

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 19th November, 2003

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### QUESTIONS BY PRIVATE NOTICE

#### MEASURES TO AVERT FAMINE IN NORTHERN KENYA

**Prof. Oniang'o:** 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 there is a looming drought and famine disaster in Northern Kenya?

(b) What contingency measures is he putting in place to avert the disaster and save human lives?

**The Assistant Minister, Office of the President** (Mr. Tarus): Mr. Deputy Speaker, Sir, may I request for an opportunity to answer this Question tomorrow.

*(Loud consultations)*

**Mr. Deputy Speaker:** Order, Mr. Leshore! Let us have some order, please.

Prof. Oniang'o, you have heard what the Assistant Minister has requested for. What is your response?

**Prof. Oniang'o:** Mr. Deputy Speaker, Sir, I have not yet received a written answer. I hope, when he answers the Question tomorrow, it will be a satisfactory one because he will have had more time.

**Mr. Deputy Speaker:** Very well. It is agreed then that the Question be deferred until tomorrow afternoon.

*(Question deferred)*

#### PROGRESS REPORT ON RWANDA/ SOMALIA PEACE TALKS

**(Maj. Madoka)** to ask the Minister for Foreign Affairs:

Could the Minister brief the House on the latest progress on the peace process on Rwanda and Somalia?

**Mr. Deputy Speaker:** Maj. Madoka is not there. We will, therefore, do as we always do,

that is, to drop the Question.

*(Question dropped)*

RELEASE OF MS. MAINA  
FROM THIKA HOSPITAL

**(Mr. O. K. Mwangi)** to ask the Minister for Health:

(a) Is the Minister aware that Ms. Alice Maina was admitted at the Central Memorial Hospital in Thika on 3rd November, 2003 following a road accident and has to date incurred a total bill of Kshs56,400?

(b) Is she further aware that Ms. Maina cannot be discharged from hospital until the bill is settled in full?

(c) What action is the Minister taking to have Ms. Maina released from hospital; and, what disciplinary action will she take against the hospital management?

**Mr. Deputy Speaker:** Mr. Kihara Mwangi is not there and, therefore, the Question is dropped.

*(Question dropped)*

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

**Mr. Deputy Speaker:** What is it, Mr. Omingo.

**Mr. Omingo:** Mr. Deputy Speaker, Sir, I am not supposed to challenge your ruling, but I am seeking the guidance and requesting the Chair to consider this matter of dropping Questions. All hon. Members of Parliament are elected on the same footing. Ministers are only given some additional responsibilities just like class prefects, but when they are not in the Chamber, the Chair defers Questions and when hon. Members get late, the Chair drops the Questions. Could the Chair consider this issue of dropping Questions for the sake of fairness on the part of Back-benchers?

**Mr. Deputy Speaker:** Okay, Mr. Omingo. I have heard your point, but I want you, also, to know that when we defer Questions because Ministers are not there, we do it for the benefit of the hon. Members and the wider public. When a hon. Member fails to come in the Chamber to ask his Question, we cannot keep on deferring the Question. After all, hon. Members, should be aware of the fact that there are so many pending Questions. If we keep on deferring Questions, other hon. Members will not get a chance to ask their Questions. Therefore, that practice will continue.

GOVERNMENT EXPENDITURE ON  
GOLDENBERG COMMISSION

**Mr. Ndolo:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Justice and Constitutional Affairs the following Question by Private Notice.

(a) Could the Minister inform the House how much the Goldenberg Commission of Inquiry will cost the Government?

(b) How long will the Inquiry take?

(c) Could the Minister table a breakdown of daily expenditure of the Commission?

**The Assistant Minister of Justice and Constitutional Affairs (Mr. Githae):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Presently, it is not known how much the Commission of Inquiry into the Goldenberg will cost the Government.

(b) The Commission of Inquiry into the Goldenberg Affair had its mandate expanded and it may not be possible to fix an accurate timeframe for completion. However, everything being equal and, including all unforeseen eventualities, the Commission expects to finish its work by June, 2004. This will make a total duration of one year and four months. The duration will depend on the length of testimony of the witnesses yet to be called.

(c) The breakdown of the daily expenditure of the Commission based on the month of October, 2003 is as follows: Daily expenditure, Kshs189,177.80; monthly expenditure, Kshs5,675,333.30. Daily telephone expenditure, Kshs16,666; monthly telephone expenditure, Kshs500,000; daily stationery expenditure, Kshs40,100; monthly stationery expenditure, Kshs1,203,008; daily maintenance and service of vehicles, Kshs4,608; monthly maintenance and service of vehicles expenditure, Kshs138,239.50; daily office maintenance expenditure, Kshs8,004; monthly office maintenance expenditure, Kshs240,122.50; total for three months rent, Kshs2,467,674; daily rent expenditure, Kshs27,418; daily expenditure on safari imprest, Kshs802.85; monthly expenditure on safari imprest, Kshs26,786; daily expenditure on office running including refreshments, Kshs16,005; monthly expenditure on office running including refreshments, Kshs480,147.50; daily expenditure on fuel, Kshs9,528.65; monthly expenditure on fuel, Kshs285,860.

**Mr. Deputy Speaker:** Do you have a long way to go?

**The Assistant Minister for Justice and Constitutional Affairs** (Mr. Githae): No, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Continue!

**The Assistant Minister for Justice and Constitutional Affairs** (Mr. Githae): Mr. Deputy Speaker, Sir, the Judicial Commission of Inquiry into the Goldenberg affair has one Chairman and two other Commissioners, four assisting counsel and two joint secretaries. The remuneration per month is as follows: The Chairman, Kshs200,000; The Vice-Chairman, Kshs540,000; Commissioner, Kshs---

*(Loud consultations)*

**Mr. Deputy Speaker:** Order, Members! Let the Assistant Minister continue!

**The Assistant Minister for Justice and Constitutional Affairs** (Mr. Githae): Commissioner, Kshs570,000; Private Sector Assisting Counsel, three in number, Kshs390,000 each; Public Sector Assisting Counsel, one in number, Kshs110,000; two Joint Secretaries: Private Sector, Kshs450,000 per month, Public Sector, Kshs150,000 per month.

The total amount so far spent on the Goldenberg Inquiry Commission, from February, 2003 to 31st October, 2003, is Kshs159,573,257.45. The Commission has so far had 26 witnesses on its 101 day. A total of 28 advocates are participating in the proceedings.

*(Loud consultations)*

**Mr. Ndolo:** Mr. Deputy Speaker, Sir, I thank the Assistant Minister for that good answer. If the Commission was sitting at the High Court, how much money could the Government have spent? Could the Assistant Minister tell us?

**Mr. Deputy Speaker:** Mr. Assistant Minister, did you get that question?

**Mr. Githae:** No, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** I did not get it either. Mr. Ndolo, could you repeat the question?

**Mr. Ndolo:** Mr. Deputy Speaker, Sir, what expenses could the Government have incurred if the Goldenberg issue was taken to the High Court?

**Mr. Githae:** Mr. Deputy Speaker, Sir, I do not understand what the High Court has to do

with the Goldenberg Commission of Inquiry.

**Mr. Deputy Speaker:** Mr. Ndolo, could you paraphrase your question? I too do not understand it. I agree with the Assistant Minister. Could you make your question clearer?

**Mr. Ndolo:** Mr. Deputy Speaker, Sir, instead of the Government spending a lot of money on the Goldenberg Commission, why can it not take this matter to court?

**Mr. Githae:** Mr. Deputy Speaker, Sir, commissions of inquiry and civil or criminal proceedings are completely different and serve different purposes. Before you take a matter to court, you need to have the evidence. All the Goldenberg Commission of Inquiry is doing, and has so far succeeded in, is to show the fallacy that all the people who were involved in the scandal maintained that they were exporting diamonds and gold.

It has now been proved that nothing like that was happening. So, it is only after that when the issue of civil and criminal proceedings can be looked into.

**Mr. Shaaban:** Mr. Deputy Speaker, Sir, could the Assistant Minister explain to this House why the Assisting Counsel earn more than the Chairman of the Commission? He has told us that the Assisting Counsel earn Kshs390,000 each, the Commissioners earn Kshs500,000 each while the Chairman earns only Kshs200,000. Could he explain why?

**Mr. Githae:** Mr. Deputy Speaker, Sir, you will notice that in salaries, there is a big distinction between the salaries for people already working in the Government and the people in the private sector. What people already working in the Government are being given is in addition to whatever they may be earning in their respective jobs. The Commissioners and Assisting Counsel who are not in the Government had to close their offices and have no other income. This is a full time job which sometimes requires putting in as many as 20 hours a day. Therefore, it is only fair that they be compensated slightly more than people who are already working in the Government. Paying them the same amount of money would create an injustice.

**Mr. Mwanzia:** Mr. Deputy Speaker, Sir, if I heard the Assistant Minister correctly, in answer to part "a" of the Question, he said that he cannot tell the House how much the Goldenberg Commission of Inquiry will cost the Government. In view of the figures he has given us, which he has computed on monthly basis, could he tell us how much he is estimating the Commission to cost? I think he can answer this question from the figures he has computed. He should estimate how much the Commission will cost up to June, 2004. He has said that the Commission will complete its work in June, 2004.

**Mr. Githae:** Mr. Deputy Speaker, Sir, the Ministry of Justice and Constitutional Affairs does not engage in speculations. We have been engaging in speculations, trying to determine when the Commission will complete its job.

I have already given the daily expenditure of the Commission. Its monthly expenditure is Kshsh5,675,333. It will be possible to add up all the figures, but then you will have to determine by how much you multiply it. To know that, then you will have to know when the Commission will complete its job. I have already given the total figure spent so far by the Commission on its 101 day. It is impossible to know how much the Commission will spend unless you determine when it will finish its work and that is not possible.

**Mr. Twaha:** Mr. Deputy Speaker, Sir, in view of the fact that all this money is being spent on the inquiry and witnesses have been summoned to the Commission, would it not have been easier for the Director of Criminal Investigations Department (CID) to record statements from the same witnesses, draw his conclusion through detective reasoning and take them to court? If it is the intention of the Government to eventually pardon the culprits, it can pardon them after they have been convicted in court and save all this money.

**Mr. Githae:** Mr. Deputy Speaker, Sir, it is in public domain that the Goldenberg saga has been a circus for the last ten years. People were taken to court and nothing happened. This is a matter of great importance to Kenyans. It is important for Kenyans to know what exactly happened

and who caused our economy to collapse. Therefore, it is not just a matter of recording statements. Statements were recorded when some few people were taken to court, and this did not work. It is important that the Commission be encouraged and supported to complete its job, so that Kenyans know exactly what happened and who looted our economy.

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

**Mr. Deputy Speaker:** There is no point of order! I just gave you a chance to ask a question. Order, Mr. Twaha!

**Mr. Khamisi:** Mr. Deputy Speaker, Sir, we have always talked of the Goldenberg affair as a scandal, and the Assistant Minister has accepted that. But the expenditure we have been given here today, is in itself a major scandal. This amount of money can build schools in the whole of this country and provide water for every Kenyan. Since we already know the culprits, who have been mentioned severally and some of them belong to this House, why is it not possible for the Government to take them to court and prosecute them, and save this country from spending that kind of money?

**Mr. Githae:** Mr. Deputy Speaker, Sir, I agree that a lot of money has been spent, but it has been spent well. What we now know, there is no way we could have known. After everything else has been done, then the issue of civil recovery and taking people to court will arise. If we can only recover 1 per cent of the amount of money that was looted, it would be more than 1,000 times what we will have spent.

**Mr. Deputy Speaker:** Hon. Members, you will realise that I have been very generous to this Question for obvious reasons. But we cannot go on for ever. Last question, Mr. Ndolo!

Mr. Ndolo, you have no question? Then, if you have no question, I will give the chance to Dr. Ali.

**Dr. Ali:** Mr. Deputy Speaker, Sir, am I in order to say that this Commission was created for the sake of some individuals to enrich themselves? Why can the Government not arrest the known culprits involved in this scandal, instead of wasting so much money in this Commission?

**Mr. Githae:** Mr. Deputy Speaker, Sir, if you look at the people who are participating in this Commission, there is no pauper there. These are people who are very successful in their own practices. Therefore, the issue of just creating a Commission to give some people jobs and enrich them does not arise. This is the amount the Government has spent. Even the people who have instructed advocates to represent them in that Commission, I can assure you, they have spent almost a similar amount of money. To me, this is money well spent.

**Mr. Omingo:** On a point of order, Mr. Deputy Speaker, Sir. We promised to bring decorum and decency to this august House. I am sure the Chair heard Mr. Khamisi say that we could be sitting with thieves in this House. Could he substantiate or withdraw that remark?

**Mr. Deputy Speaker:** Order! Mr. Omingo, do not take us backwards. If you heard Mr. Khamisi say that, why did you not stand on a point of order at that time? You are just trying to derail us and we will not be derailed!

Let us move on. Next Question, Mr. Hassan!

## ORAL ANSWERS TO QUESTIONS

*Question No.825*

STATUS OF EU-FUNDED HABASWEIN  
ASAL KIDP PROJECT

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

(a) if he could explain the status of the European Union (EU) funded ASAL KIDP

project in Habaswein;

(b) how much money was allocated to Wajir District to undertake the project; and,

(c) what the Ministry's position is on range resource management.

**The Assistant Minister for Agriculture** (Mr. J. Nyagah): Mr. Deputy Speaker, Sir, I would like to seek your indulgence. This Question rightly belongs to the Ministry of Livestock and Fisheries Development. We have passed it to them to prepare an appropriate answer for the House. I do apologise to the hon. Member and the House. Please, do bear with us.

**Mr. Deputy Speaker:** Clearly, the Question belongs to the Ministry of Livestock and Fisheries Development.

**Mr. Hassan:** Mr. Deputy Speaker, Sir, I drafted this Question long before the Ministry was split. When it came back to me for corrections, I had clearly indicated that it was now to move to the Ministry of Livestock and Fisheries Development. Therefore, the earlier I get the response, the better.

**Mr. Deputy Speaker:** Mr. Hassan, we will make sure that the Minister for Livestock and Fisheries Development answers this Question as soon as possible. Therefore, the Clerk will follow up that matter.

**Mr. Mwenje:** On a point of order, Mr. Deputy Speaker, Sir. Yesterday, I remember Mr. J. Nyagah answered a Question on behalf of the Minister for Livestock and Fisheries Development. When they discussed about answering Questions today, why did they not discuss this one? Why can he not answer this Question since he seems to be handling Questions directed to the two Ministries?

**The Assistant Minister for Agriculture** (Mr. J. Nyagah): Mr. Deputy Speaker, Sir, under the rules of collective responsibility, the Ministry of Livestock and Fisheries Development had prepared an answer. I was asked by the Chief Whip, who is my brother, to answer it. However, there is no answer from that Ministry for this Question. Therefore, I am unable to answer.

**Mr. Deputy Speaker:** Next Question!

*Question No.717*

REHABILITATION OF NYANZA  
WATER PROJECTS

Dr. Awiti is not here. Therefore, this Question suffers the same fate. It is dropped!

*(Question dropped)*

**The Minister for Water Resources Management and Development** (Ms. Karua): I am happy!

**Mr. Deputy Speaker:** Next Question, Mr. A. Mohammed!

*Question No.807*

UTILIZATION OF WATER PIPES FOR  
KIUNGA/MKOKONI WATER PROJECT

**Mr. A. Mohammed** asked the Minister for Water Resources Management and Development:-

(a) if she is aware that water pipes meant for a water project in Kiunga and Mkokoni areas were bought and delivered to the said areas ten years ago; and,

(b) what action she will take to ensure that the pipes are utilized to supply water to

the areas as planned.

**The Minister for Water Resource Management and Development** (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that 1,540 pipes of 150mm diameter were delivered to Kiunga in 1987 and were meant for supply of water to Kiunga from Mkokoni.

(b) These pipes that were intended for Mkokoni-Kiunga Water Project could not be used on the project because they were found to be of a bigger diameter for the available water source, which was three shallow wells at Mkokoni.

In 1994, about nine years later, Lamu District Development Committee (DDC) allowed the Ministry to utilize the pipes elsewhere in the country with the understanding that the Ministry would undertake to replace the same with suitable pipes for the project. Since the authorisation of the DDC was not implemented, the Ministry has now established that the condition of the pipes has deteriorated over the years to the extent that 1,000 of the pvc pipes cannot be used as they have become brittle due to exposure to heat for a long time. However, the 540 GI pipes will only require threading before use and the Ministry intends to identify a suitable project where they can be used.

With regard to supply of water to Kiunga village, the Ministry plans to construct three jambias as a short-term measure. In the current financial year, the Ministry has allocated Kshs700,000 for construction of one jambia while the other two will be constructed in the next financial year.

As a long-term solution, the Ministry will undertake intensive studies to identify alternative sources of water. Once a suitable source is identified, the Ministry will carry out the design and prepare costs estimates to enable the project to be included in the forward planning budget of the Ministry in the forthcoming financial year.

**Mr. A. Mohammed:** Mr. Deputy Speaker, Sir, I am very happy with the answer given by the able Minister. I am also grateful for the historical records on the project narrated by her. Construction of jambias is not a lasting solution for the area. Could she undertake to revive the project by drilling three boreholes and provide piped water to the residents of Mkokoni and Kiunga as a lasting solution?

**Ms. Karua:** Mr. Deputy Speaker, Sir, the answer admits that the construction of jambias is a short-term solution. As a long-term measure, I have indicated that we are carrying on intensive studies to identify a more reliable water source. If ground water is found to be a solution, we will exploit it to ensure that we find a lasting solution.

**Mr. Twaha:** Mr. Deputy Speaker, Sir, the Minister is talking about short-term solutions. However, this project started in 1987. It is about 15 years ago since it was started. What action is she taking against officers who let this project drag for so long?

**Ms. Karua:** Mr. Deputy Speaker, Sir, we are looking into the whole issue. However, the hon. Member will agree with me that 1987 to 2003, is close to two decades. There would have been many officers who were in this area who allowed those pipes to go to waste. We will look into the matter and take appropriate remedial action. These are the spill overs from the last regime.

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

**Mr. Deputy Speaker:** Mr. Twaha, you do not have a point of order. You have this habit, after asking a question you want to follow up immediately with another question calling it a point of order. The Chair is very observant. We have observed this kind of habit over the years. So, please, keep your peace.

Mr. A. Mohammed, do you have a question?

**Mr. A. Mohammed:** Mr. Deputy Speaker, Sir, I do not have any question.

**Mr. Deputy Speaker:** It means that the Question was satisfactorily answered. That is very good.

Next Question, Mr. Muturi!

**Mr. Muturi:** Mr. Deputy Speaker, Sir, as you can see this Question is fairly old because it seeks to find out something which should have happened by the end of June, 2003, and I have not received any written answer from the Minister, notwithstanding that part "a" would have actually been answered by what he was to do. However, I beg to ask my Question.

*Question No.686*

APPOINTMENT OF NEW LAND BOARDS

**Mr. Muturi** asked the Minister for Lands and Settlement:-

- (a) in view of the fact that he declared his intention to scrap Land Control Boards and District Land Disputes Tribunals by the end of June 2003, what criteria will he employ in appointing new Boards and Tribunals; and,
- (b) what role, if any, will the elected leaders play in this exercise.

**The Assistant Minister for Lands and Settlement (Mr. Ojode):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, the criteria used is that:-

- (i) one must be a resident of the local area, be an elder who is recognised by the community;
- or,
- (ii) by virtue of his age, experience, and character, to be competent to resolve land issues between parties within the community.
  - (iii) one must own or occupy land in the community and, must also be recommended by the local leaders.

That is for the Land Disputes Tribunals. For the Land Control Boards:-

- (i) one must be a public officer in the area;
  - (ii) a councillor of the local authority within whose jurisdiction the board is situated; or,
  - (iii) a women's leader, a person of integrity and good character.
- (b) The role of elected leaders is to ensure the appointment of efficient, transparent, accountable and effective land control boards.

**Mr. Muturi:** Mr. Deputy Speaker, Sir, I thank the Assistant Minister for his answers and particularly in part "a" of the Question. With respect to part "b", what evidence does he have to show that the elected leaders who include Members of Parliament, were facilitated to participate in the elections, or selections of the persons that the Assistant Minister has named in "a"?

If that happened, when is the Assistant Minister going to gazette the Land Control Boards and Land Disputes Tribunals because people are suffering and cannot have transactions registered because there are no land control boards to give consent?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, first of all, the evidence I have will come from the MPs themselves. The MPs must sit and nominate or elect members of the board. In any case, if a Member of Parliament does not sign up the form that is being brought to us for the gazettement, that will not be accepted. That is the first evidence.

The second evidence is that we are already gazetting the results which we got from the districts. As we speak, I have already gazetted some of the districts including Kakamega, Nyeri, Embu and those other places, It is still ongoing until I finish all the other divisions.

*(Applause)*

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, previously, we saw these Land Control Board Members and Land Disputes Tribunal Members were corrupt. They were corrupt because maybe they were not getting "something little." Now that the Ministry has indicated that it wants people who have undergone secondary school education, could the Assistant Minister tell this House how



much they will be earning at least every month? There are other areas---

**Mr. Deputy Speaker:** Order, Mr. Wanjala! You have asked a question. Let the Minister answer it.

**Mr. Ojode:** Mr. Deputy Speaker, Sir, in order for these people to be transparent, we are going to extent good allowances to them. We have already written to the Department of Personnel Management (DPM) to advise us on how much we will be paying them. Once we have been advised, we are going to give them good money in order for them to do good jobs.

*(Laughter)*

**Ms. Mwau:** Thank you, Mr. Deputy Speaker, Sir. It is important that the Land Disputes Tribunals and Land Control Boards know exactly what they are doing. Is the Ministry going to make sure that it trains them and equip them with skills so that they are able to determine and bring justice to the land issues?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, of course that is true. We are liaising with the Ministry of Justice and Constitutional Affairs who will give us experts so that they can train our people on land issues.

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, I participated in the selection of the two boards in my Constituency. I believe it was two months ago, but, I do not recall the requirement to sign the forms. I think that it is unfair. The requirement to sign the forms was not there but, the circular from the Permanent Secretary was very clear on its conditions. Could the Assistant Minister gazette the boards that were gazetted in the presence of the Members of Parliament, and use the minutes of those meetings instead of requesting us to sign up those forms again?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, that is exactly what we are using.

**Mr. Muturi:** Mr. Deputy Speaker, Sir, the Assistant Minister started off very well, but in his answer to the last question, he messed up the good job he had done previously. He said that one of the criteria he will use is that he is not going to gazette the board whose members of selection are not confirmed through a signature by Members of Parliament. Mr. Deputy Speaker, Sir, he now says that he is doing gazette notwithstanding that Members of Parliament did not sign up in the manner he had proposed.

Mr. Deputy Speaker, Sir, considering that the country is desirous of economic take off and revival, could the Assistant Minister consider gazetting en-mass all these Land Control Boards across the boards without any further delay because land transactions which require consent of Land Control Boards for members even to borrow funds and loans from the banks have been pending for the last four months?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, I want to assure this House that the minute the name of the hon. Member of the area will be missing, he is not going to be recognised by the Ministry. That is what I meant.

Secondly, the gazette cannot be done at once because there are so many divisions. Therefore, we are doing them on a piece-meal basis.

As I mentioned, we have already gazetted about 27 and we are continuing to do that until we finish.

*Question No.794*

SALARIES FOR WHISPERING

PALMS HOTEL EMPLOYEES

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

- (a) if he is aware that workers at Whispering Palms Hotel in Kikambala, Bahari Constituency, have not been paid their salaries for several months; and,  
(b) if he could confirm whether or not the management of the hotel had remitted as required by law, NSSF and NHIF contributions during the past three years.

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

(a) Yes, I am aware that workers at Whispering Palms Beach Hotel have not been paid their salaries for several months.

(b) I wish to confirm that the management of the hotel has not remitted NSSF and NHIF contributions as required by law.

**Mr. Khamisi:** Mr. Deputy Speaker, Sir, this particular hotel is notorious when it comes to paying salaries. In fact, this problem has been there since 1997. Now that the Assistant Minister has accepted and admitted that this hotel has not been paying salaries, what is his Ministry doing to ensure that the hotel is forced to pay salaries to its workers?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, this hotel got into trouble in 1997 after the "infamous land clashes" that were instigated by some Members in this House. At that point, the business of the hotel went down---

**Hon. Members:** Point of order, Mr. Deputy Speaker, Sir!

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Dr. Godana asked for a point of order. The only mistake he made was to walk to the mike, but I have pardoned him now. Go ahead.

**Dr. Godana:** Pardon me for walking to the mike, but I wanted to make sure you heard my request for a point of order. This hon. Member cannot take this House for a ride. He must respect the dignity of the House. He made a very serious allegation to the effect that there are sitting Members of this House who started land clashes. Could he tell us on which side of the House they are? He should also name them and lay the evidence on the Table.

**Mr. Deputy Speaker:** Order, Mr. Odoyo. I want to agree with the sentiments of Dr. Godana. It is a very serious allegation that hon. Members sitting in this House did start those clashes. It is a very serious matter. If you want us to take you seriously, you have no alternative, but to name them. Alternatively, you could withdraw that statement.

**Mr. Odoyo:** Mr. Deputy Speaker, Sir, in order to do justice to this particular Question, perhaps you may allow me to complete the answer---

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

**Mr. Odoyo:** It is a humble request, at your discretion.

**Mr. Deputy Speaker:** Order! I do not even think that this is the right time to name people. I think generally, Mr. Assistant Minister, you should understand that it is not right to make such insinuations about hon. Members here for the sake of the dignity of this House. In any case, if you do name people, you will still be imputing improper motives and you will, therefore, be required to do so under a substantive Motion. I think you have no alternative, but to withdraw that statement.

**Mr. Odoyo:** Mr. Deputy Speaker, Sir, I seek your indulgence to allow me to withdraw. Before I withdraw, the Akiwumi Report---

**Mr. Deputy Speaker:** Order, Mr. Odoyo! You are an Assistant Minister; let us be serious on this matter. You are not an activist.

**Mr. Odoyo:** I wish to formally withdraw that particular statement, Mr. Deputy Speaker, Sir. After the downturn in the tourism industry, this particular Whispering Palms Beach Hotel experienced economic hardships. The owners of the hotel put it in the market for sale. The workers, who included the 56, reached an agreement with the owners of the hotel that they should not close it

down, but that instead they should be allowed to stay there and when the management got money they could pay them. This is what is happening in that hotel.

The workers and the management have an agreement that when money comes in they will divide it; 60 per cent to the workers and 40 per cent to the owner of the hotel. Under the circumstances, there are arrears which are accruing because a dispute has not been reported to the Ministry of Labour and Human Resource Development. We cannot take any action because there is an understanding among the various workers and the management. However, we are aware that almost Kshs3,943,492 is in arrears. We arrived at this figure after the hotel was paid a visit by our Inspectorate.

There are good relations between the manager and the workers of the hotel and we cannot interrupt that understanding. If we prosecute the manager, this may lead to the closure of the hotel and, therefore, a total loss of the possibility of getting some of this income. I, therefore, pledge to the hon. Member that the Ministry is aware and we are taking action.

As to the NHIF and the NSSF, I will answer, if you have any supplementary questions.

**Mr. L. Maitha:** Mr. Deputy Speaker, Sir, the case we are dealing with about Whispering Palms Beach Hotel is just an example of what is happening in the hotel industry. Today, we have so many directors who are taking advantage of the labour laws that have been set to exploit our people. Could the Assistant Minister name the directors of that particular hotel?

**Mr. Odoyo:** Mr. Deputy Speaker, Sir, I do not have the details of the directors because Whispering Palms Beach Hotel is a limited company. Therefore, it is a body corporate and we have dealt with it as such. We spoke to the directors who were there and we are not particular in the picture as to who the owners are.

**Mr. Bahari:** Mr. Deputy Speaker, Sir, in view of the fact that the Assistant Minister has said that there is an agreement between the employees and the employer, could he formalise that agreement with his Ministry so that these workers are protected in future when this investor may decide to run away?

**Mr. Odoyo:** Mr. Deputy Speaker, Sir, this hotel is up for sale. In the event that they get a buyer, the current company law and corporate law require that the employees' benefits and salaries take first priority.

Mr. Deputy Speaker, Sir, in that respect, there are other laws in the country to protect them. However, the Ministry of Labour and Human Resource Development, using the laws that have been passed by this House, is also vigilant in the sense that our inspectors do from time to time, talk with the employees.

Mr. Deputy Speaker, Sir, we have requested the NSSF to institute separate charges in court and there is a criminal case that was taken there in July this year. That one is being pursued separately with the directors of the hotel.

**Mr. J.M. Mutiso:** Mr. Deputy Speaker, Sir, the Coast region has been severely affected because of the tourism industry being on the decline. Most of the hotels are facing bad debts while others are in receivership. Could the Assistant Minister consider extending some support by borrowing some money from the Civil Contingency Fund to help these hotels?

**Mr. Odoyo:** Mr. Deputy Speaker, Sir, it is true what the hon. Member has said that many people are facing a problem, but my docket restricts itself to the employees. However, should the House wish, I may pass that particular request to the Ministry of Tourism who may take it up with the House and other respective authorities to ensure that they get it.

**Mr. Deputy Speaker:** That is the end of Question Time.

## POINTS OF ORDER

### MEASURES TO DEAL WITH

## MATATU STRIKE

**Mr. Mwenje:** Mr. Deputy Speaker, Sir, in the morning the Assistant Minister for Transport and Communications said that he would brief us on the position of the *matatu* strike this afternoon. At the moment, buses are being burnt down and stoned. The situation is getting even more serious. The Assistant Minister indicated that this afternoon, he would be able to give us the actual position on what they are doing and the action they are taking. Now that he is here, could he tell us?

**The Assistant Minister for Transport and Communications** (Mr. Ligale): Mr. Deputy Speaker, Sir, I did promise that we shall give a comprehensive statement on the situation tomorrow afternoon. I did say that we may be able to give some indication where matters stood now. I do not have a comprehensive statement, but I do know that we are monitoring the situation very closely. Most *matatus* are in fact on strike. They have been instigated to go on strike, but we have ensured that most buses in Nairobi owned by the Kenya Bus Services are operating. The police are guarding them. There have been a few incidents of stoning, but we are not aware of any burning of buses. The stoning incidents have been very much reduced to a minimum, and buses are moving. This does not necessarily mean that the situation is under control. One thing we do not intend to do is to give in to blackmail.

*(Applause)*

It is about time the *matatu* industry was brought under some control. Kenyans are dying in their thousands, and we must bring that industry to some order. So, we are monitoring the situation and we shall stand firm. We expect this House to support us on that resolve.

*(Applause)*

**Mr. Deputy Speaker:** Very well! The Minister is still under obligation to bring the Statement tomorrow.

I have been informed that there is a Statement by Prof. Anyang'-Nyong'o.

**MINISTERIAL STATEMENT**COMMENCEMENT OF NATIONAL  
INVESTMENT CONFERENCE

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I rise to make a Ministerial Statement on the National Investment Conference that is opening this evening at the Kenyatta International Conference Centre. The National Investment Conference opens tonight at the Kenyatta International Conference Centre with a cultural extravaganza depicting Kenya's economic, social and cultural potential by various artists.

*(Loud consultations)*

**Mr. Deputy Speaker:** May I appeal to hon. Members to please consult in low tones.

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, this cultural evening will be hosted by the Ministry of Gender, Sports Culture and Social Services and the Ministry of Information and Tourism. Participation in this conference is by registration, and hon. Members of Parliament have already received---

*(Mr. Wanjala moved to the Front Bench  
to consult with Mr. Ligale)*

**Mr. Deputy Speaker:** Order, Mr. Wanjala! You know if you cannot fit in the Front Bench, you may as well go back to your usual place!

Proceed, Prof. Anyang'-Nyong'o!

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, protect me from Mr. Wanjala.

Mr. Deputy Speaker, Sir, participation in this conference is by registration, and hon. Members of Parliament have already received registration forms from me, that they should fill and return to the Ministry so that they can get their conference materials, identity cards and so on. The identity cards will entitle hon. Members of Parliament to enter and participate in the Plenary and focused sessions. Due to tight security at the KICC, I would like to urge hon. Members of Parliament to register today or early tomorrow morning at the KICC. Registration will also entitle participants to the meals that are sponsored by the corporate sector at the Inter-continental Hotel and the KICC.

The Investment Conference offers opportunities for hon. Members of Parliament to network with the private sector and survey possibilities of investments in their own constituencies. It is the NARC Government's policy to attract investments to the rural areas, particularly through value addition in agriculture and the development of cottage industries. Hon. Members of Parliament will miss an important opportunity if they do not seize this chance of participating in the first ever National Investment Conference in Kenya. Mr. Deputy Speaker, Sir, the private sector from various sections of the manufacturing, industrial and agricultural sectors will be fully present, and there is also medium, small and micro enterprises exhibition taking place in the KICC environ while the conference is going on. This will offer the opportunity for hon. Members of Parliament also to see the kind of industries that may give opportunities to their own constituents and may offer employment for their people.

Mr. Deputy Speaker, Sir, the guest of honour is the hon. Jeff Radebe, the Minister for Public Enterprises of the Republic of South Africa who arrived today from Paris to represent His Excellency the President Thabo Mbeki, currently visiting France, and due to address the UNESCO Conference today.

Hon. Members have received the programme, and we do hope that their participation will solidify our partnership with the private sector in Kenya.

Thank you.

**Dr. Godana:** On a point of order, Mr. Deputy Speaker, Sir. We thank the Minister for briefing the House. It is clear, for more than a month, the media had stories about this conference which was forthcoming. We have been treated to stories, that none other than the President of South Africa, hon. Thabo Mbeki was going to be the guest of honour. We now understand - and I will want the Minister to confirm this - that the Government, despite wishing him to be guest of honour, actually forgot to invite him until last week when they were contacted by the South African Government about the story, and in panic decided to invite him. Since his diary was full, we have ended up with a Minister for Public Enterprises. What does he have to say on this issue?

**Mr. Deputy Speaker:** Prof. Anyang'-Nyong'o, I will allow two more clarifications and then you will answer.

**Mr. Wambora:** Mr. Deputy Speaker, Sir, I would like to congratulate the Minister for organizing this very important National Conference on Investment. I would really like to participate in the conference, however, those of us who have registered have been asked to pay Kshs10,000. I do not know whether he is aware that his own officers are charging us Kshs10,000 to participate in the conference.

**Mr. J.M. Mutiso:** Mr. Deputy Speaker, Sir, if those are the charges, are we likely to have any participants in that conference? I think Kshs10,000 is beyond the limit of most people who would like to attend.

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, let me first deal with monetary matters. This conference is sponsored jointly by the Government and the private sector. The decision to pay Kshs10,000 for registration was due to the fact that there are certain expenses that will be incurred in your own interest. For example, the meals, access to the conference material and so on.

This was a joint endeavour between us, and this is just to pay for the costs. I think in the spirit of building the nation, Kshs10,000 is not too much to pay for a valuable conference. I do not compel hon. Members to pay, because this is a democratic society. If some hon. Members feel they do not want to pay, there is no problem. But there are already 250 people who have registered to participate, but I encourage hon. Members of Parliament to do so, because it is in their interest. The value they will get from the Kshs10,000 is worth more than Kshs100,000.

Secondly, another issue was raised with regard to the invitation of President Thabo Mbeki. I would not like to jeopardise our good relations with the Republic of South Africa. Kenya enjoys good trade relations with the Republic of South Africa. When we went to South Africa, we were very well received, and there are very cordial relations between us. There has been an exchange of views and contacts between our Government and South Africa regarding the visit of His Excellency, President Thabo Mbeki. I would not definitely like to engage in speculations which are not within the official realm of my responsibility, but I would like to assure the House that I received the hon. Jeff Radebe, Minister for Public Enterprises, in whose portfolio such issues as national investment conferences fall. He has the full backing of the African National Congress (ANC), the ruling party in South Africa, to fully represent His Excellency the President of South Africa and the people of South Africa in this important conference.

Thank you.

## MOTIONS

### ADOPTION OF ELEVENTH PIC REPORT

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

*(Mr. Muturi on 11.11.2003)*

*(Resumption of Debate interrupted  
on 18.11.2003)*

**Mr. Deputy Speaker:** Prof. Anyang'-Nyong'o, you were on the Floor. You have eight minutes!

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, when the House rose last evening, I was contributing to the debate on the Public Investments Committee (PIC) Report. I had underscored the fact that the PIC is an extremely important Committee of this House. It deals with the Report of the Controller and Auditor-General laid on the Table of this House for discussion and recommendations to the Government on what to do. The point that I was making was that many public enterprises are suffering from a lot of problems. That does not mean that the panacea to managing the public sector is privatisation. Privatisation is important as a weapon of reform in our economy. But it must be undertaken on a

case-by-case basis under a law that is passed by this House, and a law that will guarantee transparency and accountability on the disposal of public assets. Such a Bill has been prepared by the Government and will be discussed by this House soon. We do hope that, on the basis of that Bill, without prejudging what we are going to discuss in this House, we shall have a sound framework for privatising public enterprises.

Mr. Deputy Speaker, Sir, the second point I made was that we quite often do have corruption in both public and private enterprises, like the case of Enron in the United States of America (USA), that cost the USA Government a lot of money to put it right. It is important, therefore, that we must understand that, as we move to commercialise and privatise our public enterprises, they have to be managed on sound commercial basis. Without such a law, as we noticed in the case of Kenya Re-Insurance Corporation last year, we shall find a public corporation with substantial assets being disposed off to the private sector for a farthing, and with great loss to the Treasury and this great nation.

Mr. Deputy Speaker, Sir, one other thing that I would like to underscore is that, in the spirit of Mr. Speaker's ruling yesterday, our Committees of the House must observe the dignity of this House and forge cordial relationship among Members of this House. We, in the NARC Government, are determined to fight corruption and to make sure that the management of our public affairs is, indeed, rid of corruption. I have spent all my life fighting for reforms in this country. When I was a lecturer at the University of Nairobi, we did our best as the University Staff Association to reform that public institution, to make sure that its health and housing services were well run. It was, indeed, our role as members of the University Staff Association to establish the university staff system. I do believe that, after more than 50 years in this world, and about 30 years in public life, I cannot, at any one point now or in the future, punish or jeopardise my contribution to public life in this country, by condoning corruption or participating in it. It is known in the history of this country that in the valiant battles that we waged at the University of Nairobi in the struggle to reform our public institutions, I lost a brother in that process. That is a matter that is very close to my heart. It is something that my Ministry and myself will commit ourselves to. I want to assure this House that after the National Investment Conference is over, I will issue a comprehensive public statement on the saga that occurred in the last two weeks regarding the Numerical Machining Complex. I would not like to revisit that issue in this House, but it is a matter that belongs to the public realm. I will definitely issue a comprehensive statement in public.

Mr. Deputy Speaker, Sir, it is important that as we move ahead to lead this nation, we must realise that this nation depends on the efforts and the energies of all Kenyans. Each and every Kenyan matters. Therefore, in the process of disposing of all public assets and public corporations, the interests of every Kenyan as a taxpayer matters. That is one of the reasons why we do believe that when public assets are disposed of, they do not go the way of the Ojjo Road saga, whereby the Kenya Railways Corporation sold the corporation houses for a farthing to politically-correct individuals. We have seen the outcome of that sale recently.

When I was the Chairman of the PIC, we discussed that issue and warned the then Government that public assets were going for a farthing and the people were losing. We called attention to the fact that they should be arrested. We knew that the Kenya Railways Corporation employees would not get their pensions because the pension funds were messed up by the management. We knew that the Kenya Posts and Telecommunications Corporation could not pay pensions to its workers because pension funds had been messed up. One of the problems that is now facing our Government is the terrible heritage from the past whereby, in the process of privatisation, the Government finds it very difficult to give a fair deal to workers because their pension funds were messed up. We are appealing to our development partners that one of the reasons why we are moving very carefully with the idea of privatisation is precisely because we have the workers' interest at heart. You cannot send someone home in the process of retrenchment with a wooden handshake whereby, the golden handshake has turned into a wooden handshake because the

Government does not have the financial capability to pay pension workers.

Mr. Deputy Speaker, Sir, I would like to support the PIC very strongly in its continued endeavour; to examine the accounts and Reports of the Controller and Auditor-General and make reports to this House.

With those few remarks, I beg to support.

**Mr. Twaha:** Mr. Deputy Speaker, Sir, I rise to support this Motion that this House adopts the PIC Report. While commending the NARC Government for its efforts to fight corruption, there is need to point out a few things to the Government, which are counter-productive. Fighting corruption is a good thing, but when it leads to paralysis in the state corporation, it becomes counterproductive. The chief executive officers of parastatals in the country are afraid to take any decision on any major issues because they fear of being terrorised by the anti-corruption lobby groups. There is hardly anything getting done. Even things that are legitimate and have been approved by the Cabinet are not implemented by the chief executive officers. They are acting out of fear because when you ask them about it, they will tell you that the other day, somebody bribed a judge and the judge was sacked!

Mr. Deputy Speaker, Sir, that paralysis is something that the NARC Government needs to look into. If we want to revive the economy and get things moving, people have to be given the leeway to perform their duties. They should be courageous enough to make bold decisions to get things moving in our economy.

With those few remarks, I beg to support.

**Mr. M. Kariuki:** Thank you, Mr. Deputy Speaker, Sir. It is regrettable that according to the report of the Public Investments Committee (PIC), these recommendations have been made over and over in the past and no action seems to follow them. I think we have to start with the State Corporations Act Cap.446. This particular Act was enacted in 1986 at the height of the single-party rule when the President was seeking to enhance his powers. This Act, at that point in time, sought to diffuse the effectiveness of the office of the Auditor-General (Corporations) and that is why it created two deputies; one for State corporations. The problem of management of parastatals stemmed basically from this particular statute. If you look at Section 30 of the State Corporations Act, it gives the President sweeping powers to appoint chairpersons of parastatals. When this Act came into force, there was no attempt to amend other statutory boards that had already been set up. For example, if you look at the Pyrethrum Board of Kenya Act, it clearly states the manner of appointment of both the Chairman and the Chief Executive. It says: "The Chief Executive of the corporation will be appointed by the board." The powers of the Minister are equally spelt out; to appoint the Chairman and other members of the board, except four who are supposed to be directly elected by the farmers. If you look at the provisions of that Act vis-a-vis the provisions of the State Corporations Act, you see there are obvious conflicts. This is because the State Corporations Act gives the President power to appoint the Chairman and also gives the Minister power to appoint the Chief Executive. It also gives the Ministry of Finance a place in terms of the management of parastatals. So, we have a tri-partite kind of management structure under the State Corporations Act. I think the serious confusion in the appointment of these boards has to start with an amendment or perhaps a repeal of the State Corporations Act, so that we do not have to go over this problem again. The Committee should address itself to the creation of a new legal and policy framework in terms of management of parastatals and I think it is time we went for this particular Act and made a repeal of it. In my view, it runs contrary to the Constitution, because it is a product of that one-party dictatorship and did not take into account proper management principles of running our parastatals. So, I think our first line of defence would have been to recommend a new legal and policy framework in the management of our parastatals. I think this particular Committee stopped short of



that recommendation. But I think the State Corporations Act has outlived its usefulness and we need to restructure it in accordance with modern norms of managing public corporations.

If you look at the State Corporations Act, you will find that there are various offices created. Some of them are either dormant or totally ineffective. For example, if you look at the office of the Inspector-General of State Corporations; you wonder why we have to have an Inspector-General of State Corporations while at the same time, we have an advisory board under that particular statute. This is a duplication of roles. The Inspector-General of State Corporations, for all I know, does not seem to have a particular role to play and perhaps, he is just lording it over, given that now the Office of the President has a monitoring unit, the Efficiency Monitoring Unit. You wonder what the role of an Inspector-General of State Corporations under the State Corporations Act would be, when there are parallel bodies like the advisory board and the Efficiency Monitoring Unit under the Office of the President. So, I think the major problem today in managing our parastatals stems principally from this Act.

*[Mr. Deputy Speaker left the Chair]*

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

If you look at the recommendations made about public debts by this Committee, you find that, for example, the Agricultural Finance Corporation has gone ahead to waive some debts owing to certain farmers. It is a matter of serious concern that while I have tremendous respect for the Minister for Agriculture, what he has done is to waive debts for farmers in the North Rift and has left farmers in other parts of the country, particularly Southern Rift and Central Rift, where I come from. If the idea of waiving debts of the corporation is to give farmers incentives to go back to farming and increase production, then the waiving of the debts should have been done across the board. All farmers should have benefited. But picking selectively, certain sections of the country and waiving debts while leaving other farmers under the heavy debts they had incurred previously, is totally unjust and discriminative. I am appealing to the Minister for Agriculture to consider a situation where we have to look at the debt situation politically. The sugar farmers have benefited from a debt waiver of Kshs10 billion which was waived the other day, yet the farmers in the cereals sector have not benefited from this debt waiver. I think we have to be fair to all the farmers across the board, whether cereals, sugar or any other farmer. I think that if we have to waive debts, let us waive them across the board. But when we do it selectively, then we shall be accused of discrimination and causing injustice to some sections of our farming community.

I would like to join forces with those who said that there has been quite a problem with the appointment of the legal advisers to the State corporations. I have seen the report and I have realised that certain lawyers have been named in that particular report. A question was raised here; why has the Law Society of Kenya not taken any action against those particular advocates? I believe that a complaint has to come from the State corporations which they represent. But I think the reality of the matter is that the lawyers who work for these corporations are clear conduits of the dirty money that they share with their boards of directors. That is why the boards of directors of these particular parastatals have never lodged any complaints. When, for example, a lawyer appears in court in a matter that is referred to as an application for an injunction and raises a fee of Kshs87 million for appearing in court for one hour, it cannot be explained in any other way other than theft of public money and whatever the lawyer is receiving is usually an arrangement with the board of directors; that, we shall use the cover of legal fees to suck money from this company and that

money is shared among the members of the board.

Mr. Temporary Deputy Speaker, Sir, I am making a very strong recommendation. Now that NARC has taken the crusade of fighting corruption in parastatals, I think if we are to make an effective change, it must start with the removal of the lawyers who have been acting for these State corporations. We are told that they are all over, including this House; that is what one Member said. But I am saying that if we have to make a difference and we are appointing new boards, it must come with new appointments of lawyers who have a clean record and who would be able to account for their services to these corporations. I think to be able to curb the excesses of the lawyers---

**The Assistant Minister for Labour and Human Resource Development** (Mr. Odoyo): On a point of order, Mr. Temporary Deputy Speaker, Sir. I was taken to task for referring to some Members in this House as having instituted the land clashes and they are sitting Members. At this particular moment, we have a Member of Parliament saying that there are corrupt lawyers in this House. Would I be in order to ask him to bring a substantive Motion to discuss these Members?

**Mr. M. Kariuki:** Mr. Temporary Deputy Speaker, Sir, I believe the hon. Member heard what I said. I said the Secunder of this particular Motion, hon. Wamunyinyi, did, in fact, read the names of those lawyers from the Report and said that one of the lawyers who is a Member of this House is aspiring to be the KANU Chairman and he was not challenged. I am merely stating what has been said by others before me.

If you look at the Report, you will find that it speaks for itself. The names of the looters are in that Report. The Mover of this Motion, Mr. Muturi, can show it to the hon. Member who has not had a chance to look at it. The names of the looters are, in fact, in that Report.

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. M. Kariuki! You are in order and you have nothing to substantiate here. The information which the Assistant Minister is referring to is in the public domain because the Report was laid on the Table.

So, Mr. M. Kariuki, you can proceed!

**Mr. M. Kariuki:** Thank you, Mr. Temporary Deputy Speaker, Sir. I did not have to substantiate the obvious.

I was saying that to curb the excesses of these lawyers, we need an Anti-Money Laundering Law. This is because the lawyers are used as a conduit to get dirty money. "Dirty money" is money obtained through commission of a crime. If money is obtained by looting a corporation, then it is dirty money. But the moment that money takes the cover of legal fees, then it is money laundering. We should think how we can contain the excess conduits of dirty money. It is time this House considered debating an Anti-Money Laundering Bill so that lawyers who are used to looting public corporations can be followed.

We have read a lot from the Judicial Commission of Inquiry into the Goldenberg Affairs, that even the campaign money for 1997 was disbursed through some lawyers. That was dirty money. We have heard that a lawyer received Kshs5 billion from Goldenberg International to disburse to certain political party supporters. If we have to curb this kind of incidences where a board of directors uses a lawyer to steal money from a corporation in the name of legal fees, we need to bring an Anti-Money Laundering Bill. This Bill is long overdue. Mr. Temporary Deputy Speaker, Sir, I think there is sense in the manner in which the public is concerned about the action taken against judges and why lawyers have been left out. But there is a very important principle which has to be observed here. The Judiciary is independent and the Bar, which is the Law Society of Kenya (LSK), is also independent. There is no way a judge can investigate lawyers under the LSK Act. It is the Advocates Complaints Commission, which is a statutory body, which is supposed to investigate lawyers. So, those hon. Members who are calling upon the LSK to release its list of shame should have to look at the record of the Advocates Complaints Commission.

I am not defending lawyers here, but I am saying that firm action should be taken against lawyers, particularly those ones who have looted public corporations.

The Minister for Finance has even a greater responsibility of ensuring that all parastatals, particularly, the ones dealing with financial matters have new legal advisers whose records are untainted. As things stand now, the lawyers who have been accused in this Report are still working for these corporations. One wonders when we are going to break from this particular chain of corruption, if we cannot even post new lawyers to these parastatals. Clear guidelines should be given by the Ministry of Finance as to the persons who should be appointed as advocates for these parastatals.

Mr. Temporary Deputy Speaker, Sir, if you look at the State Corporations Act, you will find that certain State corporations have been exempted from the provisions of this Act. The truth of the matter is that the boards of the parastatals which were exempted from the State Corporations Act were those ones which were used as conduits to loot those State corporations. There is no other rational explanation as to why a State corporation would be exempted from the State Corporations Act.

*(Mr. M. Kilonzo entered the Chamber)*

**The Assistant Minister for Labour and Human Resource Development** (Mr. Odoyo): On a point of order, Mr. Temporary Deputy Speaker, Sir. In view of the fact that reference has been made to a lawyer who happens to have walked into the Chamber, perhaps, the Chair could give him a chance to defend himself.

**The Temporary Deputy Speaker** (Mr. Khamasi): What is your point of order, Mr. Odoyo?

**The Assistant Minister for Labour and Human Resource Development** (Mr. Odoyo): Mr. Temporary Deputy Speaker, Sir, is it in order for the hon. Member to continue referring to a particular hon. Member indirectly when he is seated here?

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. Odoyo! You are out of order! That is not a point of order!

Could you proceed, Mr. M. Kariuki?

**Mr. M. Kariuki:** Mr. Temporary Deputy Speaker, Sir, I think the hon. Member is putting words into my mouth. It was clearly stated by the Mover and the Seconder of the Motion that the names of the looters are in the Report. I have not named any individual here. I am only commenting generally about lawyers who might have been named in that particular Report. So, I am not aware that, that hon. Member is in the Chamber now unless the Assistant Minister wants to substantiate what he has said.

I was saying that the situation where the President exempts certain State corporations from the State Corporations Act is in bad taste. We are now in an era of transparency and accountability. It is important that this House gets powers to scrutinise every State corporation. I think it is time we repealed the excessive powers which were granted by the President to exempt certain parastatals from the provisions of the State Corporations Act. It does not serve any useful purpose to exempt some parastatals from the State Corporations Act. In my view, it only helps to shroud with darkness the operations of a particular parastatal. It is time we repealed the Act.

Mr. Temporary Deputy Speaker, Sir, the Report also talks of parastatal lands which had been grabbed. If you look at the Report, you will find that whenever we approach a general election, public land is always dished out to certain individuals and some State corporations are asked to buy it at inflated prices.

The provisions of the Government Lands Act are clear. Land should not be used for

speculation purposes. If a parastatal gives out land for free and another parastatal buys the same land from the individual who has not even developed it, then that land used is purely for speculation. From the Report, it appears that land was used as a way of sourcing funds for a particular political party during the campaign period.

I fully support the recommendation that all public land which belongs to parastatals should now be issued with title deeds. The same case should apply to parcels of land belonging to public schools and public institutions to ensure that grabbers do not grab them. But more importantly, the Report makes a very serious recommendations that we must find a way of recovering whatever has been lost.

I get disturbed sometimes when the Minister says that he is helpless, and yet there are clear provisions under the Government Lands Act. This Act states that if there is any land to be allotted in urban areas, it must be done by public auction. The Act further states that the land should be sold to the highest bidder. I wonder whether Government land has ever been sold by auction since Independence. The effect of this is that the provisions of the law have been abused and not many people, today, have clean title deeds. So, I think the Minister needs to do some homework. He should find a way of recovering grabbed parastatal land which has been issued with title deeds unlawfully. That is the challenge that the Minister has to take up.

Mr. Temporary Deputy Speaker, Sir, let me say something about the circulars. If you look at the tripartite arrangements under the State Corporations Act, you will find that the Minister for Finance, the Treasury and the President seems to be sharing power. It appears as if the Ministry of Finance has been issuing circulars giving guidelines to parastatals on how they should carry out their operations. The greatest danger today about abuse of law is to give too much discretion to a particular individual or office. To be more effective, we need to spell out the management of parastatals in an Act of Parliament so that the Minister does not abuse his powers by issuing circulars every now and then.

Circulars cannot override the force of the law. If you look at the management of finances in this country, it would appear as though it is basically run by circulars from the Treasury. It is time we spelt out the powers of parastatals; what they should or should not do. If we leave it to the whims of the Minister, the chances of abuse are quite high. We are told, for example, that the corporations which banked their money in certain banks that sunk, were acting either pursuant to a circular from the Treasury or defied one. One then wonders what is the force of law in a circular. If you are appointing Chief Executive Officers (CEOs) and giving them the discretion to manage the corporations in the best manner they deem fit, why then manipulate them through circulars? If they are going to enjoy their independence and improve their efficiency in management, then, we better give them full powers.

Mr. Temporary Deputy Speaker, Sir, let the Minister for Finance not issue too many circulars as to how the CEOs should use their money. They are accountable after each financial year for whatever they have done. The Ministry of Finance should monitor the activities of these parastatals.

If you look at the State Corporations Act, State corporations include local authorities yet their management leaves a lot to be desired. Many of them have gone on for years on end without a budget. Each year, the Minister issues a circular saying that they should get their budget ready by July. In my Municipal Council of Nakuru, there has not been a budget for the last seven years, contrary to the provisions of the law and nobody seems to pursue this matter. Despite the fact that we have the Inspector-General (Corporations), that particular office has not pursued local authorities that have failed to prepare their budgets. It is amazing that there is no audit done. We are informed that in one of the local authorities, no audit has been carried out for the last 30 years. This is a very

sad situation because it means that there is no proper supervisory authority.

**The Assistant Minister for Labour and Human Resource Development** (Mr. Odoyo): On a point of information, Mr. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Mr. Khamasi): Mr. M. Kariuki, would you like to be informed on local authorities?

**Mr. M. Kariuki:** Mr. Temporary Deputy Speaker, Sir, this is the third interruption. I am very conversant with the State Corporations Act. If anything, I can give the Assistant Minister a short lecture and so I do not need his information on this.

I am saying that there is no proper supervision of local authorities.

**The Assistant Minister for Labour and Human Resource Development** (Mr. Odoyo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to mislead the House? Local authorities are part of the public sector and are not accountable to the Public Investments Committee (PIC). They are accountable to the Public Accounts Committee (PAC). Right now we are discussing the PIC Report and he is discussing matters which fall within the purview of PAC. I believe that local authorities are part of the public sector. Is it in order for the hon. Member---

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

**Mr. M. Kariuki:** Mr. Temporary Deputy Speaker, Sir, thank you for saving me. I was talking about local authorities and that there is no proper supervision. Some of them have gone for 30 years without any audit being carried out. I have the case of the Nakuru Municipal Council which has gone for seven years without any audit being done.

**The Temporary Deputy Speaker** (Mr. Khamasi): That is why the Assistant Minister stood up to say that you are addressing a matter that does not fall under PIC.

**Mr. M. Kariuki:** Mr. Temporary Deputy Speaker, Sir, I am talking about the State Corporations Act which is the major framework under which the PIC operates. There is need to have a more effective system of supervision.

I would like to say something about receivership. There was something mentioned about the failure to amend the Companies Act since 1948. However, we were assured by one of the Ministers that there is an effort being made to update this Act. One of the major problems in the management of statutory boards and companies is when they have to be placed under receivership. There are no clear rules under the law about the minimum qualifications for a receiver. Some of them are picked without clear criteria and at the end of the day, a lot of assets of these corporations are lost because the person being appointed as a receiver is not competent. There is an urgent need to review the law more particularly to focus on the qualifications of receiver managers. This will ensure that we have a clear criteria for picking them. When you pick an accountant to be a receiver manager, other than accounting for the figures, he may not have the necessary managerial skills to sustain the particular corporation and collect debts. I think that it is time we developed a legal framework for receiver managers so as to protect State corporations from being looted by receiver managers.

There is an effort by the Government now to try and revive some of the public corporations which have gone under. I would like to, therefore, share the same fears expressed by one hon. Member. If we are going to revive some of these corporations which have gone under and have been closed for a long time, we are going to face certain challenges. We will find that the technology that was used about 30 years ago is totally outdated. We will need to import new machinery that is more competitive given that now we have diversified, liberalised and there are more competitors in the market. We stand a risk of trying to revive that which cannot be revived. There is importance in doing a thorough study before we think about reviving certain parastatals.

Mr. Temporary Deputy Speaker, Sir, it might be too expensive to import new technology

given that some of our competitors are quite up to date with modern technology. We might be putting good money after that and there is need to be cautious in our strategy to revive some of these parastatals.

When we talk about investors generally, it is important that we first look at our local investors. There are many challenges today and we seem to be focusing on the International Monetary Fund (IMF) and World Bank to inspire confidence in investors from outside. Since there are investors already on the ground, our starting point should be here. These investors are doing some good work for us and they are the ones we should be giving incentives to expand whatever they have invested locally before we can look forward to receiving a foreign investor who is already getting very adverse publicity about terrorism in Kenya. To convince that particular investor in the USA or Europe to come to Kenya and invest, it would take a much longer time. A lot of energy and time would thus be wasted. I believe that we have to start at home. Those who have already invested here should be given the necessary incentives to expand their businesses. If somebody has a small factory, let us give him incentive to expand that particular factory or to open a branch elsewhere. That way, we shall have built the necessary framework. But there is no way this country would be developed by foreign money. Whatever we are asking for today from the IMF and the World bank, US\$225 million which is about Kshs40 billion, is peanuts. The amount of money we have lost over the years running into billions clearly is a lesson for us. We do not need those foreigners to bring their money here. We only need to take care of the money that we have here locally. That is why I am saying that let us start with our local investors. Let us start with the person who already has the necessary confidence that this country is able and he can do business here. Let us give him the incentive to expand and grow. Now, we are pushing all our focus on the IMF and the World Bank. Kenya has survived the last 12 years without them. What is the miracle if tomorrow they said; "Here we are coming"? There will be absolutely no miracle. We must understand that even if they come, at the end of the day, our economic independence will very much depend on what we control locally and not on a foreign investor coming to put his money and after one year he takes it away. That would never be a foundation for developing this country. I think it is time we began to think of new strategies of reviving this economy. Let us give confidence to our local investors so that they will be able to propel this country forward.

Mr. Temporary Deputy Speaker, Sir, I looked at the PIC Report and there is something about some of our public universities. When we talk about appointments in the parastatals and other statutory boards, it is a matter of grave concern, for example, the recent appointment of university heads. It was of grave concern that out of 18 top appointments in Egerton University, 14 positions went to one community. That is, the Chancellor, Vice-Chancellor, the Chairman of the University Council, Chairman of Finance and two Deputy Vice-Chancellors. We are sending a very dangerous signal. It looks like we have already given our universities to certain ethnic groups and regions. Universities are national institutions. They must reflect the diversity of this country. When you have a chancellor, vice-chancellor and two deputies from one community, we are sending a signal that---

**The Assistant Minister for Labour and Human Resource Development (Mr. Oduyo):** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to insist that universities must also be based on regions, whereas, a university should be a place of excellence and merit only?

**Mr. M. Kariuki:** Mr. Temporary Deputy Speaker, Sir, these are national institutions. Whether we like it or not, they must reflect on our national diversity. What is the special qualification for being a chancellor, for example? When you appoint a fellow who was an ambassador to be a chancellor, what is special about him? We have so many other ambassadors who can be appointed as chancellors. In the case of a finance officer, how many accountants are qualified

in this country? It is of great concern that while we risk being accused of tribalism, I think we have a duty to this country to ensure that our institutions reflect national diversity.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, thank you for giving me a chance to contribute to this very important Motion.

Right from the outset, I would like to state very clearly that the Public Investments Committee (PIC) reports are worthless. They are not worthy the paper on which they are written. Year in, year out, the PIC makes recommendations, but who implements those recommendations? This House believes that the PIC is a watchdog Committee, but if you have got a dog that watches over you and cannot bite, of what use is that dog? The PIC would be a good watchdog Committee if this House established an assurance and implementation committee. This committee will ensure that whatever recommendations made by the PIC are implemented. Otherwise, discussing these reports and recommendations is just a circus; a waste of valuable time and resources of this country.

Mr. Temporary Deputy Speaker, Sir, in the past, there have been recommendations made. For example, in the 10th Report of the PIC, a response given by Treasury in one case was that the Chief Executive confirmed that action would be taken. That same item appeared the following year and Treasury gave the same response. How many actions have been taken on any of the recommendations made by the PIC or even the Public Accounts Committee (PAC)? So, I am challenging this House to rise up and either find a way of implementing our recommendations or doing away with the PIC and PAC; so that we can save some money used on receiving evidence, printing of these reports or touring the country. If we want to make them actual watchdog Committees, we must find a way of implementing their recommendations immediately.

Mr. Temporary Deputy Speaker, Sir, we all know that the Controller and Auditor-General does his work and reports to this House with anticipation that we will take action. However, there seems to be a conspiracy between the House, the Attorney-General's Office and the Treasury that there no action will be taken on any recommendation.

The previous speaker said that there are certain hon. Members in this House who have been cited in these reports. They have been barred from holding public office. Until recently, we are defined as public officers. How come then that these public officers who have been barred from holding office have been allowed to sneak into this Parliament? So, this House has not risen up to perform its work and role given to it by Kenyans.

Mr. Temporary Deputy Speaker, Sir, if you look at the recommendations of the report we are discussing at hand, for example, on the National Housing Corporation, there was a chief executive who was recommended not to hold any public office because he messed up the previous corporation he was heading. However, he was appointed to head another parastatal despite the recommendations of the House. There is even a case of a person who messed up the Credit Bank and he was transferred to the Kenya Sugar Authority. He misappropriated Kshs1.5 billion. He was then transferred to head another parastatal to mess it. This was despite the fact that this House had the recommendations of the PIC in three consecutive reports. What can we tell Kenyans? What is the purpose of discussing these reports? Why can we not use this time to decide, develop and enact laws that will make sure that our recommendations are actually implemented?

Mr. Temporary Deputy Speaker, Sir, recently, I visited a research parastatal. They told me they cannot carry out any research because the land that they owned had been grabbed. We do know these grabbers. They are cited in this report. Why can the Government not take steps and repossess the grabbed land? We wanted to have a constituent college of Egerton University in Kisii, but we are unable to do so because we do not have land. Yet, next to that college 1,300 acres of land have been grabbed by well-connected individuals in the previous Government. Some of them have got

more land than their grandfathers have in their rural areas of Kisii. So, for how long will we stand this? For how long will we persevere? Why can we not provide enough land to develop an institution that will serve members of the public? This land has been grabbed by specific people.

If we take the case of the Kenya Ports Authority (KPA), at one time, Kshs1.5 billion was spent to reconstruct berths. If you go there today, you cannot see the berths. Blocks of stones were laid at the places where the berths were supposed to be built. We know who was supposed to have carried out this work. He looted the money that would have been used for this work, but we have not done anything about it. We say that we are against corruption and abuse of office. We have, in fact, established institutions which should follow up a matter like this one, but they have not done anything.

Mr. Temporary Deputy Speaker, Sir, the Kenya Railways Corporation (KR) cannot pay terminal benefits to the workers it has retrenched, and yet land worth billions of shillings has been dished out to well-connected people. At one time, the KR had more land than the Government of Kenya, but we cannot account for that land. How many commitments have been made to repossess that land, and yet it cannot be repossessed?

Last year, the Committee on Finance, Planning and Trade, on which I sat, and the Committee on Agriculture, Lands and Natural Resources, recommended a write-off of non-performing loans owed to the Agricultural Finance Corporation (AFC) by people who were unable to pay. An amount of money in excess of Kshs4 billion was allocated for that purpose. However, the loans of the peasants, who were unable to pay, were not written-off. The loans which were written-off were those of the well-to-do people, who took much more money from the AFC than the peasants; yet Parliament goes ahead to tax Kenyans to write-off loans owed by people who are able to pay.

So, the AFC has been one of the conduits of taxpayers' money. It has been dishing it out to well-to-do individuals such as hon. Members, Ministers, Permanent Secretaries (PSs), managing directors of State corporations and business people and yet this House has not taken any action against its management. Why is this happening in our country? No wonder the International Monetary Fund (IMF) and the World Bank have usurped our sovereignty so much that, today, this House voted according to the whims of the IMF and the World Bank. This morning, when the Question of the Motion on the councillors' wages was put, we voted not according to our conscience, or in accordance with the views of the people we represent here but rather in accordance with the whims of the IMF and the World Bank. Today, some of the hon. Members who voted against that Motion had declared their support for it last week while making their contribution. However, this morning, because the World Bank and the IMF said: "If you vote in favour of the Motion, we will not deal with Kenya", we were all coerced to vote according to their whims.

Kenya is a sovereign State which has not received any substantial funding from those institutions for the last 12 years and we have survived, despite the looting and corruption that was there. So, whether this House establishes institutions to deal with corruption or not, we should make sure that these recommendations are actually implemented. Otherwise, there is no point discussing these Reports year in, year out.

With those few remarks, I beg to support.

**Mr. Syongoh:** Mr. Temporary Deputy Speaker, Sir, I thank you for giving me the opportunity to contribute to this Motion.

I would like to start by confessing my ideological bias. I believe in and I am completely committed to the ideology of mixed economy, that the State has a right and a duty to invest on behalf of Kenyans, in areas where we cannot get private sector investors. The State has a duty to, on behalf of Kenyans, own assets and the factors of production, so that at the appropriate time, they



will be sold to Kenyans, so that we can retain our sovereignty over our resources and assets.

In line with this ideology, for 40 years, the Government has invested in parastatals which have performed. Looking at the tea sector, if it were not for the Government's participation and creation of various tea factories, as parastatals, we would not be one of the world's leading producers of quality tea. Looking at the sugar industry, the Government has set up parastatals which have transformed this country into a major sugar-producing nation. We should not, therefore, be discouraged and use non-performing parastatals as an excuse for questioning the validity of having parastatals in the first place, or questioning the Government's rationale in investing and owning property or companies, on behalf of Kenyans.

If you look at a number of parastatals, you will realise that Mumias Sugar Company has performed well. It earns profit and pays fair dividends to the State. The same applies to the Kenya Wine Agencies. For a long time, the Government held 43 per cent shareholding in East Africa Industries, and it returned a fair share of profits and dividends to the State. It was headed by a Kenyan. There are many Kenyans who have successfully managed State corporations. In fact, they performed very well. The point I am trying to make is that, Kenyans, given the opportunity, are able to do a wonderful job and make profit in any organisation; provided the environment is right. So, we must ask ourselves why we have these Reports year in, year out. Why do we have such horrible reports of corruption, incompetence and non-performance by our parastatals?

The answer to this question should not be sought in the rationale of the Government investing in business, or in the question of Africans heading such institutions, or in the basic philosophy of a mixed economy. It must be found in four key areas. The first one is the question of appointment. The hon. Members who spoke before me indicated that the way parastatal chiefs have been appointed in this country has been wrong. We have not matched the qualifications of the holders of the various offices with the requirements for the performance of those offices. We have put nepotism ahead of qualifications. We have put in second place, the ability of these people to perform the jobs that we are giving them in favour of other considerations not related to the performance of these organisations.

In addition, we have adopted political patronage as the key criteria for appointing heads of our parastatals. So, even as we read this Report, we must ask ourselves what should be the criteria for appointing the heads of our parastatals. There can be no criteria more important than qualifications for the particular job and for the particular areas of activity of those parastatals. If somebody is a specialist in the sugar industry, he should be given the right and opportunity to manage a sugar factory. There is no point of appointing a retired provincial administrator to manage a technical parastatal, just because he is our friend, or because he helped us rig elections. That is the beginning of incompetence! It is the genesis of the reports that we have been receiving year in, year out.

Mr. Temporary Deputy Speaker, Sir, the other question is on how we remove people from offices. Every service commission in this country has clear rules on how to remove people from their positions. The Directorate of Personnel Management (DPM) is the custodian of those principles and yet, it is so common to find a fairly innocent person, a chief executive, being removed from his or her office without following the rules. That person may have upset us or done something that has nothing to do with his or her performance. Many times, they have been thrown out of their jobs through the 1.00 o'clock news. If we do not respect our officers and managing directors of our parastatals and remove them in a decent way, according to the law and on the basis of legitimate non-performance reasons, what creeps in is a strong feeling of uncertainty and lack of security. They are then tempted to steal and collude with other people, so that they can feather their nests before the 1.00 o'clock news. That is because the 1.00 o'clock news never gives the reasons

why they are removed. The 1.00 o'clock news sackings is never based on professional criteria.

Mr. Temporary Deputy Speaker, Sir, the third issue is about succession management. Every organisation needs what we call institutional memory. There must be a transfer of experience from one generation of managers to the next. There must be a system of training and preparation of managers of our institutions so that, at an appropriate time when they are competent and gained experience, they can manage those institutions. But we do not do so! There is not a single institution in the public sector that has a proper succession management policy, including the Government. We have people being juxtaposed! One minute he is a district commissioner, and the next minute he is a permanent secretary, and yet we have deputy secretaries lined up, experienced and trained with masters degrees to take over as permanent secretaries. But no! We must bring our political proteges, so that we can feel secure. Yes! As individuals, we may feel secure, but there are millions of Kenyans lying out there without jobs because of the non-performance of parastatals and Government departments! We are not delivering any services to the taxpayers and citizens. On the question of managing succession in all our departments and parastatals, we must have a clear policy. I would like to suggest that it was unfortunate that Mr. Parpai fell sick immediately after the elections and we lost him. But with all due respect, the need to have a Minister in charge of public services to take care of human resource management policies at Cabinet level and be accountable to Parliament is long overdue.

There is then the question of rewarding performance. How do we reward our officers? Do we reward them on the basis of performance? In the private sector, we have what we call budgets! We set out performance standards and carry out continuous monitoring of the performance of individuals, institutions and companies. We do what we call "variance analysis". Is there a difference between the actual versus the standards that we set? We either reward or sanction an officer on that basis. We must bring in modern-day management principles and rules in the public sector. It is the only surest and proven way to improve efficiency and effectiveness in our institutions.

Institutions, whether in private or public sector, are organisms. That is why they are called organisations. They have a life. We must run them as if they are organisations with a life, a system of input, process and output. We must allow our managers to understand that and give sufficient input to our organisations. We should put in place systems and managers who can transform those inputs into the desired outputs or results. But, if you keep on interfering in the performance and the internal systems of those organisations for reasons that are irrelevant to the expected outputs, then we get the reports that we are now discussing year in, year out.

Mr. Temporary Deputy Speaker, Sir, on the issue of the Controller and Auditor-General--- Right now, what are we really discussing? It is a report for which year? Many years have gone by! It is a post mortem. But being in the computer age, we have the capacity. We have trained young men and women, ready to operationalise a system which will give the Controller and Auditor-General the capacity to monitor the performance by just keying in all the revenue and expenses, incoming and out-going, on a daily basis and they can all be wired into one central control room. That way, in any given month, you can actually press a button and have an-up-to date report on the performance of any organisation. Why can we not give our Controller and Auditor-General that capacity? The people are there, the equipment and software are there, and it will cost us nothing, compared to the amount of loses that we are discussing today.

Mr. Temporary Deputy Speaker, Sir, not only that, but Parliament would also have the capacity to receive that kind of information on a continuous basis, so that we can deal with the problem before it becomes too serious. The question of us spending so of much taxpayers' money--- Parliament spends taxpayers' money every year discussing something that we can deal with, long

after it has happened. That is a weakness and we must address it as part of the solutions to the problems that we are debating.

Mr. Temporary Deputy Speaker, Sir, on the question of acting on the PIC reports, I think it is high time that Parliament was given the capacity--- I am not a lawyer, but I would like to suggest that this House, for the welfare of society and just Government of the citizens of this nation, should be given the powers to prosecute.

It is not fair for the citizens of this country and Members of this House to discuss these issues year in, year out and nothing happens! The United States of America (USA) Congress can prosecute! I stand to be corrected. So, why can this House not have powers to prosecute? In that case, we would not have to wait for somebody else to do the job! We will act on it!

With those few remarks, I beg to support.

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

**The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs** (Mr. Mungatana): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to also contribute to this---

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. Mungatana! Apparently, it appears to me that Mr. Wario wants to catch my eye in order to contribute to this Motion, which I believe he did yesterday. You cannot do that. I thought that you spoke on the Report of the PIC. Did you?

**Mr. Wario:** I did, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Khamasi): So, you cannot also stand up in order to catch my eye. So, once you have spoken on this Motion, you cannot repeat again.

**Mr. Wario:** Mr. Temporary Deputy Speaker, Sir, I sincerely spoke on this Motion.

**The Temporary Deputy Speaker** (Mr. Khamasi): I am sorry. Proceed, Mr. Mungatana.

**The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs** (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, I rise to support the Motion---

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. It appears to me, from listening to various speakers on this Motion, that everything is becoming repetitive, and I think the matter has been exhausted. Would I be in order, therefore, to ask that the Mover be called upon to reply?

**Mr. Sambu:** No!

**Mr. Sungu:** Let the Chair reply to that request.

**The Temporary Deputy Speaker** (Mr. Khamasi): Mr. Sungu, you have made your point. I have heard what you have said. I think it is my discretion to make a ruling on that request. I believe what you have said may be true, but I think I am obliged to give some few minutes to a few hon. Members to contribute and then, perhaps, you can revisit your request.

Proceed, Mr. Mungatana!

**The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs** (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, I want to again thank you. First, there is Standing Order No.148 which I think needs some revisiting. If one looks at this Standing Order, one can see that it gives a majority of the membership of the Public Investments Committee (PIC) to the ruling party. I believe that at the time this Standing Order was passed, as far as the PIC was concerned, it was constituted at a time when there was a general hostility in terms of the environment of democracy that was operational at the time. I think the time has come to look again at some of these Standing Orders. I believe it would be necessary for the Opposition party to have a

definite majority in the constitution of this Committee. Looking at the history of Standing Orders revision in this House, it appears that the last revision was done in 1997. Lots of things have been raised in this House concerning the need to look afresh at these Standing Orders. I stand to emphasise that, especially in a Committee such as this, the principles of democracy require that the Opposition party, and not the ruling party, should and ought to have a majority in its membership. I believe that the current atmosphere of democracy permits these amendments to come to the House.

Mr. Temporary Deputy Speaker, Sir, I would like to agree with the previous speaker that we need to look afresh at what the internet can do for us. It is not enough for us to keep volumes and volumes of this Report when there is a way in which Information Technology (IT) that is available can offer a quicker way in which PIC can carry out its functions. I would want to go further and propose that the public itself needs to access the information that is within the PIC. If we are talking about Parliament being the custodian of the nation as far as public investments are concerned, and if we are saying that these are public investments, then it follows that the information regarding looting, misappropriation, mismanagement or good performance for that matter, the public must have direct access to it. The Chairman of PIC should be able to have a website where he should display his mobile phone and his direct contacts. He should have a place where members of the public can directly tell him that: "Actually, there is something happening here in this State corporation. You do not need to wait; you need to take some action immediately".

Mr. Temporary Deputy Speaker, Sir, I also noticed from the PIC Report that what has traditionally been happening is that managing directors, chief executive officers of parastatals and other investments are the ones who are normally called before the PIC and they state their case. However, these investments belong to the public and the public has never been called to appear before the PIC. For example, in instances where the Managing Director (MD) of Kenya Ports Authority (KPA) is questioned by the PIC - what Members of Parliament have been doing in this particular Committee and I pray that we do things differently this time - is that they always visit the MD, listen to his points of view and then write those reports. That is why hon. Members have become tired of listening to the same old stuff. We have to give the public an opportunity to also contribute in these discussions because these are their investments, which we invested from their taxes. So, I think some of the past *modus operandi* need to be revisited afresh.

Mr. Temporary Deputy Speaker, Sir, I think the time has also come that the members of the public who are appointed to be chief executive officers in these parastatals or other public investment, need to be given public service contracts. We have heard a lot about them fearing to perform or, on the other hand, stealing from the public. I want to dwell a little bit on these public service contracts. The chief executive officers of these public investments must be made to sign that they understand that the money or the investments which they are heading are public and they are not going to squander them. There must be set standards by which they can be judged, whether they are performing or not. They must be told: "These are the targets which you are supposed to hit", and if they do not hit them, they must be forced to resign.

On the same level, these people need protection from political interference. We must give our chief executive officers the confidence that they can do the work and do it effectively without political interference or any form of interference. We have had, in recent times, a managing director being hounded out of office. As I am speaking today, Mr. Emmanuel Birya, the MD of East African Portland Company, has been kicked out because he has been doing his work. It becomes very difficult in situations such as those for a public servant who is a chief executive officer of an organisation to perform, if he does not have a public service contract. We must be very open. If you are employed in situations as other hon. Members have dwelt on, which make it difficult for you to be independent, it becomes impossible for you to perform in accordance with professional

standards. I think we need to give these people some form of security as other hon. Members have said.

Another issue that comes to my mind is the way the PIC and I hope the new one that has been constituted by this House would try to adopt this different style--- We hear that so-and-so has not been prosecuted, or so-and-so was involved in this corruption and nothing has happened to him. Looking at that Report, as hon. Angwenyi has said, a recommendation from Treasury, for example, for a particular managing director comes three times that action is being taken, but nothing happens.

Mr. Temporary Deputy Speaker, Sir, what makes it so difficult, for example, for the Chairman of the PIC and his Members to demand audience from a particular Minister and say, "Look! Kenya Railways Corporation has been fleeced by this and this lawyer, through this and this shady deal and this is contained in the previous Report and we want action. What are you doing hon. Minister?" We do not need to wait until next year or the year after. I would suggest, very strongly, that the Chairman of PIC should start acting on those Reports.

Mr. Temporary Deputy speaker, Sir, even if you are a Minister and you want to act on the PIC Report after you have been presented with a huge, voluminous book like that one with recommendations therein, it might not be possible. The practical thing that happens is that the Report is taken to the Permanent Secretary (PS), who then takes it to a Deputy Secretary, who, in turn takes it to another Deputy Secretary and so on and so forth. They go over the Report for six months and before you know what is happening, another Report is on the way coming, and yet the Minister has done nothing on the previous one. We need a more proactive PIC. PIC needs to take action on specific points that it has raised.

I want to revisit another issue concerning the employment policy on public investments. I would like to emphasise what a previous hon. Member said that public investments must reflect not only how managing directors are appointed, but also how other employees in those parastatals are appointed, since the investments belong to all Kenyans. Let us know the people who work in those parastatals. It is not fair for employees to come from certain areas only, especially where the public investments are located--- For example, in the Kenya Ports Authority, which is the biggest public investment in our country, we have a reflection of the whole diaspora of Kenyan communities being employed there, and yet in certain other corporations, you will not see people, for example, from North Eastern or Coast Province getting employment, or the employment policy being reflected.

It is time, if an investment belongs to the public, that it reflects in its employment policy, not only the appointment of the managing directors, but also show that it is truly a public investment. A man in Garsen Constituency is also contributing, by way of paying taxes, to such public investments. Therefore, since we use his money to set up a public investment, he has got as much right to get employment irrespective of where that investment is located, say, Maralal, Kajiado, or Nairobi.

Unfortunately, the trend has been that once the managing director of a public investment is appointed from a certain area, he fills the employment opportunities with people from his region. During this new era, we hope this trend is going to change. I also hope that the PIC will be strict on things like this one.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

**Mr. Muchiri:** Thank you, Mr. Temporary Deputy Speaker, Sir. First of all, I want to join my hon. colleagues and say that when the PIC Report comes out and no action is taken, it literally means that no work has been done.

I have a lot of experience in matters relating to parastatals because I was once working in a parastatal. The question of appointments which has been echoed here, is a major problem. Parastatals are manned by somebody called a managing director. A managing director is like a

demi-god in a parastatal. He is a know-it-all. He directs everything. He appears to run the board alone. This is a big problem because it is like a one-man's show. I want to suggest that there should be two executive directors in a parastatal, because I believe the right hand checks the left one. Those of you who have had the opportunity of being managing directors, either in the private sector or in the public sector, know that if a managing director is not checked, he can either drown the organisation or move it ahead.

Mr. Temporary Deputy Speaker, Sir, my suggestion to the Government is that there should be two directors in every parastatal. The deputy managing director does nothing. He is like a "vice-somebody", who is only there to wait until the seat is vacant. I am suggesting very strongly that there should be, at least, two executive directors in each parastatal. Quite often, the composition of the board is not the best. I was once a member of a board and I know how it is done. We would go for a board meeting and some people would just say: "Yes, yes". They did not even understand the proceedings. For clarity, I was a member of the Board of the Ewaso Nyiro North River Development Authority.

*(Mrs. Kihara crossed the Floor without bowing at the Bar)*

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mrs. Kihara! Would you, please, do the right thing?

*(Mrs. Kihara bowed at the Bar)*

Continue, Mr. Muchiri!

**Mr. Muchiri:** Mr. Temporary Deputy Speaker, Sir, quite often, boards have a lot of Government presence. If you look at most of our parastatals, you will find that members of the boards are the Permanent Secretary (PS), Ministry of Agriculture, the PS, Ministry of Water Resources Management and Development and the PS, Ministry of Energy; about ten of them. Members from other sectors are very few, if not equal. I am, therefore, saying that the Government should divest its decision-making by not appointing a lot of public servants. If we have a parastatal with a lot of Government presence, then what difference does it make from a Ministry? If we are saying that parastatals are our investment conduits, for heaven's sake, they must behave like private companies. A parastatal is a quasi-Government body and, therefore, the presence of a lot of Government officials in its board is uncalled for. A number of the Acts which create these parastatals provide for majority Government presence.

I believe that you cannot invest in an activity which has no returns. I am told that if you find diminishing returns setting in, you should quit that enterprise. What is the business of the Government giving grants to ailing parastatals, yet they are not strategic? I want to recommend that any parastatal that cannot sustain itself; that will continue eating into the coffers of the Government must be shut down. We cannot continue offering employment in the name of investments.

Mr. Temporary Deputy Speaker, Sir, the private sector will not allow the Government to continue eating into the taxes that it pays, without spending it properly. If the private sector is the goose that is laying the eggs and those eggs are just being swallowed and others are not being laid, then, I am sorry, the private sector will not pay taxes. We want taxes to go into investments that are viable. If they are not viable, then we should close them down, unless they are strategic for reasons that they will benefit this nation.

Many parastatals have caused Kenyans a lot of trouble, for instance, the Pyrethrum Board of

Kenya. My people in Nyandarua grow pyrethrum, but they are not paid for their produce. The Managing Director took money to a certain ailing bank and it got lost there. Kenyans are not interested in all the things that people are talking about. All those inquiries are unnecessary, but at the end of the day, will we recover our money? If we will not recover our money, then inquiries may not do good to Kenyans. If farmers in my constituency cannot be paid for having delivered pyrethrum to the Pyrethrum Board, then the money should be traced. I think there is a theory of tracing money in law. We can trace that money and recover it, so that our farmers can be paid for their produce.

We have the National Cereals and Produce Board (NCPB) which is supposed to take care of our cereals. In Nyandarua, we are producers of maize, particularly my constituency. Quite often, we wonder whether some of these parastatals are assisting our farmers or are just running them down. If the NCPB cannot stabilise the prices of maize, then I do not think we can justify its existence. We also have others like the Agricultural Finance Corporation (AFC). We have a lot of land in the former White Highlands where we can grow wheat, but farmers have no line of credit. These are the parastatals that should be assisting our farmers, so that we can be self-sufficient in some of these cereals.

Mr. Temporary Deputy Speaker, Sir, parastatals must rise to the occasion. They must now assist Kenyans to forge ahead. If we want parastatals to perform well, we also need to pay the board of directors well. My experience was that board members used to be paid, say, Kshs1,000 per day. This is very bad because if you cannot pay the board of directors well, then they shall be at the mercy of the managing directors and, therefore, decisions that will be coming out of those boards will not be proper. Therefore, I am calling upon the Government to pay the board members of our parastatals well, so that they can manage the parastatals properly and without having to be manipulated to be rubber stamps for decisions that are made in those boards.

Quite often, the differential of salaries between some chief executives and the ordinary officers of parastatals is just too large. There is a lot of wastage in our parastatals. You will find chief executives having a fleet of cars. Time has come for the Government to clearly run away from lavish spending, whether in our universities, parastatals and Ministries. It is important that if you cannot spend your money in the best way possible; if we can still have luxuries in the boardrooms, then these parastatals will never assist Kenyans.

It is high time we stopped classifying parastatals. There are some parastatals that are "senior" and others are "junior", and in the process, that discrepancy may not be the best. We all know that parastatals are classified depending on how much income they generate and even their board members are paid differently. These anomalies should be corrected, if we have to run them effectively.

Mr. Temporary Deputy Speaker, Sir, there must be something wrong with the issue of provision of electricity services by the Kenya Power and Lighting Company (KPLC). For example, to install electricity in any building is so expensive. The procedure of is very cumbersome. The delay that is occasioned by the whole process cannot enable KPLC to provide electricity to buildings in good time. The private sector is now getting a little bit tired. If we do not create an appropriate environment for private sector to conduct business, then at the end of the day, there will be no investment in this country.

I must reiterate here that parastatals and local authorities are ailing because of the officers on the driving seat. Although we have been told that local authorities may not be part of the PIC, they are also part of the public investments. Local authorities have companies that manage their water. So, they are part and parcel of the public investments.

Mr. Temporary Deputy Speaker, Sir, the right people should be recruited as the chief

executives of our local authorities. I have always told the Minister for Local Government that we have land economists who are knowledgeable about local authorities. If we could utilise them, then we will really revitalise our local authorities. However, a lot of appointments are done on political expediency. We should move away from this political expediency and embrace merit, good governance that is happening in the private sector.

Mr. Temporary Deputy Speaker, Sir, we have banks that do not do very well. These are banks where Government is a major stakeholder. They include the Kenya Commercial Bank (KCB) and the National Bank of Kenya (NBK). Although these banks are not doing well; they discriminate in so far as appointment of professionals is concerned. They appoint the lawyers and valuers whom they can manipulate. I am calling upon public enterprises to ensure that professional work is given in a very transparent way. We do not have to appoint valuers or lawyers who are politically-correct in those banks. Let us liberalise some of this professional work. Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

**Prof. Oniang'o:** Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to contribute to this Motion on the PIC Report. State corporations and institutions are probably the worst managed and most abused in this country. I have looked at the report. It is a very well written report, but it is just a gist of the problem. It is a drop in the ocean of what the real problem is. I believe more than 90 per cent of these parastatals have actually recorded very serious mismanagement and abuse of office.

Mr. Temporary Deputy Speaker, Sir, if I come to the appointment of chief executive officers, for instance. It seems like the State corporations is an area where we put people who have failed elsewhere. Are people put there to be rewarded for whatever reason, or are they put there to be kept quiet for whatever reason? Not that they have any management skills; when you look at the number of institutions involved here, you can truly see that we are denying qualified Kenyans an opportunity to serve properly. We are, therefore, rewarding mediocrity, by identifying wrong people to head these institutions. No wonder these institutions have not performed well. We have people with no management training skills, no proper profession; maybe, they are failed politicians being appointed as chief executive officers. In this era of transparency, and realising that there are so many Kenyans who are well qualified, we hope that there will be a turn-around, and that we shall begin to see people who are better qualified managing these institutions.

There is also the issue of the way board members are appointed. I have been a board member of a parastatal. Indeed, I was put there because of my own field of a nutritionist. Over the years that I served on that board, I could see some people who would come to collect allowances. They would sit in that board and never open their mouths. They could not open their mouths because they had absolutely nothing to say. They did not know what was going on half of the time, yet, we were spending taxpayers money paying for their allowances, like travel and so on. I am sure that, because we have not reformed this sector, this, in fact, is still going on. It is an area that we have to do something about very quickly. We have to look at a board of an institution, see what the mandate it will have, then appoint and select board members properly. Right now, we have enough Kenyans who can fill positions in these boards and be rewarded. We should reward them, pay them properly, and they should feel that their expertise is being used properly to build this nation.

Mr. Temporary Deputy Speaker, Sir, we also have an issue of the resources that belong to these institutions. We have land, for example, that belongs to these institutions. You will find people who are board Members, Government representatives, virtually taking this land without paying for it. If you take the case of Kenya Agricultural Research Institute (KARI), we have heard of a situation whereby their land has been taken away by none other than the board members, purporting to use it for something that may be as genuine as building a church, how noble! but only



to go into personal use. We cannot allow this!

If we talk of KARI, we are talking about agriculture which is the mainstay of this country's economy. We are talking of research which, in the first place, as a Government and as a nation, we do not recognise. No country ever developed without its top brains; its researchers. No wonder people have been so demoralised. They are not paid properly and, at the same time, the resources which they are supposed to use for the research work are being abused by people who do not have the slightest idea about the importance of research. In a situation like this, we must recover and retrieve this land.

Mr. Temporary Deputy Speaker, Sir, if this Government cannot go ahead and do so, Kenyans will lose confidence in them. We will be saying that we do not value research work, and we do not value agricultural research, and might as well close down KARI. Otherwise, there is no point in having recommendations in this Report which are not followed. It does not make sense in the PIC spending all this time, sitting for meetings and going round collecting information and documenting it and, at the same time, we do not do anything about it.

My recommendation is that we make use of these Reports. We should be seen by the public to be making use of these Reports so that people are made accountable and brought to book. Maybe that can curtail and curb some of these very bad practices which are completely unpatriotic and do not go really with the Kenyan fabric and spirit the way it is right now.

Mr. Temporary Deputy Speaker, Sir, parastatals were formed and this was an international initiative, with the whole idea of trying to get the Government to do business. The Government has no business doing business. There should have been some delinking of parastatals from the Government. When you appoint a Chief Executive Officer (CEO) who is accountable to the Executive, there is no way that person will do business. You then appoint somebody who is given a salary which is way above and the rest of the people are getting peanuts. Such an institution, obviously, cannot do business. It cannot make money, and yet the Government keeps pumping money into these institutions. No wonder Kenyans are so poor. More than 70 per cent of Kenyans live below the poverty line, and each time I stand here, I will make that statement because we have not been accountable to Kenyans.

We cannot have a few individuals taking the resources of this country and making them their own, as if the rest of Kenyans do not exist. This has to stop. I believe that we should turn around the parastatals. Those which are completely unviable should be closed down. The idea is not necessarily to close down the parastatals. The idea is not to privatise them completely. Otherwise, we are just privatising corruption. In some countries, such as Australia, for example, there are so many state-owned parastatals.

In some countries which have a coastline, you will find that their ports authorities contribute more than 50 per cent of the GDP. We have our Kenya Ports Authority and so many other parastatals, but all we hear about is just corruption. You put there a chief executive who has not been vetted. We have no indicators of integrity and they come out of there with stomachs that have become huge because they have just been eating. I do not think that this is acceptable in this day and age. So, we have to make sure that we harmonise this sector and make sure that we are accountable to Kenyans. We should ensure that these parastatals make money that can help this country.

Mr. Temporary Deputy Speaker, Sir, there is also---

**The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs** (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, in view of the fact that the Motion has received tremendous support from both sides of the House and it has been exhaustively debated, would I be in order to call on the Mover to respond?

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Prof. Oniang'o. This is the second

time I am getting this application. Having had the privilege to preside over the House yesterday and today, I am convinced that this Motion has been fully debated. We can see that we are being repetitive of what other people have said.

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

**Mr. Muturi:** Thank you, Mr. Temporary Deputy Speaker, Sir. I will begin by thanking hon. Members from both sides of the House who have contributed to this Motion for their very useful comments, which were highly informative. I shall be brief in my reply.

Mr. Temporary Deputy Speaker, Sir, there has been a lot of hue and cry about the PIC Reports. The hue and cry has been that a lot of times, the Committee has been doing postmortems. It comes up with reports and recommendations which, invariably, the House adopts, but about which very little is seen by way of implementation. I attribute this situation---

### QUORUM

**Prof. Oniang'o:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is there quorum in the House?

**The Temporary Deputy Speaker** (Mr. Khamasi): You are right. From the outset, it appears we do not have quorum. Ring the Division Bell.

*(The Division Bell was rung)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, hon. Members! Due to lack of quorum we must now adjourn the House until tomorrow, Thursday, 20th November, 2003, at 2.30 p.m.

The House rose at 5.35 p.m.