Sir, they had three joint secretaries. These are: Ms. Elizabeth Ng'ang'a, Mrs. Josephine Sinyo, who was a Member of Parliament and who contributed a

lot in this House on the issues and welfare of the disabled persons.

Mr. Temporary Deputy Speaker, Sir, this Task Force worked very hard. It was ably supported by funding from the United Nations Development Fund (UNDP), African Medical Research Foundation (AMREF) and the National Council of Churches of Kenya (NCCCK). I wanted to take this opportunity to put it on record so that it is reflected in the HANSARD Report that this Bill, that is about to be enacted by Parliament, was drafted by this Task Force. They held seminars and went all over the country soliciting views of the persons with disabilities and from able bodied persons who were sensitive to those issues. Some of them even travelled out of the country and came up with this Report. The Persons with Disabilities Bill is attached to this Report. This Report was further subjected to symposiums and seminars and ultimately resulted in the Bill which we are about to enact.

Mr. Temporary Deputy Speaker, Sir, I also wanted to use these two minutes to put on the record of the HANSARD the appreciation of the Government and the people of Kenya for the excellent work that was done by this Task Force. I thank you and pass on the baton to the Assistant Minister for Gender, Sports, Culture and Social Services.

**The Assistant Minister for Gender, Sports, Culture and Social Services (Mrs. Chelaite):** Mr. Temporary Deputy Speaker, Sir, I would like to support the sentiments raised by the Attorney-General. It was very important that it is put on record. I would also like to thank the members of the Task Force who came up with this important Report.

As I said before, all the amendments that have been raised have been noted and will be introduced during the Committee of the Whole House.

With those few remarks, 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 tomorrow)*

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

## MOTION

### ADOPTION OF ELEVENTH PIC REPORT

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, on behalf of the hon. Members of the Public Investments Committee (PIC), I beg to move the following Motion:-

THAT, this House adopts the Eleventh Report of the Public Investments Committee on the Accounts of State Corporations laid on the Table of the House on 3rd July, 2003.

## QUORUM

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The PIC report is very important, but there appears to be no quorum in the House.

**The Temporary Deputy Speaker (Mr. Ethuro):** Yes, there is no quorum. Ring the Division Bell.

*(The Division Bell was rung)*

**COMMUNICATION FROM  
THE CHAIR**

HOUSE BUSINESS COMMITTEE MEETING

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Order! Hon. Members, since we have not managed to raise a quorum, we will interrupt the business of the House but, before doing so, I would like to communicate that the House Business Committee will meet immediately the House rises.

**ADJOURNMENT**

Hon. Members, the House stands adjourned until tomorrow, Wednesday, 12th November, 2003, at 9.00 a.m.

The House rose at 5.25 p.m.