

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 11th October, 2001

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Mr. Deputy Speaker: Mr. Munyao's Question.

Question No.590

COMMERCIAL BANKS' LENDING TO AGRICULTURAL SECTOR

Mr. Deputy Speaker: Mr. Munyao is not here? We will come back to it later.

Question No.498

GOVERNMENT POSITION ON BOSNIA CONFLICT

Mr. Twaha asked the Minister for Foreign Affairs and International Co-operation:-

- (a) what the Government's position is with regard to the conflict involving Muslims in Bosnia-Herzegovina, Kosovo and Chechnya in the 1990s, and presently in Macedonia; and,
- (b) what diplomatic contribution the Minister has made towards ending the conflict.

Mr. Deputy Speaker: Is the Minister not here? We will come back to this Question.

Question No.374

COMPLETION OF KISUMU-MUHORONI ROAD

Mr. Deputy Speaker: Mr. Sungu is also not here? We will come back to the Question.

Question No.576

GRAVELLING OF CHEKUKAKA-MPAKANI ROAD

Mr. Deputy Speaker: Is Mr. Munyasia also not here? We will come back to the Question.

Question No.593

REPAIR OF OYUGIS-RODI KOPANY ROAD

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

- (a) whether he is aware that the contractor who was given the contract of repairing Oyugis-Rodi Kopany Road, (C28), abandoned the work and moved away from site;
- (b) what measures he is taking against the contractor; and,
- (c) what plans he has for the road to be completed.

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

(a) I am aware that the contractor who was given the contract of repairing Oyugis-Rodi Kopany Road (C28) is on site and working.

(b) My Ministry has notified the contractor of our concern over his slow rate of progress of works and warned him that appropriate action will be taken against him as per the provisions of the contract.

(c) The contractor has instructions to complete the work expeditiously as per the contract.

Mr. Otula: Mr. Deputy Speaker, Sir, I remember asking this Question last year when the contractor had begun the work. Up to now, the road is not complete. Recently, the contractor dug murrum in Nyawita. Since then, he has stopped working on the road. What is the Assistant Minister doing to ensure that the work on the particular road continues?

Mr. Mokku: Mr. Deputy Speaker, Sir, when the contract was signed, the contractor was given 20 months to complete the project. The

[Mr. Mokku]

Ministry is not happy with the rate at which the contractor is progressing. He has been warned against this delay.

Eng. Muriuki: Mr. Deputy Speaker, Sir, the Assistant Minister said that the contractor was given 20 months to complete the work. Could he tell us when the contract period commenced so that we can know whether any time is left? Could he also tell us the contract sum?

Mr. Mokku: Mr. Deputy Speaker, Sir, the contract period started in September, 1998. I would like to confirm that the contractor is behind the time schedule.

Mr. Deputy Speaker: What was the contract sum? How much was available for the project?

Mr. Mokku: Mr. Deputy Speaker, Sir, I said that the project started in September, 1998, and the work is 65 per cent complete.

Hon. Members: He has not answered the question!

Mr. Otula: Mr. Deputy Speaker, Sir, the Assistant Minister says that the project was started in 1998. How many months has the contractor spent on the project and how many months are remaining for him to complete the work?

Mr. Mokku: Mr. Deputy Speaker, Sir, if the hon. Member was listening, he should have heard me say that the contractor started work in September, 1998, and that he was given 20 months to complete the work. I also said that the contractor is behind schedule, and that he has been warned to complete the work as quickly as possible.

An hon. Member: What was the contract sum?

Mr. Mokku: Mr. Deputy Speaker, Sir, the contract was for Kshs73,296,685.

Mr. Mwalulu: Mr. Deputy Speaker, Sir, the Assistant Minister has found it very difficult to answer the Question satisfactorily. The most important thing here is whether the Ministry has a consistent policy on road repairs, to ensure that such cases do not arise. Roads are very important for our development. Since our economy is sinking, it is very unfair for contractors not to complete such work in time.

Mr. Deputy Speaker: Could you ask your question?

Mr. Mwalulu: Mr. Deputy Speaker, Sir, does the Ministry have a policy of ensuring that cases of stalled road projects do not arise?

Mr. Mokku: Mr. Deputy Speaker, Sir, the Ministry has such a policy. There is always a legal agreement between the Ministry and a contractor. If either of the parties breaches it, the law takes its full course.

Mr. Deputy Speaker: The last one, Mr. Otula!

Mr. Otula: Mr. Deputy Speaker, Sir, currently, the road in question is not passable due to an impassable bridge at Nyawita. It also appears that the contractor is not able to continue with the work. Could the Assistant Minister confirm whether the works on the particular road will be complete within the contract period?

Mr. Mokku: Mr. Deputy Speaker, Sir, as a Ministry, we have warned him to hurry up and complete this work. As I speak, he is behind time.

Mr. Muya: Mr. Deputy Speaker, Sir, I understand from the Assistant Minister that the answer to my Question is not yet ready.

Mr. Deputy Speaker: Order! Your business is to ask your Question!

LICENSING OF PRIVATE GARBAGE COLLECTORS

Mr. Muya asked the Minister for Local Government:-

(a) what the total monthly billing by the Nairobi City Council is, in respect to dustbins and refuse collection; and,

(b) who licenses private garbage collectors in Nairobi and which are the areas that are not covered by such collectors.

The Assistant Minister for Local Government (Mr. Hashim): Mr. Deputy Speaker, Sir, the answer sent to me is not satisfactory and I had informed the hon. Member about it. May I ask the House to defer this Question to next week?

Mr. Deputy Speaker: Order! This Question has been with your Ministry for over 10 days. I am not in the mood to extend that period because there is a big backlog of Questions. You are not supposed to come and tell the House that you received an unsatisfactory reply from any source, because according to the Constitution of Kenya, you are responsible to this House; you, and you alone, are responsible to us. I will defer the Question to Tuesday, next week and not later than that.

(Several hon. Members consulted at the Lobbies)

This business of negotiating behind me in the Lobbies must stop.

Mr. Anyona: Mr. Deputy Speaker, Sir, a Question is forwarded to the Ministry. The Ministry, in its collective wisdom, prepares an answer, which it forwards to the Clerk of the National Assembly. The Question is then put on the Order Paper and on the day of answering the same Question, the same Assistant Minister, who approved the Question to be sent to the National Assembly, stands up and says that the answer is unsatisfactory. Could the Assistant Minister tell the House what is unsatisfactory about the answer that he has? He cannot just get away with it. He must tell us what is unsatisfactory about the answer and how come he approved it in the first place. He is taking the House for a ride!

Mr. Deputy Speaker: Order! Hon. Members, when an Assistant Minister has confessed that what he has in his own hands, prepared by him, is inadequate, we can only sympathise.

Mr. Assistant Minister, you should answer that Question on Tuesday, next week.

(Question deferred)

Mr. Muiruri: Mr. Deputy Speaker, Sir, I have not received a written answer to my Question.

Question No.619

RESETTLEMENT OF DISPLACED FAMILIES

Mr. Muiruri asked the Minister for Lands and Settlement:-

(a) whether he is aware that over 1,500 displaced families are camped along Gakoe-Kieni Road of Gatundu North without basic human facilities; and,

(b) what immediate and urgent action he will take to settle these people to avert diseases and possible deaths.

Mr. Deputy Speaker: Is there anyone from the Ministry of Lands and Settlement? We will come back to that Question.

Question No.590

COMMERCIAL BANKS' LENDING TO
AGRICULTURAL SECTOR

Mr. Deputy Speaker: Mr. Munyao is still not here? The Question is dropped!

(Question dropped)

*Question No.498*GOVERNMENT POSITION ON BALKANS
AND CHECHNYA CONFLICTS

Mr. Twaha asked the Minister for Foreign Affairs and International Co-operation:-

- (a) what the Government's position is with regard to the conflict involving Muslims in Bosnia-Herzegovina, Kosovo, Chechnya in the 1990's and presently in Macedonia; and,
(b) what diplomatic contribution he has made towards ending this conflict.

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Mr. Deputy Speaker, Sir, I apologise for coming late.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) The disintegration of the former Yugoslavia 10 years ago precipitated a series of conflicts in the Balkans of international magnitude. The successor states of Yugoslavia have since then witnessed civil strife, largely based on ethnic hostility. In Bosnia, the conflict was between the Serbs and the coloured Muslims. The Serbs are said to have adopted a policy of ethnic cleansing, whose objective was to eliminate non-Serb populations. It is for this reason that the coloured Muslims were targeted.

These problems are similar to those taking place in Kosovo and the former Yugoslav Republic of Macedonia, where Albanians are striving for equal opportunities, fair treatment and justice. In Macedonia, the ethnic Albanians constitute about one-third of the general population, and are generally self-reliant. In Chechnya, the conflict between the official Russian forces and the Chechens has lasted for more than 250 years. The conflict is attributed to the Chechens unwillingness to be subdued by the Russians. The conflicts in the Balkans and the Chechnya are, therefore, not based on religion, but other issues such as ethnicity, discrimination in education, employment, constitutional issues and subjugation.

Kenya, as a member of the United Nations and the wider international community, has viewed, and continues to view, with concern, the conflicts that are taking place in the Balkans and Chechnya. Past and present conflicts in that part of the world have been, and remain, inimical to international peace and security.

(b) Kenya has been supporting various peace initiatives and will continue to offer her assistance towards conflict resolution in various parts of the world. Towards this end, Kenya, within the context of the United Nations mandate, has been actively involved in peace-keeping activities in various parts of the world, including Bosnia.

As of now, Kenya has contributed peace keeping forces to East Timor, Sierra Leone, Ethiopia-Eritrea border, and an observer mission in the Democratic Republic of Congo. Kenya believes that peace keeping and enforcement should remain the primary responsibility of the United Nations Security Council. However, closer co-operation between regional organisations aimed at resolving conflicts should be encouraged. We believe that regional organisations have a crucial role to play in conflict resolution, with a focus on preventive diplomacy and peacekeeping.

Mr. Twaha: Mr. Deputy Speaker, Sir, the international community, after having used Mr. Slobodan Milosevic to massacre Muslims in Yugoslavia, took him to the International Court of Justice to be charged with crimes against humanity that he was alleged to have committed. As a member of the international community himself, could the Assistant Minister assure this House that the same will be done to Mr. Ariel Sharon for the massacres he committed at Sabra Shatila in 1982, where 17,000 people were killed, after they finish using him to kill Muslims?

Mr. Affey: Mr. Deputy Speaker, Sir, that question has no relevance to the text of this Question.

Mr. Ndicho: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Kenya Government and Parliament to be pushed and involved in the Middle East politics, which we are not part of?

Mr. Deputy Speaker: That is not a point of order, in the first place. Secondly, there is no way the Chair can tell what an hon. Member will say before he says it. There is no art for finding the mind's construction in the face.

Mr. Twaha: Mr. Deputy Speaker, Sir, the Assistant Minister has said that my question has no relevance to the text of the Question---

Mr. Deputy Speaker: Ask your question!

Mr. Twaha: Mr. Deputy Speaker, Sir, the international community talks very clearly to us about human rights, corruption, good governance and transparency. Why do we seem so timid in asking it about the atrocities it commits?

Mr. Affey: Mr. Deputy Speaker, Sir, we are not timid, but I am just worried that the hon. Member's question

has no relevance to the Question he put before the House.

Mr. Deputy Speaker: I agree with you. Hon. Twaha, you cannot take this opportunity to ask the Assistant Minister about all international issues.

Mr. Twaha: Mr. Deputy Speaker, Sir, the issue is that Muslims everywhere are being killed. The issue is that Muslims are on the receiving end.

Mr. Deputy Speaker: Order! You asked a very legitimate Question, which, I think, the Assistant Minister has answered very well. Your supplementary questions must have root in this Question. If you want to ask questions in respect of other parts of the world, you are free to do so, but I will not allow you to do that now.

Next Question!

Mr. Sungu: Mr. Deputy Speaker, Sir, may I first of all apologise for coming late.

Question No.374

COMPLETION OF KISUMU-MUHORONI ROAD

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

(a) how much money was allocated for the reconstruction of the Kisumu-Miwani-Chemelil-Muhoroni Road; and,

(b) whether this project has been completed and how much money has been paid to the contractor to date.

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

(a) There was no money allocated for the reconstruction of Kisumu-Miwani-Chemelil-Muhoroni Road.

(b) Since there was no money allocated for the reconstruction work, no contractor has been paid any money.

Mr. Sungu: Mr. Deputy Speaker, Sir, the answer given by the Assistant Minister is wrong because this road was actually under construction by one, Hayah Bishan and Singh and when it reached Chemelil, it stopped before it was completed. Therefore, it is incorrect for the Assistant Minister to say that no money was allocated for that work. Could the Assistant Minister stand up and answer the question that was put to him in this House?

Eng. Rotich: Mr. Deputy Speaker, Sir the Question does not state the relevant dates that the hon. Member is talking about. As of now, we have no money at all allocated for the project and there is no contractor on site.

Mr. Deputy Speaker: But, Eng. Rotich, the hon. Member has just told you that, in fact, the road was being constructed by a contractor. So, in his Question, he did not say that the money should have been allocated during this financial year. So, whether it was allocated 10 years ago, he is still interested in finding out how much it cost or what happened to it.

Eng. Rotich: Mr. Deputy Speaker, Sir, in 1996, there was a contractor who was re-carpeting the road. The total amount set aside for that project at that time was Kshs258 million. The contractor completed what was supposed to have been done and was paid. The contract expired on 30th November, 1997.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, the Assistant Minister is telling this House that the contractor did a shoddy job in 1997 because the road is nowhere now! What steps will the Assistant Minister take against that contractor to make him come back to re-do the work on that road free of charge?

Eng. Rotich: Mr. Deputy Speaker, Sir, at the moment there is nothing we can do to bring the contractor back to site. It is true and it is common knowledge that the contractor did a shoddy job at that time, but there is nothing we can do to bring him back to site.

Mr. Muihia: Mr. Deputy Speaker, Sir, the Assistant Minister has accepted that the road was shoddily done. What steps is he taking to have the contractor compensate the Government for a shoddy work done?

Eng. Rotich: Mr. Deputy Speaker, Sir, at the moment, there are no steps being taken. But at that time, after the completion of the work, we detected that the work was not done well and we wrote to him and informed him about that. The road was completed as per the contract agreement, but we discovered later that the job was not well done after the maintenance period had expired.

Mr. Shaaban: Mr. Deputy Speaker, Sir, the Assistant Minister has admitted that the contractor did a shoddy job and he has also told us that the contractor has been paid all his money. If, indeed, the contractor did a shoddy job, why was he paid all the money? Could the Assistant Minister tell this House why the contractor was paid all the money, when he had actually done a shoddy job?

Eng. Rotich: Mr. Deputy Speaker, Sir, I am not able to explain why the contractor was paid, but the fact is

that he was paid the total amount on 30th November, 1997.

Eng. Muriuki: On a point of order, Mr. Deputy Speaker, Sir. For a contractor to be paid, there is a document called payment certificate which is signed and issued. Could the Assistant Minister tell this House whether there was anybody issuing payment certificates; if there was, who was he? Moreover, is it in order for the Assistant Minister to tell this House that he does not know how it was paid, whereas such payment certificates must be certified by a professional road engineer? Was there a payment certificate issued or was there not?

Eng. Rotich: Mr. Deputy Speaker, Sir, it is true that there is payment certificate signed by a professional resident engineer or whoever it is, before the payment is made. It is true that you cannot pay the contractor without that certificate. There was a certificate issued and that is why we paid, otherwise, we could not have paid the contractor.

Mr. Mbela: Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House how many contractors have been blacklisted for doing shoddy jobs? It seems the list of contractors doing shoddy jobs is growing longer, and longer day by day, and they seem to be getting away with billions of shillings.

Eng. Rotich: Mr. Deputy Speaker, Sir, I do not have the list of those contractors who have been blacklisted for doing shoddy jobs, but the hon. Member seems to know them because he says that the list is getting longer. Could he tell this House how long the list was, last time? At the moment, I do not know, but I can get that information.

Mr. Sungu: Mr. Deputy Speaker, Sir, as a Member of Parliament from the area concerned, I happen to know that the road in question was not completed because it was supposed to have reached Muhoroni to serve the sugar belt region. Could the Assistant Minister now tell this House what concrete steps he is going to take to make sure that this road is completed despite the fact that the money was paid and the road was not completed?

Eng. Rotich: Mr. Deputy Speaker, Sir, I do not think the issue of the completion of the road is relevant now. The road was not done properly and, therefore, it does not matter whether it was completed or not. We are now re-designing the road and, hopefully, we shall award a new contract during the next financial year.

Mr. Deputy Speaker: Next Question! Mr. Munyasia's Question for the second time!

Mr. Munyasia: Mr. Deputy Speaker, Sir, I beg to apologise for coming late to the House.

Question No.576

GRAVELLING OF CHEKUKAKA-MPAKANI ROAD

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

(a) whether he is aware that during the rainy season, the Chekukaka-Lukhome-Mpakani Road is impassable and has been recommended for gravelling by the District Development Committee, Bungoma; and,

(b) when this road will be gravelled.

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

(a) I am aware that during the rainy season, the Chekukaka-Lukhome-Mpakani Road is impassable.

(b) My Ministry has already programmed the improvement of Chekukaka-Lukhome-Mpakani Road during this financial year.

Mr. Munyasia: Mr. Deputy Speaker, Sir, the financial year is already half-way through and the money has not reached Bungoma District yet. Could the Assistant Minister tell this House when money for this financial year is going to be sent to Bungoma District for the construction of this road?

Mr. Mokku: Mr. Deputy Speaker, Sir, the Ministry has programmed the construction of this road for the 2001/2002 financial year. So, we are still going on with the programme.

Mr. Wanjala: Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House how much money has been allocated for this project and from which fund?

Mr. Mokku: Mr. Deputy Speaker, Sir, this project is estimated to cost Ksh15 million and the money will come from the Fuel Levy Fund.

Mr. Munyasia: Mr. Deputy Speaker, Sir, this is a harvest season and the people of Lukhome and Mpakani have to take their produce to the market. Could the Assistant Minister assure this House that this road will be constructed before December so that residents of this area can take their harvest to the market?

Mr. Mokku: Mr. Deputy Speaker, Sir, I cannot promise that this road will be constructed before December.

Mr. Deputy Speaker: Mr. Muiruri's Question for the second time.

Mr. Muiruri: Mr. Deputy Speaker, Sir, I wish to ask Question No.619 for the second time although I have not received a written reply.

Question No.619

RESETTLEMENT OF DISPLACE FAMILIES

Mr. Muiruri asked the Minister for Lands and Settlement:-

(a) whether he is aware that over 1,500 displaced families are camped along Gakoe-Kieni Road of Gatundu North without basic human facilities; and,

(b) what immediate and urgent action will he take to settle them to avert diseases and possible deaths.

Mr. Deputy Speaker: Is there anybody here from the Ministry of Lands and Settlement?

An hon. Member: Nobody is here yet!

Mr. Deputy Speaker: Since nobody is here, I will defer the Question to Tuesday next week. Is that okay, Mr. Muiruri?

Mr. Muiruri: Mr. Deputy Speaker, Sir, this Question is about displaced people who are sleeping in the cold. I had intended to raise the Question by Private Notice because of its urgency, but since it is on the Order Paper, I need the answer.

Mr. Deputy Speaker: Order! Order! Mr. Muiruri, you know there is no point of arguing with the Chair because the Chair has no answer to your Question. What the Chair can do in your favour has already been done. So, why do you not reserve what you want to ask on that Question for the Minister when he comes to answer it next week?

Mr. Muiruri: But the people are suffering!

(Question deferred)

(Mrs. Ngilu entered the Chamber and placed her handbag on the Floor)

Mr. Deputy Speaker: Order! Order! Mrs. Ngilu, you have an article of clothing in the House that ordinarily is not allowed in the Chamber. This is not the first time the Chair has brought that to your notice. So, could you kindly be the gracious lady that you are and do the needful?

(Mrs. Ngilu took her handbag to the Sergeant-At-Arms Row and resumed her seat)

Mr. Muniyao: On a point of order, Mr. Deputy Speaker, Sir. I know I am late and I am aware that you have called out my Question twice. I beg the Chair to allow me to ask my Question. This is the first time I have been elected to the post of Secretary-General unopposed. Could the Chair allow me to ask this Question?

(Laughter)

Mr. Deputy Speaker: Order! Order! Mr. Muniyao, this is not the first time this week you have missed asking your Question. I am, therefore, extremely sorry, but I cannot reinstate your Question now. I shall, therefore, proceed to Questions by Private Notice.

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

Mr. Deputy Speaker: Order! There is no point of order!

Let us move on to Mr. Kikuyu's Question!.

QUESTIONS BY PRIVATE NOTICE

DISBURSEMENT OF KYANGULI
SCHOOL DISASTER FUND

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

(a) How much money has been collected on the Kyanguli High School Disaster Fund, and how has it been used?

(b) When will the parents who lost their sons be compensated, and how much will they be paid?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I beg to reply.

(a) A total of Kshs8,414,833.90 has been collected. As to how it has been used, I hereby table the expenditure.

(Maj. Madoka laid the document on the Table)

(b) I am not aware of any compensation since the school was not insured. However, as outlined in the expenditure details, each parent was given Kshs57,000 as a token, and all the money they had paid as school fees for the term and examination fee in the case of Form IV students was refunded.

Mr. Kikuyu: Mr. Deputy Speaker, Sir, I agree with the expenditure as outlined. Could he tell this House when the students who were transferred from Kyanguli High School to other schools will be refunded their money? I am talking about those students who were transferred from Kyanguli High School to other schools and they had paid boarding, Harambee and other forms of fees.

Maj. Madoka: Mr. Deputy Speaker, Sir, I have not got details of those students who were transferred and the amount of money they should have been refunded. I am prepared to look at this issue and then give this House an appropriate answer.

Mr. Kaindi: Mr. Deputy Speaker, Sir, during this tragedy, it transpired very clearly that most of the Government institutions, particularly schools, are not insured, and the Minister has pointed it out rightly. What policy do they intend to put in place so that schools and other institutions could be insured to avoid and avert such tragedies? This will ensure that the parents are compensated.

Maj. Madoka: Mr. Deputy Speaker, Sir, I believe that aspect falls under the Ministry of Education, Science and Technology, and I am aware that they are looking at how best this can be handled.

Mr. Kikuyu: Mr. Deputy Speaker, Sir, could the Minister inform this House and the parents concerned when he will reply to the compensation aspect? This is because those students who left that school had paid fees. I would like to inform this House that these students are now in new schools where they have to pay new fees, and yet they had paid in Kyanguli High School. When will the Minister give an answer to this House so that the parents can be refunded their money by the school or the Government?

Maj. Madoka: Mr. Deputy Speaker, Sir, I am not quite sure that I followed his question.

Mr. Kikuyu: Mr. Deputy Speaker, Sir, the question is simple. The students who left Kyanguli High School after it was burnt down went to other schools. This happened and yet they had paid their school fees, boarding fees and even examination fees in this school. When these students joined the new schools, they were forced to pay new school fees. The Minister can see that the parents are forced to pay school fees twice in a year. When will Kyanguli High School refund the money for those students who left the school? That is my question.

Maj. Madoka: Mr. Deputy Speaker, Sir, I will have to find out when that can be done, if it has been done, or whether it will be done at all.

Mr. Deputy Speaker: Could we give you up to next week?

Maj. Madoka: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: You will answer that part of the Question on Tuesday next week.

Mr. Kikuyu: It is all right, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Thank you.

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

HARASSMENT OF DAGORETTI HAWKERS

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

(a) Is the Minister aware that, according to a complaint signed by 41 Dagoretti Corner hawkers dated 2nd July, 2001, officers from Karen Police Station are harassing hawkers in the area by arresting them and demanding Kshs1,000 from each and confiscating their wares and charging them in court for failure to give bribes?

(b) Could he investigate this matter and inform the House the disciplinary and legal measures he has taken against the police officers involved in this corruption and harassment of *bona fide* hawkers in Dagoretti Corner and other parts of Nairobi City Council (NCC)?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) As I am not aware, part "b" of the Question does not arise.

Mr. Anyona: Mr. Deputy Speaker, Sir, before I ask my supplementary question, it may be helpful to the House for Ministers to explain

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themselves. When a Minister of the Government says that he is not aware of a matter which has already been brought to his notice--- I have referred to a letter and Karen Police Station and given a date. So, when he says that he is not aware of the matter, what does he mean? Does he mean that he has not been to Karen Police Station or that the officers at Karen Police Station said that they do not know about this matter? What does he mean?

Maj. Madoka: Mr. Deputy Speaker, Sir, I mean that no complaint or signed statement has been presented to the police station.

Mr. Anyona: Mr. Deputy Speaker, Sir, sometimes we are very sympathetic to this Minister when he deals with issues of security. We do understand that it is a serious and heavy responsibility, but when he takes a light attitude towards a matter of violation of human rights of Kenyans which has been brought to his attention by a very seasoned hon. Member of Parliament, it is really not a big reflection of the seriousness of the Government. I have got the complaint dated 2nd July, 2001. This complaint is signed by 41 hawkers, who include women and men, detailing how they are being harassed by police officers. I have had a meeting with them. In fact, the police have had to hold on when I am around that place. So, they do not visit the place when I am around. Could I now table this document? Could the Minister now be required to go and investigate this case? You cannot have 41 Kenyans signing a complaint for no good reason. I would like to table this document.

(Mr. Anyona laid the document on the Table)

What will he do about it?

Maj. Madoka: Mr. Deputy Speaker, Sir, if the document was signed and it has not been presented to the police station, we cannot know about the matter. We have been unable to follow up the matter because no complaint was lodged. Now that the document has been laid on the Table of the House, we are in a position to investigate the matter.

Mr. Muchiri: Thank you, Mr. Deputy Speaker, Sir. It is common knowledge that today, in Nairobi, the hawkers are being harassed and arrested by the police. This is the order of the day. The police have no authority, without a resolution of the NCC, to move and arrest the hawkers. Could the Minister assure this House that with effect from today, the regular police and Administration Police will not patrol in lorries in this City, harassing the hawkers? Instead, they should leave the matter to the City Inspectorate who are employed by the NCC to do that job.

Maj. Madoka: Mr. Deputy Speaker, Sir, many times the police are called by the City Council *askaris* to go and help them. In many cases, they do not go there on their own.

Mr. Anyona: Mr. Deputy Speaker, Sir, I want to distinguish the problem of the hawkers in the Central Business District and the mobile hawkers. I have been in touch with the City Treasurer and he has told me that those hawkers are not subject to any form of licensing at all and yet, Karen Police Station, particularly the OCS, is notorious for harassing them. He was harassing people in Nairobi West before he was removed from there recently. He has now gone to Karen and he is harassing people. Quite frankly, I do not think the Question has been answered; so, maybe, I am going to ask that it be deferred. But could he now make a statement before this House that no police officer anywhere in Nairobi or elsewhere will harass hawkers by virtue of the fact that they are hawking their wares? Will he make that statement so that Kenyans are saved from this kind of harassment, embarrassment and humiliation?

Maj. Madoka: Mr. Deputy Speaker, Sir, I am aware of the position and the police will act.

Mr. Mwenda: On a point of order, Mr. Deputy Speaker, Sir. On part "b", the Member wanted to know if the Minister could investigate this matter and inform the House of his findings. He has said that since some documents have been laid on the Table, he is prepared to investigate the matter. Could he tell us when he will report back to the House after completing the investigations?

Maj. Madoka: Mr. Deputy Speaker, Sir, I suggest that I be given until Thursday next week.

Mr. Deputy Speaker: The Question has been deferred until Thursday next week.

(Question deferred)

Next Question, Mr. Wanjala!

Mr. Wanjala: Thank you, Mr. Deputy Speaker, Sir. On the Order Paper, this Question is appearing under the Ministry of Foreign Affairs and International Co-operation. The written answer I have is from the Office of the

President. I am getting confused although I had directed the Question to the Minister of State, Office of the President.

INVASION OF SUMBA ISLAND

Mr. Wanjala: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Foreign Affairs and International Co-operation the following Question by Private Notice.

(a) Is the Minister aware that Ugandan Revenue officers, accompanied by their army personnel, invaded Sumba Island of Lake Victoria [**Mr. Wanjala**] on 11th August, 2001, and confiscated goods belonging to Kenyan shopkeepers?

(b) What urgent measures will the Minister take to stop further harassment of Kenyan citizens and ensure their security?

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Mr. Deputy Speaker, Sir, clearly, there is a dilemma. This Question has been rerouted to my colleague in the Office of the President and they did provide a written answer. But on the Order Paper, it appears under the Ministry of Foreign Affairs and International Co-operation.

Mr. Deputy Speaker: Mr. Minister, are you in a position to respond now?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I am not aware of the Question. Maybe, the written answer was prepared by one of my colleagues. So, I am not in a position to respond to it.

Mr. Wanjala: Mr. Deputy Speaker, Sir, the written answer bears Maj. Madoka's signature and he is saying he is not aware of it. We are dealing with very delicate matters. This is an urgent matter---

Mr. Deputy Speaker: Order! Order! We have no doubt that the matter is urgent. That is why you raised it under Private Notice. But, Mr. Minister, the Member has an answer signed by you, so, you cannot escape. If you did not bring the written answer, say so.

The Minister of State, Office of the President (Maj. Madoka): I am sorry because it was not on the Order Paper or, at least, I was not aware of it. That is why I did not bring it up. It is under the Ministry of Foreign Affairs and International Co-operation. That is why, maybe, there is this confusion. I request that it be brought up on Tuesday next week.

Mr. Deputy Speaker: Mr. Wanjala, I will defer this Question to Tuesday next week.

Mr. Wanjala: Thank you, Mr. Deputy Speaker, Sir. But these Ministers should be careful when they are signing documents. They ended up signing documents on Goldenberg because they did not read their contents.

(Applause)

(Question deferred)

Mr. Deputy Speaker: Next Question, Mr. Leshore!

COMMUNITY PARTICIPATION IN ECO-TOURISM

Mr. Leshore: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Tourism and Information the following Question by Private Notice.

(a) What steps is the Minister taking to develop and sustain the participation of the communities neighbouring tourist resorts within the new perspective of Eco-Tourism?

(b) What assistance is he planning to give to the communities to ensure their full participation?

The Assistant Minister for Tourism and Information (Dr. Wamukoya): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Government has taken the following deliberate steps to encourage and support the development of Eco-Tourism through involvement in identifying suitable sites and areas for development of Eco-Tourism projects. It has encouraged broad involvement and participation of the local communities in the planning, implementation and management of Eco-Tourism projects. It also ensures that a large percentage of the employees come from the local communities and that the income accrued enhances the wellbeing of the local communities. The Government has ensured that the development is implemented in a way that increases revenues at State and local authority levels, and improves the quality of the life at community level.

(b) The Government is assisting communities in identifying partners and sponsors for such projects. It is providing technical support for such projects. It allows the benefits accrued from Eco-Tourism projects to be ploughed back to the local communities. It is also involved in the training of local communities in management of facilities, visitors and activities related to Eco-Tourism.

Mr. Leshore: Mr. Deputy Speaker, Sir, the Assistant Minister has given a beautiful answer, but what is happening on the ground is not what he is saying. The Ministry is putting a lot of effort in improving the Eco-Tourism projects around private ranches, especially in Laikipia. Would he tell us what he is doing to improve the involvement of communities around Kajiado, Samburu, Isiolo and other areas which are neighbouring the national reserves?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, this is just but a new concept. But the Ministry has already helped quite a good number of areas to develop and the local communities are already reaping revenues. One of them is Maasai Mara area where the bio-diversity and the tourists are benefiting from the arrangement. The other area is Arabuko-Sokoke Forest where the local communities are harvesting butterflies and selling them to tourists or other people who are interested in them. The third one is the Watamu community-based project which has enabled the local communities to build classes at Mida Primary School from the levy that is charged to tourists. We also have one in the hon. Member's place at Lewa Iliweng'wese Namunyaka Community which the Government is also helping. There are many others; I do not want to go through all of them.

Mr. Michuki: Mr. Deputy Speaker, Sir, the Kenya Tourist Development Corporation (KTDC) was established by this Republic to assist local communities to participate economically in the tourist industry. Could the Assistant Minister tell this House whether in the promotion of the rich culture that is evident in many parts of our country the Government has set aside any monies to assist those communities to fully take part in the tourism industry? What is the role of the KTDC?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, the KTDC is supposed to market tourism and develop new routes. The KTDC has already developed very well the southern and northern tourist routes. These are routes to Mombasa, parts of Central Province and Samburu District. I agree with you that they have to do a lot to improve the western routes. I can assure this House that my Ministry, at this particular time, is working very hard to improve that route. Also, we are introducing exotic type of tourist attractions like camel riding at Samburu and other areas.

Mr. Leshore: Mr. Deputy Speaker, Sir, the Assistant Minister has just said that his Ministry is trying to improve tourist routes. Could he tell us how much money the Ministry has set aside to improve tourist routes in those areas?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, I did not come prepared to state exactly how much money we have set aside for this project. I want to state that my Ministry is new. At the time of our budgeting, it was not included. In fact, we were given our money recently.

Mr. Michuki: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to plead poverty to this House, when in actual fact the Ministry that was responsible for tourism was provided with money? Is he in order to mislead this House by pleading poverty when, in fact, there is money that has been hived off other Ministries to cater for tourism?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, I am not pleading poverty and I am not misleading the House. I am just stating the truth that, by the time we were reading the Budget, my Ministry did not exist. It was hived out from the two Ministries; the Ministry of Trade, Tourism and Industry, and the Ministry of Transport, Information and Communications. Now we are in a new Ministry of Tourism and Information. The hon. Member is right in saying that my Ministry is receiving some money from the original parent Ministry. However, we have not received enough money for us to operate in normal circumstances.

Mr. Deputy Speaker: Order! Dr. Wamukoya, the question which the hon. Member raised is simply this: It does not matter when your Ministry was created because relevant departments to tourism were transferred from wherever they were to the Ministry. Just tell them how much was transferred under that department.

Dr. Wamukoya: Mr. Deputy Speaker, Sir, I started by saying that I did not come prepared with that type of answer.

Mr. Deputy Speaker: When can you bring that information?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, I will bring it the day you dictate to me to do it.

Mr. Deputy Speaker: Next week on Thursday.

Dr. Wamukoya: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: That is the end of Question Time.
Next Order!

MINISTERIAL STATEMENTS

PROTECTION OF CHILDREN'S RIGHTS

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Deputy Speaker, Sir, I wish to make the following Ministerial Statement in response to a wish which was expressed last week by hon. Imanyara regarding the state of the children in this country.

Mr. Deputy Speaker, Sir, on 30th July, 1990, the Government ratified the United Nations Convention on the Rights of the Child (UNCRC). The ratification of this document was, without doubt, a milestone towards standardising the tackling of issues of the children within a global perceptiveness.

Article 44 of this particular convention stipulates that state parties make their first report two years after ratification and thereafter every five years, to the United Nations Committee on Human Rights on the state of the children in their own countries. The committee has given guidelines on the reporting of the content, which includes civil rights and freedoms, education, leisure and cultural activities and special protection measures, among others. It is clear that these guidelines required extensive information on matters of legal protection, health, education, among many other details.

In this effect, the Government did constitute a committee in October 1997. This committee comprised various Ministries. This Committee did get down to work and, indeed, it came up with a draft report on the status of the children in this country. In April 1999, this particular draft report was exhaustively discussed at various levels of the Government. Thereafter, it was transmitted to Geneva in December, 1999.

The United Nations office in Geneva did acknowledge this report. As a result, it did invite the Kenya Government on 26th September to send a high-level delegation to go and explain the issues which were raised in that report. We did send a delegation. In the course of deliberation, this is what did appear in a number of the local dailies here.

That particular draft document did admit that there had been a number of problems on the children. At the same time, it did clearly state the measures that the Government is undertaking on the matters of the children because it is ultimately important. I just want to give only two highlights. It is for this reason that the Government did hold a national conference on children in the month of August. In the process of this particular conference several measures were outlined. Much more important, a monetary evaluation and resource mobilisation process were recommended. To this effect, the conference did set up a national steering committee and a working committee to ensure implementation of the recommendations that were made during the conference.

Mr. Deputy Speaker, Sir, the Government has further brought before this House a Bill on the children. You can see it on the Order Paper. Without going into very great details, these two initiatives underline the Government's seriousness in matters of addressing the problems of the children. There is no doubt, we have major problems of children, but it is not only the Government alone that will be able to address these problems, it is all of us.

Finally, I just want to bring to the attention of this House that the Government has already set aside a sum of Ksh197.6 million in the current financial year to fund the current children's programmes within the Department of Children's Services. We believe that this alone, with another further Kshs25 million, which is going towards rehabilitation projects specifically one in Thika and Nyamira, among others, will go a long way to ensure that we are doing the best we can to address this particular problem

Mr. Muite: Mr. Deputy Speaker, Sir, while the Kenya Government is to be congratulated for the candour with which it presented this report on children to the United Nations, admitting that our children have been defiled and raped during the clashes, could the Vice-President clarify to this House what steps the Government has taken to bring those who perpetrated these crimes to justice? What steps has the Government taken to bring those who defiled and raped the children during the clashes to justice?

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Deputy Speaker, Sir, I do not want to be drawn to issues. I am sure the hon. Member does know that this is fully covered in another report. I do not wish to go into that. If we create a problem, and it is known everywhere, the first people who suffer are children and women. I think it behoves all us, as leaders, to ensure whatever happened in 1992 does not happen here again. It is ourselves to pray that, that does not recur.

Mr. Anyona: Mr. Deputy Speaker, Sir, I am not sure whether hon. Prof. Saitoti has been properly and fully briefed on what transpired in the House here. If I remember right, Mr. Imanyara was horrified, and so, indeed, was the House and the whole country, that this Government went and prepared a report, distributed this report at the International Convention and exposed our children to what had happened and yet did not offer a defence or

explanation. Even now, when Mr. Muite asks what is going to be done, we still have no clue as to what we will do. So, what was the intention of this report? Was it mischief or a conspiracy to smear the country? That really is the issue Mr. Imanyara was raising. Could the Vice-President and Minister for Home Affairs, please address, that question?

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Deputy Speaker, Sir, I do not want, in any way, to allocate any kind of mischief. I have made it quite clear that, indeed, the United Nations Convention normally asks the member states of the United Nations to report on the progress that each country has made after every two years. It is true the report was prepared in 1998. It was discussed in that Convention, and I cannot conceal that there are a number of disturbing issues there. I shall be intellectually dishonest. But that is the main reason why we sent a delegation in August to Geneva to go and clarify this matter and to state in no uncertain terms, like any developing country which is going through problems of poverty, that we have problems. We should tell it in no uncertain terms the measures we have put in place to address the problem.

Mr. Deputy Speaker: Maj. Madoka, make your statements brief since you have got more than one!

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I have four Ministerial Statements.

Mr. Deputy Speaker: Well, I will give you the time, but make them brief!

DEPLOYMENT OF UGANDAN TROOPS AROUND LAKE VICTORIA

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, if they are too brief, I may not make the point. But [**The Minister of State, Office of the President**] I will do my best.

Mr. Deputy Speaker, Sir, on 3rd October, Mr. Wanjala sought a Ministerial Statement with regard to alleged presence of Ugandan military police on Lake Victoria. In this connection, I wish to state as follows: Lake Victoria is a shared resource between the three East African States. Kenya territorial waters cover the smaller part of the lake, that is approximately 6 per cent of the entire lake. Uganda and Tanzania share approximately, 43 per cent and 49 per cent of the lake respectively. In the past, fishing activities on the lake have been largely haphazard and unco-ordinated.

However, a new trend is emerging where the three East African states are beginning to take a keener interest on the goings-on in the lake. You will agree with me that the situation as it was previously, was denying the partner states that due revenue and also left a loophole which could easily be exploited by criminal elements. I must point out here that the fishermen are generally innocent and harmless, and that drug trafficking and smuggling of firearms is known to take place on the lake.

Mr. Deputy Speaker, Sir, on her part, Uganda has of late conducted intensive security patrols on the lake. This activity is justifiable given the foregoing circumstances. Indeed, relevant organs of the East African Community have urged the sister states to intensify patrols on the lake to curb illegal fishing and other criminal activities. Wherever there are genuine grievances amongst our fishermen, the Government has always taken up the matter with Ugandan authorities in bilateral fora or through the East African Community framework. Indeed, the grievances emanating from activities of Uganda's security personnel on the lake are being handled under the agencies of Lake Victoria Fisheries Organization, which is a body of the East African Community. A meeting was held in Jinja, Uganda on 5th and 6th September, 2001. It was attended by stakeholders in the fishing industry, generally. It was agreed, among other things, that: Fishermen crossing territorial waters should report their presence to the relevant authorities of the countries, and where possible, land their catches in that country. The Food and Agriculture Organization code of conduct for responsible fishing should be applied. Specific coding and marking of fishing boats, outboard engines, registration and licensing of fishermen be adhered to.

Mr. Deputy Speaker, Sir, we are patrolling our part of the lake, and we have no problem with Ugandan security personnel patrolling their part of the lake. However, any violation of our territorial waters by Uganda security officers will not be condoned. Indeed, I am aware that following one such incident at Sumba Island, where Ugandan authorities trespassed into our territory, the matter was taken up and an apology and assurance of non-repetition was given.

Mr. Deputy Speaker: Finish all the four Ministerial Statements, then you can take questions together.

EXPANSION OF WILSON AIRPORT

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, following a request for a Ministerial Statement by Mr. Angwenyi, with regard to the tender for the expansion of Wilson Airport, I would like to state as follows: Following the establishment of the Kenya Airports Authority and subsequent transfer of assets

from the former Aerodromes Department, Wilson Airport is now managed and operated by the Authority. Over the years, the Airport has grown as a base for general aviation operations and currently handles 262,000 passengers and 2,780,153 killogrammes of cargo per annum. In addition to the above, a number of buildings provide general office accommodation and workshops for other activities not related aviation have come up at the airport. In order to accommodate the above diverse activities, development of facilities at the airport over the years has been carried out without co-ordinated planning, resulting in a layout that has various limitations in enforcement of security, safety and efficiency of aircraft operations.

Mr. Deputy Speaker, Sir, arising from the above, the following constraints in operations at the airport are experienced: The air side can be accessed through any of the hangers and the other buildings with apron frontage. Staff and personnel, including immigrants can move from the points from or to the air side without adequate control. In addition, goods, including weapons, can be moved from the land side from the aircraft, especially those originating from frontier districts and the neighbouring countries. Cases have been reported that some aircraft take off during hours of closure without reference to any authority due to inadequate control of accessibility to the air side. Security of aircraft parked on the aprons cannot be fully guaranteed. Departing passengers check in at the respective airline or operation hangers or launches, then either move on foot on the air side, or are loaded into the aircraft which taxis to the existing small terminal building for immigration and customs clearance. Due to the large number of aircraft, especially at peak hours, this results in congestion of the aprons. There are no facilities for segregation of international and domestic flights, resulting in poor control over entry of unauthorised goods and immigrants. There are no suitable facilities for handling cargo, especially *miraa*, which is currently being loaded directly from vehicles to the aircraft without adequate processing and subjection to security and custom checks.

Mr. Deputy Speaker, Sir, taking into account the above constraints, the Kenya Airports Authority (KAA) commissioned consultants to study and make recommendations on the best way to develop and improve the facilities. A preliminary report has been submitted to KAA and the KAA is still receiving comments from various stakeholders. It is expected that as soon as all comments have been received, a final report will be prepared for consideration. At present, no tender for the expansion of Wilson Airport is under consideration.

FIGHTING BETWEEN RIVAL GROUPS

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, on 2nd October, 2001, Mr. Mwenje rose on a point of order, seeking a Ministerial Statement regarding the security situation in Dandora where he alleged that two rival groups have been fighting. In this connection, may I state the following. It is true that there has been insecurity in Dandora stemming from rivalry between groups calling themselves *Kamjeshi* and the *Mungiki* group. The rivalry has been exacerbated by a struggle over control and manning of matatu stages in the area. The *Mungiki* group claims that the matatu owners have hired them to man the termini and stages, while *Kamjeshi* claims that the activity is their only source of livelihood.

On 24th September, 2001, a report was made to the police that a matatu tout had gone missing and was suspected to have been killed by *Kamjeshi* members. As the problem threatened to get out of hand, a meeting of stakeholders was convened on the same day to address the issue. The Dandora Minibus Welfare Association observed that *Kamjeshi* group was demanding too much money to man the stages and termini. Therefore, they resolved to engage the services of *Mungiki*. The meeting also observed that *Kamjeshi* was usurping the role of matatu owners in determining unilaterally, who should man the stages. These decisions were communicated to the divisional security committee, with a request that the Government assists the matatu owners to remove *Kamjeshi* from matatu stages.

On 5th of October, the body of a matatu tout who was reported missing on 24th September was found dumped at the Dandora Garbage Dumping Site. Accusing fingers were promptly pointed at *Kamjeshi* as possible killers. Investigations into the death are being handled by the DCIO Buru Buru, and two suspects are already in police custody. Tension has been very high in Dandora, with sporadic skirmishes between *Mungiki* and *Kamjeshi* group. Unfortunately, the fighting escalated on the 8th of October, where four people were reported killed in fighting between *Kamjeshi* and *Mungiki*. Following the unfolding scenario in Dandora, security officers have been deployed in the area to separate the combatants and arrest all the lawbreakers. It is evident that both *Mungiki* and *Kamjeshi* are bent on resolving their differences in a violent manner. The Government has taken stern action immediately to stop these criminal activities. We have 24-hour intensive patrols and they are now on the ground, with a view to ending this menace once and for all.

Mr. Deputy Speaker, Sir, in fact, Eng. Toro is not here and I would like to wait for him instead of reading out the Ministerial Statement which he had asked for.

Mr. Deputy Speaker: Accepted!

Yes, Mr. Wanjala.

Mr. Wanjala: Mr. Deputy Speaker, Sir, the Ministerial Statement that the Minister had given about the issue I raised is not true. The Ugandan Army had moved into the Lake in full blast with speedboats written "defence" on them. They have taken over the following islands: Sumba, Sugulu, Hama, Lolwe, Siro and Ways. They have gone further to take part of Mageta Island in Bondo, Dr. Oburu's constituency. They have gone further and taken over Rimba Island which is in Mr. Kajwang's constituency, Mbita. Our fishermen do not access the lake. When they are found on the lake, all their fishing gears are removed from them. On the Kenyan side, they have no motorboats and speedboats, and the fisheries are just outside. Police officers just look on as our fishermen are killed in the lake day and night. Could he tell this House why they should allow outside aggressors to come to Kenya, when we have been embarrassed in Budalang'i and the aggressors are grabbing our islands?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, as I have said, there was one incident that I am aware of. Regarding all these other ones, I have asked for a further report from the police on the ground. He wrote a lengthy letter which I am investigating.

Mr. Deputy Speaker: Mr. Ndicho, on Tuesday, you did not have an opportunity to seek clarification on a Ministerial Statement made by his office.

Mr. Ndicho: Mr. Deputy Speaker, Sir, so far, regarding the Ministerial Statement that I had asked for; what the Government has done is quite satisfactory because they have taken action on the people who killed those people. They have also taken some disciplinary action against the police who were on duty. They have also, through the DC and OCPD, promised that they are going to expand the cells and make them remain humane and hospitable. My only clarification from that statement is only one: Knowing that the Government has admitted liability through those actions, could the Government promise that the issue of compensation will not be taken to court or take a lot of time to complete investigations? If the Government calls together the parents and the family of these people and negotiate the package for compensation--- This is because if they go to court following that admission--- The issue of compensation is straightforward. Could they save these people, by calling them and negotiating, and giving them something substantial; that is about Kshs5 million per family?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, no decision will be made about compensation until the cases have been determined.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, I would like to seek clarification on my statement. I thank the Minister for the statement that he had given, but since the amount of money intended to be spent on that project, and you know how happy Kenyans are in spending on large projects--- The project will cost Kshs1.2 billion, and since most of our airstrips in the country are dilapidated and out of service, this money which will be channelled to those airstrips--- I would want to ask the Minister to categorically state here today that before the tenders are sourced, a report will be made to the House Committee with the mandate of the airports, then, the report will be scrutinised by the Committee of this House before the tenders are sourced.

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, the position of Wilson Airport is of very great concern to the Government. It is of great security risk and this study was specifically established to see how best we can try and curb insecurity in that particular area. It cannot be compared to the other airstrips that the hon. Member is referring to. There are certain procedures in awarding the tenders, and that is what will be done.

POINTS OF ORDER

THE DISAPPEARANCE OF MR. KIMANI

Mr. Michuki: Mr. Deputy Speaker, Sir, I would like to seek a Ministerial Statement from the Minister of State, Office of the President, with regard to the disappearance of Mr. Julius Njuguna Kimani, who served as an Administration Police Officer in Meru. This officer disappeared in June this year. When I filed a Question by Private Notice on the 9th of August this year about the same, the Minister undertook to establish his whereabouts. Given that this matter was raised in June and we are now in October, could the Minister make a statement to this House as to the whereabouts of Mr. Kimani?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, up to now, we have not established where he is. But if I am required to make a Ministerial Statement, I will do so.

STATE OF AFFAIRS IN LOCAL AUTHORITIES

Mr. Anyona: Mr. Deputy Speaker, Sir, I have got two issues to raise. Last week, I asked the Minister for

Local Government to give a Ministerial statement with regard to the affairs of certain local authorities in the country, including Nairobi, Mombasa, Kisumu and Keroka. I do not know what has happened to that statement.

RESOLUTION OF PIC CHAIRMANSHIP DISPUTE

Mr. Anyona: Mr. Deputy Speaker, Sir, under Standing Order No.148, there is established a Committee of the House called the Public Investments Committee. There is very serious confusion and controversy at the moment with regard to the chairmanship of that Committee. I believe that the operations of the Committee have been stalled because of that dispute. This does not give a very good picture of Parliament because we cannot resolve our own issues. I think our rules have a sufficient leeway and if they do not, then we should be able to find one. Instead of allowing the country to wonder why Parliament cannot sort out this matter, the Chair should give this matter serious consideration, in view of the fact that communication was made from the Chair regarding the status of parties in the House when they are in the Government, or when they are not in the Government.

Mr. Deputy Speaker, Sir, my understanding of that particular Standing Order is that we are dealing with an old situation, where it was presumed that there would always be one party in the Government and other parties in the Opposition. That, in fact, is constitutionally untenable. You cannot have situations where parties come together, form a Government and move out. My understanding is that we should interpret the provisions of Standing Order No.148 in the light of the reality of the day, and not stick to the fact that there is one party in power and the other one is not in power and is in the Opposition. We do not have to paralyse the operations of Parliament because of a small matter like this one.

Mr. Deputy Speaker: I will give that matter the consideration it deserves. That is a matter over which the substantive Speaker has already made a ruling. In light of what has happened and what you have said, we will look at it again and give an authoritative communication from the Chair.

INSECURITY IN KISII CENTRAL DISTRICT

Mr. Angwenyi: Mr. Deputy Speaker, Sir, last week I sought a Ministerial statement from the Minister of State, Office of the President in charge of Internal Security and Provincial Administration, with regard to insecurity in Kisii Central District and Abagusiland in general. He promised to give that statement today, but when he was giving his statement about insecurity in other parts of the country, he did not include that statement. When will that statement be given?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I apologise because that statement is not ready. I will give it on Tuesday, next week.

Mr. Deputy Speaker: Let me hear from the Ministry of Local Government on the matter raised by hon. Anyona.

The Assistant Minister for Local Government (Mr. Kiangoi): Mr. Deputy Speaker, Sir, I was not in last week when that statement was sought. I will take that matter up and we will give that statement next week on Tuesday.

Dr. Kituyi: Mr. Deputy Speaker, Sir, the Minister of State, Office of the President in charge of Internal Security and Provincial Administration, has given two critical statements here. I would like to seek some clarification on those statements.

Mr. Deputy Speaker, Sir, on the first statement the Minister, in response to an apparent invasion of Kenyan territorial waters, said the East African Community Heads of States have agreed to work together in fighting criminal activities. How come that in that statement, he has included cross-border trade? To my understanding, the operating principles of the East African Community and even the protocol which is being prepared envisage cross-border trade and building on traditional contacts to have economic unions. Which provisions of the treaty is he referring to, in order to justify the harassment of Kenyan traders who are doing what the Maasais are doing in Namanga and the Luhyas are doing in Suam and Mbale?

Mr. Deputy Speaker, Sir, on the second statement, the Kshs1.2 billion being spent on the construction of a terminal at Wilson Airport without consulting the people doing business in that airport is unacceptable. That airport has become important because of the stakeholders who are working there. Why does the Kenya Airports Authority unilaterally impose a project on the people who have made Wilson Airport what it is? If the airport has become crowded, why is the Government allowing non-airborne activities on the airport grounds?

Mr. Temporary Deputy Speaker, Sir, on the third statement, the Minister has talked about *Kamjeshi and Mungiki*. One would think he is talking about armies in a foreign country! How does the Police Department wait for bands of criminals to fight it out, and then say one group is fair because it is not like the other one? How is the Government going to increase surveillance when people have already died? Is this how the Government provides

security to Kenyans? Why is the Government oscillating between the *Kamjeshi and Mungiki* groups?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I wish to respond to the question on Wilson Airport. I think the hon. Member did not listen to what I said. A study has been done, we are consulting with the stakeholders, but no decision has been made to spend the amount of money he is talking about. It is obvious that the hon. Member did not follow what I said.

Mr. Munyao: Mr. Deputy Speaker, I came last week to see you on whether I could raise the issue of *Mungiki* and *Kamjeshi* fights in Dandora.

Mr. Deputy Speaker: Order, Mr. Munyao! I did inform you that the issue had been raised by hon. Mwenje and the Minister has now given a statement! In fact, I told you to reserve your question until the Minister gives his statement. But you cannot raise it now as a point of order. Just seek a clarification from the Minister.

Mr. Munyao: Mr. Deputy Speaker, Sir, I do not know what is wrong with you! We are just saying the same thing! I was thanking you for your guidance!

(Laughter)

We have been good friends for a long time! If you want me to withdraw what I wanted to say, I am prepared to do so.

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir! Mr. Munyao is challenging the Chair!

Mr. Deputy Speaker: Order, Mr. Sungu! Proceed, Mr. Munyao!

Mr. Munyao: Mr. Deputy Speaker, Sir, 27 lives have been lost in Dandora. It appears as if the Government is enjoying and encouraging these two sides to keep on fighting. Is this intentional? Why should this happen in Nairobi when we have a Government in place? What else can the Government be proud of if it cannot stop such fights in the Capital City?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, the Government takes no joy in seeing lives lost. We will take stern measures when situations like these ones arise. We are aware that the matatu operators have had their own groups and they are the ones causing this problem by trying to get another group. But the situation is now under control.

AVIATION POLICY

Dr. Ochuodho: Mr. Deputy Speaker, Sir, before we proceeded on recess, I had sought a Ministerial Statement from the Ministry of Transport and Communications with regard to an aviation franchising policy. I want to revisit that issue, more so, in view of what is happening in the aviation industry. Two weeks ago in Australia, Ancept, the second major air carrier, went under. We do not want to wait for Kenya Airways to go under because of franchising to British Airways. Could the Minister issue that statement with regard to whether we have an aviation policy, whereby British Airways can do business even on domestic routes within Kenya, which Kenya Airways cannot do on the other side? I am also talking about regional routes from Nairobi to Lusaka, Entebbe and so on. If the Minister could make that statement, I would be grateful.

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I will make the statement on Thursday, next week.

MINISTERIAL STATEMENT

PURCHASE OF MAIZE FROM FARMERS

Mr. Kibaki: Mr. Deputy Speaker, Sir, I would like the Minister for Agriculture to make a Ministerial Statement regarding the purchasing of maize. Maize is now ripe and there is a huge crop, better than we have had over many years, and the stores and silos are empty. We want to hear when the Minister will authorise and give the National Cereals and Produce Board money to buy the maize from farmers, rather than letting the crop be wasted when the nation will need that maize in three months' time. It is very important!

The Minister for Agriculture (Dr. Godana): Mr. Deputy Speaker, Sir, I may as well respond to him straightaway now! I wish to take this opportunity to congratulate Kenyan farmers, especially those in the North Rift and other areas of the country where we have been fortunate enough to have good rains, and what promises to be a very bumper harvest. The Government is determined to ensure that farmers do not feel frustrated this time, by not being able to get a proper price for their crop. I can assure the House and the country that plans are already at an advanced stage. I think that within the next one week, the first Exchequer release from the Treasury, which has already

been released to the Office of the President, will enable the NCPB to intervene in the North Rift, as we expect further Exchequer releases.

Mr. Karume: On a point of order, Mr. Deputy Speaker, Sir. I thank the Minister for Agriculture for what he has said. The price of a bag of maize today is about Kshs400 to Kshs500. You know that it costs about Kshs1,000 to produce one bag of maize. Could the Minister find a way to pay the farmers more than Kshs1,000 per bag? If you pay them Kshs400 or Kshs500, it will be a waste!

The Minister for Agriculture (Dr. Godana): Mr. Deputy Speaker, Sir, I am fully aware that in the absence of intervention from the NCPB, which is responsible for stabilising the prices; and with the influx of maize from neighbouring countries where the Kenyan Shilling is virtually regarded as the "regional dollar", people have been prepared to dump maize here for as low as Kshs350. That is a fact. That is contributing to the low price in the market right now before the NCPB intervenes.

The other thing that I would like to assure the House is that the Government is determined to ensure that farmers stay in farming. There is only one miracle or trick of ensuring that farmers stay in farming; that is to make farming profitable! Obviously, where a bag of maize is sold for a price which is lower than the cost of production, then sooner or later, our farmers will be frustrated. That is the reason why our maize is already the most expensive compared to the international maize prices. Even so, we are also looking at agricultural inputs such as fertilisers, which are responsible for that inordinately high cost of production.

Dr. Kituyi: On a point of order, Mr. Deputy Speaker, Sir. What the Minister is talking about sounds very good! I come from a maize producing area, where we are selling maize at Kshs350 a bag today. Maize has not just accidentally happened to be ripe and ready for the market today. It was forthcoming since the start of the agricultural cycle. The Government knows that the longer you stay before you open up buying points by the NCPB, the more you leave the peasants vulnerable to middlemen, who buy maize cheaply, and then open the NCPB for the traders! Why has it been necessary to take so long before discovering that there is an emergency? Even on the NCPB, the Minister issued a statement claiming that it will not buy maize, which further depressed the prices for the peasant farmers. What has happened now that you have discovered that the farmers need assistance, and the Government is so good to avail money next week?

The Minister for Agriculture (Dr. Godana): Mr. Deputy Speaker, Sir, firstly, as regards the statement which I was supposed to have made, it was clearly a case of irresponsible media reporting. What I said at the time was that, as I was speaking then, the NCPB had not received any money to purchase maize. The Ministry of Agriculture acts on the basis of the budget that it has been allocated. The Ministry has not been allocated any funds by this Parliament or the Treasury for the purpose of purchasing maize. But, as a Ministry, we have been pushing for appropriate allocations from the Treasury. The delay was because our pleas for early Exchequer releases were not met as soon as we wanted them. On that account, we understood the financial situation for the whole country on account of external resources. But as I said, as I am talking today, I understand that some Kshs300 million or so have been released by the Exchequer. That should be the first instalment with which the NCPB will move into the market. We are hoping to get further Exchequer releases immediately before that small amount runs out.

Mr. Nyachae: Mr. Deputy Speaker, Sir, I am encouraged by the remarks made by the Minister about the intervention. But he has been very careful to avoid indicating the bracket of the price to be paid to the maize farmers. The Minister is also aware that the same problem existed in the wheat industry. The same Ministry has worked out a mechanism where the millers and the farmers are paid a price which is agreed upon, and nobody loses. Now, Kshs300 million will not last a week. Could the Minister move on the same basis as he did in the case of the wheat industry, so that there is a permanent system of working out a mechanism of giving the farmer his share of his returns, and the buyer also does not lose? A mechanism to guide the two forces must be there. Could the Minister look into that possibility?

The Minister for Agriculture (Dr. Godana): Mr. Deputy Speaker, Sir, In the existing circumstances, I do appreciate that the first Exchequer release that we are talking about is very modest. I want to emphasise what I said; that, that was just to enable the NCPB to go into the market within a span of the next one week. We are expecting further Exchequer releases and I am confident that the NCPB will be able to intervene in the market in a manner to shore up the price to within a reasonable level.

I am glad that Mr. Nyachae has commended us for working out something more stable in the wheat sector. We will be more than glad to explore possibilities of replicating some kind of a similar arrangement in the area of maize to the satisfaction of all sides. But, unfortunately, as it is with the wheat subsector, it was much more amenable to that kind of deal in which producers, millers and the Government had to come together because we produce less wheat than we consume. This year, we are supposed to have another bumper crop of wheat, but that will account for less than 50 per cent of our needs. That, really, is the context of shortage and the need to import which has given producers and the Government the strong bargaining arm with the millers. The problem in the area of maize is that

millers themselves, who should be out there in the field buying, are not really eager to increase the prices. As I said, we are prepared to explore all possibilities to ensure that, in the long term, we have a sustainable viable system of ensuring that the maize market is guaranteed within a price band which all stakeholders will agree is reasonable.

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek two clarifications from the Minister of State in charge of internal security. The first one is on Wilson Airport. The Minister did tell us some untruths, that people normally arrive or take off from that airport from any point. There is an Immigration Office and a Customs Office which everyone who lands at that airport, or is going out, goes through. The Aero Club of Kenya, which has developed the Wilson Airport--

Mr. Deputy Speaker: Mr. Angwenyi, this is not debate time!

Mr. Angwenyi: I have papers which I will present to the Minister, so that he can see that these people at the Kenya Airports Authority just want to waste public funds amounting to Kshs1.2 billion. These people are prepared to develop that airport.

Secondly, on the *Kamjeshi* and *Mungiki* issue in Eastlands, I would like the Minister to give a guarantee that he will protect the investments of matatu owners the same way we protect any other investment in the country, so that they are not taken over by the *Mungiki* and *Kamjeshi* groups.

COMMUNICATION FROM THE CHAIR

PROCEDURE FOR APPROVAL OF EAST AFRICAN COMMUNITY ASSEMBLY ELECTION DRAFT RULES

Mr. Deputy Speaker: Hon. Members, you have seen copies of the Supplementary Order Paper going round and I want to explain the reason behind it. I have considered the most suitable procedure to follow in order to subject the East African Community (Election of Members of the Assembly) Draft Rules to scrutiny by the House. I wish to advise that the House follow the procedure it set in 1969 and also 1992.

On 2nd October, of that year when the House was dealing with a similar Motion, to adopt the election regulations, by the indulgence of the House, Mr. Speaker directed that the Motion be referred to the Committee of the whole House. Consequently, I direct that the general debate on the Rules be taken under the Motion: "Mr. Speaker Do Now Leave the Chair". Once the debate is concluded and the question positively resolved thereupon, the House will resolve itself into the Committee of the Whole House for the consideration of the Draft Rules. Thereafter, the reporting procedure, as in other Committees, will be followed. In the Committee, the Rules will be considered one by one and Members can then propose amendments if any.

When the House resumes its sitting, the Rules will be reported with or without amendment as the case may be. The question to be proposed will be: "The House doth agree with the Committee of the Whole House in the said Report". However, to conform with the provisions of Section 34(2) of Interpretation and General Provisions Act, Cap.2 of the Laws of Kenya, the question to be proposed by Mr. Speaker at the end, and to be decided without debate, will be as follows:

That pursuant to the provisions of article 50(1) of the schedule to the Treaty for the Establishment of the East African Community Act; this House approves the East African Community (Election of Members of the Assembly) Draft Rules laid in the table of the House on Wednesday, 3rd October, 2001.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. I think it is important to get the procedural matters of this business right, and you have made headway in that direction. I would like to seek some clarification. The Motion that is before the House was a normal Motion seeking a resolution of the House, which will be debated and seconded. The debate will go on and at the end of the debate the question will be put. That is the normal procedure, but, as you rightly said, it is also important that the House has a chance of scrutinising the actual Rules. That is normally done in the Committee.

Under the normal rules of debate, this does not apply. Standing Order No.103(2) states that once a Bill has been passed at the Second Reading Stage it then stands committed to the Committee of the Whole House. Standing Order No.126 does provide that the Committee of the Whole House shall only consider matters which have either been referred to it, or which it is required to consider under the Standing Orders. In this particular case, the first provision does not apply. We do not have a situation of a Bill which has gone through the Second Reading and stands committed to the Committee of the Whole House. We have not formally referred this business to the Committee of the Whole House for consideration in accordance with the provisions of Standing Order No.126.

Obviously from what you said, there appears to be some precedent in the past. Would the right procedure in

that case not be that we debate the Motion in the normal manner, and at the end of that debate the House then refers the Rules to the Committee of the Whole House for scrutiny? That would then appear to comply with the provisions of Standing Order No.126, rather than going into the Committee Stage without any clear provisions and then starting the debate. I would have thought that, maybe, we need to do it that way. I wanted to raise that issue at this stage but I have other issues to raise later.

Thank you.

Mr. Deputy Speaker: As I said, there is a precedent set, not once but twice. If we were to follow the normal procedure, what would have been the consequences? I would have had to put the question at the end of the normal debate. If the result was positive, then those Rules would have gone through without giving hon. Members an opportunity to scrutinise or amend them Rule by Rule. In my judgement, I felt that this was better because the interest of hon. Members to discuss and amend Motions, Bills or Draft Rules before them is paramount.

Hon. Members, I did take that decision knowing that there could be a little conundrum. In order for us not to be accused of denying hon. Members an opportunity to have an input, which they can make under a Committee of the Whole House by proposing amendments, I avoided doing this House injustice.

Mr. Muite: Mr. Deputy Speaker, Sir, obviously this is a matter of great importance to this House in terms of complying with Article 50. While I appreciate your concern to accord hon. Members the opportunity of debating the Rules in the Committee Stage so that we go through them Rule by Rule, I have submitted a Motion to amend Mr. Biwott's Motion. When we are a Committee of the Whole House we will not be as effective as a Departmental Committee. I would like to have an opportunity to persuade Members of this House to agree that rather than converting ourselves to a Committee of the Whole House, these Rules be committed to the relevant Departmental Committee, which in this case is the Committee on Defence and Foreign Affairs, which was, in fact, involved in the formulation of the Treaty. This will ensure that when the matter is before that Committee we can all have the opportunity of making detailed submissions, including memoranda. The Departmental Committee can even access outside expertise and hear witnesses before it can report back to this House. That would, in my view, be the more efficient way of going about it. As it is here, we cannot even present memoranda or call witnesses.

Mr. Deputy Speaker: Order, hon. Muite! As I indicated in my communication, the House will be free to debate the merits and demerits not only of the rules, but even to question the foundation of those rules because the Treaty is now part of our domestic laws. So, you are free to raise objections and propose amendments which will be considered by the House in Committee Stage. Hon. Members, I think that under the circumstances, our time is better utilised in debate.

Dr. Kituyi: On a point of order, Mr. Deputy Speaker, Sir. Consistent with the provisions of our Standing Orders and, in concurrence with your position, that we do the procedure which allows for amendment of those rules, I think I still stand within the provisions of our Standing Orders if I do move that the matter be now referred to the relevant Departmental Committee.

Mr. Deputy Speaker: Order! There was no Motion before us except my proposal that when the Minister stands to move, he moves that Mr. Speaker do leave the Chair. So, when it comes to debate, if you want to propose an amendment, you are quite at liberty to do so. Sorry, hon. Members. I think we must now proceed.

Next Order!

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

Mr. Deputy Speaker: It had better be a point of order!

Mr. Murathe: Yes, it is Mr. Deputy Speaker, Sir. Are we actually in order to proceed in this manner, considering that the House is actually being ambushed? Even if you asked us now to contribute---

Mr. Deputy Speaker: What is your point of order?

Mr. Murathe: Unless there is a timeframe within which certain things must happen, you are right that we can go this route, but we also need to even have our copies of these rules so that we are able to scrutinise them.

Mr. Deputy Speaker: Order, hon. Murathe! The Draft Rules have already been laid on the Table. So, every Member is presumed to have a copy. However, let me say that nobody has ambushed this House. The Chair considered the two routes we could have taken and opted for this route which gives you Members time. The debate does not have to end today. You can debate it in general terms today and next week go into Committee Stage. So, we shall spend as much time as it requires for Members to be satisfied that these are their rules and neither rules of the Minister for Trade and Industry, nor the rules of the Chair. Last one, Mr. Anyona!

Mr. Anyona: Mr. Deputy Speaker, Sir, I just want to say that when we begin the debate we are in agreement. What would happen if, indeed, these Rules are actually defective and in conflict with the Treaty? Would this House then be in order to start a debate on rules which may well be considered to be defective and contrary to the Treaty? I would like that matter resolved at this stage, so that when we begin to debate we do so. Could we move that

way? Could we bring that position out in the debate or should we do it now and decide whether or not they are properly before the House?

Mr. Deputy Speaker: Order! As to whether these Rules are properly before the House, I did make a ruling last week; that, the Treaty does require the House itself to make these Rules. How does the House make these Rules? How do we access the House for purposes of making these Rules? Somebody must move that the Draft Rules be tabled and debated. We have now passed that stage. If, however, Members in their arguments, advance sufficient reasons to raise doubts in the minds of the Minister who has tabled the rules as the House generally feels that these rules contravene the Treaty, that is for debate. I cannot prejudge before I hear Members contribute to this Motion.

Next Order!

BILL

First Reading

THE SUGAR BILL

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

The Minister for Agriculture (Dr. Godana): Mr. Deputy Speaker, Sir, I beg to move that the Sugar Bill, 2001 be now referred to the relevant Departmental Committee.

*(The Bill was referred to the relevant
Departmental Committee)*

MOTION

APPROVAL OF EAST AFRICAN COMMUNITY
ASSEMBLY ELECTION DRAFT RULES

The Minister for Trade and Industry (Mr. Biwott): Mr. Deputy Speaker, Sir, I beg to move that Mr. Speaker do now leave the Chair.

Dr. Kituyi: On a point of order, Mr.

Deputy Speaker, Sir. Is it not appropriate at this stage, that now we are about to introduce debate into the matter, that I revisit the matter of requesting that the matter now to be moved, be referred to the relevant Departmental Committee?

Mr. Deputy Speaker: I wonder what Standing Order you are citing in making that request.

Dr. Kituyi: Mr. Deputy Speaker, Sir, it is exactly the same as under which the hon. Godana has made.

Mr. Deputy Speaker: Order! Hon. Godana moved that the Bill be committed to the relevant Departmental Committee. This is not a Bill. These are Draft Rules of the House to enable the House to conduct an election for representation to the East African Assembly! So, that procedure does not apply.

Proceed!

The Minister for Trade and Industry (Mr. Biwott); Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 50 (1) of the schedule to the Treaty for the Establishment of the East African Community Act 2000, the Committee of the Whole House approves the East African Community (Election of Members of the Assembly) Draft Rules laid on the Table of the House on Wednesday, 3rd October, 2001.

The Minister for Agriculture (Dr. Godana): seconded.

Mr. Deputy Speaker: Hon. Minister, after you moved that Mr. Speaker do now leave the Chair, proceed to-- Now the Motion has been moved. That is the only one you moved for now.

Proceed!

The Minister for Trade and Industry (Mr. Biwott): Mr. Deputy Speaker, Sir, it is provided under Article 50(1) of the Treaty that the National Assembly of each partner state shall elect not from among its members, nine members of the assembly who shall represent as much as it is feasible, the various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in the partner states in accordance with such procedures as the National Assembly of each partner state may determine. In Article 50(2), it further provides that the person shall be qualified to be elected as a member of the Assembly by the National Assembly of the partner state

if such a person; is a citizen of that partner state, is qualified to be elected a member of the National Assembly of that partner state under its constitution, he is not holding office as a Minister in the partner state, he is not an officer in the service of the Community and has proven experience or interest in consolidating and furthering the aims and objectives of the Community. An elected member of the Assembly shall hold office for five years and then can be eligible for re-election for a further term of five years.

In these provisions, I would like to focus the attention of the hon. Members to the following salient factors inherent in these provisions that those who shall be elected shall represent as much as feasible: One, the various political parties, shades of opinion, gender and other special interest groups. The procedures of electing such representatives shall be, and I would like to stress this one, in accordance with such procedure as the National Assembly of each partner state may determine. In other words, it is actually this House which will fully determine those rules and the procedures because when it was being debated there, there was no way in which a country could be directed as to how they should do it. It was for each Parliament itself, to decide how they are going to elect those people, provided that they take into account these salient factors which I have just mentioned.

Mr. Deputy Speaker, Sir, it is in accordance with the determination of the procedures to be followed in electing the nine Kenyan Members of the East African Legislative Assemblies that the Draft Rules before you were laid on the Table of the House on Wednesday, 3rd October, 2001, for the House to deliberate on and make the necessary decision in accordance with Article 50 of the Treaty. I am fully aware of the concern by some Members on the Draft Rules. To them, I would say that the Draft Rules were initiated in order to facilitate debate and scrutiny before they are finalised. This is now a chance for hon. Members to do so. I believe that this House has the sole responsibility of making these Rules.

Mr. Deputy Speaker, Sir, I trust that your intervention, in response to Mr. Anyona's point of order on this issue, cleared most of the concerns of hon. Members; you referred to Cap.2, Section 34(2) of the Laws of Kenya, which is on Interpretation and General Provisions. Also, what you explained this afternoon should actually suffice to enable this House to constitute itself into a Committee and go through these Draft Rules in detail. I believe that we have had enough time to ponder on these elections. I had to delay the tabling of these Draft Rules because some hon. Members, among them Mr. Anyona, had prevailed upon me to delay their tabling so that more attention could be paid to them.

I have since paid attention to the Draft Rules and thought of many ways of introducing them to the House. The House had to be accessed through some channel. I could not see any other appropriate channel through which I could introduce this Motion except the one I have used, which is consistent with the Laws of Kenya. I would, therefore, urge hon. Members to consider most the content of these Draft Rules and improve them where necessary. I appeal to hon. Members to view Kenya as a constituency which is looking forward to the National Assembly to determine, in whatever manner, the way it will send its representatives to the East African Legislative Assembly. Tanzanian has already determined a way of electing its representatives to the Assembly. Uganda has been trying to do so; I do not know whether it has determined a way of doing it or not. However, each of the three East African states is a sovereign state. It has to determine its own way of electing its representatives to the Assembly.

Mr. Deputy Speaker, Sir, hon. Members may also wish to know that the Treaty establishing the East African Community is a Schedule to the Treaty for the Establishment of the East African Community Act, 2000, which we passed here. I remember that we took a lot of time discussing the Act. It was also another problematic Act. We wanted to know how to incorporate the laws made outside this House into our own legal system. We did find a way of doing that by agreeing to append those Rules as a Schedule to this Act, and it worked. Therefore, with the ingenuity of this House, and with the experience of many hon. Members, I believe that nothing will stop us from finding a way of improving these Rules.

Mr. Deputy Speaker, Sir, because the Treaty is a Schedule to our own Act, I found it convenient to follow our own procedures, as provided for in Cap.2, Section 34(3). These Rules were drafted under that Act as subsidiary legislation. I had to use it in order to draft these Rules as subsidiary legislation, and we are going to discuss them as such. The House will now take this opportunity to discuss the Rules.

I would like to remind hon. Members, particularly Mr. Murathe, who has questioned the urgency of constituting the Assembly, that a Summit of Heads of States of the East African Community, held in April, 2001, decided that the Legislative Assembly be formally established by 31st October, 2001, and be launched on 30th November, 2001. We now have limited time. We need to approve these Rules before the end of this month to facilitate the election of our Members to the Legislative Assembly. Therefore, I would say that this limitation makes the approval of these Draft Rules very urgent. I hope that the House will take this fact into consideration while discussing these matters. It is my hope that debate on these Draft Rules and the election process will be completed in time so that Kenya can formally forward names of its nine Members of the Assembly to the East African Community Secretariat to facilitate the establishment of the East African Legislative Assembly within the stipulated time.

With those few remarks, I beg to move.

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Deputy Speaker, Sir, I rise to second this Motion.

Indeed, the Minister for Trade and Industry, under which the East African Co-operation portfolio falls, has done as should be done in asking the House to approve these Draft Rules to facilitate the nomination of our nine Members to the East African Legislative Assembly, as provided for in Article 50 of the Treaty. To those of us who have read Article 50 of the Treaty, it is clear that it is upon each of the National Assemblies of the member states of the East African Community to elect the nine Members to represent the particular state in the East African Legislative Assembly. The Treaty recognises the sovereignty of each National Assembly, and hence the need for each to stipulate its own rules for the nomination of its own Members to the regional Assembly. From that viewpoint, we should appreciate that whatever was done in Tanzania was done by that country's sovereign Parliament. We are not bound by that Parliament's rules. Neither are we going to be bound by whatever rules are going to be stipulated by the Ugandan National Assembly because every state is sovereign.

Mr. Deputy Speaker, Sir, before these Draft Rules were brought here, the House Business Committee had, on several occasions, deliberated on the issue of the Rules governing the nomination of our nine Members to the regional Assembly. The first Draft Rules were brought before the House Business Committee, and we discussed them.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. I would not have liked to interrupt the Vice-President and Minister for Home Affairs. However, we are walking a tight rope here. We are trying to find the best possible way of facilitating the nomination of our representatives to the regional Assembly. The Vice-President and Minister for Home Affairs has talked about the first and second drafts of the Rules having been considered by the House Business Committee. That means a decision has already been made!

The Vice-President and Minister for Home Affairs (Prof. Saitoti): No, no, no! Really, I do not mean to misguide the House on this issue. Normally, before a Motion or Bill is brought here for debate, the House Business Committee has to look at it for the purpose of "smoking" or cleaning it. We cannot prevent Members of the House Business Committee from offering their views on any business that is presented before it. Indeed, Members of the House Business Committee offered their views on these Rules. Once Members of the Committee give their views, the Minister concerned is advised accordingly. So, I would be extremely wrong to say that Members of the House Business Committee never saw these Draft Rules.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. The point I am making is this: With regard to the process of making these Rules, has this House authorised any of its Committees, including the responsible Departmental Committee, to scrutinise any draft of the Rules? If Members of the House Business Committee were thinking aloud in the Committee, that should not be part of the contributions to this House. As far as I am concerned, these Draft Rules have come before the House for the first time.

The Vice-President and the Minister for Home Affairs (Prof. Saitoti): Mr. Deputy Speaker, Sir, I think the hon. Member does not understand. The House Business Committee, normally, has to allot the day for the debate because that is part of the business. Normally, whether we are brought a Bill, we have to know what it is and people can talk about it. But I am not in any way suggesting that any decision has been taken on this set of rules. It is this House that must do so. I said much earlier that, as provided for in Article 50 of the Treaty, it is the National Assembly to take the decision..

Having said that, the Treaty sets out a number of parameters as far as the interest groups are concerned. It is extremely important that gender is taken into account. The Treaty makes it very clear that each country must take into account the geographical distribution. We must take into account the representation of various political parties. This is precisely what has been done.

Mr. Deputy Speaker, Sir, the most fundamental thing for us to understand is that, it is this Parliament that has got to come up with rules, which we know and believe will produce the best men and women, who will represent this country in the East African Legislative Assembly. Although political parties will be the ones that will nominate those Members here for election by Parliament, the moment they go to Arusha, each and every Member who gets there, will understand that the priority there will be to represent Kenya. But much more important will be for the Members to go and work for the co-operation of the three countries of East Africa.

That is what is intended here by the Minister. He has done his best to fit in what he clearly sees as embodying a set of rules for nomination. But, indeed, it is for this House to decide whether we will take these Rules or not. If you feel that there should be some improvement, we will agree with you because you will have only one chance in five years to elect those Members.

Indeed, I would like to state here that this is a much greater improvement over what used to happen in the old East African Legislative Assembly. In those days, it was only the Government that nominated Members to the then East African Legislative in Arusha. That was all. I am speaking as having been one, and I think I may be the only one

in this House, who actually served in the now defunct East African Legislative Assembly. I believe we could have been better, but those were different times. These are times when I think it is important for people to see that the National Assembly sat as an electoral college because each one of us is represented. We will take into account the wishes of the people and send to Arusha the best people to represent us.

I want to say that at this historical moment, nothing is more important for a country such as Kenya, and, indeed, for many countries in Africa and the world, than to ensure that whatever has been set up as a regional economic integration is strengthened, and issues are debated properly. This is because in the course of trade and co-operation amongst the various states, there will be trade disputes, legal issues and harmonisation of various issues. It is absolutely important that the people, whom we will elect, must be the best. They must be the most knowledgeable. They must be people with knowledge of the history of this country and matters of trade and economic policies. They must be people who have vision and know the necessity and the importance of regional integration. They must be people who can understand that, that is the only way in which we can, as a country, align ourselves in future with the global economy. They must understand this and that the Assembly will not just be a place for talking; it will be a debating institution.

The other thing I think we should understand - and here we must pay tribute to the Members of Authority, namely, the three heads of state. We could easily have asked how come we are not following the example of the European Union, where Members of the European Parliament are actually elected in certain constituencies in their countries. But again we are just beginning and I hope in future, the Treaty will be amended to ensure that Members to the regional Assembly will be elected directly by the people. That should not happen now. Cognisance had to be taken of our levels of development, and the fact that the East African Community is extremely young now. We should first of all nurture it and make sure that it works before we start haggling. We have a long way to go and this will be a very interesting Assembly.

I want to commend the Minister in charge of regional co-operation, who is also the Minister for Trade and Industry, for having worked hard and brought this draft set of Rules here. At least, even if you do not like them, we have a base to work on, debate on and come up with the best Rules. I want to say that this is not really something from just the Government. It is an all-inclusive process. It is not a case where we say: "We want this as a Government". It is Kenyans who will be represented in the East African Legislative Assembly. I commend these Rules, but please feel free to add more into them if you think whatever you put in will further the interests of Kenyans' representation in the regional integration, and if you also believe that it will ultimately produce men and women of reason, not just for Kenya, but for the people of East Africa.

With those few remarks, I beg to second.

(Question proposed)

Dr. Kituyi: Thank you very much, Mr. Deputy Speaker, Sir, for giving me a chance to contribute to the matter that is very close to my heart.

I join others who have expressed positive issues about hon. Biwott, on the way he has conducted the affairs of the East African Community creation up to the stage where it is. As a person who has had the privilege to work on the Defence and Foreign Relations Committee, and also as a Member of the Inter-Parliamentary Committee for the East African Community, I have appreciated the role he has played.

The evolving community has come to a stage where its qualitative development now requires that we also suppress our petty appetites, and see if we can be inspired by vision and a sense of nation to contribute to strengthening the initiative that we have been involved in.

That is a critical point where we can make procedures for which posterity will salute us or at least, abuse a privilege for which posterity will always curse us. I lately agree with the Mover of the Motion and the Seconder, that we are interested in quality, not just quality to represent Kenya, but quality at the East African Legislative Assembly, which can be used as symbol for a future serious regional Parliament, by reducing pettiness that dominates our domestic Parliaments.

Mr. Deputy Speaker, Sir, whatever method we use, we should be driven by that desire of asking Parliamentarians to rise up and challenge the creation of procedures through which only the best are going to represent Kenya. Two things become immediately clear: That, a responsibility has been given to this Parliament, on behalf of the people of Kenya. It has not been given to political parties in this Parliament. The product that goes to Arusha represents the collective wisdom of this Parliament, but not the arithmetical mentality, thinking or strength of the political parties represented in this Parliament. I will touch briefly on the substantive contents of the Treaty and Draft Rules and show why I feel there is a lacuna between these two positions.

Mr. Deputy Speaker, Sir, I want to disagree with the Mover of this Motion on one little sense; the notion that,

let what happened in Uganda remain there. And this notion was particularly amplified by the Seconder of the Motion. Let the Tanzanians and the Ugandans run their affairs and let us do ours. We have been trying to offer visionary leadership in the process of having an evolving community. It should be our business that we look for approximation. Let us explore methods through which we can review the difference between Kenya, Uganda and Tanzania, in the way they choose individuals for similar positions because that is the only way the quality of individuals so chosen, is going to be comparable. If one country has a direct mandate to elect its Members to the Community and others have presidential appointments for the mandate of the Assembly, you will never have a similarity of mandate and performance of those persons so elected. So, it should be our business, even if they are not doing very well, to set such an example, that after they look at what Kenya did, they will improve on their method of choosing Members next time, so that they can do something similar to what we have done.

Mr. Deputy Speaker, Sir, let me give an example of what happened in Tanzania. The Tanzanian Parliament looked at Article 51 of the Treaty and said: "There are two things that Parliament has to do. The first one is that, Parliament has to set up the rules. The second one, Parliament has to select the candidates." It does not mean that Parliament has to nominate candidates to be elected. They said: "In proportional terms, the Opposition in our Parliament can take one of the nine seats while Chama Cha Mapinduzi (CCM) takes eight seats." But CCM, having the privilege of such a large number of nominees, it also took up the responsibility and reflected the diversity required to take care of special interests. The Treaty does not just talk about political parties because political parties are just one of the considerations. There is, at least, four categories of special interests that had to be considered in the process. There is nothing in the Treaty which says that political parties are going to decide for those other special interest groups that have to be considered. That is very important. We should appropriate those responsibilities that belong to us as Parliamentarians. Indeed, the Treaty has just two responsibilities; setting up the Rules and electing Members.

Mr. Deputy Speaker, Sir, the first thing that happened in Uganda is that the Committees which have been involved in the deliberations about setting up the East African Parliament, the Foreign Affairs Committee, the Departmental Committee of Presidential and Foreign Relations started drafting the rules. When the Speaker looked at them, he said: "These rules are not good enough to be democratic and to be diverse in representing different groups." So, the Speaker refused it and referred the business of drafting the Rules to the Standing Orders Committee of Parliament. Look at what we have done as a Parliament. How have we come to where we are? A challenge arises. What is the challenge? It is set out in Article 51 of the Treaty of the East African Community which reads as follows:-

"The National Assembly of each partner State, shall elect, not from among its Members, nine Members of the Assembly, who shall represent as much as it is feasible, the various political parties represented in the National Assembly; sheds of opinions, gender and other special interest groups in that partner State, in accordance with such procedures as the National Assembly of each partner State can determine."

So, the first thing is for the National Assembly to determine the procedure, by some method I have been able to learn. There was a procedure which was developed and it was laid on the Table of the House on the 17th of July, 2001. It is recorded and registered as Paper No.50 tabled on the 17th of July, 2001. If you look at those draft rules, they were very good. They had some little problems that needed qualification, particularly on how we should broaden the mandate to go to different political parties and seek the nomination of gender representatives, other special interest groups; people with ability or disability and religious diversities. Those considerations have not been pegged in. But there was movement in the right direction.

On the 14th of August, 2001, a second draft Paper was recorded has having been tabled as Paper No.64 of the 14th of August. But it came to be tabled last week by Mr. Nicholas Biwott. It represents a step backwards for two major reasons: The first reason is procedural. The House Business Committee is the Committee of this House which sets out the Order Paper. It sets out the priority and the ranking order in which we are going to deal with business. But it has never, at any one time, acted as the Committee of this House, which creates draft rules for us to follow in Parliamentary activities. When they have been faced by such problems, they have, in their collective wisdom, debated it with the relevant Committee, with the advice of Mr. Speaker, and they say: "Can this be taken to the relevant Committee to prepare a draft for us, which can be the basis of initiating debate of all the rules."

So, I would have expected that the House Business Committee would either, in consultation with Mr. Speaker, recommend that this matter be referred to the Standing Orders Committee or the Speaker's Committee, which deals with procedural matters in the House or the Departmental Committee which has been involved in the drafting of these positions on the legislature of the East African Legislative Assembly, the Departmental Committee on Defence and Foreign Affairs. In their collective wisdom, they saw it fit to abandon that route and have a Sub-committee of themselves to create rules and that is a fact. But there is a problem with that fact, the House Business Committee is powerful because it is a Committee that is constituted by the leaders of the political parties in Parliament. That means, the dominance force in the House Business Committee is the representation of political parties not the House.

Therefore, if you gave them a job to interpret how Parliament will elect Members to the East African Legislative Assembly, they will try to share the business between their political parties. They were supposed to prepare how this House would elect Members to the East African Legislative Assembly. Do you know what they have done? If we can start by referring to the product of their deliberations, what they have done is to say:- "Instead of Parliament electing Members, let each of these top parties go and nominate their Members. We will give FORD(K) one, NDP one, DP two and KANU five." You go and scrutinize and pick those Members, bring them to the Sub-committee of the House Business Committee to look at them and see whether they qualify. And then, with the stroke of genius of interpreting how Parliament can elect Members to the East African Legislative Assembly, is provided in Article 7 of the Paper laid before us, which states that: "After each party has brought one person to the House Business Committee-- That is, FORD(K) and NDP have brought one person each, DP brought two people while KANU brought five people to the House Business Committee. They say this, in Section 7 of the draft of these rules:-

"The House, upon being satisfied that the requirement of Rule 6 has been complied with, the House Business Committee shall cause the names of those nine nominees of the parties to be tabled before the National Assembly."

When those names from the House Business Committee arrive the National Assembly is supposed to confirm their appointment. Such nominees shall be deemed to have been elected as Members of the East African Legislative Assembly, in accordance with Article 50 of the Treaty.

Mr. Deputy Speaker, Sir, will this House debate provisions of rules which take away its mandate? The Treaty says that this Parliament shall elect, while the rule says that once some people have chosen nine people and brought them here, those people would be assumed to have been elected by this House. In whichever stretch of imagination and definition of election, this House has had some procedures before. When the House Business Committee agrees on a list of people, they bring them to us and if we deem them appointed Members of certain committees, they are appointed. But in our Standing Orders, the only provision which has deemed that this House elects - we used it when we were electing the Speaker and the Deputy Speaker--- No House mandate of electing has ever been transferred to anybody else. There is no Committee of this House which has ever executed an exercise, which was called the "House electing". The only time the expression "House electing" has been used has been when an electoral college elects. So, any person who tries to create rules for us should create rules which make it easy for this House to elect, but cannot take away the mandate of electing and purport to transfer it to some nominating entities which come up with nine people who are accepted by a Committee of this House. After that, the Committee purports to execute an election now by presenting nine names on this Table. That is not an election.

In the nitty-gritty that you had, you know that we will be the laughing stock of East Africa. If we are celebrating that we have been offering leadership in East Africa; that we have vision, competence and ideas of creating infrastructure that posterity is proud of, how can we stumble? You know the way we stumbled in 1997/98; that political parties could not count from No.1 to No.13. Every time we sat in County Hall to count 13 Commissioners, we all failed arithmetics. Now, it is the East African Community and we are stumbling; we do not know how to elect. A Parliament, by its nature, is an expression of elections. My most cardinal expression, or humble desire, is that whatever else you do, if our duty as a Parliament is to elect, help us understand how best to elect, but do not elect for us.

(Applause)

There is a second concern that I would like to raise. This country has had two occasions to create laws without a possible culprit to be punished in case of breach. The first one was the percentage of women to be nominated to Parliament after election. In the Inter-Parties Parliamentary Group (IPPG) laws, there was a provision about the number of women to be nominated to Parliament. The mandate to nominate them was given to political parties, and there was no obligation on any political party about satisfying a quota by gender. What happened? As currently constituted, this Parliament is illegally constituted, because it has less nominated women Members than what is provided for in the law.

(Applause)

But because there is an amorphous entity about political parties choosing and the notions of gender sensitivity hanging in the air, there are no specific culprits to be pointed at. We cannot say: "Let the political parties choose who will go to the East African Community, and whoever they bring we will accept." After this, we assume that without the capacity to force an individual political party to choose a woman or a disabled person or a Muslim, at the end of the day, there will be that mosaic diversity representing the different shades of opinions and special interests in Kenya. Who will be responsible for it? You cannot force KANU to nominate women because NDP, FORD(K) and DP seem

to like men. We do not have that capacity.

The challenge to any entity that wants to draft rules for us on how we will elect our representatives to Arusha should be to assist us understand how we can be fair between diversity of political opinion and yet accommodate candidates that represent this mosaic to be presented before this Parliament in order for it to elect. They step aside from that problem. This means that we will again go to Arusha and look at the cartoons we have been looking at in all international fora; that the relatively most modernised country in East Africa is the most reactionary on gender issues. We have a challenge and an opportunity to try to prove that we can also rise today and be better than those who have gone ahead. We have got the advantage. Tanzania and Uganda have elected their Members. We have the privilege of looking at how they have done it and then not discuss how to please political party leaders, but how to make ours even better than what they have done. To me, that is what leadership is all about; that is what vision is all about; that is about national prestige.

Mr. Deputy Speaker, Sir, we are hurtful as a nation because whenever there is an opportunity to appoint persons, the competition about who will appoint, and special interests about the amount of money they will earn, has always done two things. First, it reduces us to our minimum common-denominator, which I hope you know. The appetites are very menial. Secondly and even more worrisome, many good candidates are frightened off; they do not go for the big challenges because of being dragged through the mud in the typical Kenyan way of choosing. Today, I can say without any fear that the Constitutional Review Commission of Kenya, currently constituted, could definitely have had substantially better persons included if the method of putting together candidates had not been so menial and dirty. So, we can be happy that the different interest groups have been satisfied, but are we satisfied as a nation? Are we satisfied by the products of our very pedestrian method of choosing persons? Now, we have an opportunity; we blame it on people outside. We can blame it on political parties, an illiterate electorate or ethnic chauvinists, but we are now the electorate. We sometimes want to pretend that we are the best that this country has. Could we now rise to the challenge and develop rules which can guarantee that the best persons will be elected?

I am sorry I have taken a bit longer than I normally wanted to do. There are two critical considerations. The political parties, as set out in Article 51, are an example of the special interest groups which should be put into consideration. They are not the exclusive interest groups, or special interest groups that should be the building block of the election of Members to the East African Parliament. Secondly, and most fundamental, no attempt at creating rules to facilitate an exercise can take its way. Any rules can be judged whether they are good in terms of how well they help to do what we want to do, or how poor they will help us to do what we want to do. But we cannot take away; that what we want to do is to be helped as a Parliament to elect. You cannot help us by taking away the election, and to the extent of that attempt to hijack the election, then you negate the process we are involved in. I cannot gainsay this more than I have done. I would like to propose, and I will come back at the Committee Stage, that there is a possibility of marrying some of the issues provided for in these Draft Rules - Paper No.65, which basically addresses the fears of Opposition parties; that KANU can dominate choosing for them once they have a majority in the House and the candidates have to be elected from among candidates brought to the House. You can try to address that fear. This is a serious fear, it is a political fear and it makes some sense. But we can say, since your position or the provision for your slot will always be contested by persons of your choice, you are forced to bring us competent persons. If you are not large and deep enough as a political party to find three good persons, you have no business being a nominating authority. You cannot tell us that your political party can only find one person who is good enough. Try to think about any three, bring them to us and we will choose one of them for you. We will force you to bring quality people to appear before us. But once we just leave you free--- Who carries the briefcase of the party leader; who sings most sycophantically about the party leader; who has morphologically been developed to or always wake up with the sign of the party? This becomes his most serious contender for going to Arusha. Could this Parliament, speaking on behalf of the people of Kenya, determined to produce quality leadership in an emerging Parliament for East Africa afford the risk; that plurality of sycophancy of party leaders in different parties represents the collective wisdom of Kenyans, and the best that KANU can put forward? My position is that it cannot.

Mr. Deputy Speaker, Sir, with those very many remarks, I encourage the spirit, but I hope we have such radical changes that will return to this House the right to elect Members to East African Parliament.

Mr. Anyona: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to this debate. The matter of the Community is very close to my heart, because I, among other Kenyans, is a product of the University of East Africa that died because of pettiness that Dr. Kituyi has been talking about.

Mr. Deputy Speaker, Sir, you will remember that I worked in the Secretariat in the Office of the President co-ordinating the policy of the Kenya Government on the Community. You were kind enough to recruit me soon after I left university to join that Secretariat of three people. I went to Arusha, Dar-es-Salaam, Kampala and I attended meetings here, but many times - I was a very young man who had just come from university - I used to get very embarrassed about the quality of representation that Kenya was offering in the forums of the Community. It is not

because we did not have good enough people, but simply because of pettiness at all levels and up to Ministerial level. I know you are aware that many times, there were crises even at Cabinet level. There was a Cabinet Committee that was handling Community matters, because Ministers would go to meetings in Arusha, Kampala or Dar-es-Salaam and take a position. When they came back, there would be disagreement amongst themselves or with the other partner states.

When the Community eventually collapsed I was in this House and I know that some people drank champagne. We were made to look very stupid as a country, because, if nothing else, we were still the beneficiaries of the Community. I remember one day I stood up here and the hon. Member challenged me and said: "Why do you not go to your brothers across the border?" I said: "We, as a country, need this market. We sell both to God and the devil. So, why would you want to break the Community?" I, personally, have been very cautious about the new Community. If it is merely political sloganeering and posturing, then we are wasting the time of our own people. But, if it is a serious exercise for this country, and I believe it is, then let us begin to do things the right way. Let us lead the way and that is what the other partner states expect of us. Tanzania and Uganda were involved in an election quite recently and they have already nominated their members. We have been sitting here and we are the last to do it simply because, either we were asleep or, we were calculating which way it was going to benefit us, either as individuals or parties or communities. That is why even in terms of formulation of these rules that has happened.

Mr. Deputy Speaker, Sir, Kenya must provide the best of the best to the Community, first, because we have it. Two, because that is what the Community requires and we want to play a leading role. At the level of the Head of State, our own President is the Chairman of the Community. I believe he has done very well. I do not think this thing would ever have got here if he had not played the role he has played. Then, here we are fumbling around and trying to make rules to produce people who will go there and reflect that stature that has been created. I believe, and I have heard from hon. Members, like Dr. Kituyi, that the Minister for East African Co-operation has done a commendable job. We know that he was one of the people who were involved in Community matters because he was in the Ministry of Agriculture. The hon. Bruce Mackenzie was one of the Ministers of the Community and so, he is the one who used to prepare policy issues from the Ministry of Agriculture on the Community. So, he knows. I think that experience has helped him to manage this transition very well. Why should we not then at this stage give him and the President and this Parliament and the country the best that is available?

Mr. Deputy Speaker, Sir, let me now turn to the rules. Article 50 of the Treaty requires that the National Assembly shall determine the procedure. Who is the National Assembly? The National Assembly comprises of the Speaker, the Clerk, Members of Parliament and the committees. I would have expected from the beginning that a decision would be made in the general management of the National Assembly as to who in the National Assembly would initiate the formulation of the regulations that we were going to use. But that sometimes is taken for granted. It is usually the Office of the Speaker and the Clerk, and then the matter would be referred, as has been said, to various committees of the House to prepare the ground. The House itself can also set up a unit because this is a new thing. Maybe a Motion should have been brought to this House to propose that a committee be formed to prepare the rules or that the process of forming the rules be referred to the Speaker's Committee or the Standing Orders Committee or the relevant departmental committee. That was not done. Somehow some rules surfaced on the Table of the House when I was in Australia. From there, I went to South Africa where I read that the House had rejected the rules. From my understanding of how Parliament operates, if you lay rules on the Table and some Members say, yes, and others, no, that is not rejecting the rules. You would have to have a formal way. There would have to be a Motion which you would debate and then the House would make a decision. Rules were laid on this Table of the House awaiting debate and then we would decide what to do. Then, somehow those rules disappeared under the pretext that they had been rejected by the House. I do not believe that there is any proceeding here that indicates that the rules that were laid here were rejected by the House. What happened to those rules? The rules were supposed to be debated. There are two ways in which it happens. Under Section 34 of Cap.2, the rules are debated by the House, and then after 21 days, if there has been no debate, they become law. In fact, that is what happened by default. Before there was a debate, the law took effect. The rules became law. This is because the presumption is that a resolution is passed before that time expires. Many rules are laid here and they are not debated, but they become law after 21 days. That is what the law says. So, that is my first problem. That is what I was raising here the other day.

Mr. Deputy Speaker, Sir, as far as I am concerned, we already have rules in place by virtue of Cap.2 of the Laws of Kenya. That those laws became operative. To change them, you have to make new rules in accordance with the same procedure to replace them. In other words, I was arguing the other day that the mere fact that the Minister comes here and superimposes the rules and says, "This one takes precedent", that is legal nonsense. So, that is my problem. We are debating something that is already in conflict with the procedures that have gone through here before. We have rules in place which took effect after 21 days because there was no debate. Even if we were to agree to bend the rules and forget that they exist and say that we have them debated, two questions will still arise. The first question is: Who decided to put those rules aside and bring new ones? Which organ of the House was mandated to do

that? If we have not resolved those issues, then whatever we try to do with these rules, they cannot be properly passed in this House.

Mr. Deputy Speaker, Sir, we know what happened. The truth is that when these rules were laid on the Table, individuals and political parties, as usual, were at their political greed and graft. There is too much political graft in our political system. Even what properly belongs to Parliament and the country, we want to see it as belonging to the party. So, they realised that those rules would not favour them or might even favour them. Dr. Kituyi has raised one serious concern where people were afraid that certain parties might use their numbers to get more or take away seats from other parties.

The fact that there is that mentality in a national Parliament tells you the problem of the political party system in this country. That is why democratic multipartyism cannot take off in this country. Parties do not understand that they are really a catalyst to create competition and not to become Parliament or Government unto themselves. So, because of that consideration, those rules were put aside which is unprocedural and people went and sat in coffee sessions and in other places and made decisions. In fact, it was even said that there was a sub-committee appointed to draft rules. I do not know which sub-committee you are talking about. Where is its report? It was something *ad hoc* and they came up with what we are being presented with here which is purely and simply a creation of political parties. Not all political parties, but the so-called mainstream political parties. Somehow, they misused the House Business Committee as a way of accessing Parliament to be able to bring those rules here. That is how those rules got here. So, the first thing we must do is to reject that process of going about the making of the rules. We must reject that process.

Mr. Deputy Speaker, Sir, we must insist that these rules be formulated either by the Clerk--- By the way, you have seen the law requires that the rules be gazetted. The organ authorised to make rules is the National Assembly. At least, in the previous rules, the Clerk was the one who was going to gazette the rules. The Minister is merely facilitating the process. So, if the Clerk is the one who is preparing the rules and when we pass them he is the one to gazette them on behalf of Parliament, why do we not ask the same Clerk, the Speaker and a Committee of Parliament to formulate rules that have no controversy, so that we will just talk about their merits and demerits? Now there is a breach of procedure.

Mr. Deputy Speaker, Sir, apart from that, if you look at the rules that have been formulated, under Article 50, and this has been made clear, there are four areas from which Members are drawn. One is the political party. That is one area where you would draw Members from. The other one is shades of opinion. Those are even many, not one, with many shades. Then there is the gender; a specific category. Then there is special interest groups. Again, many groups. What the Treaty requires is that Kenyans who qualify under normal electoral laws to run for Parliament, are all invited to apply and to be elected to the East African Legislative Assembly. That is what the Treaty says. From all these categories.

The second thing the Treaty requires, and there was an argument as to whether really we should have done that, is that they will have to find a political party to sponsor them. That is their business. If they cannot find a party, they cannot qualify.

After that, there is supposed to be an election. They become candidates. Candidates presume an election and then there is an election by the National Assembly. In the previous rules, in fact, they have even defined what that means. They have even defined a voter in terms of these rules. This is because where there is an election, there is a voter and Returning Officer. In this case, the Returning Officer is the Clerk. But he will be a Returning Officer of what if we go by these rules? There is no nomination process which would give him the status of a Returning Officer.

So, you can see that these rules are, in fact, in breach of procedures. They are in conflict with the Treaty in so far as they advocate a process where political parties are the only ones that are represented in the nomination of these Members. All other categories are left out. That then is in conflict with the Treaty. To the extent that there will be no election, it means, therefore, that is in breach of the Treaty because there must be an election.

Mr. Deputy Speaker, Sir, here you must have noticed something that was cleverly done. In other rules and in general practice, there are provisions for people who are not satisfied to petition. In these particular rules, that has been left out. That provision was contained in the original rules. That a member or some members who think they have not been properly elected can actually petition. That has been taken away from these rules we are being asked to pass. So, really it is a conflict all round.

Mr. Deputy Speaker, Sir, let us not make Kenya look silly and stupid. We should open up this process to all Kenyans. Let Kenyans look for political parties of their choice to sponsor them and apply. Let the Returning Officer process in the normal manner as provided. Let those names come before this Parliament so, that Parliament in its collective wisdom and on behalf of the people of Kenya can choose the best. In my view, there really ought to be no party considerations as such in a matter of this kind. In any case, if it is parties which are sponsoring the people being chosen, the parties are, therefore, taken care of even in terms of what numbers.

Mr. Deputy Speaker, Sir, the absurdity of the whole issue is that even before we made the rules - even now

we have not made the rules - the political parties have already decided how many Members they ought to have. I hear KANU will take five seats, DP two seats, NDP one seat and FORD(K) one seat. Who said that? The Treaty does not talk about any political party strength, but that has now been put in the rules as a determinant. They have even tried to give us a formula they used to determine how many they are giving. Parties have already nominated their Members and publicised their names. They are waiting for us to endorse them. Nine names will be laid on the Table and they will already be Members of Parliament. Is that really what this Legislative Assembly was intended to be? As I said, we should not look silly before our people, the whole of East Africa and in the eyes of the world.

Mr. Deputy Speaker, Sir, when our representatives go to Arusha, we want them to be respected. We want people to feel that Kenya has brought a team that you can respect, but not people who have come through the back door. We are still grappling for a procedure. Personally I feel, that what we should agree to do is for this Parliament, maybe to amend this Motion, because we have already started the process to allow these rules to be prepared; this draft, the other draft and other drafts. I believe the Departmental Committee has been doing a lot of work on this subject. We can do those amendments since it is one of our Committees. It may not be one of its usual mandates, but we can do that. We could also give the mandate to the Speaker's Committee or even set up another Committee to do it. Let us do it properly like that. The Committee could then put the rules together and then we will argue about the merits and demerits of this and that rule. But if we start on the wrong foot as far as the formulation of the rules is concerned, then we will never get it right.

Mr. Deputy Speaker, Sir, let the message go to Kenyans that nobody has been nominated as a Member of the East African Legislative Assembly. We have not even made the rules. Maybe the parties are also trying to make their supporters happy; that is their own business. But also, if I may point out one thing: Even in that formulation, why did the so-called mainstream parties not reserve a seat for the other parties? The Treaty talks about the various parties in this Parliament. Now, the other parties like the SDP, Safina, FORD-People, Kenya Social Congress, FORD(A) and Shirikisho, have all been left out. Do they not constitute a segment of this Parliament? Why in that formulation did they not reserve a seat or two to those parties so that we know that the House has elected in a balanced way?

Mr. Deputy Speaker, Sir, if people want to make political capital, let them not use the mandate of Parliament. If you want to please people in your party, please do not use Parliament. Go and find another way of giving people favours and let Parliament do a job that it is required to do, which Kenyans will respect and feel happy about. At the moment, I have met a lot of people who wanted to apply to Parliament to be elected, but they have been denied the chance because the parties have shut them out. We must make it quite clear that no door has been shut, and no door will be shut, and every Kenyan has the right to apply.

I am not supporting this Motion. I believe an amendment is forthcoming. I will support the amendment.

The Minister for Energy (Mr. Raila): Mr. Deputy Speaker, Sir, thank you for this opportunity.

I would like to begin by saying that all of us are agreed that the resurrection of the East African Community is something that is very important for the whole of this region. Some of us who grew up during the era of East African Common Services and the East African Community remember with nostalgia the ease in which it was easy to move across the border from Kenya, Uganda and Tanzania. We also remember the intellectual discourse that we used to have. The debates that used to exist in the various campuses; Makerere University, University of Dar-es-Salaam and the University of Nairobi. The people of East Africa desire a much closer co-operation. One would like to believe that this is just a beginning, and that we are finally going to move towards an East African federation which used to be talked about when we were growing up. In those days we used talk about Shirikisho la Afrika ya Mashariki.

Mr. Deputy Speaker, Sir, as hon. Members who have spoken before me have rightly pointed out, Kenya was to a very large extent responsible for the collapse of the East African Community. This was because of certain selfish interests which monopolised politics at that time. It is true that one of them actually did publicly say that he drank champagne on the day that the East African Community collapsed. I happen to have been very unfortunate at the time of the collapse, because I was attending a conference in Dar-es-Salaam. All of a sudden, all East African Airways aircrafts were grounded. The tickets were also not transferable, since no airline could accept them. We spent three extra days in Dar-es-Salaam and finally we managed to come here, thanks to Egypt Air. Now that we are trying to revive the East African Co-operation, let us do it correctly.

Mr. Deputy Speaker, Sir, the East African Legislative Assembly is a very important organ of the East African Community. It is in the East African Legislative Assembly that the policies of the Community are going to be formulated. Therefore, I could not agree more with Dr. Kituyi, that we as a country ought to send the best to represent us in the East African Legislative Assembly. I know that we have highly qualified Kenyans who are capable of representing us very effectively in that Assembly. I, therefore, would like us to look at the issue before us here as a national Parliament that has been given the mandate under the Treaty to select people to represent us.

Mr. Deputy Speaker, Sir, those who have spoken have taken issue with the rules that have been brought before the House more on the grounds of how and why, but not the substantive issue of the content itself. I do not

think whether the "who and by whom" question is very important, but what is most important is what we have before us here. We did discuss this matter in the House Business Committee and the Speaker himself did give advice. Our problem is: How do you access the House once you have made rules? The only way of accessing the House is either by bringing it as a Bill or a Motion from the Government side, or as a Private Members' Bill or Motion. It is after lengthy deliberation at the House Business Committee that we decided to give the mandate to the Minister under whose portfolio the EAC falls, in order to introduce these rules for debate. Let us now discuss the content of these rules.

Mr. Deputy Speaker, Sir, I want to say that each and every Member in this House represents a certain political party. So, it is a multiparty Parliament. Our Constitution does not allow for Independent Members. Why do you want to run away from the objective reality? That, this is a political Government and we are going to introduce a vote in this House. You cannot discuss the fact that people are going to vote along party lines. That would be a mere fantasy. Even when you go back to the IPPG rules, when nominating members of the ECK; if you have been nominated by hon. Members, it provided that political parties were going to nominate representatives to the Commission. At that time, all the political parties nominated. The DP nominated three, FORD(K) had three and Ford(A) and the Kenya Social Congress had three and one respectively. NDP was the only party that was denied the right to nominate on the grounds that we boycotted IPPG. That is a rule that was used and it still exists in our statute books.

Equally, there are provisions for nomination of members to this House and a number of hon. Members who are nominated here are nominated on the basis of proportionality, reflecting the strength of the political parties in this House. That is a reality that we live with.

Article 50 again provides as follows; that, the National Assembly of each partner state shall elect, not from among its members, nine members of the Assembly who shall represent as much as it feasible the various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in the partner states in accordance with such procedure as the National Assembly of each partner state may determine. It is, therefore, upon this House to determine the procedures and what we have here is a proposal to be adopted by the House as a procedure. It talks about electing members to represent the political parties.

When we say that this House will elect collectively, representatives of various political parties, what does that mean? It means that we are going to allow members of Ford(K), NDP or KANU to elect representatives of DP to the East African Assembly. The members of Ford(K) and NDP may not know the DP representatives, their qualifications and their effectiveness as representatives of the country. That is the reason why we decided that we give each political party the right to nominate its representatives.

In doing so, we do not just expect that leaders of those parties are going to handpick their sycophants as Dr. Kituyi was trying to suggest. We are seeing the political parties themselves being transparent and running transparent systems within their own parties. If they do not, as hon. Kihoro was trying to suggest, it is unfortunate, but, at least, I would want to tell him that in NDP, we do. In nominating our representatives, we did invite applications and a number of people did apply. We then appointed a sub-committee consisting of four Members of Parliament to carry out interviews and they shortlisted and interviewed and then forwarded two names to the party. Those names were then presented to the NDP Parliamentary Group, which met jointly with the National Executive Council. They were then forwarded to the PG and the National Executive Council that selected the name of one person. That is, in my view, a process that is similar to an election. I am saying that if we leave the past deals of political parties, and you talk about shades of opinion, gender and other factors, I do not think that shades of opinion can be excluded from political parties. We only deal with the issue of gender in order to ensure that it is fair and there is equity in gender representation. That can be provided for. But I feel that it will be very undemocratic for us to come up with rules here which will provide that all, Parliament, collectively, will elect representatives of different political parties. That can be abused, a party with a majority of this House will end up more less nominating or electing its own representatives. The original rules provided that each and every political party, on proportional basis, would nominate three names. In other words, if you apply the rules of proportionality, which ended up giving us those figures; five for KANU; two for DP, one for NDP, and one for FORD(K). Therefore, it means that, DP, if it was entitled---

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. My dear friend should know that we must be careful not to confuse the House. We are talking in terms of provisions of the Treaty. I have not seen such a word as party strength or proportionality in that Article. If you use that as the basis of debate to justify the case, then, we are clearly off the topic. This is because it must be strictly according to what Article 50 says. There is no party strength or proportionality.

Mr. Deputy Speaker: Order! The whole purpose of having these rules in draft is for the House to agree on the rules and procedures. So, if the House, in its wisdom, says that we are going to follow the proportionality route, and it passes it, that will be the rule. If you refuse the entire draft rules, that will be the position. So, let hon. Members contribute.

The Minister for Energy (Mr. Raila): Thank you very much, Mr. Deputy Speaker, Sir for giving me the

opportunity to contribute to this Motion.

Mr. Speaker, Sir, political parties should have a certain rationality when nominating Members to the East African Parliament. In drawing up these rules, we looked at our own Standing Orders with regard to the nomination of Members to this House. These rules provide for proportional representation and that is the reason why KANU nominated six Members of Parliament after the last General Elections, while the other six were nominated by other political parties.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, if we do not use the rule of proportionality to share these nine seats and we have ten political parties in this House, what is going to happen to the tenth party, even if we were to allocate one seat to every political party? If we move away from that and say, "the House collectively shall elect" and ask each political party to submit names here, I believe that we cannot avoid partisan voting when it comes to elections in the House. If KANU comes here and uses its majority strength in the House, the nine Members will come from one political party! So, we must have certain rationality and that is the reason why we decided that we go by the rules of proportionality! We must also accept that all parties cannot be equal! If they were equal, there could be no need for elections. Why do we have to go back every five years to seek the mandate of the people if every political party is going to perform the same way it performed in the previous elections? We must also accept the mandate of the people! If you got one seat, that is all the people were prepared to give you at that time and that mandate will last for five years. If you got five seats, that is enough! But we cannot allocate parties with one Member of Parliament the same number of seats like parties with 120 Members of Parliament. That is not democracy! That is an abuse of the rights of the majority!

Mr. Temporary Deputy Speaker, Sir, we are running out of time! Uganda and Tanzania have already selected their representatives to the East African Parliament. It has become the practice that every time a Bill or a Motion comes to this House, some Members of Parliament claim that it is incurably flawed. They talk about it so passionately as if the world is going to end there! When we brought here the Constitution of Kenya Review Commission Bill, it was incurably flawed according to some Members of Parliament, but that Act became law and it is functioning without any problems. There is no democracy if hon. Members want Motions and Bills passed their own way. That is abusing our rights as hon. Members of Parliament. I do not see anything wrong with the rules we are discussing now. If an hon. Member has got some suggestions to make by way of amendment, we will look at them. But this should not delay the processes of nominating our representatives to the East African Legislative Assembly. I am willing to make concessions so that we have equitable gender representation. I feel very strongly that we need to have our ladies representing us in the Community. So, I am willing, by way of an amendment, to accommodate the fact that a certain number of seats should go to women and that should form part of these regulations.

With those remarks, I beg to support.

Mrs. Mugo: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Motion.

Mr. Temporary Deputy Speaker, Sir, the East African Community is a very important organ during this age of globalisation. What we are doing this afternoon will determine the position of Kenyans in the East African Community. From what we have seen in the past, parties normally nominate their sycophants and that is exactly what is going to happen! We have seen that system in this House, where party leaders nominate their sycophants! We must send the best of our people to the East African Legislative Assembly. They are not going there to serve the interests of any particular political party but the interests of all Kenyans and that should be the driving force.

Mr. Temporary Deputy Speaker, Sir, although my colleagues have argued very strongly that we need the representation of women in that Legislative Assembly, there is nothing in these rules to suggest that, that will be tenable. It will not happen! When we say that every political party will nominate one-third, that means every other third person! Apart from KANU who could have a third person, there is no other party that can nominate women! Apart from the Democratic Party (DP) with two slots, the other Opposition parties have been given one slot each. So, where will the one-third come from? These rules, as far as Rule No.6 is concerned, are not tenable! When these men go to the House Business Committee, which party will be told to nominate a woman? Where is the one-third for the women coming from? We will bring here a proposal stating that at least one half of the persons nominated by this House to the East African Legislative Assembly should be women. Otherwise, we are just trying to endorse the names we have been reading in the newspapers as having been nominated. We have not read of any woman who has been

nominated! Everybody is talking about men. Where are the women of Kenya? Why is Kenya always lagging behind when it comes to gender? No wonder, there is no development in this country!

Mr. Temporary Deputy Speaker, Sir, I feel that gender parity has not been addressed. I would like to propose that we should find a better way that will be all-inclusive. We should not give this mandate to political parties only. We should come up with rules that address the concerns of all Kenyans, for example, the disabled, women, workers and the marginalised groups. It is the tradition of the Kenyan leaders to suppress certain groups in the country. I strongly feel that we should not allow political parties to nominate Members to the East African Legislative Assembly. We should give all Kenyans a chance so that we can choose the best and not otherwise.

Mr. Temporary Deputy Speaker, Sir, we are now moving towards the East African Parliament and probably regional parliaments---How can the same leaders advocate for *majimboism* in Kenya? We should be talking about bringing Kenyans together so that we can move towards the East African Federation!

Mr. Temporary Deputy Speaker, Sir, those who really love Kenya and who are not just talking for their limited personal power coming through the back door--- At this stage, we should be talking of one unitary Government, so that there could be room for an East African Federation or a regional parliament. We should not divide Kenya into small segments for some people to have some power somewhere, so that they could be lords or governors somewhere.

Mr. Temporary Deputy Speaker, Sir, as we discuss the rules regarding the East African Legislative Assembly, we should also consider keeping Kenya as a unitary Government. We should discard the KADU proponents who are saying that it is KANU, but it is the KADU *majimboism* which we rejected a long time ago, for the development of one nation.

When we look at the rules for nominating our representatives, I would like to bring to the notice of this House that Uganda and Tanzania have already decided on the women and gender question. They will have, at least, three if not more women representatives. We should adopt that by reserving a certain number of seats for women. Even if the parties will be given the mandate to nominate so many seats, we should reserve seats for women. This House, through application, will appoint the women to represent us. It is the only way that we will be assured that we will get women representation. Otherwise, we will become a laughing stock. We are the only country which has not even done anything on the Affirmative Action. All our counterparts have passed it. We cannot take the risk of going through this process and miss the women representation. I would like to notify this House that many times, women of Kenya become the laughing stock in international fora because they are highly educated---

The Assistant Minister for Labour and Human Resource Development (Mr. Maizis): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to emphasise on gender all the time? When women will go on maternity leave, who will deliberate on matters of the East African Legislative Assembly?

Mr. Mugo: Mr. Temporary Deputy Speaker, Sir, we need education on gender issues in this very House! Most of the Members do not understand and that has been our dilemma! I propose that you organise a workshop for Members of Parliament to be trained on the issue of gender.

Mr. Temporary Deputy Speaker, Sir, before my trend of thought was disorganised, I was saying that there is pride for this nation to show its best, be they women or men. But the practice has been that women never get that opportunity all the time. We know that we have women professors qualified in various fields and others who are highly educated. We want those women to be given a chance to serve. If you leave it to the nominating parties, there will be no women nominated.

With those words, I wish to recommend that we review and amend the rules, to reflect the needs of Kenyans, both men and women.

Thank you.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, at the very outset, may I, through you, clarify to my friend, Mr. Raila Odinga, that there is no intention whatsoever, as far as I can see, from this side of the House to block, derail or sabotage the process of electing the nine Members to the East African Legislative Assembly. We, on this side of the House, are, in fact, anxious that we should do that. If one analyses the contributions, particularly from Dr. Kituyi and Mr. Anyona, we just want to be very efficient in the manner in which we do it. Above all, we want to ensure that there is no embarrassment to Kenya as a nation and this National Assembly. As it is, there is likely to be embarrassment because the rules that the Minister is asking us to adopt, are actually in violation of Article 50 of the Treaty. If we enact them in the present form, we will be breaching Article 50 as a nation and the National Assembly. Some of us are not prepared to allow a situation where we start off on the revival of the East African Legislative Assembly by breaching not just the spirit of the Treaty, but the terms of the Treaty. So, when we are making these suggestions, we are making them in order to avoid a situation where some of us may be forced to take up the breach of Article 50 with other authorities like the Presidents of the other two countries; like the court that is going to be established. We are saying that Article 50 requires the National Assembly of Kenya to elect the nine Members. The rules do not permit or

facilitate elections. The rules turn this august House into a rubber stamp or a selection process. That, in itself, is, in fact, a violation of the Treaty. It is a breach of Article 50 of the Treaty.

I do believe that the Government is conscious about that because when you look at the first set of rules that the Minister had laid on the Table of the House back in August, they were sensitive to the requirements of Article 50. On page three, Rule 5 Sub-rule 6 was acceptable in the sense that it facilitated the elections by Parliament. Rule 5 of the old rules that we are somewhat withdrawing irregularly--- Once something is tabled in the House, the question arises as to whether it can be unilaterally withdrawn. Once it is laid on the Table of the House, it becomes the property of the House. I do not want to go into the legalities of Section 34 that Mr. Anyona raised as to whether those rules, in fact, became law by operation of the law, in the sense that they were not rejected within 21 days.

But the point that I am making is that Rule 5 Sub-rule 6 required: "A party which is entitled to sponsor candidates shall submit to the returning officer the names of three candidates, at least, one of whom shall be a woman, in respect of each seat allocated to that party, under any agreement entered into by the parties". That went some way towards complying with Article 50 of the Treaty; that, places the responsibility of electing on this House. For example, if it is agreed that KANU is to nominate five candidates out of the nine, what that rule requires is that for each slot, KANU should bring to this House three names, so that in the event, they would bring 15 names for its five positions. Fifteen names would be forwarded to us by KANU in which event KANU would also address the requirements of gender, special interest groups like the disabled and religious considerations, among others. When those 15 names come here, the National Assembly, after constituting itself into an electoral college, will then elect five individuals for KANU out of the 15 names forwarded to this House by KANU. The Democratic Party would be required to bring six names because it was given two slots, so that out of the six this House would be able to elect two names. At least the old Rules went some way towards complying with Article 50 of the Treaty.

That has been removed and instead the parties have somehow arranged that each party will be the final arbiter in the names to be selected. Those names will be taken to the House Business Committee so that, effectively, this House will be required to merely rubberstamp the parties' choices. This is a blatant violation of Article 50 because there has to be a choice when you are talking about elections. Any promulgation of Rules that does not give this House that opportunity to elect is a violation of Article 50. Therefore, those Rules were removed, and new ones formulated which not only breach Article 50, but are, in fact, in my humble submission, an insult to this House to the extent that we are required merely to rubberstamp the names and then pretend that we have elected them. That is an insult to this House. It is an abdication of the responsibilities which are vested, in terms of the Treaty, in this House. These are the violations that we ought not to allow and they can be challenged. We will look silly as a country and a Parliament.

When you look at the other considerations that Article 50 says are to be taken into account, you will see why we are recommending that we handle this matter in the right way. I would like to argue that, when we sit as a Committee of the Whole House, we do not create the right kind of environment and these Rules breach Article 50. These Rules might fail to serve their purpose because the other criteria which are laid down in Section 50 are not accommodated in the current formulation of the Rules. It is not a simple issue of amending a particular Rule. We cannot sit as a Committee of the Whole House in order to amend these Rules. It is really a much more fundamental problem. The most efficient way of going about these matters is to create a select committee, if you do not want to use the relevant Departmental Committee, to deal with them. We can have these Rules committed to a select committee which can sit down and come up with a new set of Rules, which will factor in all the different criteria that are laid down in Article 50. This will allow this House to exercise the responsibility that is placed on it in terms of Article 50. This will allow us to approve the Rules and undertake the process of electing the people before the end of November and forwarding those names to the Secretariat so that we can be represented in the regional Assembly.

As Mr. Anyona said, Article 50 does not talk about numerical strength of the parties. It requires that the National Assembly of each partner State shall elect, not from amongst its Members, nine members of the Assembly who shall represent as much as is feasible the various political parties represented in the National Assembly. That is one of the criteria. You will not find the words "*pro rata* or proportional to their numbers in Parliament" included there. The requirement of the Treaty is that the various political parties in Parliament should as far as possible be represented. When you have got Rules formulated by the House Business Committee that leave out the Social Democratic Party, SAFINA, Shirikisho, the Kenya Social Congress, Ford(P) or Ford(A), which are some of the parties represented in this House, purely in terms of logic or numbers--- Is it being suggested that the combined strength of all these parties, which are not represented, does not qualify for at least one out of the nine positions?

Mr. Munyasia: On a point of information, Mr. Temporary Deputy Speaker, Sir. I wish to inform the hon. Member that if he wants those smaller parties to have a bigger voice, they should adopt a merger. That is the trend now!

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, that is a very good suggestion. I would respond that certainly those small parties should be treated as merged for the purposes of these elections in order to get one

representative to the East African Legislative Assembly because this is a requirement of the Treaty. When you examine the current Rules that Mr. Biwott has placed before us, where does one find Rules which take into account shades of opinion? That is one of the other factors that the Rules should take into account. Where do those Rules accommodate issues of gender or special interest groups in the partner states? We want to finish this process as quickly as possible, but the present Rules do not permit that. It is not feasible to just amend the Rules. These Rules are a total negation of the letter, substance and spirit of Article 50 of the Treaty. What is required is a new formulation of the Rules that would at least go back to the old Rule 5 which the Minister withdrew. We should ensure that at least there will be more than one individual for each of the slots in order for this Parliament to do the electing rather than abdicate its responsibility.

I would very strongly urge that the Government side should not see the contributions which we are making as intended to obstruct the early finalisation of this process. The contributions which we are making are intended to comply with the terms of the Treaty, so that we can accommodate all the different interests. The most practical way of going about this matter is to commit these Rules to a select committee with the mandate to reconsider them with a view to formulating a new set of Rules that will comply with the Treaty. That can be done very quickly and, indeed, before the end of October. By early November we can do the elections and by the end of November we can forward the names.

Mr. Temporary Deputy Speaker, Sir, let us be very careful when we are formulating rules that are going to be permanent. There are many examples of things that have not been done in the right manner. You will remember, for example, in 1997, there was a lot of excitement when there were IPPG meetings in County Hall. There was a lot of excitement when the Opposition parties were given an opportunity to nominate representatives to the Electoral Commission of Kenya (ECK). They proceeded to do so and in that excitement, it was forgotten that, that right to nominate people to the ECK was not legalised in terms of what was going to happen next. For example, the terms of office of the ten people who were nominated by the Opposition is expiring in October next year. If we follow the electoral calendar, elections are supposed to be held in December next year. The ten nominees of the Opposition parties to the ECK will have vacated office in October. When I was checking the law, I do not know whether it was deliberate---

The Minister for Trade and Industry (Mr. Biwott): It was okay!

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I hear hon. Biwott saying it was okay. I do not know whether it was deliberate but no law was enacted to give the Opposition parties the right to nominate afresh, when the terms of office of those who are now in the ECK representing the Opposition expires. So, we have got this dangerous situation where ten nominees of the Opposition will vacate their seats on the ECK in October next year, on the eve of the elections and there is nothing legally to stop the President of the Republic of Kenya from singlehandedly nominating ten replacements for the **[Mr. Muite]**

Opposition's nominees. We do not want--- I am trying to say that we must guard against these loopholes and sort of lacunas. We are in a hurry to send people to the ECK but let us comply with the law. It is for that reason, that I would like to formally move an amendment to this Motion by hon. Biwott, so that we can have the opportunity to quietly with decorum and in a considered manner, come up with a new formulation of rules. I would like---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Muite, could you table your proposed amendment?

(Mr. Muite laid the documents on the Table)

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I trust that the Minister concerned will support this because I want to assist and see that we finalise this matter as expeditiously as possible. I am moving this amendment under Standing Order No.45 (A), which permits a Motion by way of amendment to a Question already proposed from the Chair.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Muite, I must now point out that the Motion before us is "Mr. Speaker do now leave the Chair." That is the Motion before the House now. The Motion before the House now is that "Mr. Speaker do now leave the Chair" and that is not what you are amending.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, then I am a little premature. I should delay it.

The Minister for Trade and Industry (Mr. Biwott): You can do it later during the Committee Stage!

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I will do it later during the Committee Stage. I am just explaining really that, it is to expedite the process of finalising the selection. We want to comply with the Treaty. We want to nominate our people. We want them to take up their positions but we do not want to do it in a manner in which we can be challenged tomorrow in other quarters and, therefore, I will reserve the position. Mr. Temporary Deputy Speaker is aware that, I did, in fact---

Mr. Anyona: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is the procedural difficulty we are anticipating. This Motion, as it stands in normal circumstances, ought to be amended in the manner in which hon. Muite is trying to do. However, because we went through this avenue, problems are arising because we do want to amend the Motion itself. Unless the Minister himself wants to withdraw it and yet I just do not know now--- This is because we cannot do it in the Committee Stage. That is wrong! It must be done as it is at this stage. So, I think the Chair has to find a way.

The Temporary Deputy Speaker (Mr. Imanyara): But Mr. Anyona, you appreciate the Motion before the House now is Mr. Speaker do now leave the Chair.

Mr. Anyona: No, I do appreciate that, Mr. Temporary Deputy Speaker, Sir. That is what I am saying; that we do want to amend the substantive Motion itself and I do not think the right place to do it is in the Committee Stage. We are in this difficulty because of the procedure that was used; ordinarily the way when the Minister gave notice of the Motion. It was a Motion that you normally move, it is seconded, debated and then you amend it like he is trying to do. So, I think the Chair has to resolve that problem.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, we could actually get your guidance because although Mr. Temporary Deputy Speaker is right that the Question which was proposed was that Mr. Speaker do now leave the Chair, but in point of fact, the Motion which we are debating is the Motion which was moved by hon. Biwott and seconded by the hon. Vice-President. This is the Motion we are debating and one that I would like to debate, so that instead of us proceeding with this Motion, it is amended and we debate whether the rule should be committed to a Select Committee. Perhaps, the Chair could guide us on this because when we wait to go into the Committee Stage, it would be a little late. And as I am saying, we are making this contribution because we would like to support the Government in the earliest possible finalisation of this matter. At what time then do we persuade the other side and this House that the proper way to go about these matters is to commit it to a Select Committee?

Mr. Temporary Deputy Speaker, Sir, this is because you are aware that I sent to you a very detailed memorandum here. When we are debating the matter here, it is not possible to have the benefit of time. When we have got a Select Committee, we will appear before it and argue perhaps for a whole morning, interact and get questions asked, so that we get a thorough understanding of the matter. A Select Committee will give us the opportunity to---

A hon. Member: Or the Departmental Committee!

Mr. Muite: Or a Departmental Committee!

The Temporary Deputy Speaker (Mr. Imanyara): Order! Do not talk to each other. Talk through the Chair!

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. I appreciate what the Motion is saying. Is it not in order that this Motion should have actually been taken to the

[**Mr. Mwenje**]

Departmental Committee like we did with all the other articles because that would have avoided all these problems we are having today?

The Temporary Deputy Speaker (Mr. Imanyara): Order! I really do not see any difficulty because the Minister will still be moving this Motion when we go to Committee Stage. He will be moving this Motion and at that Stage, you can actually introduce the amendments that hon. Muite is proposing.

Mr. Anyona: On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Muite is not talking about amendments to the rules. He is talking about the whole set of rules being referred to a Select Committee, whichever one, and we are saying that is what would happen normally if the Motion had been debated in the normal manner but because we went through this procedure where we could finish this and then go to---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Anyona, I am sorry but this is the subject of Mr. Deputy Speaker's considered Communication from the Chair. He has made a ruling that this is the procedure we are to follow.

Mr. Mwenje: It is a wrong ruling!

Mr. Temporary Deputy Speaker (Mr. Imanyara): Mr. Mwenje, whether it is wrong or right, that is the ruling that is there. So, you can await hon. Biwott's time when he moves his Motion and propose the amendments.

Mr. Anyona: Mr. Temporary Deputy Speaker, Sir, are you saying that, at that stage, we can move an amendment not to the clauses and each rule but the amendment to the Motion itself?

The Temporary Deputy Speaker (Mr. Imanyara): What is Mr. Biwott going to be moving? Is it not a Motion?

Mr. Anyona: Mr. Temporary Deputy Speaker, Sir, but in the Committee Stage, you go through the clauses!

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Anyona! Let us hear Mr. Biwott!

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I do not see the problem. The hon. Members as presently constituted, can propose amendments as, for example, was suggested by hon.

Dr. Kituyi. He said how it should be done and followed more or less by hon. Muite and hon. Anyona. Why wait until you move an amendment to refer what we have just been deliberating to a Committee, when we, in this House, can actually propose those amendments and incorporate them in the present rules and get over with it?

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, you now see the problem that is arising. We are not talking about a mere amendment to a particular rule. We are saying that either one of the relevant Departmental Committees or a Select Committee to be appointed by this House should sit down and have the luxury of time to reformulate a new set of rules that are going to accommodate each of these matters that we are required to accommodate by the Treaty and, in particular, by Article 50. It is not very practical here, unless you are suggesting that I should go and draft these rules. If I draft them, I shall be drafting them alone. If there is a Select Committee---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Muite, you can think about that. Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 16th October at 2.30 p.m.

The House rose at 6.30 p.m.