

## NATIONAL ASSEMBLY

### OFFICIAL REPORT

Wednesday, 18th April, 2001

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Reports were laid on the Table:

**Mr. Anyona:** Mr. Speaker, Sir, I beg to lay on the Table the following Reports in accordance with the provisions of Rule 1 of the rules made by the National Assembly, pursuant to Section 10(6) of the National Assembly Powers and Privileges Act, Cap.6, Laws of Kenya.

1. The Powers and Privileges Committee Report, concerning defiance of the Speaker's Rules within Parliament Buildings by hon. David Ekwee Ethuro, M.P., dated 18th April, 2001.
2. The Powers and Privileges Committee Report concerning a scuffle within Parliament Buildings between hon. Dr. Shem Ochuodho, M.P., and hon. Ochilo-Ayacko, M.P., dated 18th April, 2001.

*(By Mr. Anyona, on behalf of the Chairman,  
Powers and Privileges Committee)*

### NOTICE OF MOTION

#### ADOPTION OF POWERS AND PRIVILEGES COMMITTEE REPORT

**Mr. Anyona:** Mr. Speaker, Sir, I beg to give notice of the following Motion, in accordance with the provisions of Rule 3A of the rules made by the National Assembly, pursuant to Section 10(6) of the National Assembly Powers and Privileges Act, Cap.6, Laws of Kenya:-

THAT this House adopts the Report and recommendations of the Committee of Powers and Privileges concerning a scuffle within Parliament Buildings between hon. Dr. Shem Ochuodho, M.P., and hon. Ochilo-Ayacko, M.P., dated 18th April, 2001 and laid on the Table of the House on the same date.

### ORAL ANSWERS TO QUESTIONS

*Question No.140*

#### POLICE POSTS ALONG MIGORI/ GUCHA BORDER

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

- (a) how many police posts have been established along the Migori/Gucha District border since 1997;
- (b) how many officers have been posted there; and,
- (c) how much money the Government has planned to spend in building these posts and staff houses.

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

(a) Two police posts, one police patrol base and two administrative police posts have been established along the Migori/Gucha border since 1997, when we had skirmishes along that border.

(b) Twenty two police officers from administrative and regular police have been posted to this area.

### COMMUNICATION FROM THE CHAIR

#### DEBATE IN CAMERA: RULING TO BE MADE

**Mr. Speaker:** Order, Mr. Samoei. There is one thing which is not clear in my mind about the report tabled by Mr. Anyona. The debate of at least one report is supposed to be in camera. As far as the Committee is concerned, the matter concerning Mr. Ethuro is complete and there will be no further action against him and there will be no debate arising out of that issue.

If the debate concerning the scuffle between Mr. Ochilo-Ayacko and Dr. Ochuodho is going to be in camera, will the report be public? It is not clear in my mind. I will have to find out. So, in the meantime, the report will remain in camera until I make a Communication from the Chair on the right procedure to follow. You will all appreciate that these are new issues. We have not faced them for a long time. So, I will have to check on the procedure followed in the past.

Thank you. Proceed, Mr. Samoei.

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

(c) There are no immediate plans to build permanent posts at the moment and, therefore, no money has been set aside.

**Mr. Ochilo-Ayacko:** Mr. Speaker, Sir, arising from the Assistant Minister's reply to part (c) of the Question, that there are no immediate plans to build permanent police posts and permanent houses for these officers, how does the Government expect these officers, who are doing very crucial work at the border, to operate? We know that without them, there would be clashes along that border, loss of life and loss of property.

**Mr. Samoei:** Mr. Speaker, Sir, when we deployed these officers along that border, it was in response to the skirmishes which erupted then, hence this was a temporary measure. We have since received requests from members of the public in these areas to make this deployment permanent and we are still considering that request. Once we accede to that request, we will make plans to have permanent structures to offer accommodation and offices to these officers.

**Mr. Mwenda:** Mr. Speaker, Sir, the Assistant Minister says the establishment of these posts was temporary and they have received requests to make them permanent. When was this request received and how long does it take to accede or refuse that request?

**Mr. Samoei:** Mr. Speaker, Sir, this deployment was made in 1997. It was only last year when members of the public volunteered to donate land where these officers could be settled on a permanent basis. Because of the monetary constraints we have been facing, we are yet to make a decision on whether to vote funds for that particular exercise. Now that we have their request, we will consider it accordingly, as and when we are in a position to implement it.

**Mr. Otula:** Mr. Speaker, Sir, could the Assistant Minister tell this House the criteria used to establish police posts in any area which is lacking within this particular border?

**Mr. Samoei:** Mr. Speaker, Sir, assessments are normally done by the District Security Committees in line with the demand for such service in specific areas. Other considerations also fall in place, for instance, the availability and willingness of the members of the public to contribute towards that effort where the Government is not in a position to wholly fund such deployment. Those are part of the criteria, but we rely mainly on the recommendations of the District Security Committees.

**Dr. Oburu:** Mr. Speaker, Sir, whenever there is insecurity, and members of the public request for the establishment of a police post or a police station, the Government says members of the public should provide accommodation. Before such accommodation is provided, the police will never act on any reports.

Mr. Speaker, Sir, I would like to know whether it is policy of the Government that members of the public should provide accommodation for police officers or this is a function which should be carried out by the Government? I have got examples of three markets in my constituency which have been closed because of insecurity. Police officers are not stationed in those markets because the Government is waiting for the public to provide office and accommodation for the police officers! Why?

**Mr. Samoei:** Mr. Speaker, Sir, it is the policy of the Government to build and equip police stations and police posts. However, any input from members of the public is always welcome. As we plan with the meagre resources allocated to our department to put up such police stations and police posts, we give consideration to areas where members of the public are willing to put up physical facilities, such as offices and residential quarters for our police officers. Whenever such facilities are put up, we quickly equip them with the personnel that they require.

So, while it is the responsibility and policy of the Government to provide housing and other facilities to police

stations and police posts, we do welcome help from other areas.

**Mr. Speaker:** Next Question!

*Question No.133*

REGULAR POWER SUPPLY TO LAMU TOWN

**Mr. Twaha** asked the Minister for Petroleum Energy:-

(a) whether he is aware that the frequent power cuts in Lamu Town and Matondoni Village are having a devastating effect on tourism and fishing industries in these areas; and,

(b) what urgent measure is taking to ensure that regular power supply of electricity is restored in Lamu and Matondoni.

**The Assistant Minister for Energy** (Eng. Manga): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) Lamu Power Station has been rehabilitated, and currently, it is producing 700 kilowatts. However, a comprehensive rehabilitation programme has been scheduled, and once it is completed an additional 800 kilowatts will be realised and will go a long way in ensuring that regular supply of electricity is restored in Lamu Town.

Matondoni is not connected to any electricity supply and, therefore, the question of power interruption does not arise. However, Matondoni Village will be connected with electricity once sufficient funds are secured, and in accordance with Lamu District Development Committee's priorities.

**Mr. Twaha:** Mr. Speaker, Sir, could the Assistant Minister give us a timeframe within which this comprehensive rehabilitation programme will be completed? I also wonder if the Assistant Minister is aware that Kshs8 million has been set aside for rural electrification programmes in Lamu District. If that is the case, why do they not use this money to supply Matondoni Village with electricity?

**Eng. Manga:** Mr. Speaker, Sir, the tender to install two generators, each producing 400 kilowatts, has been advertised. It is planned that by the end of August, they should be installed and commissioned. It is true that, according to the Printed Estimates, we are supposed to have Kshs8 million, but we have a problem because the Rural Electrification Programme has a big debt with the Kenya Power and Lighting Company. Therefore, the money might not be forthcoming at the moment, but the Ministry is trying as much as possible to find other alternatives.

**Mr. Twaha:** Mr. Speaker, Sir, could the Assistant Minister consider putting aside some of the money they pay as interest on Treasury Bills to settle the account with the Kenya Power and Lighting Company so that wananchi can benefit from the taxpayers' money instead of wasting it on banks?

**Eng. Manga:** Mr. Speaker, Sir, that is not the Ministry's affair as the hon. Member knows very well. The Ministry does not handle that money.

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

**Capt. Ntwiga:** Mr. Speaker, Sir, I have not received the written reply to this Question.

*Question No.141*

POWER SUPPLY TO INSTITUTIONS IN NITHI

**Capt. Ntwiga** asked the Minister for Petroleum Energy:-

(a) whether he is aware that electricity power lines, with installed transformers, have reached Kamwimbi Secondary School, Mukui Society, Ndunguri 98 Farmers and New Nkangani Society and that power has not been connected for usage by these institutions for some years now;

(b) why these institutions have not been connected with power; and,

(c) whether he could compel Kenya Power and Lighting Company to connect the power with immediate effect.

**The Assistant Minister for Energy** (Eng. Manga): Mr. Speaker, Sir, I agree that he has not received any written answer because it is not there. I would like to ask for the indulgence of the hon. Member and the House, because the reply I got was not satisfactory. I have requested to have a satisfactory reply and by Wednesday, next week, I will bring a satisfactory answer.

**Capt. Ntwiga:** Mr. Speaker, Sir, I would like to know whether the Chair has deferred this Question, and to which day, because the Assistant Minister is not ready to answer today.

**The Assistant Minister for Energy** (Eng. Manga): Mr. Speaker, Sir, I am surprised, because I had already talked to the hon. Member and we agreed that I could answer the Question on Wednesday morning.

**Mr. Speaker:** I agree with you.

*(Question deferred)*

*Question No.134*

REVIVAL OF CHEPALUNGU  
WATER SUPPLY PROJECT

**Mr. Speaker:** Mr. Kimeto not in? We shall come back to the Question later.

*Question No.136*

ESTABLISHMENT OF LARGE SCALE  
IRRIGATION SCHEMES

**Mr. Speaker:** Mr. Kombe's Question is deferred!

*(Question deferred)*

**Mr. Speaker:** For the second time, Mr. Kimeto's Question!

*Question No.134*

REVIVAL OF CHEPALUNGU WATER  
SUPPLY PROJECT

**Mr. Speaker:** Mr. Kimeto still not here? Question dropped!

*(Question dropped)*

#### QUESTIONS BY PRIVATE NOTICE

DESTRUCTION OF PROPERTY AT  
MATUTU SETTLEMENT SCHEME

**Mr. Anyona:** Mr. 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 of the recent incident at Matutu Settlement Scheme (Plot No.164) in Nyamira District, which resulted in arrests, destruction of property and injuries?

(b) What was/were the cause(s) of the incident?

(c) What measures have been taken to investigate and resolve the cause(s) of the incident and ensure that the situation does not recur?

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

(a) I am not aware that recently there was an incident at Matutu Settlement Scheme in Nyamira District that resulted in arrest, destruction of property and injuries.

Arising from my reply to part "a" of the Question, parts "b" and "c" do not arise.

**Mr. Anyona:** Mr. Speaker, Sir, in the first place you ruled recently that answers are only acceptable when they are signed. The written answer to this particular Question has not even been signed. No wonder he is not answering anything.

**Mr. Speaker:** Mr. Samoei, is that a hand-out or an answer?

**The Assistant Minister, Office of the President** (Mr. Samoei): Mr. Speaker, Sir, it is only the signature that is missing. Otherwise, it is the correct answer.

**Mr. Speaker:** It cannot be! Be serious! Please, next time take two minutes, read it and sign. For now, we consider that we have no written answer.

Proceed, Mr. Anyona!

**Mr. Anyona:** Mr. Speaker, Sir, this really, is a very serious matter, because it is an incident that took place between students of the school, members of the community and our neighbour, hon. Prof. Ongeru, where a number of people were arrested and property destroyed. There was a case going on, but because of the wish to reconcile

everybody in the area, a request was made to the State to withdraw the case to allow reconciliation to take place. That has happened, and we are very grateful for that. I am very surprised to hear the Assistant Minister say that he is not aware.

**Mr. Samoei:** Mr. Speaker, Sir, maybe the negotiations took place even before even the issues got to the State, because they are not recorded anywhere.

**Mr. Anyona:** Mr. Speaker, Sir, I am trying to help the Assistant Minister. There was a case in court which would have been heard, but because of the wish to have reconciliation, the case was withdrawn. So, the negotiation process came after the matter went to court. I do not know why he does not know that, but those are the facts.

Could the Assistant Minister ensure that the environment for reconciliation that was created to enable the case to be withdrawn is maintained? Right now some people, who in the first place caused this problem have gone back to the drawing board and are inciting people to raise funds; Kshs500 per family to go and file a case claiming damages. I believe some other incidents are pending. Could he make sure that swift action is taken to maintain peace and ensure that there is reconciliation?

**Mr. Samoei:** Mr. Speaker, Sir, I think there is a problem with the details that were availed to my office with respect to the issues Mr. Anyona is referring to. I am aware of the incident involving Prof. Onger, and we shall accede to the request that the hon. Member has made.

**Mr. Anyona:** Mr. Speaker, Sir, this is an extremely serious Question and if it is going to be handled in this casual manner the Assistant Minister is handling it, we are going to have serious problems on our hands. Would I be in order to request, that in the interest of peace and tranquillity, and now that the Assistant Minister knows what it was all about, he be given some time to go and investigate and bring an answer, if we do not want to have another eruption in our hands involving people killing one another?

**Mr. Samoei:** Mr. Speaker, Sir, I think the hon. Member has given a good explanation of what the State has done. I think it was done with goodwill and that goodwill is still there, and the best is going to be done to make sure that the whole matter is settled amicably. I think we had better leave it at that.

**Mr. Speaker:** Next Question!

#### SHOOTING OF MR. WANYEKI

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

(a) Under what circumstances did the police shoot dead Mr. Ngigi Wanyeki and wound Mr. Wamwai Mwangi on 1st April, 2001 at Kabati, Maragwa District?

(b) What precautions is the Government taking to ensure that innocent Kenyans do not lose their lives at the hands of police officers?

(c) Why has the Officer Commanding Station (OCS), Kabati, who shot Mr. Ngigi Wanyeki on 1st April, 2001 from behind, not been arrested?

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

(a) Mr. Ngigi Wanyeki, being part of a riotous *Mungiki* mob, attempted to grab a firearm from a police officer who was part of a contingent sent to disperse an illegal assembly of this group. As a result, Mr. Ngigi Wanyeki was shot dead and Wamwai Mwangi was injured.

(b) The Government has impressed upon all security officers, on the need to exercise maximum restraint while using firearms. Indeed, the officers are familiar with the situations where the law permits use of firearms, and all officers who act contrary to this requirement know the consequences.

(c) Kabati Police Station Inquest File No.5/2001, is still pending under investigation. Appropriate action will be taken once investigations on this matter are complete.

**Mr. Muchiri:** Mr. Speaker, Sir, this Government has refused to declare *Mungiki* an unlawful society. The Assistant Minister is now telling the House that, that group which was having their prayers was an unlawful assembly. How could it be an unlawful assembly when it has not been declared so?

**Mr. Samoei:** Mr. Speaker, Sir, I think I have informed this house many times, that until the time *Mungiki* seeks registration as an organization, it is an illegal organization. I will call upon the hon. Member of Parliament to take time to find out what those young Kenyans are doing with their lives before he can stand in this House and support such an organization.

**Mr. Keriri:** On a point of order, Mr. Speaker, Sir. I do not think the Assistant Minister has answered the question asked by the hon. Member, as to why the Government has not declared *Mungiki* unlawful. He just went ahead to say: "Until they apply." The hon. Member wanted him to tell the House why the Government has not declared it

unlawful.

**Mr. Samoei:** Mr. Speaker, Sir, this organization remains illegal until it seeks formal registration and gets it.

**Mr. Wamae:** Mr. Speaker, Sir, is the hon. Assistant Minister aware, that the fact that *Mungiki* is an illegal society, does not mean the members be shot on sight? These particular persons were shot from behind. How could they have been threatening the lives of police officers?

**Mr. Samoei:** Mr. Speaker, Sir, we are talking about an assembly of more than 500 people. We are talking of the same assembly charging at police officers. We are talking of this very *Mungiki* attempting to grab a firearm from a police officer. Under those circumstances, anything could have happened.

**Mr. Murathe:** Mr. Speaker, Sir, so many Kenyans are being shot by the police, literally everyday, at least, three to five people under the guise of gangsters. I would like the Assistant Minister to tell this House what is happening with the police? There is not a single day when you do not have three to five people being shot by policemen under the guise of criminals.

**Mr. Samoei:** Mr. Speaker, Sir, I think the question we should be asking ourselves is: What is wrong with our society? All of a sudden there is an influx of firearms. We have all manner of activities taking place in and outside Nairobi. As a Force which is charged with maintaining law and order, the police will not stand by and see these robbers take charge of the lives of Kenyans. The police are doing their best and that is in the Press. We are talking about men and women who are armed with illegal firearms and yet, they are supposed to be arrested. We have lost men and women in the Police Force to these crooks. I think we have a responsibility, as a Government, to protect the Police Force from these people. Anybody with a firearm is a dangerous person and, in most cases than not, these people are shot by the police.

**Mr. N. Nyagah:** Mr. Speaker, Sir, I want to ask a very simple question: Do you remember Robert Shaw who wiped out criminals from the streets of Nairobi? Why have you not enlisted the support of the CID who have the pictures of all these criminals and who know where they live, if you are serious about wiping out criminal activities in Nairobi?

**Mr. Samoei:** Mr. Speaker, Sir, the CID is part of the Kenya Police Force and their services are in full use by the Police Force. As the hon. Member has said, indeed, we have photographs of these people and their days are numbered.

**Mr. Muchiri:** Mr. Speaker, Sir, I am still in a dilemma. Could he tell this House whether a society would be illegal before it is declared so in the *Kenya Gazette*?

**Mr. Samoei:** Mr. Speaker, Sir, the legality or lack of recognition for this organization is not in question. If *Mungiki* requires formal recognition by the law, they know where to seek formal registration. Until they do that, this organization which has misled many young people from Central Province by giving them false hopes---

I believe this House owes the people of Central Province---

**Mr. Speaker:** Order! Order!

**Mr. Muchiri:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to evade the question I have asked him?

**Mr. Speaker:** Order, Mr. Muchiri! Order! I think you are flogging a dead horse. If a society is not registered under the Societies Act, it follows that it is illegal.

**Mr. Kathangu:** Jambo la nidhamu, Bw. Spika. Ningalitaka kujua kama ni nidhamu kwa Waziri Msaidizi kueleza Bunge hili kwamba kundi la *Mungiki* halijaomba kusajiliwa ilhali katika Ofisi ya Mkuu wa Sheria kuna mambo hayo ambayo yaliwasilishwa mwaka wa 1986 na Serikali ikakataa kuyasikiza? Tunajua kwamba Mkuu wa Sheria amesajili makundi ya dini zaidi ya 800 kutoka nje; Uropa na Marekani.

**Mr. Samoei:** Mr. Speaker, Sir, if at all *Mungiki* applied for registration and it was denied, there must have been good reasons for that. Until they make good those reasons, they will have to try something else.

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

**Mr. Mbela:** Mr. Speaker, Sir, this Question is coming up for the second time because the Minister was not available to answer it. Maybe, he will care to apologize for not being there.

PAYMENT OF MOBILISATION FEE TO  
WESTFIELD CONSTRUCTION COMPANY

**Mr. Mbela:** Mr. Speaker, Sir, I beg to ask the Minister for Roads and Public Works the following Question by Private Notice.

(a) Why was Westfield Construction Company paid a mobilisation fee of Kshs300 million for constructing Muchongoi-Marmanet-Marigat Road?

(b) How many kilometres does the contract cover?

(c) Did any civil servant lose his job on account of irregularity in this contract?

**The Minister for Roads and Public Works** (Mr. W.C. Morogo): Mr. Speaker, Sir, I am not aware that this Question had come up before. If it did, and we were not there to answer it, I apologise.

Mr. Speaker, Sir, I beg to reply.

(a) No mobilisation fee has been paid to Westfield Construction Company for constructing Muchongoi-Marmanet-Marigat Road. Arising from that, parts "b" and "c" do not arise.

**Mr. Mbela:** Mr. Speaker, Sir, part "b" is asking: "How many kilometres does the contract cover?" How come it does not arise?

**Mr. W.C. Morogo:** Mr. Speaker, Sir, Westfield Construction Company has never been given a contract.

**Col. Kiluta:** What percentage of the total cost was this mobilisation fee?

**Mr. W.C. Morogo:** Mr. Speaker, Sir, that question is a bit ridiculous. I have said that no mobilisation fee has been paid and there is no contract which has been awarded to Westfield Construction Company. What is he talking about?

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. There is something niggling. It appears that this Question is subject of scrutiny by a Committee of the House and apparently, the report may not have gone to the House. Here we are, and I suppose with some members of the same Committee, raising the matter in the form of question. I may be wrong, but there is that feeling. It will be safe for the Chair to find out.

**Mr. Speaker:** Order! Order, Members! Mr. Mbela, is this Question subject to a Committee of the House probing?

**Mr. Mbela:** Mr. Speaker, Sir, I am asking this Question as an individual. But I have it on record that there is Marigat-Muchongoi Road C51 which is on-going. Excluding the last financial year which I have no details of, this year alone, Kshs12,511,518.75 was paid by the end of March. I find it misleading for the Minister to claim that there is nothing going on, on that road.

**Mr. Speaker:** But, Mr. Mbela, that is not what I asked you. I have asked you a very simple question: To the best of your knowledge, is this matter before a Committee of this House and the report is being awaited?

**Mr. Mbela:** No, Mr. Speaker, Sir, the matter has not been tabled before the relevant Committee.

**Mr. Speaker:** Very well! Mr. Minister, is this pending before any Committee of the House?

**Mr. W.C. Morogo:** I am not aware, Mr. Speaker, Sir.

**Mr. Speaker:** Very well! It is a fair game. Mr. Minister, it is advertently before the House.

**Dr. Ochuodho:** Mr. Speaker, Sir, I am a member of the relevant Committee. I can also confirm that, that matter has not come to the attention of the Committee. However, I think the Minister would be in order to answer the Question raised by Mr. Mbela. He could clarify to us. What is the exact position of this road; is there any contract going on? How many kilometres does it cover and how much money is being paid for it?

**Mr. W.C. Morogo:** Mr. Speaker, Sir, the Question before me is: "Why was Westfield Construction Company paid mobilisation fee of Kshs300 million?" I have said it was not paid.

**Mr. Mwenda:** On a point of order, Mr. Speaker, Sir. It does appear---

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

**Mr. Mwenda:** Mr. Speaker, Sir, it does appear---

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

**Mr. Speaker:** Order, Dr. Ochuodho! I have given the chance to Mr. Mwenda. Why do you want to take the chance? Please, respect the House and your colleagues. There is an hon. Member of this House called Mr. Cecilio Mwenda.

*(Laughter)*

He stood up on a point of order, and I recognised him. Now you want to overrule him and me. Proceed, Mr. Mwenda!

**Mr. Mwenda:** Mr. Speaker, Sir, is the Minister not out of order to refuse to answer the question asked by hon. Dr. Ochuodho; about what is going on, on that road? This is because the problem appears to be that it is Westfield Construction Company which is in dispute. It does appear that there is some work going on, on that road. Is there anything going on along that road? If so, who are the contractors?

**Mr. W.C. Morogo:** Mr. Speaker, Sir, if that question had been put to me as such, I would be very glad to answer it. However, if you read this Question, there is nothing like Muchongoi-Marmanet-Marigat Road. We have a Road C51 which is Marmanet-Olarabel-Muchongoi-Marigat Road. It is not the same road. This road is at the moment

under construction by M/S Access Construction Company.

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. The question I asked the Minister was: If there is on-going work, how much money will be utilised, and what is the length of that road?

**Mr. W.C. Morogo:** Fair enough, Mr. Speaker, Sir. The road will cost Kshs277,344,596.10. That road is 83 kilometres long.

**Mr. Mbela:** Mr. Speaker, Sir, could the Minister tell us in which media and what date the tenders were advertised?

**Mr. W.C. Morogo:** Mr. Speaker, Sir, the prequalification notice was placed in the *Kenya Times* of October 8, 1999, out of which nine contractors tendered and M/S Access Construction Company, being the lowest tenderer, succeeded.

**Mr. Achola:** Mr. Speaker, Sir, are the Minister and hon. Mbela talking about the same road, because I think we are getting a bit confused? It looks like hon. Mbela is acceding to what the Minister is saying, but I do not think that many of us here are convinced that they are talking of the same thing. Could we get a clarification from the Minister as to whether they are talking of the same thing?

**Mr. W.C. Morogo:** Mr. Speaker, Sir, I am giving information on the road that Dr. Ochuodho asked about. Otherwise, the other one which originally was being asked about - on the mobilisation for Kshs300 million - was completely a different one. I did clarify that there is nothing like Muchongoi-Marmanet-Marigat Road.

**Mr. Speaker:** Next Order!

#### POINTS OF ORDER

##### DEATH OF MR. DANIEL KAMANDE

**Mr. P.K. Mwangi:** On a point of order, Mr. Speaker, Sir. Before we adjourned this morning, I had requested the Deputy Speaker to give me permission to seek a Ministerial Statement concerning the drowning of one, Mr. Daniel Kihara Kamande, alias Ospora, who drowned in Makuyu Dam on the 16th of April, 2001. I am seeking a Ministerial Statement from the Minister of State, Office of the President who is in charge of internal security. On that date, Flying Squad police officers from Makuyu frightened a group of young people who were playing soccer near a dam by firing two gunshots, and the said Daniel Kihara Kamande alias Ospora drowned in the dam and died. I want to know under what circumstances the police used a firearm against a harmless group of young people who were enjoying their evening at around 5.30 p.m.? Who were involved and what action has been taken so far since Monday?

**Mr. Speaker:** Maj. Madoka, do you want to respond now?

**The Minister of State, Office of the President (Maj. Madoka):** Mr. Speaker, Sir, I would want to get more details from him and, then, I will respond accordingly.

##### CRIMINAL CHARGES AGAINST A MINISTER

**Mr. Orengo:** Mr. Speaker, Sir, I also rise to request for a Ministerial Statement from the Leader of Government Business, but in his absence, his colleagues in the Cabinet should explain to the nation why a Minister who has been charged with a criminal offence and arrested and thrown into the cells is still in the Cabinet. This is because already, there are a lot of precedents which have been established over the years including even hon. Biwott's case. He was merely a suspect but he was relieved of his duties. The Government's legal and moral authority suffers when somebody who is already a suspect on offences of stealing from the public still serves the public, and is being escorted by police officers who have arrested him. Also, he sits in the same Cabinet with the Attorney-General who is prosecuting him, and he is advising the President on whom to appoint a Judge---

**Mr. Speaker:** You are now debating!

**Mr. Orengo:** Mr. Speaker, Sir, I am just pointing out that these conflicts--- Even the Magistrate is under great difficulty because this is the man who advises the President, even on the appointment of a Judge and now he appears before a magistrate as an accused person in handcuffs and he is still a member of the Cabinet. That needs an explanation.

(Applause)

#### MINISTERIAL STATEMENT

##### ELIGIBILITY TO STABEX FUND TRANSFERS



**The Minister for Planning** (Mr. Ndambuki): Mr. Speaker, Sir, I would like to issue a Ministerial Statement on STABEX Fund Transfers. Eligibility to STABEX Fund Transfers is assessed on an annual basis. Once a country is declared eligible for STABEX Fund Transfers, the funds are deposited in joint foreign trust accounts. Its utilisation details and procedures are agreed between the European Union and the Government of Kenya in a joint memorandum called Framework of Mutual Obligation (FMO). A financing agreement must be signed for every project covered in the FMO, in accordance with the EEC procedures and regulations laid down in the Lome Convention. Consequently, all STABEX-funded projects must be reflected in the GOK Annual Estimates and, therefore, cannot be allocated directly to individual farmers. Funds can be utilised in the following ways:

- (i) In support to the sector that recorded the loss in export earnings and for the direct and indirect benefits of the whole range of economic co-operators adversely affected by the loss.
- (2) For the purpose of diversification and production sectors or for the processing of agricultural products. In the Kenyan context, diversification can include sectors like tourism and export promotion.
- (3) STABEX in support countries reform policy such as restructuring key institutions to improve the economic policy framework and improve the performance of key productive sectors that will impact positively on the entire economy. The coffee and tea sectors are the two potential beneficiaries of STABEX but do not constitute a set of automatic entitlements. In addition, both sectors may benefit directly and indirectly. Since STABEX was introduced, Kenya has qualified for four transfers and I am going to read the amounts according to the transfers in each year. In 1990, a transfer of Kshs2,990,929,540 was done. In 1991 - Kshs1,148,939,750. In 1992, Kshs1,171,779,280. In 1993, Kshs1,589,470,470 totalling to Kshs61,119,040.

Mr. Speaker, Sir, those transfers earned interest as follows: Interest on foreign accounts - Kshs1,305,773,113; interest earned on local accounts - Kshs2,052,267,202. The total amount, that is principal plus interest, comes to Kshs9,359,159,355.

Mr. Speaker, Sir, Kenya also qualified from an additional amount on STABEX in 1999 totalling to Kshs3,348,932,960 giving us a total figure, from 1990 to 1999, of Kshs12,708,091,515. Out of that amount, we have Kshs7,846,413,054 committed out of the Kshs12 billion. As we speak now, we have committed an available balance of Kshs4,861,678,461.

Mr. Speaker, Sir, we have signed three FMOs with the European Union on STABEX and I can just mention them. The first one was in 1990 which catered for the following sectors: Agriculture - Kshs503,657,919; Economic Management - Kshs232,112,000; Institutional Support - Kshs4,450,000; Roads, Kshs12 million; Tourism - Kshs370,530,000 totalling to Kshs1.2 billion on that FMO. The second FMO of 1990 to 1991 is as follows: Coffee took Kshs1,788,506,03; Economic Management took Kshs52,500 and Roads took Kshs1.3 billion. The third FMO is as follows: Economic Management took Kshs2,332,835,260; Tourism, Kshs849,742,322. As I said, we have an uncommitted amount totalling to Kshs4.8 million out of the total funds we have received.

Mr. Speaker, Sir, the 1999 STABEX, which we just signed last month, is Kshs335 million, plus unutilised one, is giving us Kshs4.8 billion. Those are the funds which we are going to use. The available resources for further re-allocations amount to Kshs4.8 billion. In addition to this amount, there is a further Kshs1.7 billion which we are negotiating with the European Union, to open up some of the FMOs and re-allocate these funds to uncommitted funds. Discussions with the European Union have been initiated on the basis of the recommendations of the Inter-Ministerial Committee comprising of Permanent Secretaries of the Ministries of Roads and Public Works, Agriculture, Livestock and Rural Development and Energy and co-ordinated by the Ministry of Finance and Planning. The Committee has recommended to allocate the bulk of the available resources to coffee, tea and road sectors but also to provide resources for other agricultural sectors like cotton, fish, horticulture and so on. Discussions are now underway between the Ministry of Finance and Planning and the European Union Commission delegation to establish the modalities for the renegotiation of the resources and the previous FMOs and the resources under the 1999 transfer allocation. This exercise is expected to be completed soon and Parliament will be kept appraised of further development in this regard.

Thank you, Mr. Speaker, Sir.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. Whereas I believe it is the right of the House to be briefed by the Ministers concerned, this matter of STABEX funds is one that is going on in the Departmental Committee of Parliament on Agriculture, Land and Natural Resources and the concerned Minister for Planning and also the other Minister for Finance. The details he has given here were subject to discussion in a meeting where the Committee summoned him to come and give an explanation. This is because here, he has not explained when and how these STABEX funds will be disbursed. So, I believe that it is only in order that he comes back to the relevant Committee which was appointed by the House so that this matter can be finalised before he tables it in the House because he has now given, in my view, a half-cooked story to the House. I am the chairman of that Departmental Committee.

**Mr. Wamae:** Mr. Speaker, Sir, we would also like the hon. Minister in explaining further this issue, to let us know why the coffee and tea sectors which were supposed to receive most of this money, have not received any of these STABEX funds. Could he also confirm that the balance of the money, which is Kshs4.8 billion will be allocated to the coffee sector which has suffered so much in the last two to three years with low prices of this commodity so that the farmers can continue improving their coffee instead of uprooting it as they are planning to do now?

**Mr. Murathe:** Mr. Speaker, Sir, I am in support of my chairman of the Departmental Committee on Agriculture. This issue formed part of the brief---

**Mr. Speaker:** Will you please do this? This matter was raised with the consent of the Speaker in the House and the Minister was obligated to obey what he was asked by the House. So, could we not ask him to address the House on that issue because he will.

**Mr. Murathe:** That is fine Mr. Speaker, Sir. However, I was concurring with my Chairman that the Minister is being uneconomical with the truth about the issues surrounding the STABEX issue. It formed part of the brief of our visit to Brussels in the European Union and the Minister knows that he cannot give a commitment in terms of timeframes. This is because if they go to negotiate new FMOs, it is going to take between two to three years yet the proposals on his table are such that this money, on the existing FMOs, can come out within a month or two. The Minister did not tell this House that about Kshs285 million disappeared in a collapsed bank called Meridian-BIAO. There is a lot of money committed, allocated, under-utilised and under stalled projects which the Minister is supposed to re-allocate. The mischief going on is that, when you deposit this sort of money in a local bank and those deposits can be availed to individuals so that they can draw LCs, they can use that money to import sugar *et cetera*. When that money is released to the farmers, that facility will no longer be available. That is the real problem with STABEX.

**Mr. Speaker:** Order! Order, hon. Members! I have just been wondering whether hon. Members have been seeking clarification statements from the Minister or not.

**An hon. Member:** But that is exactly what we have done!

**Mr. Speaker:** Order! Yes, some of you are doing so, but those of you who know more than the Minister, please, wait for your time. But, those who genuinely want to seek clarification from the Minister, please do so.

**Mr. Kibicho:** On a point of order, Mr. Speaker, Sir. Could the Minister tell the nation, out of the money which he is getting from coffee sales, how much will he set aside to support farmers so that they can access cheap credit? How much will the farmers get to enable them get compensated for the loss of their earnings from coffee and how much are the farmers going to get for cheap credit?

**Mr. Speaker:** Mr. Minister, you can take notes and then you can respond to all of them. Mr. Twaha, is there coffee in Lamu? You are a Member of the House, proceed! Proceed, you have a right!

**Mr. Twaha:** Mr. Speaker, Sir, I am just wondering why so much emphasis is being put on coffee and tea when cotton is the mother of our industrialisation, historically, and we have got cotton farmers who are suffering in Lamu. What is their share out of the STABEX funds?

**Mr. Michuki:** On a point of order, Mr. Speaker, Sir. The Minister has read out the tranches of funds that are committed and received from the European Union. Could the Minister tell this House the whole truth and nothing but the truth, how, under each tranche that qualify the crops to be aided? This is because each tranche must have basic qualifications, which are required to attract funds from the European Union. Could the Minister explain to this House which crops were qualified during the first tranche, and on what basis crops qualified during the second tranche and so on until 1999?

**Mr. Parpai:** On a point of order, Mr. Speaker, Sir. When the Minister was responding, he enumerated the sectors that were meant to benefit from STABEX Funds. I have not heard him talk about the livestock sector. The Chair knows, as much as I know, that previously, livestock products used to be exported out of this country, but that sector is now dead! It is better for coffee and tea because we still export something. What are we exporting from the livestock sector and what is the Minister doing about it? Has he ignored the livestock sector? Since livestock falls under the Ministry of Agriculture and Rural Development, does it mean that the livestock sector has been forgotten and, therefore, livestock farmers should be left to die? What is the Minister doing about that?

**Mr. Speaker:** Very well. Mr. Minister, would you like to respond now?

**The Minister for Planning (Mr. Ndambuki):** Mr. Speaker, Sir, I thank the hon. Members for seeking further clarification on my Statement.

One hon. Member asked how much has been used in the coffee sector, or agricultural sector, out of the committed Kshs7 billion. We have Kshs2 billion which has been committed to coffee and the agricultural sector.

With regard to the amount which we are negotiating, and which should go to the farmers, we are still negotiating. We have Kshs4.8 billion already in our hands. We are negotiating with the European Union to see what part of that amount goes to coffee, tea, cotton, fisheries and any other sector that we might come up with. The only problem which we are having is that there are some people going round trying to use these STABEX Funds as a

political tool to achieve their selfish ends. But I would like to ask all the Members to give us time to negotiate and finalise our negotiations and all these funds will be given to the farmers as soon as we are able to do that. As one Member said, to finalise on this matter, the minimum time we can take is 18 months. But we are trying to speed up the process to make sure that this is done at the right time.

Mr. Speaker, Sir, the other thing that I need to mention here is that, from now on, we are no longer going to have STABEX Funds. The facility has been scrapped and we are not going to have it. So, I urge all hon. Members not to use the STABEX Funds to incite farmers. This money is safe apart from the few amounts which had been invested in Meridian Biao Bank, which went under and we have managed to collect Kshs109 million from that bank and it is being held by the Central Bank of Kenya.

The other funds which have not been disbursed are safe with us. Take it from me, as soon as possible, these funds are going to be released.

### BILL

#### First Reading

#### THE DOMESTIC VIOLENCE (FAMILY PROTECTION) BILL

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

**The Minister for Home Affairs, Heritage and Sports** (Mr. Ngala): Mr. Speaker, Sir, because of the absence of the Attorney-General, I would like to move that the Domestic Violence (Family Protection) Bill, be referred to the relevant Departmental Committee in accordance with Standing Order 101A(1).

**Mr. Speaker:** Next Order!

### MOTION

#### ADOPTION OF 1996/97 PAC REPORT

**Mr. Gatabaki:** Mr. Speaker, Sir, before I move forward, I wish once more to request the indulgence of the Chair to be allowed talk from the Dispatch Box. This is the most important Report throughout the life of this Parliament.

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

**Mr. Gatabaki:** Mr. Speaker, Sir, I am requesting your indulgence to use the Dispatch Box.

**Mr. Speaker:** Why do you not do it from where you are?

**Mr. Gatabaki:** It is because I have many bulky documents---

**Mr. Speaker:** Order! Order! You must know the rule of debate. The rules of debate is that you will not come here to read the whole Report. The rule of debate says that you will talk off-the-cuff, and you may refer to your notes. That is the rule of debate! If that is the rule of debate, I do not see which bulky documents you are going to read out to the House. The rule is that, the Chairman of the Public Accounts Committee is Mr. Mwai Kibaki. I am informed, from the Table here, you have his authority to move that Report as a Member of that Committee. It does not mean that every Member of the Committee makes some Report, we waive the rule of the House that requires Members to speak from where they are. If you are from the Front Bench, you speak from the Front Bench, and if you are from the Back Bench, you should speak from the Back Bench.

Please, if you are incapacitated from presenting this Report from there, I am quite willing to wait for Mr. Kibaki and in the meantime we proceed to the next Order.

**Mr. Muite:** On a point of order, Mr. Speaker, Sir. I rise on a point of order not to challenge your ruling, but to seek your guidance. It has been the practice of this House that some hon. Members, when they are reading reports have, in fact, been permitted through the discretion of the Chair to come and do so from this Dispatch Box. Should we not really be consistent as a House instead of being seen perhaps to be discriminating against the hon. Member for Githunguri? We have allowed other people to read reports from the Dispatch Box.

**Mr. Speaker:** May I ask you this question as you stand there: What basis do you have as a person, Mr. Muite, to say that we are discriminating against the hon. Member for Githunguri?

**Mr. Muite:** Mr. Speaker, Sir, with respect, I did not say that we are discriminating against the hon. Member for Githunguri, but I said that it has been the practice in the past. Hon. Members will remember that the Chair has permitted reports to be read by people who normally sit in the Back Benches from the Dispatch Box. So, I said that we should remove any possibility of any perception that we, as a House, are discriminating against the hon. Member for Githunguri. I am not saying that we are discriminating against him. I appeal for your guidance.

**Mr. Speaker:** May I just ask your indulgence: Do you know the relevant Standing Order about the sitting arrangement in the House?

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

**Mr. Speaker:** Order! Can you read it to me; whether it is my discretion or it is made by the House?

**Mr. Muite:** Mr. Speaker, Sir, even without reading the relevant Standing Order, I can recite it from my memory. It is leaders of the political parties and hon. Members of the Official Opposition. But in addition to the rules of this House, there is a practice and procedure of the House, and the Chair does have discretion. I am saying that, perhaps we should get your guidance on whether the Chair cannot again exercise the discretion in favour of the hon. Member for Githunguri presenting what is after all one of the most important reports, as other hon. Members have done. That is all I am saying.

**Mr. Speaker:** Order! I think I have a discretion where an hon. Member is incapacitated, and we do actually have hon. Members who are incapacitated in this House. If, for example, an hon. Member cannot sit at the Back Bench where he or she is entitled to sit because of his or her physical condition, I have indeed, allowed such a person to sit in the Front Bench. I will tell you offhand the hon. Members I have allowed to sit in the Front Bench. In the past, there was Dr. Richard Leakey, who sought my permission to sit at that very end because of his legs and Mrs. Sinyo who, because of her incapacity to see, I have allowed to sit at the Front Bench. Now, we have Mr. Leshore, again who is on a wheelchair and I have allowed him, in fact, to sit right there because of his condition. But we will not swap the sitting positions of this House at whim. I am not aware of any incapacity of the hon. Member for Githunguri.

Mr. Speaker, Sir, in the past, he has always spoken very well from there, and even now he can speak very well. He has no audio problem, to the best of my knowledge. So, why can we not attempt and see? If by some reasons, he is now incapacitated, then I will reconsider him addressing the House from the Dispatch Box. Could we just listen to Mr. Gatabaki? Mr. Gatabaki, could you address the House for a while?

*(Mr. Nyanja dropped some documents he was holding for Mr. Gatabaki)*

*(Laughter)*

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir. When Mr. Donde was moving his Bill, he sought your permission to move it from the Dispatch Box and you granted him permission. Could you also extend your generosity to Mr. Gatabaki to speak from here?

**Mr. Speaker:** May I, before I invoke either my generosity--- There is just a little show being staged there by Mr. Nyanja and his friend out there. That will not move me one inch because what it means is that, what is being presented is a report of a Committee, and every document so presented to that Committee is already part of the record and is in the library, and it will not be necessary to put it here. So, what he really needs to present is a report, as stipulated on the Order Paper before the House. But Mr. Nyanja's and Mr. Gatabaki's antics notwithstanding, and I am sorry to use that word, and I do not want to see it again in future, I will ask Mr. Gatabaki, in accordance with the rules of the House---

I do not know whether I have the power, but let me see whether I will allow you to speak from here, but you will not come with your huge reports.

*(Applause)*

The huge reports should be left in the library. If I may ask, are you carrying a bomb?

*(Laughter)*

Will you, Mr. Nyanja, in the meantime, give the carton that is bound to the Serjeant-At-Arms for safety because I am not sure whether it contains books or dynamite?

*(Mr. Gatabaki moved from his place to the Dispatch Box to present the PAC Report)*

**Hon. Members:** We have won!

**Mr. Speaker:** Order! If you do that I may change my mind!

**Mr. Gatabaki:** Mr. Speaker, Sir, I beg to move the following Motion:-

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

I take this very difficult task, on behalf of Mr. Kibaki, who is not only the Leader of the Official Opposition in Parliament, but also the man who should be sitting on the other side of the House as the President of the Republic of Kenya had it not been for the rigging of the 1997 General Elections by the KANU Government.

*(Laughter)*

**Mr. Speaker:** Order! Order! Mr. Gatabaki, what page of the Report contains that?

**Hon. Members:** The preliminary!

**Mr. Speaker:** Order! We have to be serious. Mr. Gatabaki, you are presenting a Report of the House; it is not your Report. What you have to speak on behalf of the Committee must be factual. What page of that Report contains that preposition?

**Hon. Members:** Preamble!

**Mr. Gatabaki:** Mr. Speaker, Sir, every major presentation has a preamble.

*(Applause)*

And we have made great (inaudible...) preambles in this House by our predecessors, the late Mzee Jomo Kenyatta, the late Tom Mboya, the late Jaramogi Oginga Odinga, Mr. Kibaki---

**The Assistant Minister, Office of the President (Mr. Haji):** On a point of order, Mr. Speaker, Sir. In view of the behaviour of the hon. Member, I think we should be kind enough to take him to a mental hospital.

**Mr. Speaker:** Order! From now on I will exercise my powers to maintain dignity in this House, both to Mr. Gatabaki and all other Members. Mr. Haji, you are totally out of order and you have no business insulting another hon. Member in the House. Will you proceed now and apologise?

**The Assistant Minister, Office of the President (Mr. Haji):** Mr. Speaker, Sir, I withdraw and apologise.

**Mr. Speaker:** Very well. With that, Mr. Gatabaki, with all seriousness, proceed to present the PAC Report to the House, and there should be no more jokes.

**Mr. Gatabaki:** Mr. Speaker, Sir, I was not joking when I mentioned the people who have stood here and presented very major statements. Possibly, I was joking to Mr. Haji because maybe the word "joking" is not in his vocabulary, given his history in the Provincial Administration.

*(Laughter)*

**Mr. Speaker:** Order! For the last time, Mr. Gatabaki, I think you are doing a whole Committee of the House a great disservice by treating a serious issue like the Public Accounts Committee (PAC) Report with a lot of jest. Will you please be serious, on behalf of the House? Forget about Mr. Haji or every other hon. Member of the House. In fact, you are only supposed to be addressing me. Forget about everybody. Now address the Speaker and go straight to the Report!

**The Minister of State, Office of the President (Mr. ole Sunkuli):** On a point of order, Mr. Speaker, Sir. In view of what you have just ruled, is it not important that you now rule that for such a very important Report, the Leader of the Official Opposition should actually come and present it or get some other dignified Member of the Democratic Party to do so?

*(Applause)*

**Mr. Speaker:** Order! By the way it is within his rights to make that application to the Chair. The rule is that the Chairman or any other hon. Member, with the consent of the Speaker, does have that right. I have given you that

consent. I have not retracted it. I am now seriously warning you to take the House and the Report of the House seriously. Please, present what the hon. Members recommended.

Now proceed!

**Mr. Gatabaki:** Mr. Speaker, Sir, I am so intimidated already that I do not know how to go about it. Let me establish my credentials as to why Mr. Kibaki allowed me to present this Report on his behalf. On many occasions, out of the 100 sittings of the PAC, I was the Acting Chairman. Therefore, I have the credentials to represent Mr. Kibaki and present this document.

Mr. Speaker, Sir, the PAC is established by the Standing Orders of this House, particularly Standing Order No.147, for purposes of examining the accounts and appropriation of the monies voted by this House and the way those accounts and the monies have been spent by the Government of the day. Section 105 of the Constitution of the Republic of Kenya requires the Controller and Auditor-General, once every year, to present to the Committee the Report, on the basis of which the Committee examines the documents regarding the expenditure of public funds. Therefore, this is a Report authorised by a Standing Committee of this House, an oversight Committee for the very important purpose of examining the expenditure of public funds, which are the taxpayers money. Therefore, it is very important document.

Before I go ahead, I would like to express my sincere gratitude to the hon. Members of the PAC who served in that Committee during 1996 for the examination of the 1996/97 accounts. They are Messrs. Mwai Kibaki, the Chairman, MP for Othaya, David Mwiraria MP for Imenti North, myself, Jimmy Angwenyi, MP for Kitutu Chache, Dr. Abdullah Ali, MP for--- wherever he comes from.

*(Laughter)*

There is Dr. Oburu Odinga, the MP for Bondo, Mr. Raphael Wanjala, MP for Budalangi---

**Mr. Shidiye:** On a point of order, Mr. Speaker, Sir. The hon. Member who is moving the Motion does not know the Members of Parliament, particularly those from the North Eastern Province. It appears that he is slighting them. Is he in order not to mention where they come from?

**Mr. Speaker:** Order! As you know, I know all your names and your constituencies and I am the only one obligated to know that. I do encourage all of you to know each other including your constituencies.

Proceed!

**Mr. Gatabaki:** Mr. Speaker, Sir, the other Members were Messrs. Raphael Wanjala, the MP for Budalangi, Eric Morogo MP for Rongai, Suleiman Kamolleh, MP for Matuga and Samuel Kiminza for Kitui South. I may repeat again that I had the privilege of serving the PAC for two successive years. The PAC examined the Reports of the Controller and Auditor-General and reported to this House. On many occasions during that time as I earlier emphasised, I did serve as the Acting Chairman.

First, I wish to record my profound appreciation for my party the Social Democratic Party (SDP) represented here by Mrs. Charity Ngilu, for the opportunity the party gave me to serve in the PAC. I am not only presenting this Report as a Member of this House, but also as a Member of the SDP, for which I am very grateful. I also wish to record my appreciation to Mr. Henry Obwocha the Ford(K) MP for West Mugirango who was the Chairman during the 1995/96 PAC proceedings. I wish to thank him very much for the opportunity he gave me to second the Report.

Mr. Speaker, Sir, I was deeply moved by the enthusiastic support the House accorded me in my contribution during the secondment. On the same note, I wish to pay special tribute to my colleagues who sat for many hours and who rose above subjective interests and party affiliation and devoted exhaustive hours in scrutinising the accounts and coming to unanimous recommendations. I also wish to thank them for their patriotism and commitment to a better Kenya and to the parliamentary motto of "for the welfare of society and the just governance of men. As a result, in all our deliberations - and this must be singularly stated - we arrived at decisions unanimously.

In the two consecutive occasions I sat in this very privileged Committee, the PAC had the majority from the ruling party KANU. In every single occasion which required a decision, we made it unanimously. I thank those Kenyans who, because of their patriotic concern about good governance, reached conclusions unanimously. Before going on to the specific issues in the 1996/97 Report, I wish to make some observations on the expenditure of public funds. I wish the Minister for Finance was here to hear this because he might benefit from some of the recommendations and findings of the PAC which might help him in the management of public funds.

As has been clearly demonstrated, the Government, which is entrusted with public funds, lost Kshs475 billion between the year 1991 and 1997. This money was lost through irregular and unconstitutional payments, mismanagement of public funds, pending bills, undelivered goods and services, corruption and outright theft. This is shown in various Reports that the Public Accounts Committee (PAC) had access to. The Kshs475 billion amounts to an average of Kshs68 billion lost every year. Up to 80 per cent of the loss was attributed to laxity on the part of the

Government. This is in the Report of the Controller and Auditor-General which states that the Government of Kenya lost Kshs475 billion in those six years through waste, mismanagement and corruption.

Mr. Speaker, Sir, if you examine the Reports of the PAC from the time of Independence to date, you will see how far we have come; to become a bad Government. I have with me the first Report of the PAC, which covered the period between 30th June, 1964 to 30th June, 1965. It is exactly 31 pages. The chairman of the Committee was the Late Jaramogi Oginga Odinga. The Committee recommended that the various Departments of the Government had to spend money appropriately. This was the summary of this document which was prepared between 1964 and 1965. We have all these documents in the library for every hon. Member to read. I will recommend to the hon. Members from the opposite side to go through this document in order for them to know where we have come from. Now we have a 707-page document and in every page, there is a saga of misdeeds, corruption and squandering of public funds. This is not my story but the story of the PAC which was recorded, minuted and agreed unanimously by the hon. Members who were serving in PAC. That is the record for all Kenyans to see. This is the record of the level of misuse of public funds. It is the record of bad governance in this country.

Mr. Speaker, Sir, the Kshs475 billion that the Government lost between 1991 and 1997 is equivalent to US\$6 billion, while the average annual losses of about Kshs68 billion is equivalent to about US\$900 million. The Minister for Finance is here and those figures must ring in his mind very rapidly. The amount of US\$6 billion which was lost by the Government through corruption and pending bills is equivalent to one of the highest amounts of aid given by the International Monetary Fund (IMF) to very special countries, among them the former Soviet Union, Nigeria and other major economies of this world. We do not qualify for this magnitude of aid, yet, we qualify for wasting this amount of money. I am saying this because it is the finding of the PAC. It is the reality. When you see my anger and keep on sending me out of this House, it is because I am speaking the truth about what this Government has done to this country.

**Mr. Speaker:** Order! Mr. Gatabaki, you should debate the Report and not your misconduct.

**Mr. Gatabaki:** Mr. Speaker, Sir, the implication of this US\$6 billion which the Government of Kenya has squandered is that, if the Government had been appropriating public funds as voted by this House, the public debt account would in be surplus, and the nation would not have required any funding from IMF. Our President would not have been required to go begging overseas for funds. We would not have required the President of the World Bank and the Managing Director of the IMF to come here, lecture our President and humiliate him over the loans from the IMF and the World Bank. The fraudulent management of public funds by this KANU Government is so vast that the figures speak for themselves. Such is the extent of our misdeeds that the Government has been accused by the donors of bad governance. Bad governance has been attributed to very few countries in the world, and among them is our country.

Every time we send our Minister for Finance to Washington, London and elsewhere to borrow funds, the donors have in their docket all these kinds of squalor. So, every time the Minister for Finance, the former leader of the former Dream Team and the former Governor of the Central Bank of Kenya went to Washington or London to negotiate for funds, the IMF and the World Bank had the documents on waste of our funds with them. They had prepared themselves to listen to what our people had to talk about. They knew that Kshs475 billion had been wasted in frightening circumstances. So, every time the donors turned an eye and told Kenyans that they would send their team to our country in two to four months' time, they were telling Kenyans that they would not fund them. The record is very clear, and I will explain why we are not eligible for donor funding.

The only reason why the donors give aid to us is because they care for Kenyans. The donors care about the coffee, tea and sugar-cane farmers. They care for the person who spends sleepless nights trying to catch fish for export. The donors care for that ordinary Kenyan who devotes his time and energy to earning a living and creating value by exporting whatever commodity he has for generation of foreign exchange. The donors do not care about this Government because they have read these documents. Furthermore, they have got enormous documents prepared by the Treasury. The Treasury is headed by the Minister and is given by the Constitution the power of being the custodian of public funds and the implementation of what the PAC recommends. The Treasury is a unique institution because it has those powers and privileges. It has got authority over the other Ministries of the Government. So, every time our delegation goes to Washington, the people who preside over the largest multilateral institution and determine who will get funds, have this document in front of them. They have gone through this document and seen what there is in it. They have seen that there has been wastage, pure and simple theft and embezzlement of public funds by our Government. Year in, year out, from 1964 to date, the PAC has reported these things. Theft of public funds has been demonstrated in the PAC Reports for many years.

**Mr. Speaker:** Order! Why repeat? It is my duty to keep the debate in order! No Member shall repeat what he has already said.

Please proceed!

**Mr. Gatabaki:** Mr. Speaker, Sir, if I do not emphasise that, maybe, the wisdom of our founding fathers---

The presentation of this document may have been the wisdom of the founding fathers before we came here! The Kenyattas, the Jaramogi Oginga Odingas and the Tom Mboyas had the wisdom, and not the lot that we have today. Mr. Humprey Slade was the Speaker. Maybe, their wisdom did not limit the presentation of this document by any hours!

**Mr. Speaker:** Order! Are you implying that the current Speaker, therefore, is part of that mismanagement?

**Mr. Gatabaki:** What I am saying is that those founding fathers, whatever wisdom they had, did not limit the presentation of this document. The implication perceived is that you would like this debate to be limited. You cannot limit defence, an attack, an explanation of misuse of public funds!

**Mr. Speaker:** Order! On a serious note, Mr. Gatabaki, please present your debate! You are having a broadside against everybody and all. Nobody has limited your time. Your time is limited by the Standing Orders and the rules of the House. Those rules will not be bent, whether it is Mr. Gatabaki or anybody else! So, stop those broadsides. You are hurling brick bats at everybody! Please, keep the Chair out of it.

Please proceed!

**Mr. Gatabaki:** Mr. Speaker, Sir, one finds it very difficult indeed, when you have got this kind of touch, to understand what kind of language to use to present this kind of document. I find it difficult. I have to say it because I have got my right to say it! I have a right to say whatever I want to say because that is my right! I am elected by the people of Githunguri to represent them in this House! Those are the ultimate people that I am responsible to. It is in such circumstances that the Leader of the Official Opposition gave me the mandate to present this document on his behalf. I think I deserve that kind of latitude!

In the preface to this Report, Mr. Mwai Kibaki singled out the various times that the Committee decided to go and examine for itself, the misuse of public funds and the mismanagement of public institutions. The Committee visited the Government Press, the Numerical Machining Complex, the National Youth Service (NYS), the Government Manufacturing Facility at Ruaraka, the Administration Police Training College, Embakasi, the Mokowe Sub-District Hospital in Lamu, the Mokowe Ice-Cooling Plant, the Malindi Jetty and the Government Coast Agencies.

According to Mr. Kibaki, the above projects were visited in order for the Committee to ascertain for itself, that the evidence given tallied with what was given in the Report. The visits to those places were horrifying to most of us! We were horrified in many ways to see the extent to which public funds were totally looted!

With regard to the Government Press, Mr. Kibaki noted the following: The project was undertaken in July, 1986, and was scheduled for completion by January, 1998. That is ten years. However, the project is yet to be fully completed. The Government Press project was apparently conceived in haste, in order to print security documents for the Kenya Government. So, an amount of money that was voted and authorised by Parliament, was given to a certain merchant to import equipment, so that the Government of Kenya could print security documents in haste. A total of almost Kshs1 billion was given to one Mr. Somaia and his companies to bring the specialised printing equipment, so that the Government could print cheques and other security documents. But the issue here is that the Minister for Finance expeditiously presented Supplementary Estimates to this Parliament, which contained expenditure of almost Kshs1 billion for the project. He indicated the haste and the hurry with which the Government wanted to bring the specialised equipment from all over Europe, in order to print the cheques and other security documents. That project was conceived in 1986 and up to now--- When we paid a visit to the Government Press - it is not far away and, in fact, we found some boxes---

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, you also remember that you did the same. You were part of the Public Accounts Committee (PAC) for 1995/96 that toured the---

**Mr. Michuki:** On a point of information, Mr. Temporary Deputy Speaker, Sir. If Mr. Somaia and his companies were given close to Kshs1 billion, and a supplementary estimate was not taken, surely, that money could not come from the Civil Contingencies Fund, whose limit at that time, was nowhere near Kshs1 billion. So, the whole withdrawal of that money was unconstitutional. I hope the Report mentions that!

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I wish to thank Mr. Michuki for that information. He has a lot of experience in the management of public funds. The amount of money used in the Government Press project, which ranged from Kshs800 million to about Kshs1 billion, was paid by the Treasury on the insistence of the Office of the President! I believe that, that is what the Committee reported. I agree with you that it was unconstitutional.



But here is a situation where somebody in the Government conceived a way of squandering public funds. He came up with that brilliant idea. Those were the days of wastage of funds and any amount of money could be spent. You just thought about a project and you went ahead to spend public funds because the money was there, and nobody could control it. In the era of single-party tyranny in this country, over Kshs800 million was given to one Mr. Somaia to import the equipment, so that the Government of Kenya could be able to print security documents, not only for its use, but also for the surrounding countries. It was a brilliant idea if it had worked. That kind of capacity was not there. Maybe, the Government could have earned foreign exchange by doing that kind of business with the surrounding countries.

Mr. Temporary Deputy Speaker, Sir, today, as I speak here, the equipment that were forced to be opened by the PAC of 1995/96 contained a variety of certain equipment which, one cannot conclude whether they are of printing press nature or not. You were a Member of that Committee and you also witnessed what transpired. Mr. Somaia was summoned to appear before the PAC many times! He was summoned from 1993/94, 1994/95, 1995/96 and 1996/97, through the Attorney-General. He refused to appear before the PAC again and again, and got away with it! This is a man who has a lot of investments in this country. He owns the Block Hotels and so many other investments. He refused to appear before the PAC! That brings me to the following point. What is the point of having the PAC and other oversight institutions if their recommendations are ignored by the powers that be? Mr. Somaia refused to come because he has godfathers. If the Attorney-General of the Republic of Kenya was here, I would tell him directly that he met with Mr. Somaia in London many times! He met Mr. Somaia at the airport but he did not enforce the instructions of the Public Accounts Committee (PAC) that Mr. Somaia be brought before the Committee. The Powers and Privileges Act provides that anybody who fails to appear before the PAC should be arrested without a warrant of arrest. This gentleman has been coming into the country over and over again, and dining with the authorities without being arrested.

Mr. Temporary Deputy Speaker, Sir, the time has come for us to ask: "Is this Government at the mercy of Mr. Somaia? How much is this Government held to ransom for the sins committed by the political merchants of the day?" This Committee recommended that if Mr. Somaia cannot be brought before the PAC, all his assets in Kenya should be seized and frozen. Unfortunately, Mr. Somaia owns most of his assets together with his political godfathers. You cannot finish the institutions of profit owned by political merchants, who masquerade as politicians in this country. So, the whole idea of seeing the Government in action is reflected in our records. We recommend that the State should do whatever it takes to get, through the Attorney-General, Mr. Somaia to appear before the PAC.

We also toured the Mokoe Ice Cold Storage Plant and Malindi District Hospital. The purpose of doing that was to show Kenyans that the waste of public funds is not only limited to Nairobi but rather is spread throughout Kenya so that the public cannot see what is going on. In Nairobi, the Press is alert, and all the people who matter are here. So, everything is easily exposed. Therefore, these political merchants fear the extent of their squalor. So, they devised a system of sending this kind of squalor outside Nairobi. One of the politically-correct architects, one Harban Singh, designed a hospital in Lamu. Over Kshs300 million of public funds was spent on merely laying the foundation of that project, after which it was abandoned. I am glad that you also witnessed the hospital project I am referring to. That was one of the most horrifying cases of waste of public funds. Up to now, nobody cares. What is frightening is that the hard-working people from that region, who have no access to medical care because of this kind of public waste, vote for the ruling party.

**The Minister for Public Health** (Prof. Ongeru): On a point of order, Mr. Temporary Deputy Speaker, Sir. Being very mindful of my very learned colleague, hon. Gatabaki, would it not be in order for him to seek attention from me so that we can help him? I can see that he has a problem on his neck.

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Musila): Order, Prof. Ongeru! Continue, Mr. Gatabaki.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, you can understand the kind of concern exhibited by the PAC. Government representatives wasted Kshs475 billion of taxpayers' money through those projects. You can see a Minister responsible for Ministries which squandered billions of shillings of taxpayers' money talk nonchalantly about issues that are so important. Fifty per cent of the Kenyan people live in squalor, without access to medical services, because of the activities of a big friend of mine, not because of his performance, but rather because of his belonging to a Government which considers the spending of public funds at will as part of a joyous game.

**Mr. Nyanja:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to inform hon. Gatabaki that Mr. Harban Singh is not an architect; he is just a draughtsman.

**Mr. Michuki:** He is not qualified as an architect!

**Mr. Nyanja:** Mr. Temporary Deputy Speaker, Sir, Mr. Singh is not qualified to be called an architect in my

presence, as a registered architect. He is a mere draughtsman. That is why he has assisted the system to loot public funds.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, what hon. Nyanja has told this House is true. Possibly, he can substantiate it. Considering the big number of buildings the said Mr. Singh has designed on behalf of the Government, I think it is high time we looked into those buildings, so that one of these days they do not collapse and kill millions of Kenyans.

Mr. Temporary Deputy Speaker, Sir, I would now like to proceed and refer to the introductory part of this Committee's findings. The introductory and general part of this Report starts with unconstitutional expenditure. I think we require hon. Michuki's assistance here. The hon. Member served at the Treasury for many years, and is familiar with the words "unconstitutional expenditure". These words have their meaning in Government expenditure parlance. I am saying so because when we were elected as Members of Parliament, we swore to defend, uphold and protect the Constitution of the Republic of Kenya as by law established, and prayed that God helps us. These are cardinal words.

In countries such as the United States of America (USA), any violation of the constitution leads to impeachment of the officer who violated it. In that country, if you violate the constitution, there is no cure for such violation other than impeachment. Here, we swear while holding a Bible: "I swear to defend, uphold and protect the Constitution of the Republic of Kenya as by law established. So, help me God". But here we are stuck, in this Report, with unconstitutional expenditure.

Mr. Temporary Deputy Speaker, Sir, I am raising these issues because this nation treats certain values as if they related to a KANU Parliamentary meeting. Some Ministers of State, Office of the President, shout that the incumbent President will remain this country's President indefinitely, knowing very well that Section 9(2) of the Constitution bars anybody from holding that Office for more than two terms. That is the Constitution of the Republic of Kenya, yet, here is a Minister of State, Office of the President and other Ministers who, everyday violate the Constitution and get away with it. The introductory part of this Report is on unconstitutional expenditure. This is what the Committee recommended regarding unconstitutional expenditures. It says:-

"The Committee was gravely appalled by the unconstitutional authorization of withdrawal of about Kshs2.7 billion for the purchase of shares in parastatals such as Kenya Airways, Kenya Pipeline Corporation, the National Bank of Kenya and East African Portland Cement Factory. The Committee was further concerned that the Government was acquiring shares from companies it was divesting from, contrary to the privatisation programme."

Mr. Temporary Deputy Speaker, Sir, that is the introduction of this Report before you go further on unconstitutional expenditure. So, you start with this horrifying unconstitutional expenditure of public funds. The recommendation of the Committee, after hearing evidence, is that the Attorney-General should institute legal action against the Permanent Secretary responsible for violating Sections 99(1), 100 and 105(2) of the Constitution of the Republic of Kenya. I want to emphasise this point because there are some Ministers here I respect. But I do not know whether I respect my brother---

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Musila): Order! The Chair wants to remind you that you are moving a Motion on the Report of the PAC.

Could you proceed, Mr. Gatabaki?

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, you must see these things mentioned here because this money was spent by Government Ministries. Government Ministries are headed by my brothers here. So, they cannot escape the responsibility of public censure. They cannot escape blame for what their respective Ministries have done over and over again. I may give comfort to some Ministers because they were not there when these things were done in 1996/97. However, they are part of a collective Government which has squandered public funds. Therefore, this Government is immorally in power.

Mr. Temporary Deputy Speaker, Sir, the first recommendation of the Committee is:-

"The Attorney-General of the Republic of Kenya must institute legal proceedings against the Permanent Secretary in Treasury who violated Sections 99, 100 and 105 of the Constitution of the Republic of Kenya."

What are these statutes? Section 99(1) is very clear. It says:-

"Subject to subsection (2), all revenue or all other monies raised or received for the purposes of the Government of Kenya shall be paid into and form a Consolidated Fund from which no monies shall be withdrawn except as may be authorised by the Constitution or by the Act of this Parliament (including an Appropriation Act) or by a Vote on Account passed by the National Assembly under

this section 101".

Mr. Temporary Deputy Speaker, Sir, this section is very clear that all public monies must be paid into the Consolidated Fund. No monies can be spent by anybody without the authority of the Constitution or the authority of this House. The most important duty of this House is appropriation of public funds. Without that, there cannot be a Government. Without that, there cannot be services. What the Committee found out is unconstitutional expenditure.

Mr. Temporary Deputy Speaker, Sir, Section 100 of the Constitution says:-

"The Minister for the time being responsible for Finance shall cause to be prepared and laid before the National Assembly in each financial year estimates of revenue and expenditure of the Government of Kenya for the next following financial year."

So, there is a provision that the Minister for Finance, at any particular time, has the power and the responsibility of laying before this House whatever the Government wants to spend.

Mr. Temporary Deputy Speaker, Sir, Section 105(2) of the Constitution says:-

"It shall be the duty of the Controller and Auditor-General to satisfy himself that any proposed withdrawal from the Consolidated Fund is authorised by law, and if so satisfied, approve the withdrawal."

So, here is a situation where the Controller and Auditor-General---

**Mr. Michuki:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I want to inform Mr. Gatabaki regarding the point he has raised on the Constitution, that nobody in this Republic, irrespective of the position he holds, has access to the Consolidated Fund without the authority of this House. The Consolidated Fund must be treated, for all intents and purposes, as the holy of holies. It is like a mosque where the hon. Member here goes to, where you do not go with your shoes or go with a dog. It is highly sacrilegious. Therefore, the whole issue of financial configuration revolves around that principle. If that principle is violated, except for the fact that we, Kenyans, are very cowardly, we should not pay any tax.

**Mr. Gatabaki:** Thank you, Mr. Michuki, for re-emphasizing the importance of constitutional provisions regarding the expenditure of public funds. The withdrawal of funds from the Consolidated Fund is so sacrosanct that the whole basis of Government lies on that. There shall be a fund called the Consolidated Fund in which all monies must be paid. There is a regulation that no amount of money can be withdrawn without going through a process. Therefore, it is so unconstitutional when somebody sits in the office or receives a telephone call authorising him to provide US\$460 million to buy a presidential jet. This is unconstitutional.

**Mr. Kamolleh:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House that the authorization to buy the presidential jet was done through a telephone call when he knows that all those documents were availed before the Committee? The hon. Member was a Member of the Committee and he saw those documents. Is he really in order? **Mr. Gatabaki:** I will take the comment from my friend from Matuga with a lot of concern. He is the only person who made it to Alliance High School. We are talking about unconstitutional expenditure; whether it is a gang of three or ten people; whether it is by telephone or by summons to State House or whatever means, unconstitutional expenditure is that. Having gone to Alliance High School, I think this thing should not be hammered to Mr. Kamolleh.

**The Temporary Deputy Speaker** (Mr. Musila): Order, Mr. Gatabaki! I think you have repeated yourself so much and the Standing Orders do not allow you to do that. I think the Chair did warn you previously to steer clear of repetition. The issue of unconstitutional expenditure is still dwelling on one thing. I think we have heard it. Could you, please, move on?

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, if you go through this Report, you will find that 707 pages talk about unconstitutional expenditure. Also, the Ministry of Finance and Planning, Treasury Memorandum on the Public Accounts Committee Report, is another huge document and the subject of unconstitutional expenditure occupies about half of it. So, we cannot

avoid mentioning it because it affects virtually every Ministry and Department of this Government. Also, the oath of office we took when we were sworn in as Members of Parliament, and the oath of office Ministers take when they go to State House is so serious an oath of office. It is administered here by the Speaker holding a Bible, for the Ministers at State House by a judge of the High Court, and for the President by the Chief Justice of the Republic of Kenya. That is the seriousness of the Constitution. The issue of the Constitution is so serious that for the last two years, we have been squabbling as to which way to take; the Raila way or the Ufungamano way, Moi way or our way!

*(Laughter)*

**The Minister for Public Health** (Prof. Ongeri): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Gatabaki to talk in parables and tongues when it is clear that it is only English and Kiswahili that are

the official languages in this House?

**Mr. Parpai:** He said it!

**The Temporary Deputy Speaker** (Mr. Musila): Order! Order! Mr. Parpai, that point of order is not directed to you.

Mr. Gatabaki, could you respond?

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, if the hon. Minister can tell this House he did not take an oath of office and that it was not administered to him by a judge of the High Court, then I will agree with him that whatever misdeeds he has done against the people of Kenya can be forgiven!

*(Laughter)*

Mr. Temporary Deputy Speaker, Sir, I am just emphasizing certain points. In the introductory part, the first point is unconstitutional expenditure. The other point is non-existent or fictitious companies. You keep pondering how anybody can do so much injustice to so many people in this country. Whoever from my side, and even the other side, can help me to discourage the immorality of this Government is welcome.

The Committee was again horrified about an occasion where the Government or somebody in the Government decided to pocket Kshs20 million. These are small items, but the implications are colossal. They created a fictitious company called Bungoma Sugar Factory - I wish the Minister was here - and decided to pay the farmers there who would be displaced by this factory. They decided that so many people would be displaced and they would be paid Kshs40 million. The cheque was hurried to the DC and that was it. Nobody was paid compensation, no factory was built, no certificate was given to show that the Government owns shares in that company and the money was taken. The Committee heard evidence from the Accounting Officer who confirmed that Kshs20 million was paid to the DC and that there was nobody who was displaced. When we asked the Accounting Officer whether there were some plots allocated for that factory, he told us he did not know. He further confirmed that there were no structures called Busia Sugar Factory. Then what happened to the money? It sounds like ghost stories, but it is the reality. When I have an opportunity of meeting the President when he comes to Kiambu, I will tell him that he is served by gangsters. I know he is a Christian and God-fearing!

**An hon. Member:** He might never come!

*(Laughter)*

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, because he eats together with these characters, they many never enable him to go to Heaven!

The PAC recommended that the Permanent Secretary must, at least, avail share certificates to the Controller and Auditor-General by 31st October 2000, in order to prove that the Government has something it can rely on.

I am following this Report and this is the introductory part. I have not gone to any Ministry. Introduction is pure horror. On public debt, the Committee noted with deepest amazement---Those are not my words. I am happy the hon. Minister for Public Health is very well schooled and these kind of words conjure up some kind of behaviour. When a whole Committee is amazed, it must be very serious. The Committee noted with deepest amazement the massive debt which stood at Kshs331 billion. I can understand the word "massive". As at 30th June 1997, the interest paid on the amount amounted to Kshs12 billion or about 12.8 per cent of total revenue expenditure. Anybody who is familiar with management of a company could be frightened about those figures. I am talking of Kshs331 billion of public debt as at 30th June, 1997. The interest paid amounted to Kshs12 billion every year, or about 12.8 per cent of the total Recurrent Expenditure or public debt payments of about Kshs110 billion. That represented about 60 per cent of the total Government expenditure in 1996/1997. I want to emphasize on that issue. On the public debt of Kshs331 billion, there was a repayment of Kshs110 billion, which represented 60 per cent of the entire Government expenditure. I do not know how any government under the sun--- I understand that there are banana republics. The word "banana" comes from the banana plant which we grow. When a banana tree starts bearing fruits, it can fall any time. So, if you are a banana republic, you do not know whether your government would be there tomorrow or not. So, today, there is a government and tomorrow, you do not have a government. These kind of governments are found in Latin America where every week, they are overthrown by rag-tag armies; small skeletons of army personnel who walk to the state house, shoot the president and establish a government. After two weeks, they shoot another president and another government comes in. That is a banana republic!

That is the only comparison that I can give to a Government which accumulates Kshs331 billion in public debt and pays a Kshs110 billion as repayment or 60 per cent of the total Government revenues. The Committee's concern was not only about that, but there was mention of almost Kshs60 billion in the statements of expenditures in

respect of the public debt, or to which account that amount of money had been paid to. The Committee was equally overwhelmed by the massive Kshs7.3 billion over-expenditure in excess of the Budget. I have not served in the Government, but those kind of figures frighten me. If I were the hon. Michuki and hon. Too - because they are serving major institutions - I may understand what I am talking about. You cannot imagine such enormous amounts of losses. Imagine how a government can operate in that way, and out of that, the Controller and Auditor-General could not get any kind of explanation as to how Kshs50 billion was used; to which account and where and who took it. They may appear exaggerated, but that is the reality and they are there and the Treasury tried to explain: "Well, another account was formed on top of another and it continued like that." It is only one account which is recognisable; the Consolidated Fund. Any other account is monkey business.

Regarding payments of salaries and allowances under the Constitutional Offices Remuneration Act, I am happy that hon. Michuki is here because he brought to the attention of this House that since 1993, Judges of the High Court, professional legal experts and the Attorney-General of the Republic of Kenya had been drawing salaries and allowances unconstitutionally. When a Judge of the High Court of Kenya and the Attorney-General of the Republic of Kenya are paid salaries and allowances unconstitutionally, it is very bad. The Attorney-General is the man in charge of legal affairs in the Government, and the custodian of law and order. It took hon. Michuki, not a Government officer, to tell the House that since 1993, when the Government authorised those kinds of expenditures--- In 1995, it had not been regularised by a single amendment to the Constitutional Offices Remuneration Act. By 30th June, 1997, when our mandate ceased to exist, Judges of the High Court, including the Chief Justice, and the Attorney-General of the Republic of Kenya who sits down here and brings these kinds of amendments, and other legal officers of the Republic of Kenya, had been paid a total of Kshs160 million unconstitutionally; without parliamentary consent as required by the Constitution of the Republic of Kenya, which we have sworn allegiance to. If the Judges can---

**Mr. Michuki:** On a point of information, Mr. Temporary Deputy Speaker, Sir. Hon. Gatabaki, I would like to inform you that when I studied that case of the unconstitutionality of the payments, it is on record of this House that the monies were either paid immediately before an election or immediately after an election.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, so the question is: Was it a coincidence that we, in the PAC, did not have that mandate of questioning about the timing and payments which coincided with certain electoral activities of this country, and for which the Government knows very well, the verdict of the people of Kenya? Little issues like validity and amendment to the Constitution in order to regularise those kinds of payments were ignored. The money was paid out without parliamentary authority as required by the Constitution. So, it took almost ten years - until this year - when we brought the amendments to the Constitution. It is this year when we took the amendment to Parliament at the behest of an hon. Member of the Opposition; an hon. Member of the Opposition brings to the attention of this Government a certain unconstitutional development which was taking place and which is an embarrassment to their offices and officers who were getting those salaries and allowances.

*(Mr. Gatabaki turned to hon. Members  
on the Opposition side)*

I must salute the Opposition for the integrity and honour shown, in defending the Constitution. I must do that because without that---

**The Temporary Deputy Speaker** (Mr. Musila): Order, Mr. Gatabaki! You are supposed to address the Chair; you are now addressing hon. Members on the Opposition side.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I must singularly thank hon. Members from the Opposition, particularly, hon. Michuki for bringing up that issue. The Attorney-General rushed to his drafters and brought a skeleton amendment. This House, because they were ashamed by those tiny technicalities--- But the Attorney-General rushes in every time and complains: "My hands are tied."

**Mr. Kamolleh:** On a point of order, Mr. Temporary Deputy Speaker, Sir, I would like to inform the hon. Member that, in fact, in any democracy, the Opposition is set to make sure that their job is, one, to remind the Government of some of the matters that may not be there. Two, also to keep the Government on its toes; to make sure that whatever is being done is being done correctly. I would like to inform the hon. Member that, in fact, the Opposition was there right from the time when hon. Michuki said that those monies were paid after or before the elections. They should have come straightaway at that particular moment and said: "Look, this money is being unconstitutionally paid and, therefore, it is high time that we did something." They waited until four or five years later. That is when they corrected the matter.

Hon. Gatabaki, you should know for sure that in any way, the Opposition is there to keep the Government on its toes. Therefore, you are right, but it should have been done earlier on.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, if I knew that he was standing on a point of

disinformation, I would not have allowed him. I will take the point of information from hon. Muite because of his legal experience.

**The Temporary Deputy Speaker** (Mr. Musila): Order! If you are being too casual about that--- You just do not call upon someone to give you information. He has not even offered any information to you, which the Chair could rule whether to allow or not. Would you, please, continue?

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I want to request that a Member of Parliament in this House of the calibre of the hon. Muite could help the House, and I thought I heard him ask for---

**The Temporary Deputy Speaker** (Mr. Musila): Order, Mr. Gatabaki! Mr. Muite will get his chance when he wants to speak, and you know that. So, would you, please, utilise your time?

**Mr. Gatabaki:** Thank you, Mr. Temporary Deputy Speaker, Sir. Coming to hon. Kamolleh, that it took from 1993 and 1995 to 2001 for the Attorney-General to regularise this kind of amendment, this House must stand firm and demand the censure of the Attorney-General for this kind of embarrassment to the Government of President Moi.

We are still dealing with the introductory part of the Kenya Pipeline Company. What I am raising are the highlights of misdeeds. The Government purchased 11,651,204 additional shares totalling over Kshs800 million, not only without parliamentary approval but also unconstitutionally - I do not know what to do to avoid "unconstitutionally" and also in questionable circumstances. Considering that the Kenya Pipeline Company was supposed to be among the few of the profitable parastatals, the explanation given by the Permanent Secretary that it was unable to service its external loans and, therefore, required bailing out from the Government was totally unconvincing to the PAC.

Let me re-emphasise that. This is the period when the Government has agreed and told the World Bank and everybody else that it is liberalising and divesting from the parastatals because of the experiences of so many years. This is the Government policy on privatisation and divestiture. So, in the middle of it, when everybody thinks and believes the Government is divesting, Kshs800 million is withdrawn from the Consolidated Fund unconstitutionally, without the authority of Parliament, to buy shares in a parastatal. This parastatal is not only profitable but among the ones which should do not require funding or bailing. The explanation given is "required to bail a profitable parastatal." I do not know the understanding of the Government when such glaring eyes are given and they are here---

**The Minister for Public Health** (Prof. Ongeri): On a point of information, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Musila): Do you want information?

**Mr. Gatabaki:** When I come to the docket of the Ministry of Public Health is when I will require the information, but this is an area where the Minister is deficiently---

**The Temporary Deputy Speaker** (Mr. Musila): Professor, your information is not accepted.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, it is very deficient, but I can accept it.

**The Minister for Public Health** (Prof. Ongeri): Mr. Temporary Deputy Speaker, Sir, I would like to inform hon. Gatabaki that he fully well knows that when this amount of money was being requested for, it was at the request of the World Bank in order to purchase the shares for the Kenya Pipeline Company. He knows, and he is privy to this information. It was done purely on an emergency basis, and having heard that information, it would not be right for him to use it to vilify the Government when he knows the circumstances under which this money was taken, and at the request of the World Bank. This is one of those conditionalities that he very ably helped to put in place and, therefore, in order to expedite that purchase, they had to withdraw Kshs800 million.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, never has this House been so misled---

**Mr. Muite:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to inform the Member for Githunguri that the point which he is getting across to hon. Members is contained in Section 99 of the Constitution of Kenya, which is Chapter 7, the heading of which is "Finance", It states:-

"Subject to subsection (2), all revenues or other monies raised or received for the purpose of the Government of Kenya shall be paid into and form a Consolidated Fund from which no monies shall be withdrawn except as may be authorised by this Constitution or by an Act of Parliament (including an Appropriation Act) or by a Vote on Account passed by the National Assembly under Section 101."

Mr. Temporary Deputy Speaker, Sir, I wanted to inform the hon. Member that the information from the Minister for Public Health really amounts to an admission of a brazen violation of the Constitution. The Attorney-General is the chief legal adviser and there can be no issue of any emergencies when the Constitution is so very specific that you cannot withdraw even one shilling from the Consolidated Fund without the authority of this House. That is the violation that we are talking about.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, if I can emphasise the phrase, "However urgent, you cannot violate the Constitution." However, coming to the Kenya Pipeline Company Limited, the hon. Minister who I

tried to refuse information from is very misinformed about what I am talking about. If I come to the specific section about the Kenya Pipeline Company---

### QUORUM

**Dr. Kulundu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is there a quorum in the House?  
**The Temporary Deputy Speaker** (Mr. Musila): No, we do not have a quorum. Ring the Division Bell.

*(The Division Bell was rung)*

**The Temporary Deputy Speaker** (Mr. Musila): Order, hon. Members! We have a quorum now. You may proceed, Mr. Gatabaki.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I want to re-emphasise the point raised by the hon. Minister for Public Health, that the amount withdrawn by Kenya Pipeline Company from the Consolidated Fund was because it was required by the World Bank. There can never be such misleading information given to this House. The Committee appointed and given authority by this House expressed horror that the Government could withdraw from the Consolidated Fund an amount of Kshs800 million without Parliamentary approval to buy so many millions of shares for the Kenya Pipeline Company for no known reason. This is a profitable parastatal that did not require any bailing out and I wish the Minister could listen to this.

The reason given by the Accounting Officer in the Treasury was that the Government wanted to bail out a parastatal which, according to the evidence adduced by the PAC, was not convincing at all.

Mr. Temporary Deputy Speaker, Sir, in the end, when I come to this Report, I will show that recommendations were essentially made by the Public Accounts Committee that the Accounting Officers misused public funds without the authority of Parliament.

The next one is on fraudulent payment of honoraria. The word used here again and again by the PAC is "fraudulent". Anybody who has gone to school understands the meaning of the word "fraud". **Mr. Mwenje:** That is stealing!

**Mr Gatabaki:** The hon. Member for Embakasi emphasizes it and uses the word "stealing", which is unparliamentary. It was the wisdom of the PAC to use the word "fraudulent." How were those fraudulent payments arrived at? The Committee was baffled by the blatant manner in which honoraria payments were abused by the Directorate of Personnel Management (DPM) in the Office of the President. The DPM paid Kshs200 million to some members of staff including two Permanent Secretaries; directors and senior members of staff between Job Groups "G" and "T". According to terms and conditions of employment in the Government, anybody between Job Group "G" and "T" cannot claim allowances. It is the other group that falls under Job Group "F" and below which can claim honoraria.

Mr. Temporary Deputy Speaker, Sir, two Permanent Secretaries and senior officers of Government in the Treasury, including directors, claimed and were paid with the authority of the DPM, over Kshs200 million for performing routine duties for which they are employed and paid for. That is the reason why the Committee used the words "baffling", "amazing" and "overwhelming!" Some of the officers claimed and were paid for more than 365 days. A Permanent Secretary claimed and was paid Kshs700,000 for working for 382 days a year. Have these people changed the calendar of the year from 365 days which we are aware of? Many more officers of the Government were paid for 350 days or 340 days. Indeed, one Deputy Secretary was paid Kshs600,000 for having worked for 509 days. The information is in this Report.

A Deputy Director and a Deputy Secretary were paid over Kshs600,000 in the form of honoraria, apparently for working for 509 days each. So, you are baffled at the extent to which these fraudulent payments have gone because it appears as if they were stealing from a bank. If you go to a bank and steal right away and you are not shot, you will be lucky. But here is somebody who sits down and fraudulently pretends to work beyond the normal 365 days in a year and then he claims that he worked for "500 days" and that he deserves honoraria payment!

Mr. Temporary Deputy Speaker, Sir, we did call the Head of Public Service and Secretary to the Cabinet in connection with the honoraria payments. The then leader of the "Dream Team" Dr. Richard Leakey, did come and we spent the whole day with him on giving us some kind of explanation. Even Dr. Leakey, the advisor to President Moi then, or the man who popped in to give this country a face-lift, was so shocked by the extent to which Permanent Secretaries could defraud the Government through such fraudulent claims.

Maybe, the person who appointed him did so for a particular purpose; to destroy him. By then, the Government was made up of 29 Ministries, plus the Office of the Attorney-General. The entire Government was made up of 30 Ministries, but the "Dream Team" covered only six Ministries. How on earth was Dr. Leakey expected to change that kind of Government? We told him that he might not succeed because of the extent to which fraud, decay

and decadent dealings in his Government had reached. Today, Dr. Leakey has become part of history.

Mr. Temporary Deputy Speaker, Sir, that is the introductory part of my speech. If you go to one of these finest hotels, you will start eating your dish with something small before being served with the main dish. Then you are given that small item to warm yourself. It is called the appetizer, which is part of the several misdeeds contained in this Report. My extensive research and learning would say that is a fact of squalor, fraud, misdeed, corruption, mismanagement, ineptitude *et cetera*.

I can understand why history decides that certain regimes should be condemned for crimes meted against humanity. In the introduction of the Report of the PAC for the year 1996/97, which I have been talking about for the last one hour--- I require one year to deal with this matter before the next General Election. But I did go to the library and got the equivalent of that Report to show my colleagues in this House how saddened we have become over the misuse of public funds.

**Mr. Shidiye:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Gatabaki to go back to his introductory remarks after having spoken for the last one-and-half hours? I can see that he is not telling us anything of substance. Can he move ahead because we do not want to waste our valuable time?

**The Temporary Deputy Speaker** (Mr. Musila): Order! Order, Mr. Shidiye! Mr. Shidiye, you are out of order! You cannot say that Mr. Gatabaki has been telling us nothing! He has got the opportunity and time.

Proceed, Mr. Gatabaki!

**Mr. Gatabaki:** Thank you, Mr. Temporary Deputy Speaker, Sir. I can understand the kind of difficulties this Government has been encountering from its whips.

Mr. Temporary Deputy Speaker, Sir, let me emphasize this for the benefit of the hon. Member. The Report of the Public Accounts Committee for the year 1964/65 contained very few pages. On top of the Report, it is stated: "We accept the Controller and Auditor-General's Report---" The words "we accept" are repeated again and again.

Many years later, after another regime took over, Kenyans are burdened with Reports of 700 pages, covering the entire Government of the day. This Report contains 707 pages. If you want to challenge me, every page contains a statement of misdeeds. I did go over it and found that, at least, every page of these 707 pages contains misdeeds. If one is proud of that, I would not like him to be an uncle of my children.

Coming to the Ministry of Finance and Planning, I would like to say that this Ministry is unique. In many parts of the world, the Minister for Finance has got a particular name. In the United States of America (USA), he is the Secretary to the Treasury. That is the importance of the job. In the UK, he is the Chancellor of the Exchequer. They have got certain designations because of the importance of the job of being the custodian of public funds. The founding Father of our country also recognised the importance of the Ministry of Finance and Planning. The Minister for Finance is guarded by some statutes, which give that Ministry power over the other Ministries; he is the custodian of public funds. To go further, this Ministry is given the authority of being the implementor of the recommendations made by the PAC, which is appointed by this House and which reports to this House, and for which I have the honour, on behalf of the Leader of the Official Opposition, to present the Report. That is important to me today. I am here in my capacity representing hon. Kibaki.

**The Temporary Deputy Speaker** (Mr. Musila): We have heard that many times.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, what am I talking about? I am talking about the Ministry which is given the authority of being the custodian of public funds, and the first statement is that the Ministry of Finance and Planning violates the Constitution and incurs unconstitutional expenditures. If that guardian of public funds does misdeeds, who is there to protect us? If the Ministry of Finance and Planning, which is given these enormous powers over and above the other Ministries--- The Chair will bear with me, the appointment of the Minister for Finance is one of the biggest jobs we have around. You can count the Ministers for Finance, but you cannot count the Ministers for Health since the late Mzee Jomo Kenyatta's time. You can also not count the Ministers for Energy and all the other Ministers I can see here, including my brother, the Minister for Planning, which was part of the Ministry of Finance. The Chair is unable to count even the Attorney-Generals we have had since the late Mzee Jomo Kenyatta's regime, but you can count the Presidents we have had, the late President Mzee Jomo Kenyatta and the other one. The Chair can also count---

(Applause)

**An hon. Member:** Who is the other President?

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, you can also count the Ministers for Finance. That is the importance of that portfolio. It is unique in the designation of their duties as being custodians of public funds. I am happy to see hon. Mudavadi, who is seated on the Front Bench on the other side of the House, who did an exemplary job at difficult times of our years, when the stigma and the octopus of Goldenburg was there. He did manage to cleanse



the Government from that criminal act.

I have said that the Ministers for Finance are very few, and the Chair can count them in the last ten years. So, what I am saying is that this is a special Ministry with a special designation and duties. This Ministry is the overseer of public funds; this is the Ministry which is charged with the implementation of the recommendations made by the PAC. This Ministry is also involved in bringing those bills of Appropriation and funding the Government of the Republic of Kenya. So, if this Ministry violates the Constitution, you can imagine the magnitude of problems that other Ministries are faced with. So, the first start is the unconstitutional expenditure in the Ministry of Finance and Planning.

Mr. Temporary Deputy Speaker, Sir, I will leave numerous cases of fraud and come to a few of them. I would like to come to the presidential jet. It has occupied pages and pages of the PAC Reports for quite some time, and it required an explanation from the Ministry of Finance and Planning many times. Presidential jets are interesting in the world because they have got a particular purpose and nations fund for these kind of utilities. The Head of State has got certain jobs and functions which require to be handled in different ways. Any Head of State, anywhere in the world, requires a means of travel. I would like to say that global travels require some means. Whatever reason there was in acquiring the presidential jet at that particular time was prudent; that the Kenya Head of State must travel like other Heads of State. Not only that; using the commercial airlines had its own problems, such as inconvenience and cost. Not only that, because you are talking about wide-bodied aircraft, again, the sycophants in the Government had the capacity of hiking in the presidential aircraft and giving our country a terrible image about this KANU *damu* characters going to particular places and behaving as if they were in KANU rallies.

*(Laughter)*

So, whatever decision was made to acquire the presidential jet and misuse this revenue--- I would like to quote my friend, hon. Raila, about these characters who are messing up the constitutional arrangement. It was a sound decision that the Head of State moves expeditiously, in comfort and dignity. For the Republic of Kenya, that aircraft symbolises the power and the dignity for the President of Kenya. There were certain characters who wanted to make profit out of that arrangement. These people went and bought an aircraft for our beloved President without spare parts, without making arrangements for training, and from a manufacturer who was going under.

*(Applause)*

I would like to say that certain characters from the Office of the President, the Department of Defence and the Treasury authorised the payment of US\$46,800,000 which is equivalent to Kshs2.5 billion.

**An hon. Member:** Without the authority of Parliament!

**Mr. Gatabaki:** Mr. Deputy Speaker, Sir, I am not even coming to the authority of Parliament. They used this money to acquire an aircraft which our President needed and deserved. They looked for an aircraft for which there was going to be under-cutting; money would change hands, and they would commercially benefit at the expense of the security and integrity of our Head of State. If there is a crime bigger than that; forget about sedition for which we have been jailed many times---

*(Laughter)*

If there is a crime bigger than that; forget about the incitement for which hon. Mwenje has been harassed years and years--- A gang of people in the Office of the President and the Department of Defence acquires an aircraft from a manufacturer in Europe for our President, without spare parts and arranging for training, and yet the aircraft was to be used to carry the President. Here, it states that not only does this group misuse public funds to the tune of Kshs2.5 billion, but it also does so unconstitutionally because of the fear of bringing that kind of request to this House. This is because this House could have granted the authority to buy our President a jet, subject to certain conditions. That jet must be of internationally highest quality so that our President's security and civic safety can be assured.

Of considerable concern to the Committee was the fact that the terms and conditions of the contractual agreement were not fully complied with by the supplier, particularly those relating to spare parts worth Kshs24 million, and training arrangements. The implications regarding the safety of the jet of His Excellency the President for local and global travelling are mind boggling. The Committee reiterated its earlier recommendations that the Attorney-General should investigate the matter, identify and prosecute the PS responsible for violating Sections 99 and 100 of the Constitution of Kenya. He should also identify the directors of the company who acquired this aircraft and sue them for breach of contract. Some of these characters could be from the ruling party. One of our Committee Members from the ruling party told us this information again and again. We summoned the Attorney-General and I asked him: "Who are

those characters who made the Kenya Government buy this kind of aircraft"? We were told that one of the gentlemen was paid Kshs10 million as commitment fee, but he later withdrew from the deal and disappeared. A certain European was paid Kshs10 million to identify an aircraft and give recommendations. He disappeared the moment he put that money in his pocket. That man disappeared with Kshs10 million without even showing the commercial merchants where to buy the aircraft.

**Mr. Kamolleh:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mention people who, in his words, perhaps, conned this Government without mentioning their names? Why does he not mention their names?

**The Temporary Deputy Speaker (Mr. Musila):** Order! Mr. Kamolleh, you are out of order. If you wish you can peruse the report. I am sure it contains the finer details. You are a Member of the Committee and are aware of the details.

**Mr. Mwenje:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I tend to concur with hon. Kamolleh because the person is not named in this Report and the Mover has mentioned that this person was paid Kshs10 million. Can this person who was paid Kshs10 million be mentioned? Who is this person who was paid Kshs10 million as a broker of this particular airplane which is not even secure enough for our President?

**The Temporary Deputy Speaker (Mr. Musila):** Order, Mr. Mwenje! I think I made this issue very clear. I am sure if you have gone through those Reports you will find all those names. In any case, I am not preventing Mr. Gatabaki from mentioning the name, if he wishes to do so, as long as it is in that Report. If you went through that Report, you would find all the names you want to see.

Proceed, Mr. Gatabaki.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, the point hon. Kamolleh and hon. Mwenje are raising is very valid. I will mention the name of the company which is here. It is a company called ICF International, but the director's name is not here. That director was staying at the Inter-Continental Hotel, because we did call the Attorney-General to demand from him the reason why this company has not been identified for the purposes of demanding the refund of the money. This is a recommendation that has been made by the PAC, year in, year out. The Attorney-General kept telling the Controller and Auditor-General that the names of the person and the company were not available and he could not get the designation anywhere in Europe or Kenya. One Member of the Committee kept on telling us the director of that company was residing at the Inter-Continental Hotel. We kept on telling the Attorney-General that the director of ICF International was residing at the Inter-Continental Hotel.

However, the other recommendation by the PAC regarding this awful stealing of Kshs10 million, supposedly to identify the aircraft and then disappear, the directors and the company---

**Mr. Achola:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Whereas I do not wish to interrupt hon. Gatabaki, it was not Kshs10 million; it was Kshs12 million. Let us just get our facts right.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I do not think this can amount to Kshs12 million. The Kshs12 million is for the same company which got a similar amount of money, supposedly to identify a financier for the Eldoret International Airport. With all due regard to the hon. Member, the fee was US\$115,396, which amounts to almost Kshs9 million. So, I am quite right in my presentation. The PAC recommendation is that this company, together with its directors, be blacklisted from transacting any business with the Government of Kenya. The other recommendation was that the PS in charge of Internal Security in the Office of the President, responsible for the presidential jet transaction, be banned from holding public office. The Committee took this issue so seriously that it went out of its way to recommend that the PS in the Office of the President, in charge of Internal Security at that particular time be banned from holding public office.

Members of the PAC and by extension, this House, made these recommendations with weighty implications because of their sincere honesty and concern for our nation. They are concerned because the life of our President is at stake. When I was seconding hon. Obwocha about two years ago, I said that certain characters bought our President a flying coffin. The PAC has made these recommendations, and this House has adopted these Reports, again and again, unanimously, but nothing happened to that PS. The President has continued to recycle these characters. This shows that there is something basically and glaringly wrong with the Executive arm of the Government of this country. We are telling the President that, that aircraft he is flying in is defective. There are no spare parts available for it and the manufacturer has disappeared. There are no training arrangements for the personnel. When you are 30,000 feet above sea level, these are sobering facts. Clearly, we need to hammer this point home again. I wish the sycophants on the other side who share the high table with the President, would tell him about the implications of purchasing this aircraft. Since they also travel in this jet with the President, they too must prepare their coffins.

**Mr. Kombo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. If the air crash is likely to take place in the sea, we do not need coffins. Do we?

**The Temporary Deputy Speaker (Mr. Musila):** What is your point of order, hon. Kombo?

**Mr. Kombo:** Mr. Temporary Deputy Speaker, Sir, is the hon. Member in order to talk about coffins if the air crash is likely to be in the sea?

**The Temporary Deputy Speaker (Mr. Musila):** Hon. Kombo, you are not serious. We should be serious about this debate.

Proceed, Mr. Gatabaki!

**Mr. Gatabaki:** Thank you, Mr. Temporary Deputy Speaker, Sir. I am giving a lot of emphasis on this issue. These are not jokes. These are facts which can be read. The manufacturer of the presidential jet is not known; it is not known who entered into a supply of spare parts contract worth Kshs24 million. There are no contractual arrangements regarding training. So, what else can you say to convince anybody that whatever he is using is safe?

*[The Temporary Deputy Speaker (Mr. Musila)  
left the Chair]*

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

What other language can you use? How else can we say this? How else can we hammer home the point that the recommendation of the Public Accounts Committee should be implemented? This is the PAC's finding, based on the Report of the Controller and Auditor-General, and strengthened by the evidence that the PAC took from Accounting Officers in Government. How else can you explain this? The Bible says: "Those with ears should hear, and those with eyes should see". We are talking to a Government with "ears" and "eyes", but has put cotton wool into its ears. I do not know what it has done to its "eyes".

**The Temporary Deputy Speaker (Mr. Poghio):** Order! Hon. Gatabaki, you should just debate without dramatising things. You should address the Chair now.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, whoever talks seriously with the President should mention to him the fact that the presidential jet is insecure. I will repeat this because the hon. Assistant Minister has asked me why I should repeat it. These sycophants who go near the President only talk about what is good for their stomachs and not what is good for His Excellency the President.

*(Applause)*

Again, we come to unsupported, unconstitutional and illegal expenditure by the Central Bank of Kenya (CBK). I will recommend that every hon. Member should go through not only the Report of the PAC, but also the Reports of the Controller and Auditor-General. The words in these reports are very clear. These are not my words, but the words of PAC and the Controller and Auditor-General. The Controller and Auditor-General talks about unsupported, unconstitutional and illegal expenditure by the CBK. Those who know the importance of a central bank will understand what it means for a central bank of a country to be accused of acting illegally and irregularly. If any management of a central bank is accused of even a small extent of illegal action, it will require an overhaul. Such a bank is the custodian of public funds. It is the manager of the financial affairs of a country. The whole trust regarding the monetary system of a Government is in its central bank. Governors of central banks should be people of the highest credibility and integrity. They should be people who have been tested by the commercial world and major organisations. They should be people of excellence in management practices and in academics. How do you get a central bank governor who has no track record in performance? I am challenging hon. Members to tell this House anywhere in the world where governors of central banks are appointed in public rallies and on a president's way to state house.

**Mr. Kombo:** On a point of information, Mr. Temporary Deputy Speaker, Sir. As we speak today, we do not know whether we have one or two Governors of the CBK. This is because Mr. Cheserem's tenure has not expired and yet the President has appointed another Governor. Hon. Gatabaki is very right that things in this country are happening in a very haphazard manner.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, in view of the gravity of the issue raised by hon. Kombo, and the importance of this office, we may require a Ministerial Statement as to who is the Governor of the CBK. The appointment to the office of the governor of a central bank is one of the most important appointments by any president anywhere on earth. This office is so important that so much time is taken to decide who should be appointed to hold it.

**The Assistant Minister for Finance and Planning (Mr. Marrimoi):** On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member is misleading this House by saying that Kenyans do not know who is the

Governor of the CBK. Is he in order to mislead the House?

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, the hon. Assistant Minister for Finance and Planning works in the Treasury. I do not know what criteria his Excellency the President uses to get this kind of characters to the Treasury.

(Laughter)

However, we really require information from the hon. Member.

The first thing that was mentioned by the PAC and the Controller and Auditor-General was that the CBK had acted unconstitutionally. The PAC observed that for years, the Controller and Auditor-General has been questioning, without satisfactory answers, as to why, to whose account, and with whose authority the CBK paid out a massive Kshs5.8 billion through Delphis Bank, Exchange Bank, Post Bank Credit, Trans-National Bank and the National Bank of Kenya, with the little-known Exchange and Delphis Banks being paid the bulk of the money amounting to Kshs4.4 billion. The Exchange Bank, which is owned by Mr. Kamlesh Pattni, received over Ksh2.2 billion, while Delphis Bank, reportedly also owned by a politically-correct merchant, received another Kshs2.2 billion.

Mr. Temporary Deputy Speaker, Sir, let me emphasise what I have talked about. Over the last seven years, the Controller and Auditor-General has been questioning this payment in every Report that he has made. The PAC has also questioned this payment in all its Reports of about the same period, which have been tabled in this House and unanimously adopted by the House. Which authority did the Central Bank of Kenya (CBK), the highest monetary authority in the land, use? In whose account did the CBK pay the Kshs5.8 billion? The Controller and Auditor-General may be taken lightly by certain people on that side of the House. The Public Accounts Committee (PAC) may not be taken very seriously for questioning some of those things, but certain people at the CBK committed public funds from the Consolidated Fund without the authority of this House! They withdrew Kshs5.8 billion and put it into questionable commercial banks. Those commercial banks, which were established recently, became the recipients of billions of shillings of public funds. I will mention them again. There is the Delphis Bank and the Exchange Bank. We know the Kenya Commercial Bank (KCB), Barclays Bank and the National Bank of Kenya (NBK), but Delphis and Exchange banks were new entities, and yet they were paid Kshs5.8 billion of public money!

Mr. Temporary Deputy Speaker, Sir, to date, no acceptable reason has been provided as to why the Government assumed the responsibility for dormant accounts in the CBK, amounting to Kshs1.5 billion, paid to the NBK. No explanation has been given as to what circumstances made the Government to be involved in the payments of what were essentially private debts between the CBK and other beneficiaries. That is the reality, according to the information that was given by the Accounting Officer regarding the Kshs1.5 billion that was paid to the NBK without the authority of Parliament. He gave the recipients as the following: The Government Press, Kshs420 million; Nzoia Sugar Company, Kshs300 million; the East Africa Sugar Industry, Kshs150 million; Spareworld owned by Mr. Somaia, Kshs280 million; Kenya Uniforms, Kshs59 million and Cyppher Enterprises, Kshs280 million! The only explanation, as in the previous Reports going back to 1993, is here and it reads: "The beneficiaries of the well-known Goldenberg billions could not be revealed because the cases were pending in the High Court." There was what he called the *sub judice* rule that the Speaker of the House established. He said that could not be discussed because certain persons went to court to make it impossible for discussion of the expenditure in Parliament.

Mr. Temporary Deputy Speaker, Sir, given that scenario, we went to the extent of sitting down with the Speaker to discuss the issue of *sub judice*, where a case has vast enormous public interest. We asked whether that over-weighed the *sub judice* rule that Mr. Speaker created.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, hon. Gatabaki! Are you saying that the *sub judice* rule originated here? I thought it is in the Standing Orders!

**Mr. Gatabaki:** The Speaker did that, Mr. Temporary Deputy Speaker, Sir! The Speaker ruled on that issue of *sub judice*. There is no other institution, but it is only the Speaker, Mr. ole Kaparo, in his wisdom, who established the *sub judice* rule, that made it impossible to discuss the Goldenberg issue!

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Gatabaki! You know the rules! The Standing Orders were not drawn by the Speaker! You will find that *sub judice* rules are actually obtained here! You need to be very careful when you are talking--

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I will lay some documents on the Table. I will lay on the Table, another Report of the PAC which contains the summary by hon. Wamalwa on the *sub judice* rule.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Gatabaki! It is going to be in the interest of Members to know Standing Order No.74. It reads:

"No Member shall refer to any particular matter which is *sub judice* or to any matter which is, in its nature, secret."

This is not the creation of one person. It is part of your Standing Orders.

**Mr. Sambu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. With all due regard to your ruling on that matter, will a *sub judice* rule apply to our previous Reports that were adopted by the House? The Report that he is referring to is a brilliant one and was adopted by the House. It was not made by the courts; it was made and adopted by this House!

**The Temporary Deputy Speaker (Mr. Poghiso):** Mr. Sambu, in your context, you can argue about it in any way. But, in my opinion, what Mr. Gatabaki is bringing out is personification. He is personalising the matter!

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I am very thoroughly acquainted with the rule of *sub judice*. I have talked about that in one or two seminars. The question did arise in 1993/94 PAC, and hon. Wamalwa raised the issue in about three or four pages to the Speaker of the National Assembly, about the *sub judice* rule that he had established at that particular time, regarding the Goldenberg issue. He brought into question the deliberations in other Commonwealth parliaments regarding that rule. So, what I am talking about is that the rule of *sub judice* was established by the Speaker of the National Assembly, regarding the conduct of the Goldenberg matter in the 1993/94 period. So, I am talking with authority and with the knowledge about the *sub judice* rule, and its application in this House.

**The Temporary Deputy Speaker (Mr. Poghiso):** Hon. Gatabaki, what do you want? Do you want us to change the rules or the Standing Orders?

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I am just bringing to you---

**The Temporary Deputy Speaker (Mr. Poghiso):** Order! I think you probably have to proceed with your Report without having to draw in the Chair in that particular incident. The ruling from the Chair was based on Standing Order No.74, in its application. I am just wondering where you are heading, with that part of your Report. What is your recommendation? What do you want us to do?

**Mr. Gatabaki:** One of the recommendations that we made--- If you allow me to go ahead, the Committee indicated its interest to listen to the then Chief Justice of the Republic of Kenya. We went to the Speaker of the National Assembly and requested him to invite the then Chief Justice, regarding the *sub judice* rule.

**The Temporary Deputy Speaker (Mr. Poghiso):** Order! I do not know why you are so much interested in drawing in the person or the Chair to this matter. You know that if you want to do that, you can go ahead, but you should bring a substantive Motion. If you want to discuss the character of the Speaker of the National Assembly, you do that through a Motion. Otherwise, I think what you are doing--- You had better have great regard and be careful when you draw in the Chair to some of your intentions. I do not think the Committee would wish you to try and draw the Speaker's name to whatever you want to present. If you have anything to challenge the Speaker about, or to discuss the character of the Speaker of the National Assembly, you know exactly where you are heading and what to do.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, these are not my personal recommendations but rather, those of the Public Accounts Committee (PAC). One of this Committee's recommendations contained in this Report and in previous Reports is that the rule of *sub judice* should be repealed because it hinders and violates the freedom of expression and that of free access to information. So, that is a very important point.

Mr. Temporary Deputy Speaker, Sir, if you allow me, I will now dwell on the central issue regarding the ownership of the Kenyatta International Conference Centre (KICC). That building was built using public funds. We summoned the Controller and Auditor-General and the Permanent Secretary, Ministry of Roads and Public Works, to give evidence regarding the construction of that building. The Controller and Auditor-General told us that KICC was built using public funds.

In two consecutive Reports, among other previous Reports, this Committee recommended that the ownership of KICC should revert to the public. However, somebody rushed to court and sued somebody about collection of rent for the premises, or about something else relating to the building, making it impossible, under the *sub judice* rule, for the PAC to discuss the ownership of KICC. Such is the weighty importance of the *sub judice* rule in discussing public finance. When certain misdeeds are done, somebody goes to court and establishes a case so that we cannot discuss the issue. That is what the Committee noted.

According to this Committee's previous Reports, dating back to 1993, there is an explanation that the beneficiaries of the well-known Goldenberg scandal billions of shillings could not be revealed because of the cases pending at the High Court, and that the *sub judice* rule established by the Committee---

**The Assistant Minister for Finance and Planning (Mr. Marrirmoi):** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the hon. Member is confusing us. He is mixing up issues. We do not know whether the notes he is referring to contain information from the PAC Report. Could he be compelled to guide us properly on the issues raised in the Report? He is confusing us.

**Hon. Members:** We are not being confused!

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I am not confusing the House. I am confusing only one Member of this House in the name of Mr. Marrirmoi. The hon. Member cannot be confused any more because he is already severely confused.

(Laughter)

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

**Mr. Obwocha:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I wish to inform the hon. Mover and hon. Marrirmoi---

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! You are on a point of order, Mr. Obwocha!

**Mr. Obwocha:** Mr. Temporary Deputy Speaker, Sir, I have risen on a point of information.

**The Temporary Deputy Speaker** (Mr. Poghisio): Who are you informing?

**Mr. Obwocha:** Mr. Temporary Deputy Speaker, Sir, I am informing hon. Gatabaki, unless I am not being heard. My voice is big enough.

**The Temporary Deputy Speaker** (Mr. Poghisio): You rose on a point of order!

**Mr. Obwocha:** Mr. Temporary Deputy Speaker, Sir, I rose on a point of information. Even hon. Gatabaki, the whole House and hon. Marrirmoi have accepted to be informed.

**The Temporary Deputy Speaker** (Mr. Poghisio): Very well; proceed.

**Mr. Obwocha:** Mr. Temporary Deputy Speaker, Sir, the rule of *sub judice* has been used against the interests of the people of this country.

**The Temporary Deputy Speaker** (Mr. Poghisio): But who are you informing, Mr. Obwocha?

**Mr. Obwocha:** Mr. Temporary Deputy Speaker, Sir, I am informing Mr. Gatabaki, Mr. Marrirmoi and the House that KICC was constructed using funds provided for in the Printed Estimates in the Financial Years 1997/72 and 1972/73. But somebody rushed to court to ensure that KANU continues to take the revenue from that building. That is how badly the *sub judice* rule has been used against the people of this country. Money that is supposed to go to the Exchequer now goes into people's pockets.

**The Temporary Deputy Speaker** (Mr. Poghisio): Hon. Members, I very surprised that you would let go an opportunity to stand on a point of order---

**Mr. Obwocha:** But I was on a point of information, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghisio): I am saying that hon. Members missed an opportunity to stand on a point of order. Mr. Gatabaki was way out of order for saying that his colleague is confused.

**An hon. Member:** But he is confused!

(Laughter)

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order! Mr. Gatabaki, Mr. Marrirmoi is a Member of Parliament. It was very offensive for him to be referred to as "confused". So, before we move any further, I would like you to withdraw and apologise to your colleague. Let us be gentlemen.

**An hon. Member:** But there is no complainant! So, continue, hon. Gatabaki!

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, it is difficult to concede the obvious. But I agree that the Assistant Minister for Finance and Planning cannot be confused.

**The Temporary Deputy Speaker** (Mr. Poghisio): Mr. Gatabaki, that is not the way to apologise.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I apologise to you.

**Mr. Achola:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Why should hon. Gatabaki apologise when hon. Marrirmoi is not complaining about being referred to as "confused"? He is confused; that is what caused the problem.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Mr. Achola, the Chair is here to keep order.

**Mr. Obwocha:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Marrirmoi himself said that he was confused, and that he could not tell whether Mr. Gatabaki was talking about the notes he was referring to or about the Report.

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

**Mr. Obwocha:** Mr. Temporary Deputy Speaker, Sir, but I wish to inform the Chair.

**The Temporary Deputy Speaker** (Mr. Poghisio): Please, do not argue. Continue, Mr. Gatabaki!

**Mr. Michuki:** On a point of information, Mr. Temporary Deputy Speaker, Sir. May I inform hon. Gatabaki?

**Mr. Gatabaki:** Yes, Mr. Temporary Deputy Speaker, Sir, can I be informed?

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Mr. Michuki, you have got to ask the Chair!

**An hon. Member:** But he is asking you!

**Mr. Michuki:** Mr. Temporary Deputy Speaker, Sir, hon. Gatabaki has allowed me to inform him.

**The Temporary Deputy Speaker** (Mr. Poghismo): Order! How can hon. Gatabaki allow you to inform him?

**Mr. Michuki:** Because he is on the Floor!

**The Temporary Deputy Speaker** (Mr. Poghismo): But Mr. Gatabaki got to the Floor through the Chair. So, if you want to inform him, do so through the Chair.

**Mr. Michuki:** I want to inform him, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghismo): You should rise on a point of information then. You do not just stand up and say: "I want to inform you".

**Michuki:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghismo): Order! I am still on my feet.

*[The Temporary Deputy Speaker (Mr. Poghismo)  
sat down in the Chair]*

Mr. Michuki, you can now rise on your point of information.

**Mr. Michuki:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**Mr. Obwocha:** But Mr. Gatabaki has already accepted to be informed.

*(Laughter)*

**Mr. Michuki:** Mr. Temporary Deputy Speaker, Sir, I would like to inform the Mover of the Motion that, in my capacity as the Permanent Secretary in charge of Treasury then, and under instructions from my Minister then, the late hon. James Gichuru, I provided from the Consolidated Fund into the Estimates of the Republic of Kenya, all the money that was required to construct KICC as a building owned by the Republic of Kenya. So, other than the Republic of Kenya, those who might be receiving revenue from that building are pretenders who have actually usurped the rights of the citizens of Kenya. So, hon. Gatabaki should note that fact. In case he needs any further information, I am prepared to give it.

**An hon. Member:** He will then table you!

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, the kind of evidence in this Report will be useful in future. Once upon time, there will be a President called Mark Too, who will not want revenge in this country. Our nation will not like to go through that kind of devastation in revengeful slaughter. Therefore, he will authorise the Attorney-General to go through the Reports of the PAC and prosecute all those people who misappropriated public funds. A party called KANU will pay every cent for the use of Kenyatta International Conference Centre.

As I said, the only explanation as contained in the previous Reports of 1994/1995 and 1995/96 was the *sub judice* rule. However, the Committee went further and invited a former Governor of the Central Bank of Kenya, Mr. Eric Kotut, and the then Governor, Mr. Cheserem. We also invited former Permanent Secretaries, Ministry of Finance, Mr. Mbindyo and Dr. Wilfred Koinange, together with the then Permanent Secretary, Mr. Martin Oduor-Otieno, regarding these payments. For a whole day, the Committee discussed the issue of this Kshs5.8 billion referred to as the "Goldenberg scam". The whole authority of the Kenya Government appeared before the Committee and explained the circumstances in which this amount of money was paid. Dr. Koinange very clearly explained, for posterity and for himself, the circumstances in which he was party to the payment of Kshs5.8 billion. Never before had I witnessed that kind of experience. It is the highest Government policy regarding unconstitutional expenditure that has crippled our nation. Dr. Koinange, who was party and privy to the payment wrote the following letter. This is because I challenged him that in years to come, unless he explained, together with Governor Kotut, the circumstances in which this amount of money was paid, he would be accountable, together with his family and their posterity, for the payment of this money to the people of Kenya. Dr. Koinange wrote this letter and we put it on record in this Report. This is part of what Dr. Koinange wrote to the PAC and which is contained in this Report. It says:-

"At no time did I know or believe that the payments that I authorised were illegal. The payments were discussed and agreed on in the Treasury with the Minister and the senior officers of Treasury, including the Financial Secretary and the Paymaster-General. The Head of the Public Service was fully briefed and aware of the matter. This was also known to the higher authorities. The decision to make payment was a Government decision, and I was instructed to implement the decision by the Government. There was nothing personal."

Mr. Temporary Deputy Speaker, Sir, the implications are grave, that the Goldenberg payment had the full authority of the powers that be, including the highest office in the land, namely, the President of the Republic of Kenya. I want to make that statement very clear, that none other than Dr. Koinange said the payment of Goldenberg

amounting to Kshs5.8 billion was authorised by the highest authority. How else can you respond to this? We, in the PAC, were overwhelmed by the admission of Dr. Koinange who served for many years during those hectic times, regarding payment of these billions. I am happy that a former Minister for Finance at that time is here. Dr. Koinange's words have very great implications to the Kenya Government; the Government of President Moi. The Goldenberg payments were paid with the full authority of the Treasury, the Head of the Public Service and Secretary to the Cabinet, the Paymaster-General and, according to Dr. Koinange, the highest authority in the land. Even if we do not do anything today, I put it to this House that the greatest financial crime in this country called Goldenberg scam is the one single kind of financial disaster that has crippled our nation. This information is in this Report for posterity. It is well documented. It is not hon. Gatabaki who did it. But Dr. Koinange told the Committee that the Goldenberg payment was done with the full knowledge of the then Head of the Public Service and Secretary to the Cabinet; the then Minister for Finance, and the highest authority in the land.

**An hon. Member:** Who was the highest authority then?

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, I do not know who was the highest authority then, but the point is, all these personalities knew about the payment of the Goldenberg money. I remember hon. Mr. Michuki rising in this House and asking in anger: "In whose account was the Goldenberg money paid? Was it paid to the account of God?" Those were the words hon. Michuki asked this House in displeasure, anger and rage, about this kind of infamy. Never in the history of mankind was so much stolen by so few, to benefit so few and impoverish so many!

**An hon. Member:** That is the quote of the day!

*(Applause)*

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, the recommendations, and they are not my recommendations because some of my best friends are named here --- My job is to report and not to defend any character. They did not give me anything. I did not eat with them. The Committee recommended that the *sub judice* rule be repealed to enable Parliament debate and determine cases of high public interest. The Committee also recommended that the previous recommendations be implemented expeditiously. The recommendations and the Treasury Memorandums are here for record purposes. Three, the Committee recommended that Dr. Wilfred Koinange be barred from holding public and elective offices for involvement in illegal and unconstitutional expenditure of massive scale.

The Committee Members were so aggrieved by this kind of payment and out of their way, they added that Dr. Wilfred Koinange should never contest elective office! I was one of the members among 11 of them, and six of them from the ruling party, KANU. I am talking about unanimity and patriotic Kenyans who rose beyond petty party affiliation to recommend and put for posterity, standards which will never be challenged.

Therefore, the Committee recommended that those who steal and plunder public funds be barred from holding public and elective offices. If that was done before 1997, three-quarters of my friends down here would be in jail. I would never have seen them inside this House!

*(Laughter)*

Fourth, Mr. Temporary Deputy Speaker, Sir, the Committee recommended that the following who were party to those payments, be summoned by the PAC in future to give evidence:- Prof. The hon. George Saitoti, MP; The hon. Musalia Mudavadi, MP; Prof. Philip Mbithi, Messrs. Benjamin Kipkulei and Charles Mbindyo. Finally, the Vice-President of the Republic of Kenya then and now, is named as the person to be summoned to give evidence.

**An hon. Member:** Succession!

**Mr. Gatabaki:** I do not know about succession, but if there was an accident in this "coffin" I am talking about; the presidential jet, the President of the Republic of Kenya would be under indictment.

**The Temporary Deputy Speaker** (Mr. Poghio): Order, Mr. Gatabaki!

**The Minister for Public Health** (Prof. Onger): On a point of order, Mr. Temporary Deputy Speaker, Sir. Did I hear him mention something like a coffin? If so, could he substantiate where this coffin is and lay it on the Table here?

**Hon. Members:** Aha! Aha!

**Mr. Gatabaki:** If the hon. Member was following me, I was talking about the circumstances under which the presidential jet was bought and those people who did whatever they did to give our beloved President a jet without spare parts. It is not a question of getting angry; it is there and the documents are available. The sourcing of that jet is unknown and its manufacturers went under. They are insolvent. Spare parts worth Kshs24 million cannot be ascertained. What is so difficult to understand?



*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Poghiso): Order, Mr. Gatabaki! It looks like I will be forced to make Mr. Gatabaki, probably terminate his presentation. The Standing Orders also do protect other hon. Members from repetition.

**Hon. Members:** No!

**The Temporary Deputy Speaker** (Mr. Poghiso): Order, Mr. Gatabaki! You do not have to answer yourself, and also keep us going back and forth. I think you need to be serious and focused and take us through the Report. That is the opportunity you have been given. Do not subject us to repetition.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, the fifth recommendation by the PAC regarding the Goldernberg infamy is that the Attorney-General brings a Bill to Parliament providing for severe penalties for any Permanent Secretary in the Treasury who makes unconstitutional and illegal payments from the Consolidated Fund. Those are the PAC recommendations; they are not my recommendations. I am amazed at the kind of fear among some of us; that their days are coming to an end and there is a judgement here. They will be responsible for their sins. I did not help them in making those crimes. The documents are here. Certain Kenyans will be required by the PAC to appear before it to give evidence regarding the Goldernberg scam. No matter how long it takes, the Goldernberg scam will be accounted for. No matter how many years, those responsible for impoverishing Kenyans will be responsible for their high crimes and misdemeanours. It will never go because it is a crime of such a gigantic nature, because over the years, the economy of this nation is at a negative growth rate; 60 per cent of Kenyans live on one dollar a day. If there are violations of human rights, what else can that situation be called?

Mr. Temporary Deputy Speaker, Sir, we are still in the introductory part.

**Mr. Kamolleh:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to inform the hon. Member and further enlighten the House that in the Report, on page 23, as regards the Goldernberg transactions, I would like to make it clear that the last verse has nothing to do with Goldernberg transactions. In fact, it is because of typing errors. It should have read: "As regards K£75 million, the Committee noted with deep concern that the statement by the PS, Dr. Wilfred Koinange, that at no time did I know or believe that the payments I authorised were illegal." This has nothing to do with Goldernberg. I thought I should give you that information.

**Mr. Gatabaki:** Mr. Temporary Deputy Speaker, Sir, he is talking about grammatical mistakes or whatever they are. But we are emphasizing that whether it is Kshs1.5 billion or Kshs5.8 billion or what has been established as Kshs67 billion, a crime is a crime. It is not the magnitude which is enormous; it is the conception and execution of such a crime; that we can export from this country gold and jewellery which were not there.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Poghiso): Order! Hon. Gatabaki, your presentation continues tomorrow.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 19th April, 2001, at 2.30 p.m.

The House rose at 6.30 p.m.