

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 7th June, 2001

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.241

DISASTER MANAGEMENT COMMITTEES

Mr. Muturi, on behalf of **Mr. Kombe**, asked the Minister of State, Office of the President, when the Government will put in place disaster management committees in every district to cater for the ever-increasing disasters in the country.

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

The Government has already put in place disaster management committees in every district in the country.

Mr. Muturi: Mr. Speaker, Sir, this a very interesting answer. If the Government of Kenya has put in place disaster management committees in every district in the country, what method has the Government used to communicate such decision - and more specifically in the case of Malindi? When, if at all, was such a district disaster management committee put in place?

Maj. Madoka: Mr. Speaker, Sir, most of these disaster management committees are at various functional levels. We have just set them up. So, they are not fully operational. But as of 26th May, 2001, we had 70 district disaster management committees. So, they are not yet fully operational but they are in place. They comprise of the District Commissioner as Chairman, district departmental heads; local leaders; NGO representatives; private sector representatives and representatives of United Nations agencies.

Mr. Maitha: Mr. Speaker, Sir, recently, there was a very big disaster in Malindi when a bus plunged into River Sabaki killing many people. What can the Minister tell this House about the District Disaster Committee in Malindi which failed to retrieve bodies until now? In fact, one bus is still buried in that river up to this moment. What facilities has the Government given to these disaster management committees which have failed to even retrieve bodies trapped in a river?

Maj. Madoka: Mr. Speaker, Sir, I think the hon. Member knows what efforts the Government put in trying to retrieve those bodies and the buses stuck in the river. We did our utmost. We mobilised the Kenya Navy and Kenya Ports Authority--- A lot was done! The fact that some bodies were not retrieved or the fact that the bus was not retrieved does not mean we failed to do our utmost.

Mr. Muturi: Mr. Speaker, Sir, the Minister's answer to the supplementary question contradicts his written answer. In his written answer, he says the Government has already put in place disaster management committees in every district. I have asked him to state what legal instruments, if any, have been used to give the mandate and scope of operations of those disaster management committees. If they have been defined, does their mandate and scope include, among others, vetting those who have been affected in the event of disasters such as the Malindi bus disaster, to be able to know who lost their relatives and what levels of compensations are going to be given to those people?

Maj. Madoka: Mr. Speaker, Sir, I would not say there are legal instruments at the moment but these committees have been put in place and their tasks and terms of reference are clearly stipulated. I can read them out. There are four main tasks: One, preparation of integrated scenario specific contingency plans in anticipation of potential disasters, train, drill, exercise rehearse and practise with members of public on such updated contingency plans annually. Two, preparation of an updated inventory of disaster response resources, human, material and equipment both from private and Government of Kenya-owned equipment. Three, preparation and

implementation of comprehensive public disaster awareness programmes through regular public barazas and seminars. Four, submission of a summary of disaster management activities undertaken by each district disaster co-ordination committee to the National Disaster Operation Centre, Office of the President on a quarterly basis with effect from the end of December, the year 2001.

Mr. Wamae: Mr. Speaker, Sir, the Minister has detailed what this Committee would do in mobilising resources both from the public and the private sector. If they are going to mobilise resources from the private sector, they need some enabling law which will give them powers to do so. How will these committees be able to do that without the legal framework?

Maj. Madoka: Mr. Speaker, Sir, we are currently drafting the Disaster Management Act which will empower the President to mobilise any equipment at any time.

Mr. Speaker: Next Question, Capt. Ntwiga!

Question No.254

RELIEF FOOD DISTRIBUTION IN MERU/THARAKA

Capt. Ntwiga asked the Minister of State, Office of the President:-

- (a) whether he is aware that Meru South and Tharaka districts collect their relief food allocations from Meru Town, a distance of over 100 kilometres; and,
- (b) what plans he has put in place to ensure that the said allocations are availed at Chuka Town which is closer to the two districts.

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

(a) I am aware that Meru South District is currently collecting its relief maize from Meru National Cereals and Produce Board Depot which is 110 kilometres return journey from Chuka Town where the district headquarters is located.

(b) Plans are underway to have Meru South District collect their relief food from Embu National Cereals and Produce Board Depot which is nearer as requested by their District Commissioner. However, Meru South and Tharaka districts have already been issued with Authority to Incur Expenditure (AIEs) to meet their transportation cost for the relief food to their nearest destinations.

Capt. Ntwiga: Mr. Speaker, Sir, it is very inconvenient that food is transported all the way from Nairobi down to Meru through Chuka Town and then we are forced to go and collect our rations there and travel back to Chuka Town again. In the process, the food is lost on the way. It is very expensive for our people to do this. Could the Assistant Minister promise this House that he will put up a cereals depot at Chuka Town for convenience and as a cost-cutting measure?

Mr. Kochalle: Mr. Speaker, Sir, as I have said, we are making arrangements for them to collect their food rations from Embu Town because it is nearer. But building a cereals depot at Chuka is a matter for another Ministry.

Mr. Mwenda: Mr. Speaker, Sir, the Assistant Minister has said that AIEs have been issued to both Meru South and Tharaka districts to meet transportation costs. But in the past, the same relief food had to be sold to raise money to transport food from Maua Depot to Tharaka. If it is true that money had been set aside for transportation, could he tell us how much money has been allocated to Tharaka District for transportation?

(Mr. Angwenyi's cellphone rang)

Mr. Speaker: Who is that again?

Mr. Angwenyi: Mr. Speaker, Sir, I apologise--- I have put it off. It rang by mistake---

Mr. Speaker: Out of the Chamber for the balance of the day!

(Mr. Angwenyi withdrew from the Chamber)

Mr. Kochalle: Mr. Speaker, Sir, as I have said, AIEs are allocated to District Commissioners in every district. If food was sold to meet transport costs, then the matter should be reported to the police so that we can look into it.

Capt. Ntwiga: Mr. Speaker, Sir, in the answer I was given, the Assistant Minister says "owing to the improved food security in the district, the Government of Kenya and other agencies have suspended relief food distribution and plans and introduce food for work programmes." I would like to inform the Assistant Minister

that there has been a failure of rains in Meru. Therefore, he should not suspend food relief distribution in these two districts. Is he informed about the shortage of rain in Meru?

Mr. Kochalle: Mr. Speaker, Sir, there is no shortage of rain in the Republic of Kenya. It is raining everywhere. So, owing to the improved food security after the short rains in those districts, the Government of Kenya and other agencies have stopped relief food distribution and plans are underway to introduce food-for-work programme through our Ministry.

Mr. Speaker: Next Question, Mr. Kaindi.

Question No.305

LIST OF PARASTATALS' BOARD MEMBERS

Mr. Kaindi asked the Minister of State, Office of the President, whether he could table the list of the current board members of parastatals/corporations, and the names of their respective chairmen.

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I wish to request that this Question be deferred because we have not yet got all the details required by the hon. Member.

Mr. Speaker: What is your response, Mr. Kaindi?

Mr. Kaindi: Mr. Speaker, Sir, I filed this Question before we went for recess last time. It was put on the Order Paper yesterday but the Minister was not there to answer. Now, we are being told that they do not have information. When are they going to be ready?

Mr. Speaker: I order that they answer that Question next week on Wednesday. Do you understand, Maj. Madoka?

The Minister of State, Office of the President (Maj. Madoka): That is fine, Mr. Speaker, Sir.

(Question deferred)

Mr. Speaker: Next Question, Mr. Kimeto!

Question No.232

PENSION PAYMENT TO MR. CHERUIYOT'S FAMILY

Mr. Kimeto asked the Minister for Finance:-

(a) why he discontinued the payment of dependants pension for the family of the late George Kimalel Cheruiyot, File No.MP.2742 as from 31st May, 1999; and,

(b) when the officer's widow, Mrs. Lydia Chepkurui Cheruiyot and her children will be paid the said pension.

The Assistant Minister for Finance and Planning (Mr. Marrirmoi): Mr. Speaker, Sir, I beg to reply.

(a) File No. MP. 2742 given by the hon. Member for Sotik belongs to Mr. Abdi Aden, a retired Senior Sergeant from the Department of Defence. The Pensions Department has been unable to trace records in respect of the late George Kimalel Cheruiyot or that of the widow, Lydia Chepkurui Cheruiyot.

I am, therefore, requesting the hon. Member to give more details. Such details should include the pension number of the deceased or the widow, the employer of the deceased prior to death and when he died and any correspondence on payment of the dependants' pension claim.

Mr. Kimeto: Mr. Speaker, Sir, since Mrs. Kimalel is still alive, could I request the Assistant Minister to allow me to take her to his office, so that he may settle her claim?

Mr. Marrirmoi: Mr. Speaker, Sir, I accede to the request. Let her come with the details of all the requirements and we shall assist her.

Mr. Kimeto: Thank you very much, Mr. Speaker, Sir.

Mr. Speaker: Very well! All sorted out nicely! Next Question!

Question No.300

ACTION AGAINST SHAH MANEK COMPANY

Mr. Speaker: Mr. Muiruri not in! We shall come back to that Question later on! Next Question!

Dr. Ochuodho: Mr. Speaker, Sir, I have an answer which has not been signed, though I received it from

the Minister.

Question No.203

IMPLEMENTATION OF EDUCATION
COMMISSION REPORT

Dr. Ochuodho asked the Minister for Education:-

(a) when the Government will implement the recommendations of the Report of the Commission of inquiry into the Education system; and,

(b) what became of the Educational Curriculum Review Task Force and the funds allocated to it.

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

(a) The Ministry has appointed a committee to study the Report and prepare for a national forum on education, on issues in the Report before implementation.

(b) The Education Curriculum Review Task Force transformed into a World Bank/Government of Kenya Project on Strengthening Education at Primary and Secondary Level (STEPS), after its facilitation of information on curriculum rationalization through provincial consultative meetings, and the funds were used to facilitate the project.

Dr. Ochuodho: Mr. Speaker, Sir, the biggest mistake the Government made was that of exposing our children to the 8-4-4 education system. They do not seem to have accepted that this was a mistake. In a span of one year, four committees or commissions have been formed by the Ministry. There was the Koech Commission, now a new committee is being formed, there was a task force before the Koech Commission and there is the STEPS Committee. Could the Assistant Minister tell this House why they cannot do what the Koech Commission recommended? Why do they not just scrap the 8-4-4 and revert to the old education system?

Mr. Karauri: Mr. Speaker, Sir, first of all, the 8-4-4 system was not a mistake. The 8-4-4 system of education is very good. In fact, our children who go to study abroad after passing through the 8-4-4 education system perform very well. They are being accepted in most countries. Whatever recommendations that were given by the Koech Report that he is talking about, may be the same as what the Ministry is doing before the recommendations are made public. So, many issues that are in the Koech Report have been implemented by the Ministry.

Mr. Wamae: Mr. Speaker, Sir, the Koech Report has a detailed implementation programme for the education system. Why does the Ministry have to form another task force to do the implementation, and how long is this going to take? For the last four to five months, the Ministry has been talking of a task force working on the implementation programme.

Mr. Karauri: Mr. Speaker, Sir, when a report is made, there are experts in the Ministry who study it, because we intend to have a national forum for all stakeholders in education. That includes, teachers, KNUT and all the people who are interested in education to discuss what is supposed to be implemented.

Dr. Ochuodho: Mr. Speaker, Sir, part of the problem with the Government are these committees. Whenever they want to evade a problem they form task forces and committees. They also spend money. Now they have a commission to study another commission's report. It does not make much sense. However, I also have concerns about money being sunk into these committees. When the first task force was formed, prior to forming the Koech Commission, the Minister said that the Government had set aside Kshs100 million for the process. Part "b" of my Question asks how much money was spent and where the money went when that Committee was wound up. Could the Assistant Minister tell us how much money the Ministry spend on the Koech Commission and where the Kshs100 million that was given to the Review Task Force that was wound up when the Koech Commission was formed went to?

Mr. Karauri: Mr. Speaker, Sir, the hon. Member must realise that there is a difference between a commission and a task force. Some of these committees are formed by experts in the Ministry to study the Report. As regards the amount of money spend on this exercise, the World Bank provided to the Kenya Institute of Education with Kshs1,589,000 for the assessment and survey. This money has been spent, and a further Kshs2 million was provided by the bank for data analysis and report writing. We are negotiating for more funding, because curriculum rationalization is an expensive exercise.

Dr. Ochuodho: On a point of order, Mr. Speaker, Sir. My question has not been answered. How much

money did the Government spent on the Koech Commission and on the Educational Review Task Force? It can surely not be Kshs1 million. The figures the Assistant Minister is giving are the amounts which they have been spending on STEPS; the funny World Bank Committee.

Mr. Karauri: Mr. Speaker, Sir, if the hon. Member wants to know how much the Government spent on the Koech Report then he should raise it as a new Question, because this is a different Question.

Mr. Speaker: Order! Mr. Karauri, what is your understanding of part "b" of the Question?

Mr. Karauri: Mr. Speaker, Sir, I have already answered part "b" of the Question. I have read out the figures that the World Bank provided the Kenya Institute of Education with Kshs1,589,000 for this purpose. They also provided a further Kshs2,203,450 and this is the money which was spent.

Mr. Speaker: Next Question!

Question No.312

RURAL ELECTRIFICATION IN MBEERE

Mr. Muturi asked the Minister for Energy:-

(a) how much money, if any, had been set aside for rural electrification in Mbeere District for the last five years and how much of that was spent, and on which projects; and,

(b) how much of that money was intended for projects within Siakago Constituency.

Mr. Muturi: Mr. Speaker, Sir, I have agreed with the Minister concerned that for him to come up with an appropriate answer we defer the Question to Wednesday afternoon.

Mr. Speaker: Very well! The Question is deferred to Wednesday afternoon, next week.

(Question deferred)

Mr. Speaker: Next Question!

Question No.289

CONSTRUCTION OF DUAL CARRIAGEWAYS

Mr. Speaker: Mr. Ojode not in? We shall come back to that Question later on! Next Question!

Question No.201

AWENDO COUNCIL PLOT ALLOCATIONS

Mr. Ochilo-Ayacko asked the Minister for Lands and Settlement:-

(a) how many plots have been allocated by Awendo Town Council since its inception two years ago; and,

(b) who the allottees of the said plots are.

Mr. Speaker: Where is the Minister for Lands and Settlement?

Hon. Members: He is not in!

Mr. Speaker: We will come back to that Question later on! Mr. Muiruri's Question for the second time!

Question No.300

ACTION AGAINST SHAH MANEK COMPANY

Mr. Speaker: Mr. Muiruri still not in? Question dropped!

(Question dropped)

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

Mr. Speaker: I am sorry Mr. Gatabaki. I skipped your Question without realising. Proceed to ask your Question!

Question No.028

UTILIZATION OF FUEL LEVY

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

- (a) how much money the Government has collected from the Fuel Levy Fund since it was established;
- (b) how much money has been used in each province to repair roads; and,
- (c) which specific roads have benefited from the Fund and which roads are scheduled to benefit in the current financial year.

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

(a) The Government has collected Kshs28,184,405,720 from the Fuel Levy Fund, since the Fund was established.

(b) The funds which have been used to repair roads in the country, province by province are as follows:-
(Kshs)

Nairobi	-	512,095,882.90
Coast	-	1,583,209,746.80
Central	-	2,674,032,604.15
Rift Valley	-	4,347,552,750.74
Eastern	-	1,427,444,372.26
North Eastern	-	724,185,783.65
Western	-	835,771,105.90
Nyanza	-	<u>1,299,093,500.21</u>
Total	-	<u>13,403,385,746.61</u>

(c) Some of the roads among many others which benefited from the Fuel Levy Fund are as follows:-

Rodi Kopany-Karungu Bay, Nakuru-Nyahururu, Saos Tenges, Naivasha-Longonot Turi off, Kangema-Kanyenyaini, Miritini-Likoni-Lunga Lunga, Mau Summit-Njoro-Mau Narok, Machege-Eldama Ravine Kakuma-Lokichoggio, Tarasa-Ngao, Nakuru-Nyahururu, Yala-Busia-Kakamega-Mumias, Makutano-Sagana, Sultan Hamud-Mtito Andei, Molo-Oienguruone, Mogotio-Kisanana, Lolgorian-Mara Bridge, Itembe-Olbutio-Siongiroi, Tot-Biretwo, Rumuruti-Nanyuki, Ijara-Galma Galla, Wajir Hadado among others, Kilgoris-Lolgorian, Iten-Kapsowar, Londiani-Fort Tenan, Nanyuki-Doldol, Kehancha-Ntumaru, Githunguri-Uplands, Makutano-Timboroa, Kilifi-Malindi, Kisumu-Muhoroni, Eldoret-Sergoit, Kangonde-Mwingi, Marigat-Kabartonjo Thika-Yatta, Timboroa-Miteitei-Songhor, and Lanet-Elementaita, among others.

Some of the major roads which have benefited during this Financial Year are:-

Magumu-Njabini, Limuru-Tigoni-Ruaka, Limuru-Ndenderu-Ruaka, Marwa-Nyeri-Kiganjo-Marwa, Mai Mahiu-Naivasha; Athi River, Sotik-Amala River, Kiminini-Kapenguria and Kitale-Endebess, Miritini-Sabasaba, Ahero-Kisii and Kisumu-Yala, Kalanga Corner-Laga Hamaris; Lare Mutuati and Nunguni Kikoka among many others which are scheduled to benefit.

Mr. Kiunjuri: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House by indicating that the Nanyuki Doldol Road which is used by Mr. Speaker to go home - but now you cannot reach home because the road has been cut off completely - was allocated any funds? He is lying before Mr. Speaker himself!

(Laughter)

Mr. Mokku: Mr. Speaker, Sir, I am not misleading the House. The report I am reading to the House is a seven-year old report; 1994-2001. Within a period of seven years, a road might have been repaired, for example, in 1994/95, but we have had rains since then, including the *El-Nino* rains.

Mr. Gatabaki: Mr. Speaker, Sir, you can see where we are heading to on the basis of this Question. In every sitting of this House there must be a Question about roads. Every day we sit, Questions about roads are asked here by hon. Members representing the great people of Kenya. The Assistant Minister tells us that they have collected Kshs28 billion from Kenyans. The Kshs28 billion is enough to tarmack every road in Kenya. Given the condition of Kenyan roads, could the Assistant Minister confirm that truly the Ministry has used the money appropriately, and tell Kenyans where the balance of Kshs15 billion went to?

Mr. Mokku: Mr. Speaker, Sir, the Kshs13 billion I have told the House about is for maintenance. We have got other support services which include repair and maintenance of equipment apart from the roads, axle load controls, headquarters' services, Kenya National Roads Board, emergency works, special programmes on environment, road safety, agency fund and others.

Mr. Wamae: On a point of order, Mr. Speaker Sir. Is it in order for the Assistant Minister to claim that support services have used more money to the tune of Kshs15 billion than the actual construction of the roads?

Mr. Mokku: Mr. Speaker, Sir, support services are part of the roads. Those are services that cover roads in the Kenya Wildlife Service areas, tea and sugar estates *et cetera*. So, those are support services some of which are done by the local authorities.

Mr. Odongo: Mr. Speaker, Sir, the Assistant Minister has stated that his Ministry has spent about Kshs835 million in Western Province and yet he has not read out any road on which he has spent that kind of money. Could he inform the House on which roads in Western Province his Ministry has spent the Kshs385 million?

Mr. Mokku: Mr. Speaker, Sir, among the roads in Western Province which my Ministry has spent Kshs835 million include Bungoma-Trans-Nzoia Road and that part of it which joins West Pokot District.

Dr. Kituyi: Mr. Speaker, Sir, to the best of my knowledge, there is no road called Bungoma-Trans-Nzoia Road, and all the roads that exist connecting those two districts, none of them has even had roadside clearance in the past five financial years. So, what Bungoma-Trans-Nzoia Road have you been maintaining?

Mr. Mokku: Mr. Speaker, Sir, among the roads I had earlier stated are the roads in the Mumias Sugar area. These are support services on roads.

Hon. Members: Which road?

Mr. Mokku: Hold on! Since the hon. Member wanted to know the roads by names, on which my Ministry has spent Kshs835 million in Western Province, I can avail that information later.

Mr. M. Galgalo: Mr. Speaker, Sir, despite the fact that the Assistant Minister has said that over Kshs700 million had been used in North Eastern Province, he has not mentioned a single road which was repaired by the Government in that period. Could he tell us one of the roads which has been repaired using that money in that area?

Mr. Mokku: Mr. Speaker, Sir, the roads in North Eastern Province which I have in my list include: Garissa-Dadaab Road, Hura Bridge and Ijara-Galamagala Road.

Mrs. Ngilu: Mr. Speaker, Sir, could the Assistant Minister tell us what rationale they use in allocating each province with different amounts of money? This is because I have in mind Rift Valley Province which got nearly Kshs4.3 billion and no other province has got that kind of money. Is it because there are more roads in the Rift Valley Province?

Mr. Mokku: Mr. Speaker, Sir, it is true that there is an allocation of nearly Kshs4 billion for roads in Rift Valley Province. However, in Central Province, we have an allocation of nearly Kshs3 billion. The reasons behind this scenario are probably that the Rift Valley Province is the largest province and it forms 33 per cent of the land mass in this country.

Mr. Murathe: On a point of order, Mr. Speaker, Sir. The Assistant Minister knows that roads are classified under either categories "A", "B", "C" and "D" and they have names. Secondly, he did not answer hon. Wamae's question, that he gives a breakdown of those support services which consumed the balance of Kshs15 billion. Is he in order not to respond to this question?

Mr. Speaker: Very good, Mr. Murathe. Unfortunately, you are asking a supplementary question. I really would have liked you to raise a point of order.

Mr. Gatabaki: Mr. Speaker, Sir, this House, in its own wisdom, enacted the Kenya Roads Board Act in 1999 and, according to Section 31 of that Act, it states:- "There shall be paid in the Fund all proceeds from the Road Maintenance Levy Fund". An Act of Parliament presided over it. Since then this Ministry has refused to comply with that Act of Parliament and went ahead and distributed the money from the Fuel Levy to Ministries, or the local authorities and public works in complete violation of the law. Could the Assistant Minister tell the House the circumstances under in which the Government has violated the Act of Parliament, refused to comply with the stipulation of the law and refused to submit the money to the districts and constituencies?

Mr. Mokku: Mr. Speaker, Sir, I request the hon. Member to repeat the question so that I get it clearly.

Mr. Speaker: Order! What the Member has asked you is as follows: That this House passed an Act of Parliament creating a Roads Board which all revenue of the Fuel Levy should be paid into. He now says that, in defiance of the law, you have refused to remit that money to the Kenya Roads Board. Why have you defied the

law? That is what he asked you.

Mr. Mokku: Mr. Speaker, Sir, the Ministry of Roads and Public Works is supposed to remit Kshs5 million to every constituency in this Republic once it receives it money from the Kenya Revenue Authority (KRA). So far, we have only received Kshs1.5 million per constituency from KRA. So, we have remitted that money to every district and we have not received the remaining balance from the KRA.

Mr. Mbela: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead the House because the Ministry received Ksh4.5 billion and yet he says it has only received Kshs1.5 billion? Out of that, only Kshs1.5 million has gone to the constituencies. So, is it in order for him to mislead this House?

Mr. Mokku: Mr. Speaker, Sir, I said that we have submitted Kshs1.5 million to each constituency. So, the money hon. Mbela is referring to is the total sum that was submitted to the Ministry which we have divided and sent to each district.

Hon. Members: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Order, hon. Members! I appreciate the gravity of this issue.

Mr. Wamae: On a point of order, Mr. Speaker, Sir.

(Mr. Wamae moved to the microphone)

Mr. Speaker: Order! Order, Mr. Wamae! Why are you being carried away? You see, I have not even given you a chance to speak. So, what is really bothering you?

(Laughter)

Mr. Wamae: On a point of order, Mr. Speaker, Sir. You are so kind this afternoon. When Mr. Gatabaki asked the last question, he was not very clear and you amplified it and said that we wanted to know why the money had not been transferred from the Ministry of Roads and Public Works to the Kenya Roads Board, and the Assistant Minister did not answer that question. I would like to say that he refused to answer that question. Is it in order for him to do that?

Mr. Mokku: Mr. Speaker, Sir, the hon. Members understand that there was a court order and, as an Assistant Minister, I have no power over the court decision.

Hon. Members: On a point of order, Mr. Speaker, Sir.

(Loud consultations)

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

Question No.300

ACTION AGAINST SHAH MANEK COMPANY

Mr. Speaker: Is Mr. Muiruri still not here? His question is dropped.

(Question dropped)

Let us move on to Mr. Ojode's Question for the second time!

Mr. Ojode: Thank you, Mr. Speaker, Sir. I apologise for coming in late.

Question No.289

CONSTRUCTION OF DUAL CARRIAGEWAYS

Mr. Ojode asked the Minister for Local Government when the Ministry will build a dual carriageway for both Ngong and Outering Roads in Nairobi.

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

Detailed design works for Ngong Road have been finalised and tender documents prepared and only sourcing of funds is remaining. As regards the Outering Road, preliminary designs have been completed but

tender documents have not been done. However, it is not possible to confirm when the actual construction work will commence since sources of funds have not been identified.

Mr. Ojode: Thank you, Mr. Speaker, Sir. These two roads lead to important destinations. The Outering Road is used to get to the Jomo Kenyatta International Airport (JKIA), while Ngong Road is usually busy. In the last two years, the Assistant Minister has confirmed to this House that they would construct these two roads, to no avail. Now, he is talking about identifying sources of funds. How much money is he looking for? How much money will the construction work take, and yet, we have the Fuel Levy Fund and a certain percentage is allocated to the Ministry of Local Government? In fact, that money has never been disbursed to the districts. What kind of money is he looking for to build these two roads?

Mr. Kiangoi: Mr. Speaker, Sir, for the Dagoretti Road, which---

Mr. Ojode: On a point of order, Mr. Speaker, Sir. I did not talk about the Dagoretti Road!

Mr. Kiangoi: I am sorry, Mr. Speaker, Sir. The Ngong Road actually ends at Dagoretti. For this road, we will require Kshs1 billion, while for the Outering Road which is about 10.6 kilometres; running from Thika Road to Airport Road with two rails over bridges and other facilities, we will require Kshs600 million.

Capt. Ntwiga: Mr. Speaker, Sir, could the Assistant Minister tell this House what is happening at the junction between Jogoo Road and Outering Road? Could he tell us whether construction is taking place, or it is just a movement of some machines? I would like to know what is happening there.

Mr. Kiangoi: Mr. Speaker, Sir, I do not know what is happening there, but we have previously answered a Question in connection with Jogoo Road in this House.

Mr. Muchiri: Thank you, Mr. Speaker, Sir. Along Outering Road, members of the public are constructing permanent residential and commercial buildings. What is the Ministry doing about this? When will the Assistant Minister demolish all these kiosks that are harbouring thugs, who kill people along that road?

Mr. Kiangoi: Mr. Speaker, Sir, the road reserve should not be interfered with. Time and again, I have asked the hon. Members in the City of Nairobi to assist the Ministry. This is particularly because the DP controls the Nairobi City Council (NCC). If that happens, then those buildings will be razed down.

Eng. Toro: Thank you, Mr. Speaker, Sir. It has become a habit of the respective Ministries to misappropriate funds through designs and paying consultants a lot of money when work is not being done. Because the Assistant Minister has said that preliminary designs have been done for both roads, could he tell this House when they were done and the costs then? If the costs at that time were Kshs1 billion and Kshs600 million, as he has said, what would be the cost of building the roads at the moment?

Mr. Kiangoi: Mr. Speaker, Sir, I will not answer on behalf of the various Ministries, but on the question that touches on my Ministry, there was an Urban Transport Study which was carried out in the 1994/95 Financial Year. That was the study and not the drawings. After that study, it was necessary to have the plan in place, and that was done. The Kshs1 billion for Ngong Road is the current figure, while the Kshs600 million was the figure three or four years ago. But the final plans have not been made and that is why we cannot quote the exact amount it will cost as of now.

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

Mr. Speaker: Sorry, we have ten minutes left and we have not---

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

Mr. Speaker: Order! Eng. Toro, you are behaving in a manner that is not befitting an hon. Member. You are now disorderly and I order you to get out of the Chamber!

Mr. Ojode: It is as simple as that! Mr. Speaker, Sir, can I go ahead and ask my question?

Mr. Speaker: Not when a stranger is in the House!

(Eng. Toro withdrew from the Chamber)

Proceed, Mr. Ojode!

Mr. Ojode: Mr. Speaker, Sir, I was saying that my Question has not been answered fully. I asked the Assistant Minister what had happened to the Fuel Levy Fund, where a certain percentage was allocated to his Ministry and this money was supposed to be disbursed to the districts and this has not happened to date. Why can he not use the Fuel Levy Fund? I would like to say that Kshs1.6 billion is nothing compared to the amount of money that he has been receiving from the Fuel Levy Fund. What is happening to the Fuel Levy Fund which they get, and how much money do they get?

Mr. Kiangoi: Thank you, Mr. Speaker, Sir. Thank you, Mr. Ojode, because you are at least civil. The Fuel Levy Fund is not meant for new construction, but for the maintenance of the existing roads.

Mr. Speaker: Very well. It is now time for Questions by Private Notice! Mr. Njeru Kathangu's Question by Private Notice.

Mr. Ochilo-Ayacko: On a point of order, Mr. Speaker, Sir.

(Loud consultations)

Mr. Speaker: Order! What is it?

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, you have skipped my Question. I had asked it, but the Minister was not in.

Question No.201

AWENDO COUNCIL PLOT ALLOCATIONS

Mr. Ochilo-Ayacko asked the Minister for Lands and Settlement:-

(a) how many plots have been allocated by Awendo Town Council since its inception two years ago; and,

(b) who are the allottees of the said plots?

Mr. Speaker: Sorry, I have to defer this Question to Tuesday.

(Question deferred)

QUESTIONS BY PRIVATE NOTICE

DEATH OF ESTHER NJERI

Mr. Kathangu: 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 that Esther Njeri, a Standard Eight Pupil in Ng'araria Primary School in Kandara Division, Murang'a District, was pronounced dead on arrival at Thika General Hospital on 9th February, 2001?

(b) What investigations did the police carry out to ascertain the cause of the death?

(c) Why was Mr. John Gitau Muhwanga arrested in connection with this death and later released?

Mr. Speaker: Mr. Kathangu, I understand that you have agreed with the Minister to defer the Question.

Mr. Kathangu: Mr. Speaker, Sir, the Minister did approach me about this Question and I understand his reasons; that he doubts whether the answer given is adequate. I agree with him, but the Chair has to assist me. This Question has been deferred several times and yet a child has been killed.

Mr. Speaker: What day of the week do you prefer for the Question to be put on the Order Paper?

Mr. Kathangu: I wanted it answered today, but he suggests that we do it on Wednesday next week.

Mr. Speaker: Will Wednesday afternoon be okay with you or you want it done on Wednesday morning?

Mr. Kathangu: Wednesday morning is okay, Mr. Speaker, Sir.

Mr. Speaker: Wednesday is better for you.

Mr. Kathangu: For this nation, Mr. Speaker, Sir.

Mr. Speaker: Very well. I will defer the Question to Wednesday morning, next week.

(Question deferred)

DIVERSION OF MT. KENYA RIVERS

Mr. Kiunjuri: Mr. Speaker, Sir, I beg to ask the Minister for Water Development the following Question by Private Notice.

(a) Is the Minister aware that there is excessive diversion of water along the Mount Kenya rivers of Nyariginu, Teleswan, Sirimon, Likii, Nanyuki, Bangurite and Tigithi, which flow downstream to Laikipia East Constituency?

(b) What immediate action is the Minister taking to stop these diversions?

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

(a) I am aware that Mt. Kenya river systems are highly stressed due to high demand of water emanating from increased population density in the region coupled with increased intensive horticultural farming. Further, the river systems have not recovered from the *La Nina* induced drought.

(b) To regulate the abstractions, my Ministry has imposed a ban on irrigation during the day in the Mt. Kenya area and other parts of the country. Secondly, people are being encouraged to use water conserving irrigation methods, including the provision of storage facilities to store flood water. Water use awareness campaigns and formation of Water Users Association (WUA) as a vehicle to community participation in water management has been initiated.

Finally, my officers on the ground have clear and firm instructions to ensure equitable distribution of the available water.

Mr. Kiunjuri: Mr. Speaker, Sir, for sure, in the months of October, December, January and February every year, the people of Laikipia go without even a drop of water for consumption and the same applies to all the other people downstream. The Assistant Minister is telling us that he is aware that the rivers are stressed and at the same time, he is imposing a ban during the day while at night people carry out irrigation activities which does not make any difference. Could the Assistant Minister offer us a permanent solution and ensure that the people of Laikipia get water, whether you are imposing a ban or not during those months? Which action is the Assistant Minister taking?

Mr. Kofa: Mr. Speaker, Sir, I did not get the Member's question because my colleagues were consulting. Could the hon. Member repeat the question?

Mr. Speaker: Order! Order! I had asked hon. Members on the Front Bench here to give their colleagues ample time to listen because, for instance, the Assistant Minister cannot follow the proceedings! It may be necessary for me to clear the whole Bench. Mr. Kiunjuri, would you like to repeat your question?

Mr. Kiunjuri: No. This shows how irresponsible these Cabinet Ministers are, if they cannot follow the proceedings!

(A mobile phone rang from Mr. Kiunjuri's pocket)

(Laughter)

The Assistant Minister for Local Government (Mr. Kiangoi): On a point of order, Mr. Speaker, Sir. Could I be in order to invite the Chair to apply the usual rules?

Mr. Speaker: Well, it is very sad that I have to apply the rule, even-handedly.

At the very beginning of the session, I sent out Mr. Angwenyi for that offence. I am sorry, I will again apply the same rule and ask the hon. Member to leave the Chamber. But, much more importantly, before he leaves, I would like to ask hon. Members, if they cannot switch off those gadgets, they should leave them out of the Chamber. I also appeal to Kenyans not to call hon. Members on mobile phones when the House is sitting. It is disrupting the business of the House!

I am sorry, Mr. Kiunjuri, you have to leave now.

(Mr. Kiunjuri withdrew from the Chamber)

Yes, Mr. Wanyiri Kihoro!

Mr. Kihoro: Mr. Speaker, Sir, Mr. Kiunjuri will walk out, but the Question will survive the conspiracy by the Front Bench to have Mr. Kiunjuri sent out.

Mr. Speaker, Sir, the answer that was given by the Assistant Minister mentioned, population, intensified agriculture *et cetera*. The information I have is that there is destruction of forests in Mt. Kenya region and the water catchment areas. Lack of damming and re-afforestation is the cause of the shortage of water in that region. Could the Assistant Minister tell us what he has done to preserve the forests, increase damming and re-afforestation?

Mr. Kofa: Mr. Speaker, Sir, it is true that 20 to 30 years ago, there was a lot of intensive livestock keeping in the Mt. Kenya region, but to date the land has been converted into small-scale farming and the idea that deforestation is going on can be truly one of the causes of lack of water. But as per the records, I have a list of seven rivers here, for example, Nyariginu, which have water in full flow, although there are some intruders. Then there is Sirimon---

Mr. Kihoro: Mr. Speaker, Sir, if I may tell your former teacher and Assistant Minister, who is my friend, he is not answering the Question. My question was based on lack of damming, destruction of the water catchment areas and lack of re-afforestation. This Government has no policy on re-afforestation. When you fly over Mt. Kenya, it is very clear that you have destroyed too much of the forest and that is why you have no water. Could the Assistant Minister refrain from blaming the population?

Mr. Kofa: Mr. Speaker, Sir, I tend to think that, that is a different question.

Mr. Mwiraria: Mr. Speaker, Sir, all the rivers mentioned in this Question happen to flow through my constituency; the Timau area. The problem is that there has been deforestation hence destruction of the catchment areas, but worse still, there are large-scale farmers who have dammed these rivers upstream so that by the time the river reaches the end of their farms, nothing flows out. Now, stopping irrigation during the day will not solve the problem. Could the Assistant Minister order those farmers with dams to open them during the day so that the people downstream can get some water?

Mr. Kofa: Mr. Speaker, Sir, that can be done.

Mr. Parpai: Mr. Speaker, Sir, what is happening in Laikipia District is also happening in Kajiado South Constituency, Oloitokitok. What policy does the Government have to ensure that the diversion of rivers does not interfere with the flow of water, so that people downstream do not suffer as a result of irrigation? What permanent policy do we have to ensure that everybody gets the natural resource that is due to them?

Mr. Kofa: Mr. Speaker, Sir, the hon. Member for Kajiado South Constituency is right. This is actually happening in his constituency. But if the hon. Members do not report such things to the Ministry, what can the Ministry do?

Mr. Speaker: Order, hon. Members! As a matter of interest and for the benefit of the House, who is supposed to report to you? Is it the hon. Members or your District Water Officers?

Mr. Kofa: Mr. Speaker, Sir, we have our men on the ground who are supervising the projects. But if the hon. Members know of others, then they should let us know.

Mr. Achola: On a point of order, Mr. Speaker, Sir. I was just wondering whether you are satisfied that, that answer which has been given by the Assistant Minister is sufficient. I do not think it is satisfactory. I would rather ask the Chair to order this Assistant Minister to go back and bring a proper answer to the House.

Mr. Speaker: Order! I may be persuaded by the argument of Mr. Achola, particularly taking regard of the fact that because of a mobile telephone, the owner of the Question was sent out of the House. I do not want that to be an excuse for an **[Mr. Speaker]**

hon. Member sent out next time. But this is a matter of life and death. Mr. Assistant Minister, you can ask your colleague next door, Dr. Wako, the effect of that. So, it may be necessary for you to go back and re-think out this issue. I will give you two weeks and I will have the Question back on the Order Paper.

(Question deferred)

DOCTORS FOR NYAMIRA DISTRICT HOSPITAL

Mr. Obwocha: Mr. Speaker, Sir, I beg to ask the Minister for Public Health the following Question by Private Notice.

(a) Is the Minister aware that there is only one doctor currently operating in Nyamira District Hospital?

(b) What action is he taking to send more doctors to the hospital in view of the fact that there is no doctor to carry out normal theatre procedures?

The Assistant Minister for Health (Dr. Galgalo): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that there is only one doctor currently operating in Nyamira District Hospital.

(b) The current number of four doctors at the hospital is sufficient for its operations.

Mr. Obwocha: Mr. Speaker, Sir, this is the most unfortunate answer I have had, from the Ministry of Health. Over the weekend, a prominent businessman, namely Mr. Abagatata alias Oteki Momanyi was attacked and cut by thugs. In fact, he comes from the boundary of my constituency and Mr. Kiangoi's constituency and Mr. Kiangoi can attest to that. I have photocopies of the prescription that he was given because on Monday I was in my office in Nyamira and there was no doctor to operate on him. He was transferred to Kericho, St. Leonards Hospital. The Assistant Minister has claimed that there are enough doctors at Nyamira District Hospital. Could he name the doctors in that hospital, particularly surgeons?

Dr. Galgalo: Mr. Speaker, Sir, I have not heard of the incident the hon. Member has talked about but, to the best of my knowledge, we have the following doctors stationed at Nyamira District Hospital. These are Dr.

H.L. Kaniaru, who is the Medical Superintendent, Dr. Dan Otieno and we have two other volunteer doctors from the Netherlands; namely, Dr. Ingrid and Dr. Peter.

Mr. Ndilinge: Mr. Speaker, Sir, this is a national alarm because in every district hospital, you will find patients dying due to lack of doctors. Is the Assistant Minister aware that in Makueni District Hospital, we are experiencing the same problem?

Dr. Galgalo: Mr. Speaker, Sir, if Makueni District Hospital is understaffed, the hon. Member needs to file a different Question or come to the Ministry and we shall look into that. But we generally have a shortage of doctors in the country. Recently, we wanted to recruit doctors, but none was available.

Mr. Obwocha: On a point of order, Mr. Speaker, Sir. The answer the Assistant Minister has given is misleading. There were, indeed, two volunteer doctors, but they left Nyamira District Hospital. The only doctor in Nyamira District Hospital is Dr. Kaniaru, whom the Assistant Minister has referred to, who is the Medical Officer of Health (MOH). Among those two doctors, other than the volunteers, is there a Surgeon?

Dr. Galgalo: Mr. Speaker, Sir, we have one of the best medical schools in this country, that I went to, and as medical officers, we are capable of handling all emergencies and surgical operations.

Dr. Kulundu: On a point of order, Mr. Speaker, Sir. The Assistant Minister has rightly said that there is a shortage of medical personnel in this country, which is true and disappointing. What measures is the Ministry putting in place to ensure that there are enough doctors and other health personnel? It is not enough just to come and tell us that there is a shortage of doctors. There are doctors, but they are not working in Government hospitals. What measures has the Ministry put in place during the next financial year, to ensure that medical personnel in this country are adequately compensated for their work?

Dr. Galgalo: Mr. Speaker, Sir, in my answer earlier on, I said that we had recently advertised for the posts of 100 doctors, but they did not come out to be recruited. As far as terms of service for doctors and other medical personnel are concerned, you will recall that recently, His Excellency the President announced that terms of service for the civil servants, that will include doctors, are being looked into. We expect this to attract more doctors.

Dr. Kulundu: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to invoke the name of the President whenever the Ministry fails to adequately plan for its manpower requirements?

Dr. Galgalo: Mr. Speaker, Sir, the President of the Republic of Kenya is the Chief Executive.

Mr. Speaker: Next Question! Mr. Sambu's question is deferred for two weeks. Time is up for Questions!

NUMBER OF CASES INVESTIGATED BY KACA

(Mr. Sambu) to ask the Attorney-General:-

(a) How many cases had the Kenya Anti-Corruption Authority (KACA) investigated before its dissolution?

(b) How many of the cases had reached prosecution stage and could the Attorney-General table the list of those charged and the crimes committed?

(c) How many had been concluded and how many are pending under investigation?

(Question deferred)

MINISTERIAL STATEMENTS

FEES GUIDELINES FOR 2000/2001

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Mr. Speaker, Sir, yesterday, I promised the House that I will lay on the Table, secondary schools fees structures for the years, 2000 and 2001, and also the schools that are suspected to have over-charged fees in the year, 2000.

(Mr. Karauri laid the documents on the Table)

NOMINATION OF MEMBERS OF SELECT COMMITTEES

The Minister for Information, Transport and Communications (Mr. Mudavadi): Mr. Speaker, Sir, by the indulgence of the House, I wish to make the following Statement. The House Business Committee, during

its sitting on Wednesday, 6th June, 2001, and in accordance with Standing Order No.154 Subsection (i), nominated the following Members to serve in the various select Committees during the Fifth Session of the Eighth Parliament.

PUBLIC ACCOUNTS COMMITTEE

Hon. Mwai Kibaki, MP
Hon. Dr. Amukowa Anangwe, MP
Hon. Eric Morogo, MP
Hon. Raphael Kitur, MP
Hon. Col. Ronald Kiluta, MP
Hon. Mohamed Weyrah, MP
Hon. Zephania Nyang'wara, MP
Hon. David Mwiraria, MP
Hon. Joshua Ojode, MP
Hon. Lawrence Sifuna, MP
Hon. (Mrs.) Beth Mugo, MP

PUBLIC INVESTMENTS COMMITTEE

Hon. Ochilo-Ayacko, MP
Hon. Mwangi Kiunjuri, MP
Hon. Abubakar M. Badawy, MP
Hon. (Mrs.) Grace Mwewa, MP
Hon. Said M. Amin, MP
Hon. David N. Kombe, MP
Hon. Isaac A. Shaaban, MP
Hon. Geoffrey Parpai, MP
Hon. Wafula Wamunyinyi, MP
Hon. John Katuku, MP
Hon. Justin B.N. Muturi, MP

THE HOUSE BUSINESS COMMITTEE

Hon. Prof. George Saitoti, MP
Hon. Musalia Mudavadi, MP
Hon. Kipyator Nicholas Biwott, MP
Hon. Stephen Kalonzo Musyoka, MP
Hon. Joseph J. Kamotho, MP
Hon. Maj. M. Madoka, MP
Hon. Prof. Sam Ogeri, MP
Hon. Chris Okemo, MP
Hon. Kipng'eno arap Ng'eny, MP
Hon. Simon Mkalla, MP
Hon. Mohamed M. Shidiye, MP
Hon. Mwai Kibaki, MP
Hon. David Mwiraria, MP
Hon. (Ms.) Martha Karua, MP
Hon. Norman Nyagah, MP
Hon. Raila Odinga, MP
Hon. Owino Achola, MP
Hon. Michael Wamalwa, MP
Hon. Lawrence Sifuna, MP
Hon. (Mrs.) Charity Ngilu, MP

SPEAKER'S COMMITTEE

Hon. Kausai Francis ole Kaparo, MP - Chairman
Hon. Chris Okemo, MP
Hon. Julius ole Sunkuli, MP
Hon. Noah Katana Ngala, MP
Hon. William Morogo, MP
Hon. Gedion Ndambuki, MP
Hon. Prof. Sam Ongeru, MP
Hon. Isaac K. Ruto, MP
Hon. Matere Keriri, MP
Hon. Eric G. Sungu, MP
Hon. Gitobu Imanyara, MP
Hon. Moses N. Muihia, MP
Hon. George Anyona, MP

STANDING ORDERS COMMITTEE

Hon. "Kwasai" Francis ole Kaparo, MP - Chairman

Mr. Speaker: Could you, Mr. Minister, read that name properly?

The Minister for Information, Transport and Communications (Mr. Mudavadi): "Kwasai!"

Mr. Speaker: Try again!

The Minister for Information, Transport and Communications (Mr. Mudavadi): Is it Kausai?

Mr. Speaker: Now, that is better!

The Minister for Information, Transport and Communications (Mr. Mudavadi): Thank you, Mr.

Speaker, Sir. Let me start again.

Hon. Kausai Francis Xavier ole Kaparo, MP - Chairman

Hon. Joab H. Omino, MP
Hon. Dr. Bonaya Godana, MP
Hon. Stephen Kalonzo Musyoka, MP
Hon. Maalim Mohamed, MP
Hon. Mathias Keah, MP
Hon. Ombasa Kiangoi, MP
Hon. Chafarno Mokku, MP
Hon. Muhika Mutahi, MP
Hon. Peter Kaindi, MP
Hon. Dr. Noah Wekesa, MP
Hon. Chris Mogere Obure, MP

CATERING COMMITTEE

Hon. Maina Kamanda, MP
Hon. Ms. Mariam Matano, MP
Hon. Mohamed A. Galgalo, MP
Hon. Mohamed M. Galgalo, MP
Hon. Zephania Nyang'wara, MP
Hon. Thirikwa Kamau, MP
Hon. Kausai F.X. ole Kaparo
Hon. Harisson Odongo, MP
Hon. Samuel Moroto, MP
Mr. Samuel W. Ndindiri - Clerk of the National Assembly
Mr. Michael ole Kirusua - Chief Serjeant-at-Arms

PRIVILEGES COMMITTEE

Hon. Kausai Francis Xavier ole Kaparo, MP

Hon. Joab Omino, MP
Hon. Amos Wako, MP
Hon. Moody Awori, MP
Hon. (Ms.) Marere Mwachai, MP
Hon. George Anyona, MP
Hon. Wanyiri Kihoro, MP
Hon. Orwa Otita, MP
Hon. Musikari Kombo, MP
Hon. Prof. Anyang'-Nyong'o, MP

THE LIBRARY COMMITTEE

Hon. Joab H. Omino, MP
Hon. Mohamed Affey, MP
Hon. John K. Marrirmoi, MP
Hon. Jembe Mwakalu, MP
Hon. Ekwee Ethuro, MP
Hon. Tom Onyango, MP
Hon. Mwangi O.K., MP
Hon. Alfred Nderitu, MP
Hon. Daniel Khamasi, MP
Hon. Josephine A. Sinyo, MP
Hon. Wycliff Osundwa, MP

THE SELECT COMMITTEE ON THE CONSTITUTION OF KENYA REVIEW COMMISSION

Hon. Dr. Bonaya Godana, MP
Hon. Prof. Sam Ogeri, MP
Hon. Joseph Kamotho, MP
Hon. (Mrs.) Zipporah Kittony, MP
Hon. Isaac Ruto, MP
Hon. Julius ole Sunkuli, MP
Hon. A.A. Ekirapa, MP
Hon. Musalia Mudavadi, MP
Hon. Kalonzo Musyoka, MP
Hon. Mathew Adams Karauri, MP
Hon. Fred Gumo, MP
Hon. Mohamed Affey, MP
Hon. Darius Mbela, MP
Hon. Mathias B. Keah, MP
Hon. Mwai Kibaki, MP
Hon. Norman Nyagah, MP
Hon. (Ms.) Martha Karua, MP
Hon. Kiraitu Murungi, MP
Hon. Kijana Wamalwa, MP
Hon. Daniel Khamasi, MP
Hon. Gitobu Imanyara, MP
Hon. (Mrs.) Charity Kaluki Ngilu, MP
Hon. Njehu Gatabaki, MP
Hon. Paul K. Muite, MP
Hon. Raila Odinga, MP
Hon. Otieno Kajwang, MP
Hon. Felix Kanyauchi, MP

I would like hon. Members to note that the Select Committee has been appointed pursuant to Section 10 of the Constitution of Kenya Review Amendment Act, 2001.

Thank you, Mr. Speaker, Sir.

Mr. Kathangu: On a point of order, Mr. Speaker, Sir. Nataka kusema kitu kidogo, Bw. Spika---

Mr. Speaker: Order! "Kitu kidogo" is unlawful! Will you please stop bringing "kitu kidogo" here? "Kitu kidogo" has a very bad connotation! Mr. Njeru Kathangu, the term "kitu kidogo" has acquired a very bad connotation in this country. Please, do not bring it to the House!

POINTS OF ORDER

ABSENCE OF THE PRESIDENT AND THE VICE-PRESIDENT FROM THE COUNTRY

Mr. Maitha: On a point of order, Mr. Speaker, Sir. My point of order is for the benefit of the country as a whole. This country has an Executive headed by the President, Parliament and the Judiciary. The House would like to get guidance from the Speaker on behalf of all Kenyans. I read the Constitution the whole night because the President of this country, who heads the Executive, is out of the country. The Vice-President is also out of the country. Who, in case of an urgent event, is being contacted? Who is in charge? I have the Constitution with me here, showing the three arms of the Government. We are in the second arm. Could you give us guidance or maybe, Parliament could be given leeway to appoint an acting President!

Mr. Speaker: Maybe, the Deputy Leader of Government Business can respond to that, and not me!

The Minister for Information, Transport and Communications (Mr. Mudavadi): Mr. Speaker, Sir, the Government is in charge! I would like to assure the House that the President of the Republic is in control wherever he is. He is in direct communication with all the organs of the State. We know that we have no crisis and there is no room in the Constitution at this stage, to provide for any acting President. So, the Government is in charge!

ERRONEOUS REPORTING BY *KENYA TIMES*

Mr. M.M. Galgalo: Mr. Speaker, Sir, under the heading "Coast News" and the title: "Hola Residents Now Disown Member of Parliament", the KANU newspaper, *Kenya Times* has decided to publish my picture. I do not belong to the Coast Province and I have no constituency. My constituency is the whole of Kenya! I would like you, Mr. Speaker, Sir, to take serious action against those people because this story is tribalistic. I belong to Amani, a regional organisation which works for peace among parliamentarians from East and Central Africa.

Mr. Speaker, Sir, could the *Kenya Times* write an apology in bold letters and publish my picture that I am not the one whom the people have disowned?

Mr. Speaker: Order! I suppose they do not know the difference between that Galgalo and the other Galgalo. I ask the journalists from that newspaper to look at you very closely and look at the other Galgalo very closely and know the difference.

(Laughter)

Hon. Members: Let them stand up!

Mr. Speaker: Order! Order! I do not run a classroom. These are hon. Members. They are not asked to stand up at will like that. They are supposed to sit there honourably.

Very Well!

MINISTERIAL STATEMENT

BAN ON HARMFUL COSMETIC PRODUCTS

The Minister for Public Health (Prof. Ongeri): Mr. Speaker, Sir, I rise to bring to the attention of this House and the public the issues that may be of public interest related cosmetic products containing harmful substances. The Kenya Bureau of Standards (KBS) invoking Legal Notice No.66 of 1999 issued a public notice in the media to inform and educate consumers on the harmful effects of mercury, hydroquinone, hormonal preparations and oxidizing agents contained in some cosmetic products in the market. The action was in line with the legal notice which empowers the KBS and Public Health to prohibit any goods which do not comply with Kenyan standards or any other approved standards.

In Kenya, these products have been inappropriately used for skin lightening purposes. The prohibition/ban is aimed at protecting unsuspecting consumers and discourage dumping of these products in the Kenyan market. Hydroquinone oxidizing agents and hormonal-preparations are used as drugs for various medical

needs. They are, therefore, classified as drugs and should be applied only upon the advice and direction of a medical doctor. All creams, lotions, gels and soaps containing hydroquinone, steroids and hormonal preparations should be registered by the Pharmacy and Poisons Board of the Ministry of Health for medical use. Their use in cosmetics was prohibited through Gazette Notice No.4310 of 14th August, 1998 and Gazette Notice No.7169 of November, 2000. The Government wishes to state that the following products are registered with the Pharmacy and Poisons Board to be used as human medicine for various skin conditions and not as skin lightening creams. They are:- Betnovate, Mediven, Diprosone, Nerisone, Dermonvate, Hydrocortisone, Oxy 5 and Oxy 10.

These products listed below contain hydroquinone, steroids, mercury and hydrogen peroxide. They have not been registered with the Pharmacy and Poisons Board of the Ministry of Health as medicines. They, therefore, should not be offered for sale as they have not been registered and approved for use in Kenya.

Skin Lightening Creams Containing Hydroquinone

Jaribu, Mekako, Amira, Tura, Yesako, Rico, Madonna, Mrembo, Shirley, Kiss Medicated Beauty Cream, UNO21, Princess Patra - Luxury Complexion Cream, Zalina, Envi, Viva, Ambi Special Complexion Cream, Lolane, Nadinola, Glotone, Nindola, Claire, MIC, Tonight, Fulani, Clere Extra, Binti Jambo, Butone, Malaika, Dear Heart (with hydroquinone), Miki, Crusader, Nish, Island Beauty, Malibu, Palmer's Skin Success Fade, Care Plus Fairness Cream, Topiclear, Carekako, Body Clear, Ambi American Formula, Dream, Symba, Cleartone Extra, O'nyia Skin Cream, Elegance, Mr. Clere, Fair Lady and Black Opal.

Soaps Containing Hydroquinone:

M.G.C Extra Clear, Topiclear, Lady Claire, Blackstar, Shirley, Amira, Ultra Clear and Body Clear.

Lotions Containing Hydroquinone:

Black Star, A3 Lemon, Jaribu, Amira, Kiss and Rico.

Skin lightening Gels Containing Hydroquinone:

Ultra Clear, Topiclear, Body Clear and Black Opal Advanced Complex Fade.

Soaps Containing Mercury and its Compounds:

Movate, Mekako, Jaribu, Tura, Acura, Rico, Fair Lady, Elegance and Miki.

Cream Preparations Containing Hydrogen Peroxide:

Jolen Cream

Preparations Containing Steroids:

Movate, Skin Success Gel, Hot Movate Gel, Amira-C and Tenovate.

All creams, lotions, gels and soaps which contain mercury should not be used at all as they are injurious to human health. Creams which contain hydrogen peroxide should only be used as prescription drugs. Skin preparations containing steroids should only be used under medical supervision. All creams, soaps, gels and lotions containing hydroquinone should only be used under the direction and supervision of a medical doctor.

In view of the aforesaid, the Ministry of Health and the Ministry of Tourism, Trade and Industry would like to warn the members of the public not to use these products as cosmetics. We wish to remind consumers that it is their right to make informed choices of beauty products. We urge them to avoid the banned products for the sake of their health and safety. There are safer alternatives which the beauty products industry can use for skin lightening purposes. For example, the use of vitamins and approved acids. Members of the public and the business community are warned to desist from importation, sale and possession of the above products as cosmetic creams, lotions, gels and soaps to avoid prosecution.

The Ministry of Health and the Ministry of Tourism, Trade and Industry requests members of the public and the media to report any such cases for remedial action to the Managing Director, KBS and the Registrar Pharmacy and Poisons Board.

Signed by

Hon. Kipyator Nicholas Biwott and

Prof. The Hon. Sam Ogeri.

Mr. Speaker: Very well! Next Order!

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. This is very serious because some of the products the Minister has cited as being injurious to the health of Kenyans, especially women, have been in the market for too long. Now that Kenyans have been injured by those chemicals, mercury and its compounds, who will take liability?

Mr. Speaker: Although I will ask the Minister, may be you should put that by way of Question so that the House can participate. I will allow you time if you can put that by way of a Question.

Mr. Munyao: On a point of order, Mr. Speaker, Sir. When the hon. Minister was reading the list of banned products, because we have got gracious ladies, we were concerned and called for some of the components. Here we have got a packet of Black Opal Cream which is used by Madam President. What are we going to do about these products because they are found in every chemist in Nairobi?

Hon. Members: Table it!

(Mr. Munyao laid the packet of Black Opal Cream on the Table)

Mr. Speaker: Order! Order! Mr. Munyao, do you know what you have done? You have deprived that gracious lady of the use of her cosmetic. We will not give it back to her now. It has become the property of the House.

(Laughter)

Order! Order! As the Minister said, he is in charge of public health. Hon. Members and the public will digest what he said. There is no doubt that there will be reactions. We cannot continue discussing a serious matter like this one under Points of Order. So, first of all, digest what he has said. May be, you will come to know what will come out of it all.

MOTIONS

ADOPTION OF SESSIONAL PAPER NO.1 OF 2001

That, this House adopts Sessional Paper No.1 of 2001 on the proposed action by the Government of Kenya on the conventions and recommendations adopted by the International Labour Conference during the 34th, 42nd and 18th to 87th Sessions of the International Labour Organisation.

*(The Assistant Minister for Labour and Human Resource Development
(Mr. Ethuro) on 5.6.2001)*

(Resumption of Debate interrupted 6.6.2001)

Mr. Speaker: Prof. Anyang'-Nyong'o, you were on the Floor when debate on this Motion was interrupted. You have ten minutes left.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, before the House rose yesterday, I was noting that Sessional Paper No.1 of 2001 is very important because it requires the Kenya Government to take certain actions of adhering to conventions and recommendations adopted by the International Labour Conference under various sessions mentioned therein since 1951. I was observing that many developing countries, Kenya included, are fond of signing conventions without having the slightest intention of adhering to them. As a lawyer, you realise that the Universal Declaration of Human Rights is one of the most important conventions.

We have been a member of the community of nations called the United Nations (UN) for many years. However, if you look at the extent to which the signatories to this declaration adhere to, support and defend human

rights on a day-to-day basis, you will find a very sad record. That includes developed countries as well. It is not only developed countries that are culprits of signing such serious documents and then proceeding to ignore them. For example, the rights that immigrants from Africa have in the industrialised countries fall far short of these countries' adherence to the Universal Declaration of Human Rights.

As I speak, the Republic of France practices very discriminatory policies towards certain immigrants in that country, particularly those from Africa. For example, it is not uncommon to find that a coloured immigrant may find it very difficult to get a job. So, let those who say that they are members of the world community of nations be faithful to the declarations that they sign. In that regard, all I am recommending is that the Kenya Government should adhere to the recommendations and conventions mentioned in this Sessional Paper.

Mr. Speaker, Sir, I would like to take a serious objection to the number of recommendations and conventions that the Government of the Republic of Kenya says it cannot adhere to. I would like to repeat what I said yesterday, because we are still developing. The Minister says in one of the paragraphs of this Sessional Paper: "The requirements of this recommendation set for member states are too high and ambitious for a developing country such as Kenya, which is struggling to alleviate poverty among its people." Recommendation No.189 is trying to stimulate job creation in small and medium-size enterprises but the Government says that the standards set are too high for us since we are still developing.

I recommend that we adhere to this recommendation so that it can inspire us to aim higher. As a developing country, we really rely on small and medium-size enterprises. Rather than decline to adhere to this recommendation, due to the high standards set, we should come up with a law that will put a time-table on how to implement it. It may appear more honest to say that we are not going to adhere to the recommendation rather than ratify it and then backtrack. However, I believe that the Government should adhere to this particular recommendation. The reasons given here are not good enough.

Mr. Speaker, Sir, I would like to refer to Recommendation No.177, which deals with domestic workers. This particular recommendation is aimed at protecting the rights of domestic workers and ensuring that they are given liveable wages. One of the things that happen in this country is the extreme exploitation of domestic workers. We are saying that if we set up standards that put a threshold on how much money domestic workers should be paid, those who employ those domestic workers will not afford it. I am sure that Kenyans do read from time to time about what happens in Parklands, Nairobi. Quite a number of members of the Asian community have been butchered by their domestic workers whom they dismissed or retired. Those domestic workers came to realise that they were exploited over the years. So, they went ahead and butchered their former employers in revenge. That is the expression of protest and disgust that a worker may use after many years of exploitation. It would be much better if we had established a threshold for protecting the rights and interests of domestic workers.

As I said yesterday, we should then proceed to have a good social security system and public health system that will ensure that the wages of domestic workers are subsidised by the state. Once domestic workers have access to good public health, social security and public transportation systems, these can be worked into what is called a liveable wage for domestic workers. Employers will not then have to feel the weight of having to bear a huge wage bill for their domestic workers, as is currently the practice. I am afraid that if we do not do this, we may soon see much more violence from domestic workers who may feel that, over the years, they have been paid much less than what they should have earned in terms of a liveable wage.

Mr. Speaker, Sir, the other issue that I wanted to raise has to do with safety and health in working places. That particular recommendation refers mainly to mines, but I think safety and health in working places should refer to all working places, and I have one major example here in Kenya, which is an eyesore to the Republic, and that is the Webuye Paper Mills. If you have talked to anybody who has worked at the Webuye Paper Mills, or had the privilege of visiting Webuye Paper Mills and seeing the environment in which that factory is currently found in, you will find that all the houses around Webuye which have corrugated iron sheets which are long tenable, have gone through a process of corrosion which demonstrates the kind of toxic elements that come from the Webuye Paper Mills, and which are emitted into the atmosphere. Now, just imagine the human beings who are working around the factory or live within the environment and take in those corrosive fumes---

I had the occasion, very recently, of talking to the workers of Webuye Paper Mills, and they told me that many of them can no longer - men at least - have kids. In other words, they cannot "produce" children. That terrible environmental hazard called Webuye Paper Mills and the corrosive fumes that enter the people's bodies have made many men impotent. I am serious. That is evidence from workers from Webuye Paper Mills. So, when we have recommendations from the ILO that tell us that we should have certain safety and health standards in working places, we should not dismiss it so offhandedly; that we are a young nation and we cannot adhere to such high standards, when we know that right within our country, precisely because we do not adhere to those standards, and in spite of the fact that we now have an Environmental Management Law, we are experiencing a

disaster that is putting the health of our people in jeopardy. Further, the toxic waste that comes from Webuye and enters the River Nzoia on its way to Lake Victoria, has resulted into tremendous environmental degradation in the lake, and the animals and people who happen to use the waters from Nzoia River also have had their health in jeopardy. Precisely because---

(A mobile phone rang)

Mr. Speaker: Order! Can the owner of that mobile phone own up? Who is that?

An hon. Member: Is it from somebody in the Speaker's Gallery?

Mr. Speaker: In the Speaker's Gallery? Mr. Serjeant-at-Arms, find out who it is and get him completely out of the perimeter fence!

(The owner of the cellphone was removed from the Speaker's Gallery)

An hon. Member: Remember to bow!

Mr. Speaker: Proceed, Mr. Anyang'-Nyong'o.

Prof. Anyang'-Nyong'o: Thank you, Mr. Speaker, Sir, for guaranteeing me a healthy working environment. So, it is important that recommendation No.176 that deals with safety and health in working places be adhered to by our Government. The other recommendation - fortunately the Government says that they are going to adhere to - deals with how to calculate equal remuneration. But that particular recommendation cannot be looked at in isolation. Equal remuneration is not simply in terms of wages given to an individual. Equal remuneration also has to do with the micro-economic conditions under which people work. For example, I have already said that regarding social security, public health, public education, public transportation and so on, there is no way a developing country like ours is going to have a fair equal remuneration policy for workers until and unless we develop what I might call "good, efficient, cost-effective public transportation, public health, social security and public housing," for our workers or for wage earners. At the moment, for example, those who are enterprising in urban areas and want to develop good housing are penalised by speculators. It is much more rewarding to buy an acre of land in Upper Hill in Nairobi and sit on it for years without developing it. After five or six years, you would make much more money than the person---

COMMUNICATION FROM THE CHAIR

ADMITTANCE OF STRANGERS TO THE GALLERIES

Mr. Speaker: Order, Prof. Anyang'-Nyong'o! Hon. Members will realise that for the very first time, we have had to expel a stranger. That is not something I would like to happen. So, I will direct an order to the Clerk that all strangers admitted to the galleries must first surrender all their cellular phones, so that we do not have to deal with **[Mr. Speaker]**

strangers in that very uncomfortable fashion.

Proceed, Prof. Anyang'-Nyong'o.

Prof. Anyang'-Nyong'o: Congratulations, Mr. Speaker, Sir. Equal remunerations cannot be dealt with in our context, as I said, without developing good working public sector programmes for basic needs like health, education, housing and social security, and that is an area in which while the Government is declaring that it will adhere to that particular recommendation. I would like the Government to think very seriously about investing effectively in the public sector, especially in areas of housing, health, social security and transportation. Many workers may not need to be paid high wages as it is envisaged, when you are talking about equal remuneration, if a developing country like Kenya has a good public sector programme in those areas. So, when the Government rejects some of the recommendations, it should not reject them while oblivious of the micro-economic environment in which the recommendations are being made. Some of the recommendations may not look that expensive; they may not look as if they are meant for more developed countries. They are meant to inspire developing countries to aspire to those standards, so that for example, we can begin investing effectively in our public sector, which will make it possible for workers to live much higher living standards, not necessarily from their wages, but from what they can get cheaply in the public sector.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, if you go to India, for example, wages are very low, but the cost of living is also low. So, whereas an Indian may earn 100 Rupees a month, and a Kenyan earns 200 Rupees a month, the Indian's 100 Rupees are much more valuable than the Kenyan's 200 Rupees. This is because among other things, the cost of doing business in Kenya is one of the highest in the world. So, if the cost of doing business is very high, it means, therefore, even workers will demand more wages in order to survive. When we talk of economic security in Recommendation No.111, you will find that, for example, it is precisely because Kenyan doctors do not have economic security that we have close to 400 of our doctors migrating in one year to go and work in South Africa, a country which should have many more doctors than Kenya. A Kenyan doctor will prefer to go and work in South Africa than here because there is more economic security there. Economic security does not just refer to the money you earn, but when you invest somewhere you get a higher return for what you have done. It is that higher return that makes for better economic security in a developing country than otherwise. I would appeal to the Government to adopt this Recommendation and ensure that they do not reject it because of not having taken into account the macro-economic conditions.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Ndicho! You have a different view from your leader.

Mr. Ndicho: Thank you, Mr. Deputy Speaker, Sir. I wish to support this Motion. I come from a constituency that has a lot of concern for labour issues. We have had to go through many years of complaints and we have raised issues here that affect the labourers in my constituency, Nairobi and other areas. We support these Conventions and Recommendations from the International Labour Conferences (ILCs) that are held in various countries, for various periods of time. My worry is that the convenors of these conferences who recommend and make conventions are related to the people who own these industries especially in Africa.

We have imported the way of dealing with labour matters especially from Europe. You will realise that the investors in our local industries also come from Europe. There are double standards involved in so far as policing and supervision of these recommendations are concerned from these International Labour Organisations and Conferences. If you compare the labourer in Africa to that one in Europe or America, the disparity is too big. You will never find the cases of human rights abuse that are meted to our people in Africa being meted to the workers in Europe. The issue of infringement of these labour rights goes hand in hand with human rights infringement. I come from a constituency where we have over 135 factories. Most of my complaints are about the way workers are treated and mistreated by the investors or owners of these factories.

If you ask the workers in Thika, Nairobi and these other areas whether there is an organisation that talks about their rights, they will tell you that it either exists in theory or does not exist at all. Government officials, including the trade union officials, who are supposed to form the supervisory body for workers are all compromised. There is no place where a worker in this country will take his complaints, be listened to and action taken. This might be because the Indian factory owner has befriended the trade union officials. When the Ministry officials attempt to go there, they are also compromised. All this adds up to abuse of labour and human rights. As we talk about these Conventions and Recommendations, I wonder whether the Minister for Labour is ever serious at all, or is this just a Motion he has brought in this House so as to be seen to be alive and kicking?

Many are the times that we have raised issues of human rights and labour abuses in this House. The Minister promised that he will bring to this House recommendations to amend and overhaul the entire Labour Act which is too colonial and which has been amended the least number of times. One Minister for Labour after another comes here and promises that he will overhaul and bring recommendations for the amendment of the Labour Act for the betterment of our people, but nothing ever happens. When we started this Session of the Eighth Parliament, the Minister for Labour promised to bring a complete overhaul of the Labour Act. Next year we will go for elections and I am sure that the Minister has not even started to initiate those recommendations and amendments. He only comes here for a public relations exercise. If he has initiated those recommendations, let him stand now and confirm or deny what I am saying.

There is the recently introduced horticulture industry for cut flowers and carnations which has spread all over this country within a short period of time. If there is an area where Kenyans have been exploited, it is in the industry of cut flowers. Cut flowers are grown under very stringent conditions where a lot of chemicals and other types of fertilizers must be used. I have got so many horticultural farmers in my constituency. These people would never allow somebody like a Member of Parliament to enter those green houses. Before the officers from the Ministry of Labour go to supervise them, a worker from the green house is sent in the morning to give them an

envelope so that when they go there, they will keep quiet about their findings. We are talking of the ILCs with Conventions and Recommendations. They are so beautifully entrenched in those books, but they are never implemented. I even wonder whether the Ministry officials have ever read the Recommendations in this booklet. If they had done so, they would never allow the abuse of human and labour rights to go on in these factories as far as our people are concerned.

In Ruiru, there was a case whereby I had to seek the intervention of the District Commissioner for Thika because the company stoutly refused to issue gloves to the workers. I went there and found that the nails of women had been disfigured due to the use of chemicals. Several of the workers have gone blind. Pregnant women cannot work there. It took the intervention of the DC, Thika, to threaten the factory owners to either provide protective gear for the workers or close down the factory. We were shown a few gloves that were bought, but we wonder whether they are replaced when they wear out. This is happening and yet we have got a Ministry of Labour in this country. If you look at the conditions under which our people work in this factory, where many people would not be allowed to go in, you will just pity Kenyans because they are working in those diabolic conditions just to earn a living. If they do not go to work, even under those conditions, they will go hungry and yet they have got families to feed and clothe.

Irrespective of the fact that we are living under very severe economic times, the Government's responsibility to ensure that its workers are working under better conditions does not mean that the investors should be left to do what they want with African labour. Throughout the world, it is only the African labour that is exploited without the respective governments raising a finger to oppose it. They are hiding behind the excuse of investment; that you cannot scare away the investor, and that the donors will feel bad about you. They feel that the investor must be protected and given a conducive working environment and that he must not be threatened. We shall have those investors coming here, but all we will get is the exploitation of Africa. They will get resources and money from Africa. By the time they will be rich enough to leave this continent, there will be no population to talk about. So, I hope the Ministry of Labour and the Government in general will take the issue of workers in this country with the seriousness it deserves. They are totally exploited. There is no close supervision.

Mr. Deputy Speaker, Sir, if we go to the issue of housing, especially in the agricultural sector, where my constituency and, I believe, many others in this country are situated, you will find that there are round thatched mud huts which a whole company calls "labour lines". These are the same huts that were built by the white settlers. When we replaced "Jones" with a "Kamau" to take a 500-acre shamba, he just continued with the same tendencies that the Mzungu was meting to the people of this country. So, what is the Government's policy in so far as, for example, housing is concerned? You will find that a labourer has got a better house in his rural home than the one he lives in, in the so-called "labour lines". We have got field staff from the Ministry of Labour and you wonder what sort of job they do in the field.

Mr. Deputy Speaker, Sir, I wish to commend Del Monte Company just for once. We have been making noise about Del Monte Company, but recently we visited it with hon. Murathe, the DC, Thika, and other official leaders from Thika. It is now phasing out those round thatched huts and putting up, at least, a one-bedroom house with sitting room, kitchen and a toilet, to give some decency to their workers. I wish they complete that project they showed us, so that other companies will have no excuse but to make their labour lines better living places than they are today.

Mr. Deputy Speaker, Sir, if we go to the issue of salaries, it is only in Africa that we have got the lowest paid labourers in this world and yet we have those conventions. All they do is to spend a lot of money with conventions, that is 34th, 42nd, 18th Sessions of the International Labour Organisation (ILO). They only "eat" money, talk and produce volumes of books and recommendations. However, once they have done that, these recommendations just go to gather dust in the libraries and shelves of these organisations. So, it is high time that Africa rose up and said "no" to exploitation of their people.

Mr. Deputy Speaker, Sir, right now, I am mourning the death of a very distinguished African patriot from Zimbabwe, the late Chinjirai Hunzvi, who was the leader of Zimbabweans in telling them: "Let us reclaim what belongs to us and let us say no to the exploitation by the white men, the colonial masters." They were exploited by their fathers and grandfathers, and now men with beards are exploited by their sons and daughters. It is sad that we have lost that man because I was his supporter. In fact, I will consider attending his funeral just to show solidarity with Zimbabweans for losing such a good person.

Mr. Deputy Speaker, Sir, it is those kind of people that we lack in Kenya. When I stand up and say that we have been exploited because some of these factories and industries are owned by foreigners, this Government and the President do not want to hear anybody touching them since they think that we are going to scare them away. When I talked about it, I was arrested and put into police cells and then taken to court. When is this Government and Africans in general going to stop adoring the whiteman as if he is a superman than themselves?

We are created equally in the eyes of God. We are all the same and yet we allow our people to be exploited by the whiteman because he is simply white or because he is simply Mhindi. When you talk about it, you are told that you are scaring away the investor. What is this scaring away the investor all about, when our people are being exploited?

So, Mr. Minister, it is your responsibility to come up with a document called the New Labour Act which is going to protect our people in their working conditions, look into their wages and salaries, housing problems and medical policies, which are lacking. That document from the ILO is talking about fantastic health care policies but they are never implemented at all. Nobody talks about them. If you look at the so-called dispensaries in those factories, they are just small clinics with aspirin, panadol and whatever. When somebody goes complaining, he or she is just given a few painkiller tablets.

Mr. Deputy Speaker, Sir, it is the Government's responsibility to understand that you cannot be a Government without the people and you are not subservient to other people. You are the same as those people. You travel to a country like Dubai where investors are allowed in and employ the locals; you will find that one of the conditions there is that the foreign investor must incorporate the locals in his investment. It should be around 40 to 60 per cent or whatever percentage. The supervision of labour in that country is so stringent that if you overwork a labourer alone by 5 or 15 minutes, it is such a big offence that the Government will come up in arms. What is our Government doing about that? What stops us from thinking about the people who have either elected us or voted us out and then rigged the election in order to call ourselves the Government? Why do we not think about them?

Mr. Deputy Speaker, Sir, look at the issue of trade unions and you will notice that the so-called industrialists, investors and owners of these factories, deliberately flout the law, even the existing bad one which provides for creation of trade unions in every factory. If you employ over 25 people in your organisation, they are entitled by law to have a trade union and yet, for example, in Thika, Bidco Oil Company, just because the owners are friends of the powers that be, vowed that as long as they are in this country, no trade union will be allowed in Bidco Oil Company. They have lived up to their word. I have brought that Question here from one Minister to another, and even yesterday the Minister promised that he was going to look into that matter. That is what I got from the previous Ministers. I am receiving the same from the current Minister, and I might do the same from his successor. I know he might be honest but he does not know the connections of those people. If he attempts, he might lose his job. However, should we allow companies to operate here, flouting the existing laws by refusing the registration of trade unions and yet they are recognised by the ILO?

Mr. Deputy Speaker, Sir, I have thought of writing a letter to the headquarters of the International Labour Organisation (ILO) and complain about that particular factory. I know that this is not the only factory in this country that bars its workers from joining a trade union. There are several factories in Nairobi, Mombasa and Kisumu which refuse to allow their workers to join trade unions for ulterior motives; so that whatever they do there or when they oppress the workers there, it will not come out. I have the example of Bidco Oil Refineries Ltd.

The Asian there threatened that whoever would attempt to join the Food and Allied Workers Union would lose his job. So, the employees decided to keep away from trade unions so as to keep their jobs. But since there is a law---

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

Mr. Ndicho: Point of what?

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): Mr. Deputy Speaker, Sir, I said on a point of information, but actually---

Mr. Ndicho: No, you get it from me and not from the Chair!

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Go ahead and raise your point of order!

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to mislead this House that Bidco Oil Refineries Ltd., has refused to allow its employees to join a trade union, when we gave an answer to this House yesterday to the effect that the recruitment number was only 25 per cent of the labour force? We need a minimal of 51 per cent. Is the hon. Member in order to continue misleading the House when he has got the right answer?

Mr. P.K. Mwangi: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: On what now? Mr. Ethuro rose on a point of order and the hon. Member is responding to it.

Mr. Ndicho: Mr. Deputy Speaker, Sir, truly, I would like to respond, and possibly the Assistant Minister was summoned yesterday and warned. The answer he gave here was given to him by the Personnel Manager who is an Asian, or the owner himself. I would like to inform this House that the workers were threatened that if they attempted to join that union, they would be sacked. That is why the workers in that company have not joined a trade union.

Mr. Deputy Speaker: No! No! Mr. Ndicho, is it a fact that you must achieve 51 per cent membership before a chapter of a union is recognised?

Mr. Ndicho: Mr. Deputy Speaker, Sir, I do not know what the Assistant Minister is talking about. But the law provides that if any person has over 25 employees who would like to join a union, they are free to do so.

Mr. Deputy Speaker: No! No! Mr. Ndicho, if I had 12 employees, would they constitute a chapter of a union?

Mr. Ndicho: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: So, the point the Assistant Minister is making is that no matter what number you have, 51 per cent ought to subscribe to the union. That is different from what you are saying.

Mr. Ndicho: Mr. Deputy Speaker, Sir, the law provides 25 employees as the minimum number. When he talked about 51 per cent, it means that if a factory has got 100 workers, then 51 of them must be willing to join that union. I do not understand why the employees of Bidco Oil Refineries Ltd., would refuse to join a union given that they experience so many problems. These employees are the ones who confided in me that--

Mr. P.K. Mwangi: On a point of information!

Mr. Ndicho: Granted!

Mr. P.K. Mwangi: Mr. Deputy Speaker, Sir, I would like to inform Mr. Ndicho that Bidco Oil Refineries Ltd., has more than the number the Assistant Minister has talked about. What this company does is that it only employs the Asians on a permanent basis. The casual labourers who have worked there for more than five years are paid on a weekly basis and that is why they cannot get a number that is required by the Government.

Mr. Ndicho: Yes, there you are getting the facts.

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

Mr. Ndicho: Granted! It is not the Chair that gives you the permission; it is me.

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): Thank you, Mr. Ndicho.

Mr. Deputy Speaker: Order! In fact, there is no such thing as a "point of information" in our procedures. This is an abuse of our process.

So, proceed, Mr. Ndicho!

Mr. Ndicho: Mr. Deputy Speaker, Sir, although this matter is being taken lightly, it is, in fact, very serious.

I was coming to what Mr. P.K. Mwangi has said. There is a tendency not only in Bidco Oil Refineries Ltd., but in many Asian owned factories not to employ Kenyans on permanent basis. They do this to stop them from joining a trade union and, secondly, to avoid giving them their dues. If you work for a company for ten or 15 years, you deserve to be paid some dues at the end of your service. So, to avoid all that, they just employ them on temporary basis as casual labourers or seasonal labourers, and after three months, they are retrenched. Then if they want to be employed again, they have to be issued with a new number. That is why we want that Act to be amended. This is because you cannot employ somebody for ten years as a casual or seasonal labourer. This is what was happening at Del Monte until we got the current Managing Director. He is quite a good guy. He abolished what we call "seasonal labour". He said that you are either a casual labourer or a permanent employee. This is because there is no provision for seasonal labourers in our Act. If it is there, it is when there is, for example, the rainy season or dry season and, therefore, one works during that season. When that season is over, he or she is sacked.

In Del Monte, there were some people who had worked for 30 years as seasonal workers so that at the end of the 30 years, they only got the monthly salary without dues for the 30 years that they had worked. So, it is incumbent upon the Ministry to start work on the review of this Act immediately and bring it before the House before we go for elections next year. So, it is important that the Government knows that there are people it should take care of.

If I may turn to the creation of jobs, which is my last remark, the Government should be at the forefront of creating jobs. The Government is not serious at all about creation of jobs, and as a result we have joblessness which has led to crime. I would like to point out that crime in this country is closely related to joblessness. Because

the Government has got no policy even for the informal sector; how it should help people who have no formal jobs to be employed--- Even when these people try to create their own jobs, the Nairobi City Council (NCC) demolishes their kiosks and council employees chase them up and down. So, the Government should come up with job creation technique so that we can get our people being employed.

Mr. Deputy Speaker, Sir, the importation of manufactured goods, like the ones the Minister for Health has just read here, has become a big problem. You will find that all "takataka" from all over the world is dumped in this country. These include fruits, eggs, ugali and rice. Some time from now, you will find a certain company importing cooked ugali or mchele. This will be imported from either Dubai or another country, and the Government will allow it. The importation of these goods leads to the creation of jobs in those countries where they come from, and leads to joblessness in this country.

So, if the Government sits here and does nothing about reforming the Labour Act, we will do nothing about it. We will only come here to cry, day in, day out, without helping our people.

Mr. Mkalla: On a point of order, Mr. Deputy Speaker, Sir. Is it not in order to call upon the Mover to respond to this Motion since it has been discussed well?

Mr. Ndicho: But I have not finished!

Mr. Deputy Speaker: Well, finish, Mr. Ndicho!

Mr. Ndicho: Mr. Deputy Speaker, Sir, I beg to support the Motion.

Mr. Deputy Speaker: Well, I do not see the Mover here.

(Mr. Mkalla left the Chamber to look for the Mover)

QUORUM

P.K. Mwangi: On a point of order, Mr. Deputy Speaker, Sir. There is no quorum in the House.

The Assistant Minister for Labour and Human Resource Development (Mr. Maiz): On a point of order, Mr. Deputy Speaker, Sir. We have discussed with the hon. Member and I do not know why he is fearing this. Mbona anasema kwamba hakuna quorum?

Mr. Deputy Speaker: Order! There is no Quorum. Ring the Division Bell.

(The Division Bell was rung)

Mr. Deputy Speaker: Order! Order, Members! We now have a quorum.

Mr. Mkalla: On the a point of order, Mr. Deputy Speaker, Sir. Would it be in order for me to call upon the Mover to reply since the Motion has been exhaustively discussed?

An hon. Member: How do you know?

Mr. Deputy Speaker: Order! Hon. Members, there being no dissenting voice, the Mover may go ahead and reply.

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): Thank you, Mr. Deputy Speaker, Sir. I wish to reply to the issues raised by hon. Members, when they have been contributing to this Motion.

I want to start by thanking all the hon. Members. I am pleased very much because most Members contributed in favour of the Motion. In fact, there was almost unanimous and total support to this particular Motion. The most you could hear in terms of dissenting voices was that: "I support this Motion with amendments", or "I support with a heavy heart." Nevertheless, it was still support for the Motion. This shows the seriousness of these issues, and this House as the national authority has risen to the occasion where we, in the Government, can bring some of the international conventions to this House so that hon. Members can make some contributions to enable us manage our labour issues and set them in a way to show that they have the mandate from the people we represent.

Mr. Deputy Speaker, Sir, the conventions that were brought before this House were those considered to be the ones that can be domesticated within our own economy and made by the relevant organs, taking into account our socio-cultural and economic levels.

Mr. Deputy Speaker, Sir, hon. Members have raised issues about whether the Government is serious in implementing these conventions, or whether this is just a talkshop Paper that we want to use to convince people that we are serious. The Chair heard, particularly from the last speaker, that labour laws have not been reviewed. I want to start with that by saying: Last month, the Minister gazetted a Commission that has started work on

reviewing and harmonising all the labour laws in this country. We hope that by the end of the year, we will get new laws that will be brought to this House to take into account various issues that have arisen within the East African Community and within our own development, with regard to all the issues that hon. Members have raised.

Mr. Deputy Speaker, Sir, hon. Members have shown a lot of concern about child labour. Hon. Members wanted to know what the Ministry is doing about child labour. I want to reassure them that, actually, the Ministry had a project on child labour which was meant to look into all forms of child labour. Some of the international conventions that are being discussed within the Sessional Paper conform to our understanding about labour laws and the seriousness we attach to the Sessional Paper.

I want to assure hon. Members that we have ratified more conventions than most Members of the International Labour Organisation. We have previously ratified about 46 conventions and we are doing even better than industrialised states like United State of America, which has also ratified 13 conventions. I think that is a big improvement because it shows the seriousness and commitment the Government is putting into these issues.

Mr. Deputy Speaker, Sir, one of the concerns shown by hon. Members was that some of the conventions, like those on mining and the tea sector, were not being recommended at this particular time for ratification and adoption. Once these conventions have been ratified, then we have an obligation to implement them and make regular reports on the progress on them. So, when we have recommended them for ratification, it should not be taken to mean that we have done so because we have realised that it may be very difficult to implement them, given our technical capacity and resources. We do not want to come here and tell this House that we will do this and we fail to do it. We do not want to come here and tell the House that we will do things that we cannot do. We want to state clearly the kind of conventions that we are interested in ratifying. For example, if you look at the convention that we are considering on worst forms of child labour, it is aimed at prohibiting and eliminating all forms of child labour. You will all agree that child labour denies this country its potential, and we are all committed to ensure that our children go school and are not engaged in any form of employment.

Mr. Deputy Speaker, Sir, if you also look at Convention No.111 concerning discrimination in employment and occupation, it was recommended because Section 82 of the Constitution outlaws discrimination. Therefore, both in law and practice, discrimination is not allowed with regard to employment and occupation. This is why the Government intended to adopt this particular recommendation and convention, so as to supplement Recommendation No.111. I cannot go on and on because that is basically the rationale that we use in making recommendations of the specific Sessions.

You will realise that hon. Members have raised the issue of some of those conventions that took place as early as 1958. You will notice that those conventions would not have been applicable at that particular time. We felt that time was ripe and we, as a country, were ready to adopt and ratify those particular conventions. It is not just a matter of time, but it is a matter of suitability and our ability to be able; once we have ratified them, we would domesticate and implement them and report on the progress as we go on. The conventions that we have not recommended, it is not because we do not want to implement them. It is because we are saying, maybe, now we will not be able to implement them.

Most hon. Members have actually spoken on the need to look at this in different ways. We have talked about quasi-judicial bodies. Members have raised issues on the different payrolls. We want to say, as a Ministry, that we do not encourage different payrolls. The Government is serious and concerned that there should be equal pay for equal amount of work. The tripartite arrangement in trade unions and the labour sector should support these kind of practices. If there are practices that are not consistent with the laws of the land, the Ministry would be happy to learn about them.

Mr. Deputy Speaker, Sir, we have taken on board issues that hon. Members have raised. This particular Sessional Paper brings to completion, all the conventions of the ILO as under obligation as a member state up to the year 1999. That will remain very current and during the remaining one or two more years, we will look at them as we progress. I want to be grateful to the hon. Members who have actually complimented the Ministry for the good job that it is doing. The Government is taking responsibility, that all the commitments we make outside this country are being brought to this House, so that Members will have an opportunity to contribute on them. I do not want to take long because this was a Motion that got support from all Members.

Mr. Ndicho said that our predecessors gave the same answers to certain Questions. He said that he is almost sure that our successors will provide the same answers. I want to prove otherwise. Hon. Ndicho knows the good job that we have done with him in the last few years, to be able to take care of certain issues such as seasonal labour in his constituency. It is only fair if he admitted it in this House, so that the rest of his colleagues will know that we are doing a good job.

With regard to the Trade Disputes Act and the Employment Act, we have already gazetted a review process headed by Justice Cockar, the Judge of the Industrial Court, as the Chairman. So, I want to reassure this

House that what we have promised before in this House, we have actually implemented. So, we are no longer talking about what we will do. The process is under way and we are hoping that by the end of the year, we will complete all the aspects relating to labour laws.

Mr. Ndicho: On a point of order, Mr. Deputy Speaker, Sir. I am really at a big loss. The Assistant Minister has said that they have appointed Justice Cockar as the Chairman of that review process. Is it in order to appoint the Judge who hears the disputes to work through the documents? That is a contentious issue.

Mr. Deputy Speaker: Order! There is no Standing Order he has breached. You are now engaging him in an argument, wanting to know why they have appointed Justice Cockar, "Justice Ndicho" or whoever. That is not a point of order.

Proceed, Mr. Assistant Minister!

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): Thank you, Mr. Deputy Speaker, Sir. I thought Mr. Ndicho was going to confirm that we have worked with him on the issue of seasonal labour and it has been successful. Why do we not talk about the favourable side?

The point I was making was that certain Members raised issues about the seriousness of the Ministry. I was giving that as an example of where we had promised this House before, through many of the Questions that Members raised, that we will undertake a review process to some of those laws which date back to the colonial time. I was proudly announcing that, that Committee has actually been gazetted and the work is going on. I think the best person to head that Committee is Justice Cockar because he hears all the parties that are concerned. He has heard all the issues, and it is only fair that he does the job because he is bound by the existing framework and he cannot change what is not within the law.

With those few remarks, I beg to move.

(Question put and agreed to)

ADOPTION OF REPORT ON KENYA ROADS BOARD

Mr. Mbela: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Energy, Communications and Public Works on the operations of Kenya Roads Board laid on the Table of the House on 26th April, 2001.

The Report covers activities of the Kenya Roads Board pursuant to the provisions of Standing Order No.162. As you will recall, Parliament passed the Kenya Roads Board Act in December, 1999. In fact, I remember the previous Minister and my Committee working over that, to make sure that the whole Act was done in line with the wishes of the Members of this House and the interests of the Government. The Act was, thereafter, given assent on 6th January, 2000, and its operations were supposed to start on 1st July, 2000. Thereafter, because we found certain loopholes in the law, we amended the Finance Bill so that all the proceeds of the Road Maintenance Levy Fund could be paid directly to the Kenya Roads Board.

Mr. Deputy Speaker, Sir, as I move this Motion, I notice that nobody is here from the Ministry of Roads and Public Works and the Ministry of Local Government, who are subject of this Report. The Act that I am referring to states in Section 6 Subsection 2 (d) that:

"Without prejudice to the generality of Subsection 1, the Board shall:-

(d) Determine the allocation of the financial resources from the Fund or from any other source available to the Board required by Roads Agencies for the development, rehabilitation and maintenance of the road network to ensure that the re-allocation of funds is pegged to specific categories of roads, and not less than 24 per cent of monies from the Fund is allocated equitably to the District Roads Committees.

(ii) 16 per cent of the money from the Fund will be allocated equally to all constituencies in the country.

Mr. Deputy Speaker, Sir, so far, up to March, a total of Kshs5,569,302,337.15 were collected and, instead of the money being sent directly to the Kenya Roads Board, 79 per cent was, in fact, irregularly sent by the Ministry of Finance to the Ministry of Roads and Public Works. That amounted to Kshs4,501,773,137.20. Then, 21 per cent was sent to the Ministry of Local Government. That amounted to more than Kshs3 billion! But what is important is: The Act was defied without any good justification. After discussing the issue with the Ministry of Roads and Public Works and the Ministry of Local Government, we found some very serious reluctance to release the money, particularly to attend to the rural roads. We even found cases where a lot of money just continued to be spent in a great hurry and recklessly. A week ago, the Ministry, without any lawful

justification, went ahead and advertised tenders for roads which are not even crucial and not in the programme! That responsibility was stopped under the law.

Mr. Deputy Speaker, Sir, I would like to quote from Section 31(1) of the Act, which states:

"There is established a Fund to be known as the Kenya Roads Board Fund, which shall vest in the Board. There shall be paid into the Fund all proceeds from the Roads Maintenance Levy Fund."

From the foregoing, it is worthy noting that all proceeds of the Roads Maintenance Levy should be sent directly to the Kenya Roads Board from the Kenya Revenue Authority or the Ministry of Finance. By 9th March, 2001, the Ministry of Finance had collected Kshs5,569,302,337.15, contrary to the provisions of Section 31(2) of the Act. The Minister dispatched 79 per cent of the money to the Ministry of Roads and Public Works, and 21 per cent to the Ministry of Local Government.

The Committee, having known that Kshs5 million should have gone to the constituencies, took up the issue. But the Ministry of Roads and Public Works was only willing to send Kshs1.5 million to the constituencies. I am sure Members here know that their roads are in very bad shape because of the reluctance of the Ministry to follow the law as enacted in this House.

Mr. Deputy Speaker, Sir, some Members of this House have confused issues. There was a Miscellaneous Civil Application No.1372 of the year, 2000, to the Kenya Roads Board Act in court. The court ruled that Section 17(1) of the Kenya Roads Board Act is inconsistent with the Constitution to the extent that, Members of Parliament participated in the activities of the District Roads Committees in an executive capacity. But as you know, Members of this House have not done anything executive in the Committees. Although we had arranged meetings with the Attorney-General, he was quite efficient in doing his disappearing acts, instead of guiding the Committee on the type of the amendments that were supposed to be done! But as we stand today, close to Kshs6 billion is about to be spent on the authority of people who have not been authorised by the law. I consider that to be a very serious and criminal issue. That is why, on the instructions of this Committee, I brought that to the attention of this House.

Mr. Deputy Speaker, Sir, Section 39(1) of the Kenya Roads Board Act says:-

"Any person who appropriates, applies or causes any other person to appropriate or apply any proceeds or assets of the Board or the Fund, otherwise than in accordance with the Act or the directions of the Board, shall be guilty of an offence and shall, upon conviction, be liable in addition to any other penalties which the Board may prescribe, to the penalties prescribed in the Penal Code Cap. 63 of the Laws of Kenya."

Mr. Deputy Speaker, Sir, my Committee made the following recommendations, and I am requesting this House to adopt them:

(i) That pursuant to the provisions of Sections 12(1) of the Act, the Executive Director of the Board should be appointed immediately, failure to which a senior officer should be seconded from the Ministry to attend to the affairs of the Board.

(ii) That no further disbursements should be made by the Ministry of Finance to the Ministry of Local Government and Ministry of Roads and Public Works.

(iii) That the provisions of Section 31(1) and (2) of the Act should be strictly adhered to.

(iv) That all funds emanating from the Road Maintenance Levy Fund which have been disbursed to the Ministry of Local Government and the Ministry of Roads and Public Works should be disbursed immediately to the Kenya Roads Board Fund.

(v) That the House adopts this Report of the Committee and resolves accordingly.

With those few remarks, I beg to move and request that Eng. Muriuki seconds this Motion.

Eng. Muriuki: Thank you, Mr. Deputy Speaker, Sir. The Kenya Roads Board (KRB) was established because there was a failure in the people and the Ministries which were charged with the responsibility of development and maintenance of roads in this country. One of the specific objectives of the KRB is to ensure that maintenance of roads, be they the main roads or in the rural areas, are taken care of the way they should be. At the moment, there are discussions and meetings being held on how we can reduce poverty in this country. But it is important for the Government and also Kenyans at large to understand that there is nobody, whether it is the donors or the Government or the Members, who is going to line us up and give us Kshs50,000 each so that we stop being poor. At the end of the day, it will be Kenyans who have somehow to work on their own and stop being poor. It is with this wisdom that Parliament passed the Kenya Roads Board Act to help Kenyans to utilise agriculture which is the mainstay of this country so as to uplift their standards of living.

Mr. Deputy Speaker, Sir, it is in that Act where it was provided specifically that a portion of the money which is available through the Fuel Levy Fund should go to the constituencies. But at the commencement of this

Act in July last year, all manner of games were started by the Executive to try to frustrate its implementation. At one time, the Committee on Energy, Communications and Public Works was told that the Fuel Levy Act does not allow the Kenya Roads Board Act to be followed. They told us that the Fuel Levy Act says that the money has to go to the Treasury. The Committee did bring the necessary amendment through the Finance Bill in November last year, and the necessary adjustments were done to the Fuel Levy Act. Even then, some people went to court to challenge the legality of the Kenya Roads Board Act.

One of the reasons used was that Section 17 was contravening the doctrine of separation of powers. If Kenyans would wish to implement or put in place the doctrine of separation of powers between the Legislature, Executive and Judiciary, I think they will do that during the Constitution review process. But at the moment, there is no separation of power. As a matter of fact, the Constitution has 126 Sections well organised in 11 chapters. None of those sections calls for separation of power and I would like to be proved wrong. As a matter of fact, some of the sections in the Constitution which were being quoted in court do specifically require that there is overlap. For example, Section 5(3) requires that the Head of the Executive, who is the President, must be a Member of Parliament, which is the Legislature. Sections 16 and 17 require that the Ministers and the Cabinet, who, together with the President form the Executive, must be Members of this Parliament, in which case the same Constitution does require that there is an overlap. It even requires that the head of the Executive is the one to summon and regulate the prorogation of the Legislature. I would wish to take the opportunity to challenge the Attorney-General and also my colleagues, the lawyers, who are in this House to interpret for us in case I may be making a mistake.

Mr. Deputy Speaker, Sir, after we passed that Motion, the court did rule that there is some inconsistency, which I think is not true. The excuse we were given by the Kenya Roads Board and the Ministry of Roads and Public Works was that the KRB has no chief executive, and that is why the money from the Fuel Levy Fund cannot be taken to the KRB. I am duly informed now that there is an account opened. But somewhere along the way, the Energy, Communications and Public Works Committee did send a small sub-committee, of which I was a member, to go to the Ministry of Roads and Public Works, and find out why the Kenya Roads Board Act was not being implemented to the extent of the funds which were supposed to go to the District Roads Committees (DRCs). We found out that the Ministry of Roads and Public Works, having received some money from the Treasury, which it should not have received, spent all of it, presumably on the so-called on-going contracts. The Committee was willing to accept that there may be some contracts which were signed a long time ago and, therefore, there was need to complete them. But even today, if you look in the newspapers, there are still some contracts which are being advertised by the Ministry of Roads and Public Works, in complete contravention of the Kenya Roads Board Act.

Mr. Deputy Speaker, Sir, in the meeting with the Ministry of Roads and Public Works, we could not get any explanation as to why the funds for the DRCs; 16 per cent, had not been disbursed. Instead, we were informed that somewhere along the way, the Government - I do not know who they meant by the Government - decided that instead of following the Kenya Roads Board Act, which clearly stipulates that 3 per cent of the funds should go to the KRB; 57 per cent to the Ministry of Roads and Public Works, and 40 per cent to the DRCs, it sent 21 per cent of the funds to the Ministry of Local Government. Even when the Committee summoned the Minister for Local Government to appear before the Committee and explain what was happening, he acknowledged that they received the funds and that they had spent most of the money. There was an argument as to how much was spent for the DRCs, and the Ministry of Roads and Public Works were saying it was 413 million, while the Ministry of Local Government said it was Kshs268 million.

Section 39(1) of the Kenya Roads Board Act calls for penalties for people who are contravening the Act. I do hope that the relevant arm of the Government will take action on the Minister for Finance, who is listening, for having sent the funds to the Ministry of Local Government in complete contravention of the Kenya Roads Board Act, duly passed by this Parliament. Since only Kshs1.5 million has gone to each constituency as opposed to the Kshs5 million which should have gone there as per the Act, the least the Minister for Finance can do is to carry forward the balance so that in the next financial year, the constituencies do receive their Kshs5 million, plus the Kshs3.5 million which is still pending. He should also recall the Kshs268 million from the Ministry of Local Government, which they have confirmed to the Committee is lying in an account not knowing what to do with it. They told us that they do not know why they received the cheque for the funds of the DRCs. I would like to request the Minister for Finance and not even the Minister for Roads and Public Works, to confirm to us that he is going to carry forward the money for the DRCs which never reached them, and put it together in the next financial year, so that we can allow wananchi to take care of their financial status.

With those few remarks, I beg to second.

(Question proposed)

Mr. Raila: Mr. Deputy Speaker, Sir, I want to talk about two issues. One of them is that of separation of powers. I am a very strong believer in clear separation of powers. As the previous speaker has said, this is an issue we should tackle very comprehensively as we review this country's Constitution. That is why, during the Safari Park talks, I was opposed to the provision that made Members of Parliament Chairmen of District Roads Committees (DRCs) and Constituency Roads Committees (CRCs). I said that if we, as Members of Parliament, become the executors, then how would we compromise that role with our primary role of being the people's watchdog? If the Controller and Auditor-General brings the report and accounts of the Ministry of Roads and Public Works before the Public Accounts Committee (PAC), and I happen to be a Member of that Committee, how would I compromise the two roles if the issue involves an act of omission regarding the DRC or CRC of my constituency? That is why I feel that in our anxiety to see effectiveness in the execution of the Act, we went too much overboard to make Members of Parliament part of the Executive in the districts and the constituencies.

Mr. Deputy Speaker, Sir, I am, however, very disturbed with the revelations contained in this Report; that the Minister for Finance has contemptuously decided to ignore the provisions of an Act of Parliament that was passed when he was present and decided to give money to authorities that are not allowed by the Act to handle the money. So, I think this is something this House needs to take very seriously. There are clear provisions in the Act as to what actions need to be taken against those who will offend its provisions.

No country can develop without an efficient infrastructure. When we talk about development and eradicating poverty, we should talk about having in place efficient and elaborate infrastructure. It is pointless for the Government to spend billions of shillings constructing and tarmacking roads which are not maintained thereafter. Very many roads which have been paved, murrammed or tarmacked are in a very sorry state today. Some roads are hardly three years old but they are already in a terrible state of disrepair due to lack of maintenance. So, this Government is sometimes required to re-tarmack a complete road because it has not been maintained over a period of time. That is why hon. Members were so concerned that they, in their wisdom, decided to create the Kenya Roads Board (KRB).

Mr. Deputy Speaker, Sir, the KRB should, therefore, be made to work. One does not understand why it has taken so long to make the KRB operational. One does not understand why it has taken so long to appoint the Executive Director of the KRB, as provided for by the Act. That is something that should have been done as a matter of course if the Government was committed to implementing the provisions of this Act. So, I call upon the Government to give a clear undertaking to implement the recommendations contained in this Report. It should ensure that the KRB Executive Director is appointed as quickly as possible. It should also ensure that money is paid when the payment date is due, and that the provisions of Section 31(1) and Section 31(2) of the Act are adhered to.

With those few remarks, I beg to support.

Mr. Kamolleh: Bw. Naibu Spika, ninahuzunika sana kwamba baada ya kutunga sheria katika Bunge hili, Serikali huenda kinyume ya sheria hiyo. Kama alivyosema Bw. Raila, tulipitisha katika Bunge hili kwamba kuwe na Halmashauri ya Barabara Nchini pamoja na kamati za barabara wilayani na kamati kama hizo katika sehemu za uwakilishi Bungeni, na kwamba pesa zitengwe ili tuweze kutekeleza yale tuliyoazimia. Lakini Waziri wa Fedha amepana pesa hizo kwa maafisa wa Serikali ambao hawatambuliwi na sheria hii. Kwa hivyo, kama inavyosisitizwa katika Ripoti hii, inafaa hali hii ibatilishwe haraka iwezekanavyo kwa sababu inahujumu mamlaka ya Bunge hili ya kutunga

[Mr. Kamolleh]

sheria.

Inasikitisha kwamba licha ya Bunge hili kupitisha ya kwamba, baada ya muda fulani, kuwe na mkurugenzi wa Halmashauri ya Barabara Nchini, mpaka leo mkurugenzi huyo hajachaguliwa wala kuteuliwa. Hii inamaanisha ya kwamba sisi huketi bure katika Bunge hili. Wadhifa tuliopewa wa kutunga sheria bado haujatekelezwa inavyotakikana. Ni jukumu letu sisi kama watunzi wa sheria katika nchi hii kuona ya kwamba sheria tunazozitunga katika Bunge hili zimetokelezwa kama zinavyotekelezwa amri za Maulana. Hali ilivyo sasa ni kwamba Bunge hili hutunga sheria, lakini hazitekelezwi. Watu fulani Serikalini hutumia hila ili kuona ya kwamba sheria hizo hazitekelezwi. Basi kuna haja gani sisi kutunga sheria kama sheria hizo hazitekelezwi? Huko ni kupoteza wakati.

Bw. Naibu Spika, hitilafu zinazotokea katika barabara nchini husababishwa na Wizara ya Ujenzi na Barabara. Wizara hiyo hutengeneza barabara nzuri sana. Miaka mitatu iliyopita, Wizara ilijenga ile sehemu ya Barabara ya Nairobi-Mombasa, kuanzia Machakos mpaka Mtito Andei. Tunavyozungumza, barabara ile iko na mashimo chungu nzima, si kwa sababu Wizara haikutumia vifaa mwafaka katika ujenzi wake, ama kwa sababu

maafisa waliojenga hawakufuata maelezo yaliyotolewa na mhandisi, lakini ni kwa sababu magari yanayotumia barabara ile hubeba mizigo mizito kupita kiasi kinachofaa. Mitambo ya kupimia uzito wa malori hupelekwa katika barabara ile lakini maafisa wanaohusika hupuza na kuyaruhusu malori yenye uzito mkubwa zaidi kutumia barabara zetu na kuziharibu.

Bw. Naibu Spika, Ripoti inasema vizuri ya kwamba, na vile vyelelezo hivyo ni vyema kwa sisi sote hapa--- Ningepedelea kama Waziri au Mawaziri Wasaidizi wake wanaohusika na jambo hilo wangukuwa hapa. Ingekuwa bora kama Wizara hiyo ingejua ya kwamba sisi tunatoa pesa nyingi, na tunakopeshwa pesa nyingi ili kujenga barabara hizo ziweze kutusaidia sisi, lakini baada ya miaka miwili zinaharibika. Hiyo ni kwa sababu ya upuzaji wa kanuni ambazo zimewekwa kuhusu uchukuzi katika barabara hizo. Mimi ninafikiria ya kwamba wakati umefika wa kuweka adhabu fulani ambazo wafanyikazi wa Wizara wanatakiwa wazifuate. Iwapo gari lolote litakuwa na mizigo zaidi ya vile inavyotakikana, na lipite kwenye barabara zetu, litaharibu yale tuliyofanya. Basi, haitoshi kufuta watu hawa. Ni lazima wapelekwe kortini ili waweze kujua kwamba mambo hayo ni mabaya katika Jamhuri hii yetu.

Pia, kuna wale wahandisi katika hiyo Wizara ambao kazi yao ni kuweka sahihi kwenye makaratasi, kusema ya kwamba barabara fulani imekamilika kwa kuwa pengine wameweza kuelezwa mambo fulani. Lakini kwa kuwa jukumu lao ni kwa Jamhuri ya Kenya, wanapoweka sahihi zile and barabara bado hazijakamilika, hazijatengenezwa sawa sawa, lami haijatandazwa vyema, ni kwa sababu sisi hatujaweza kuwapa adhabu wahandisi hawa katika Wizara hii ndio tukaona maafa na madhara kama haya ambayo yanatupata. Wakati umefika, na Bunge hili lisiwe likizungumza kila siku na hali wengine wanafanya yale kinyume tunachozungumza sisi. Tunatakikana tuwe wakali, na kuweka kanuni, na tuzifuate ili pesa nyingi zisiweze kupotea kama mferaji uliofunguliwa na maji kumwagika.

Mambo yanayozungumzwa hapa ni mengi lakini ingekuwa vyema kama yale machache yaliyopo katika Ripoti hii yangeweza kutekelezwa na kuona ya kwamba tunaweka msimamo thabiti kwamba wafanyakazi katika hiyo Wizara wanaheshimu sheria na wanatekeleza lile ambalo wameelezwa.

Kwa hayo machache, asante sana.

Mr. Maitha: Mr. Deputy Speaker, Sir, while I support the Report brought to the House by a very able Committee, it is also important to note that the Government should introduce good laws on our roads. At the moment, our engineers design tarmac roads, and the Government gives money to tarmac the roads whose specifications take very short time, and they have a very short life. It is high time the Government thought of constructing concrete roads which are very expensive, but which take a long time to wear out. The Government has not been keen to introduce concrete roads. At the moment, in many countries, specifications of roads have changed from tarmac roads to concrete roads. There are very many roads--- For example, when you go to South Africa, you will find that a lot of money in their Budget has been used on concrete roads. Even the same is happening in America. When you go to France, they have used a lot of money on concrete roads, and their life span is long. We do not need to recarpet those roads. We do not need even to do patching.

So, it is high time our engineers in Kenya were allowed by the law to approve concrete roads, and the Government should use that money collected from the Petroleum Levy Fund to award tenders for concrete roads. That would help our Government to save more money and to have a long life span for our roads.

There has been a lot of confusion and deliberations on that issue, especially on the part of our Government. The other time, the District Tender Boards were being chaired by the District Commissioners. The other day, they removed them and brought in a new Legal Notice to say that every department is going to handle its own tenders. You will find that it is in the road section that all corruption is found. You will find that tenders in the Ministries are given to contractors, especially in our district roads offices, who are not even road engineers. They do not know what they should do on a road, and you will find somebody being given a contract to grade a road, and that person does not even have a grader, or any machinery to grade that road. But that person is awarded a tender.

I have an example in my area, regarding the construction of the Mwakirunge-Maunguja Road, where an engineer gave a tender to a contractor who did not even have a grader, but it was because that contractor was known to that engineer. The money meant for road construction in constituencies is now being misused and given to a person who does not have a grader. He hires a grader today, and tomorrow morning the grader cannot work. The road was recommended for heavy grading, but the contractor did shallow grading and there were no specifications. The District Roads Engineer always recommends for the payment of the grading of that road contrary to the specifications given earlier on. He argues that Members of Parliament would not sit on the District Road Boards because of the court order that was issued. They are taking that advantage.

It is now high time that hon. Members, having passed that Motion in this House, supervised their constituencies in terms of road construction, and the Ministry of Roads and Public Works should make sure that

they are consulted. In fact, if it is possible, Members should participate to see to it that a contractor who is given a certain road to construct in a constituency is one who is going to do a good job because we will be accountable for the use of the money. We will be able to tell our constituents that as hon. Members, we facilitated the construction of that road. That can be so if the road is of high quality, and the constituents will always say that their hon. Member, at least, did something for them.

I beg to support the Motion.

Mr. Wamae: Mr. Deputy Speaker, Sir, I rise to support very strongly the recommendations by the Departmental Committee on Energy, Communications and Public Works, which deals with, among other things, the Ministry of Roads and Public Works. I think they have done very well to bring to our attention, the fact that the Kenya Roads Board Act which we passed in this House has been infringed, firstly, by the Ministry of Finance and Planning by sending money to the wrong people, and, secondly, by the Ministry of Roads and Public Works by accepting to receive money which they knew was not due to them. One of the reasons why we created the Kenya Roads Board (KRB) was to bring more efficiency in the maintenance of our roads by using the road maintenance funds. This is because we knew that the roads had been very poorly maintained over the last few years. We had reached a stage whereby the whole infrastructure had collapsed. This was the time when corruption had increased to so high a level in the Ministry of Roads and Public Works that they were not capable of continuing to maintain our roads. That is why we felt that the creation of the KRB would serve us better, and it would be a solution to our problems because it is composed of professionals.

We had enumerated competent and professional people who were to be the chairman and directors of that board and we expected them to look after the road maintenance funds. It is very sad that after making all these arrangements, the Minister for Finance found it necessary to divert the funds from the KRB and DRC to the Ministry of Roads and Public Works and the Ministry of Local Government, which is contrary to the Act. There must be a certain reason for this. Why did the Minister decide to do this? Was it really for the efficiency of maintenance of our roads or for personal reasons? Why was this done? Why did they not come to this House and say they were experiencing problems in doing this? Even if somebody had gone to court and there was a question of interpretation of Section 17, that was not a sufficient reason to prevent the funds from being sent to the institutions where they were meant to go. They should have asked the Members of Parliament not to sit in those committees, but the funds should have been sent to the areas where they were required to go as specified in the Act.

If we are going to breach the provisions of the Act which was passed in this House with the full agreement of the Government, then this will result into a very embarrassing situation which is difficult to handle. It is for this reason that I fully support the recommendations which were made, that no more funds should be passed to the Ministry of Roads and Public Works or the Ministry of Local Government contrary to the Act. We should try to remedy what has been breached by the Ministry of Finance and I am happy that the Minister for Finance is here. I am very surprised that the Minister and Assistant Ministers for the Ministry of Roads and Public Works are not here today when we are discussing such an important matter affecting them. It shows how they look down upon this House.

The Minister for Public Health (Prof. Onger): On a point of information, Mr. Deputy Speaker, Sir. The hon. Minister for Roads and Public Works is, in fact, attending the general conference, in New York, on Habitat, and that is why he is not here. We are here as the Ministers on the Front Bench.

Mr. Wamae: Of course, the fact that the Minister is away does not explain why the Assistant Ministers are not here. It does not mean that it is only the Minister who should be present here.

Hon. Member: The Assistant Minister is here!

Mr. Wamae: No, he is not the Assistant Minister. That is the Assistant Minister for Education, Science and Technology! You can see that they do not take this matter seriously. They knew that this Motion was coming to this House and that we would discuss them. So, they conveniently absented themselves.

The Assistant Minister for Education, Science and Technology (Dr. Wamukoya): We are here!

Mr. Wamae: You are not here to represent them because I believe collective responsibility will not work now. I hope that this matter will be taken seriously. It is not a joking matter when we come here to discuss a matter which we had all agreed is of importance. We are blaming the Government for failing to fulfil what is contained in an Act that they were party to.

With those few remarks, I would like to support very strongly the recommendations made by the Departmental Committee.

The Minister for Finance (Mr. Okemo): Thank you, Mr. Deputy Speaker, Sir. I just want to make a few remarks to clarify the situation in as far as the Ministry of Finance is concerned. I actually did appear before the

Committee and I thought that we had very fruitful discussions. I threw some light on the matter and explained the reasons why the Ministry of Finance did what it did. The KRB appears on paper; there is no chief executive or bank account. The money coming from the Kenya Revenue Authority (KRA) would have had no destination. You cannot transfer it from the KRA to no account.

Mr. Mbela: On a point of information, Mr. Deputy Speaker, Sir. The Minister is misleading the House because the KRB actually has a bank account.

The Minister for Finance (Mr. Okemo): Mr. Deputy Speaker, Sir, a bank account with no signatory is really nothing.

Mr. Deputy Speaker: Mr. Minister, this Parliament has discharged its responsibility by passing an Act which is now operational. It can only be put into operation by the Executive. It is no good for you as a member of the Executive, to come and tell the House that you have not done that which the Act wants you to do.

The Minister for Finance (Mr. Okemo): Mr. Deputy Speaker, Sir, that is not what I was saying. I was trying to explain the reason why the money has not been released to the KRB. There were two options; either the money remains with the KRA and nothing happens, or it is released to the Ministries and some work gets done until the practical problems have been sorted out to enable the money to be disbursed from the KRB. As far as we are concerned, we are ready to release that money to the KRB for as long as it has a bank account which is operational and can disburse the money to the District Roads Boards.

Eng. Muriuki: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister for Finance to mislead this House? He could explain why the funds did not go to the KRB. Can he now explain how the money ended up in the Ministry of Local Government?

Mr. Deputy Speaker: That is not a point of order. That is a question. Proceed.

The Minister for Finance (Mr. Okemo): Mr. Deputy Speaker, Sir, for practical reasons we have been continuing to enable the Ministry of Roads and Public Works and the Ministry of Local Government to implement road maintenance work. We have been continuing with what was there before the Kenya Roads Board Act was put in place, which means that 79 per cent of the funds go to the Ministry of Roads and Public Works, and 21 per cent to the Ministry of Local Government.

I support the recommendations because they are details of what ought to have happened. We are not contradicting what is being recommended by the Committee. We actually support the recommendations of the Committee.

Mr. Kathangu: Asante sana, Bw. Naibu Spika. Jambo la kwanza ni kwamba nchi hii imekuwa kama nchi iliyo chini ya utawala wa kijeshi kwa sababu ya kutokuwa na mapenzi ya kufanya kazi na kufuata sheria. Tulipitisha sheria hapa kwamba fedha zipelekwe kwa KRB na DRC tukijuwa kwamba barabara za nchi hii zimeharibika kabisa na hii inasababisha shida kwa wafanyabiashara. Hata kilimo kimedhoofika zaidi kwa sababu ya hali mbaya ya barabara zetu. Kila siku kutakuwa na sababu hapa ya kusema kwa nini jambo fulani halitendeki. Ninashangaa sana kwamba Waziri wa Fedha, ambaye anaheshimiwa sana katika nchi hii, alisimama hapa na kusema kwamba KRB haikuwa na akaunti ya benki. Inachukuwa muda gani kwa Serikali au Waziri mwenyewe kusema kwamba: "Tunataka akaunti ya benki kesho asubuhi saa tatu kwa sababu kuna cheki yenu", na jambo hilo litendeke? Utamuona Waziri ambaye ni mzee kama sisi, akisimama hapa na kutuambia jambo ambalo ukiliangalia kimaakini, ni jambo ambalo halifai.

Nilikuwa mmoja wa wale waliotakiwa kuwa mweka sahihi kwa akaunti ya wilaya.

Ikiwa kwamba tunatakikana tufungue akaunti, nilienda nikaongea na Mkuu wa Wilaya na Meneja wa Kenya Commercial Bank, kwa sababu tulipitisha kwamba tutafanya kazi na benki hii. Tulifunguliwa akaunti ya benki chini ya dakika tano

Ikawa kwamba kunahitajika Kshs5,000, na sisi kama kamati hatukuwa na zile fedha. Watu wa Mkuu wa Wilaya wanasema tungoje Waziri atatuma pesa ili tufungue akaunti. Niskasema: "Hapana, ninyi mnataka tukae mark-time tu kwa matope. Wewe, Bw. Ndwiga, toa Kshs1,000, Kathangu pia, na pia Mkuu wa Wilaya toa Kshs1,000." Mkuu wa Wilaya akakataa, lakini sisi tukatoa na tukaenda tukafungua akaunti.

Kwa hivyo, ni vibaya sana kweli kwa Serikali kuja hapa kutuambia kwamba haingewezekana kufunguliwa akaunti ya benki. Kwanza, tunasema juu ya fedha nyingi sana. Pili, tunasema kwamba hakuna mtu ambaye alikuwa anasimamia Roads Board, yaani Mkurugenzi Mkuu. Mkurugenzi Mkuu anatoka wapi? Ikiwa sisi tunaweza kuchagua Makatibu wa Kudumu 26 au 32 kwa siku moja na tunapata Mawaziri mara moja, na wenyeviti wa mashirika kadha katika dakika kumi, ni kwa nini hatuwezi kupata Mkurugenzi Mkuu wa Roads Board kama kuna mapenzi ya kufanya kazi? Ikiwa hakuna shida, ni kwa nini Waziri wa Barabara na Waziri wa Fedha hawawezi kuketi chini kukubaliana ni wapi kuna shida? Ni vibaya ikiwa huu ni mwaka wangu wa tatu na

nusu kuwa Bungeni halafu nasikia Serikali inasema mambo mengi ya uongo na kupuuza kila siku mpaka unashindwa ni kwa sababu gani.

The Minister for Finance (Mr. Okemo): On a point of order, Mr. Deputy Speaker, Sir. I think the hon. Member of Parliament should substantiate that far-sweeping utterance that the Government tells a lot of lies on a continuous basis?

Mr. Deputy Speaker: But the Government cannot tell lies because it is not a human being!

Mr. Kathangu: Asante sana, Bw. Naibu Spika.

Mr. Deputy Speaker: Bw. Kathangu, Serikali si binadamu wa kusema uongo!

Mr. Kathangu: Ndio, Bw. Naibu Spika. Serikali si kitu ambacho kina kichwa ama nini.

Mr. Deputy Speaker: Taja ni Waziri yupi anasema uongo?

Mr. Kathangu: Bw. Naibu Spika, leo asubuhi tulikuwa tunazungumzia kuhusu barabara na Serikali haikudanganya, lakini Waziri wa Serikali hiyo alitudanganya kwamba Kshs13 bilioni zimetumika kwa kutengeneza barabara katika Kenya hii. Kila Mbunge aliyezungumza hapa asubuhi ya leo alikuwa anasema barabara ambazo zilitajwa na huyo Waziri hazikuwa zimetengenezwa, na hakuna hata barabara moja imetengenezwa kwetu Embu katika Mkoa wa Mashariki, ambako ilisemekana kwamba kumetumika pesa zaidi ya Kshs1 bilioni. Hakuna barabara hata moja ambayo imetengenezwa. Jambo la pili ni kwamba fedha zote ambazo walisema walitumia ni Kshs28 bilioni na kati ya pesa hizo, Kshs15 bilioni hazikujulikana zilienda wapi. Hii ni kwa sababu wenyewe hawajui. Walisema kwamba zilienda kwa trakta na ofisi, na hawasemi ni trakta gani kwa sababu hakuna trakta ililima barabara.

Bw. Naibu Spika, kwa hivyo, jambo ambalo ninasema hapa ni hivi: Kwamba kuna mambo mengi yanatokana na wasimamizi wa miradi mbali mbali Serikalini ama Mawaziri wa Serikali ambayo ni ya kupotosha ama kudanganya, wakijua kwamba wanatudanganya.

The Minister for Finance (Mr. Okemo): On a point of order, Mr. Deputy Speaker, Sir. Could the hon. Member of Parliament use parliamentary language? He continues to use unparliamentary language all the time.

Mr. Deputy Speaker: You are quite right! Bw. Kathangu, Wabunge hawadanganyi na hawasemi uongo.

Mr. Kathangu: Bw. Naibu Spika, najua kwamba ni vigumu sana kuita mtu mwizi na akubali ni mwizi.

Mr. Deputy Speaker: Order, hon. Kathangu.

Mr. Kathangu: Nasikia, Bw. Naibu Spika.

Mr. Deputy Speaker: Na kama umesikia, kubali.

Mr. Kathangu: Bw. Naibu Spika, ni kweli kwamba Mawaziri wa Serikali hawadanganyi.

Mr. Deputy Speaker: Wabunge!

Mr. Kathangu: Mimi sijasema Wabunge!

Mr. Deputy Speaker: Na hakuna Waziri ambaye si Mbunge!

Mr. Kathangu: Bw. Naibu Spika, mimi sijasema kwamba Mbunge alinidanganya. Hii ni kwa sababu sasa tunasema---

Mr. Deputy Speaker: Hakuna Waziri wa Serikali ambaye si Mbunge.

Mr. Kathangu: Bw. Naibu Spika, kuna tofauti kubwa kati ya Waziri wa Serikali na Mbunge. Hii ni kwa sababu Mbunge ni yule anayewakilisha sehemu fulani ya nchi, lakini Waziri wa Serikali ameteuliwa---

Mr. Deputy Speaker: Sikiliza Bw. Kathangu! Katiba inasema kwamba huwezi kuwa Waziri bila kwanza kuwa Mbunge. Kwa hivyo, hakuna Waziri wa Serikali hii ambaye si Mbunge, na ukisema kwamba Waziri anadanganya, au anasema uongo, unayaelekeza matamshi hayo kwa Mbunge mwenzako.

Mr. Kathangu: Bw. Naibu Spika, ningependa---

Mr. Deputy Speaker: I am not going to entertain an argument!

Mr. Kathangu: Bw. Naibu Spika, sitaki kubishana.

Hon. Members: Then withdraw the remarks!

Mr. Kathangu: Mr. Deputy Speaker, Sir, could I communicate with you in English a bit? I want to know---

Mr. Deputy Speaker: Well, I understand Kiswahili too.

Mr. Kathangu: Mr. Deputy Speaker, Sir, I actually want to know---

Mr. Deputy Speaker: Order!

Hon. Members: Withdraw the remarks!

Mr. Deputy Speaker: In the first place, you cannot change from Kiswahili to English. That is what your Standing Orders say.

An hon. Member: Withdraw! Keti chini!

Mr. Kathangu: Bw. Naibu Spika, Kshs15 bilion hazikutumiwa na Kshs13 bilion zilitumiwa---

Mr. Deputy Speaker: Bw. Kathangu, hebu tuelewane. Ninataka uyaondoe yale maneno ambayo umeyatumia kwa sababu hayatumiwi katika Bunge hili.

Mr. Kathangu: Bw. Naibu Spika ni kheri kusema kwamba yote ambayo waakilishi na wateule wa Serikali wanasema katika Bunge hili ni ya kweli, ili tuendelee?

Mr. Deputy Speaker: La! Zijakuuliza utafsiri maneno yangu. Ninataka ufahamu na uelewe vizuri kwamba Wabunge hawaongei uongo na hawadanganyi. Maneno hayo mawili hayatumiwi katika Bunge hili.

Mr. Kathangu: Bw. Naibu Spika, kwa hivyo ninaweza kutumia neno "kupotosha"?

Mr. Deputy Speaker: Ondoa maneno hayo na uombe msamaha!

Mr. Kathangu: Bw. Naibu Spika, ninaomba msamaha; hawadanganyi lakini wanalipotosha Bunge hili.

Mr. Deputy Speaker: Hapo ni sawa.

Mr. Kathangu: Ahsante sana, Bw. Naibu Spika.

(Applause)

Ninakushukuru kwa sababu lugha inatatiza wakati mwingine.

Yale mambo ambayo ninayasema ni kwamba ikiwa kuna mapenzi ya kufanya kazi, hakuna jambo ambalo linaweza kuwa shida katika nchi. Hii ni kwa sababu Serikali, waakilishi wake na wateule ni watu ambao wanazifahamu kazi hizo. Waakilishi na wazee wa sehemu za uwakilishi wanafahamu shida ambazo ziko huko. Wakati fedha za kupambana na ugonjwa wa Ukimwi zilipotolewa, na ikasemekana kwamba zipilekwe kwa constituency, kazi nyingi ilifanywa. Ningependa kusema kwamba kamati za kupambana na ugonjwa huu ziliundwa. Walitoa kati ya Kshs200,000 na Kshs350,000 kwa kila kamati. Ningependa kusema kwamba pesa hizo zilitumiwa kwa kuandaa mikutano na zilitumika kwa njia nzuri sana. Baada ya miezi mitatu, kamati nyingi ziliundwa.

Hizi fedha za barabara zinaleta shida, kwanza, kwa sababu ni nyingi. Kuna watu katika Serikali ambao wanaona kwamba fedha hizo zikifika kwa constituency itakuwa vigumu sana kwa wao kuzipata. Hii ni kwa sababu zitakuwa katika mikono ya watu tofauti kabisa na jukumu la kutafuta watu watakaotengeneza barabara litakuwa la watu wengine. Ikiwa hiyo si sababu, basi tunatarajia kwamba mwezi wa Julai, hizo pesa zote zitakuwa zimetolewa, tuwe na Kenya Roads Board na msimamizi wake. Tungependa pesa hizo zitumiwe katika kila constituency.

Wakati huu, katika kila wilaya imekuwa kwamba zile kamati ambazo tuliunda za DRC hazina kazi. Kwa hivyo, wamechukua mtu mmoja kutoka kwa Ofisi ya Mkuu wa Wilaya na ofisa ambaye anasimamia barabara katika wilaya, ili wazichukue fedha hizo kutoka kwa Serikali.

Bw. Naibu Spika, kule kwangu Runyenjes, sahihi inatiwa katika account na watu wawili, mteule wa mkuu wa wilaya na mhandisi wa barabara. Wanajua ni pesa kiasi gani zinatumiwa wapi na ni trakta gani itatumika na pesa hizo zitalipwa kwa njia gani. Hata kukiwa na udanganyifu, ni vigumu kugundua. Kwa hivyo, ni vizuri Waziri wa Fedha aelewe hayo mambo kwa sababu ni vibaya kuchukua pesa za umma kwa kikapu na uzipelekee watu wawili kwa sababu wana uhusiano na mkuu wa wilaya, ili waangalie na wasimamie matumizi yake kwenye ujenzi wa barabara.

Bw. Naibu Spika, nikuzungumzia jambo lingine, utaona kwamba, katika Kenya hii, nafikiri Waziri atafurahi kuona kwamba tunaweza kusimamia pesa vizuri hata ikifika mwezi wa Juni pesa nyingine zibaki na kuletwa kwake ili zipelekwe kwingine. Lakini Bw. Waziri atakuwa anaangalia fedha zinatumiwa kwa vikapu. Lakini ukiambiwa kila siku kwamba hazijatosha, ni vibaya. Ni vibaya kupatia barabara moja Kshs1 bilioni na iwe haijamalizwa kutengenezwa. Tunachukua bilioni nyingine tena na labda wakati huo Waziri haulizi na labda hana nguvu za kuuliza ni kwa nini bilioni moja haitoshi.

Bw. Naibu Spika, zamani nilipokuwa nikifanya kazi na Serikali, nilikuwa ninaona kwamba, kila tarehe nne ya mwezi wa saba, fedha ambazo hazikuwa zimetumiwa, zikirudishwa ili waweze kuleta zingine na kupatia wengine ambao hawazihitaji. Nafikiri hata siku hizi wanafanywa hivyo. Lakini ni pesa kidogo sana ambazo zinarudishwa kwa Serikali. Ni kwa sababu gani? Matumizi ni mengi, matumbo ni makubwa, na kwa hivyo, inakuwa shida kubwa sana kwa mtu yeyote kurudisha pesa kwa Serikali. Ni lazima macho yawe mengi ya kuangalia matumizi ya fedha za umma. Yafaa kamati iteuliwe ili iweze kuangalia na kujua kwamba pesa fulani zinatumiwa kwa njia fulani. Kwa hivyo, ni vibaya sisi ambao tumechaguliwa tusiwe na uwezo wa kuangalia vile zile pesa zinavyotumiwa. Nafikiri ni vibaya sana kwa wale ambao wameteuliwa kama wakuu wa mikoa, wakuu wa [Mr. Kathangu]

wilaya, wakuu wa tarafa na machifu kuwa ndio watasimamia pesa ambazo zitanufaisha kila mmoja katika kila

sehemu ya uwakilishi Bungeni au katika wilaya.

Bw. Naibu Spika, nikiunga mkono mapendekezo ambayo yametolewa na kamati, si vizuri tuwe tunasema kitu kimoja miaka yote. Tunapitisha sheria halafu ile sheria inapuuza. Kwa hivyo, inawabidi wale ambao wako katika kamati mbali mbali, wawe wanarudi hapa kwa sababu labda miguu na mikono yao imekatwa, na kwa hivyo, wanakandamizwa kwa sababu kazi haifanyiki.

Bw. Naibu Spika, tumeona kitu kimoja na sitaki kuyaingilia mambo ambayo yako katika mahakama. Ningependa kusema hivi: Hata katika mahakama yetu, ni lazima tukumbuke kwamba katika Bunge hili kuna uzee na busara fulani. Bunge hili limeundwa katika Kenya ili liwe ndilo litakuwa linaonyesha mwongozo wa sheria. Ni vibaya sana ikiwa Bunge hili linasema kwamba fedha zitatumika kwa njia fulani au nchi hii itakuwa na halmashauri ya kusimamia barabara na halafu tunasikia kwamba mtu mmoja ametoka pahala ambapo hapajulikani, ameenda mahakamani kufanya Bunge zima linyamaze na kusema: "Haya ni mambo ya mahakama."

Bw. Naibu Spika, ikiwa sheria ambazo tunatunga hapa zinaweza kupingwa na mahakama, basi hii ni kusema kwamba Bunge halina uwezo.

Mr. Deputy Speaker: The laws you make here are subject to interpretation by the courts and not by you again. That is a very well established package.

Mr. Kathangu: Bw. Naibu Spika, kwa hivyo, ikiwa sheria ambazo tunatunga zinatakiwa kufafanuliwa, hiyo ni sawa. Lakini pia ninatarajia kwamba sheria hizo zitafanya kazi, na kufanya kazi sio kusema tuchukue hizo sheria na tuziweke mfukoni. Hivyo ndivyo mimi ninafikiria.

Dr. Ochuodho: On a point of order, Mr. Deputy Speaker, Sir. I have no intention of challenging the Chair, but I hope that when the Chair says that the courts are supposed to interpret the laws, it does not mean that they misinterpret them.

Mr. Deputy Speaker: Order, Dr. Ochuodho! First of all, that is not a point of order. You are trying to argue with the Chair's ruling. Secondly, and more importantly, you cannot be the judge and the jury in your own case. So, when the courts have interpreted a piece of legislation, that is it. If you want another body to do it, create one, but it should not be Parliament.

Mr. Kathangu: Ahsante sana, Bw. Naibu Spika. Hiyo ni sheria kweli. Nilikuwa nikisema kwamba itakuwa vibaya, ikiwa katika utekelezaji wa zile sheria, unaweza kufika wakati ambapo chuo fulani katika nchi kitazipinga zile sheria na kusema haziwezi kufanya kazi. Sisi Wabunge tulienda vijijini na tukawaambia wananchi kwamba fedha zao zitakuwa zikisimamiwa na kamati ya constituency na wilaya. Waliposikia tena kwamba hii haitawezekana, kwa sababu mahakama ilikataa, walihuzunika sana. Kama vile Bw. Mbela na Kamati yake wanavyosema, ni vizuri haya mambo yaangaliwe, ili yasiye yakaleta farakano katika nchi.

Mwisho, nchi hii iko na utajiri mwingi. Iko na mashamba yenye rutuba sana lakini hii rutuba haiwezi kutusaidia ikiwa hatutakuwa na barabara za kusafirishia mavuno kutoka kwa hayo mashamba. Hii nchi ni moja kati ya zile nchi za kwanza kuogopewa baada ya mataifa makubwa. Hata wakoloni waliona kwamba Kenya huenda ikachukua nafasi ya kwanza kwa maendeleo katika Afrika. Tukishajua kwamba sisi tuko na utajiri mwingi na nguvu zetu ni pana, ni vibaya kuwa na Waziri ama Serikali ambayo itakuwa ajenti wa kuturudisha nyuma. Mataifa ambayo tulikuwa sawa nayo kimaendeleo yameendelea sana na sasa tunaenda kuomba misaada kwao. Hayo ni mataifa kama Korea na Taiwan. Sisi tulikuwa na hiyo nafasi ya kuendelea. Ni kitu gani ambacho tumekosa kufanya? Ukitengeneza watu barabara, uwapatie maji, simu na sitima, unaweza kupumzika ukingojea mali yaje. Hata kama wewe ni mwizi, utangojea mali yaje na utayaiba pole pole kwa sababu yatakuwepo. Ikiwa wewe utakuwa kazi yako ni kuiba tu kutoka kwa stoo ambayo haiongezewi mali, siku moja utakuta kwamba wewe na stoo mnatokomea pamoja. Hakutakuwa na chakula katika stoo na wewe mwenywe hutajua utakwenda kuomba wapi kwa sababu mali yote katika stoo yatakuwa yamekwisha. Mwizi mzuri ni yule kila siku anasaidia watu, ili waweze kuwa na mali na wayaweke pahali ambapo anaweza kuyachukua kwa urahisi. Lakini ikiwa utakuwa mwizi na hakuna kitu cha kuiba, utakuwa mwizi mwenye huzuni na mahangaiko. Nikimalizia, nasema kwamba nchi hii itakuwa na mali nyingi wakati Waziri wa Fedha na Waziri wa Barabara na Ujenzi watatoka hapa mara moja kila wiki, na kutembelea sehemu ambako barabara zinatengenezwa. Ikiwa pesa zinazotengenezwa hapa Kenya zinasimamiwa vyema, na Mawaziri wetu wawe macho, utajiri wa nchi hii utaimarika. Kenya itainuka tena kiuchumi kabla ya miaka miwili. Watu wanateta kuhusu maongozi ya kitaifa, si kwa sababu nyingine. Ni kwa sababu hakuna mawasiliano. Chakula na fedha zimekwisha. Watu wanasema: "Ni lazima tubadilishe uongozi huu!" Lakini ikiwa watu watahiba wawe na kazi za kufanya na viwanda viwe vinaendelea, hawatafikiri juu ya uchaguzi wakati huo. Watafikiria vile pesa zitakuja na kazi ya kiongozi itakuwa rahisi.

Bw. Naibu Spika, mimi nasema wakati wa uchaguzi wa mwaka ujao, tusiambiwe pesa zinakuja. Tutapewa kidogo Julai ili tuendelee mpaka Februari, halafu uchaguzi utaitishwa na isemekane kwamba: "Unaona Serikali inafanya kazi nzuri." No! Tunataka kazi iendelee wakati wote, kukiwa na uchaguzi au bila

uchaguzi; na Mola wetu atatubariki sana.

Ahsante, Bw. Naibu Spika.

Mr. Maundu: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to make a few comments on the Report of this particular Committee. As we are aware, the particular Act that established the Kenya Roads Board has been challenged on a number of reasons. But basically, the reasons that have been given for challenging that particular Act have not been expounded by the court itself! But I do not want to go into the details of that matter because it is still pending in court.

Mr. Deputy Speaker, Sir, I am saying that there is absolutely nothing that this Parliament will see as illegal in terms of Members of Parliament participating in the District Roads Committees. In fact, there is nothing illegal for a Member of Parliament to be the chairman or secretary of those particular committees technically, legally and even constitutionally. We would like to see this particular Act put into operation in totality as quickly as possible. Our colleagues here have raised very fundamental issues, touching on that particular Act. It would appear like, at some level, there was a group of some people who were not happy with that particular Act. That is because generally, and I agree specifically with what Mr. Kathangu has said; that, the idea behind the formulation of that Act was to make sure that the cartels, the level of mismanagement and corruption that used to dominate and pervade the Ministry of Roads and Public Works was taken care of. In fact, the Act did decentralise major activities from the centre of the Ministry to the constituencies, where Members of Parliament will be hawk-eyed to make sure that one of the most sensitive areas of the development of our country (roads) was done. There is no Member of Parliament who would sit in a committee and be party to the embezzlement of public funds because the consequences are severe and obvious. But it would appear that there are people who believe that control of funds, particularly in some lucrative Ministries, should be in their hands. Recently, we complained about shoddy jobs done on our roads, by contractors who are thieves and are still surviving and in place. Most of the questions that are embarrassing to the Ministries are directed to the Ministry of Roads and Public Works because contractors who are well-connected continue to get lucrative jobs which they never do! We keep on complaining because we see them around with junk equipment! They are given massive contracts to perform. That is the sort of thing that this particular Act wanted to address. It, indeed, addressed it very powerfully and it had a lot of support at that time. Indeed, at that time, I am aware of several donors who were willing to come in full swing and participate in the roads sector because they had seen some openness in this country. But those who were unhappy about these things rushed to court, of course, as it were and argued that there was no separation of powers. The doctrine of separation of powers is so contentious that I do not think it can be interpreted very correctly by the courts. It is more academic than judicial. Therefore, I think somebody is involving Parliament in a circus to the extent that they now ignore or even say they are not interested in this because they do not want their names to be tarnished. There is nothing for Members of Parliament to fear in participating in the Committee that has been established under this Act. I think it should be the business of this House to pursue the participation of Members of Parliament in important committees in this country where public funds are involved. We have raised these issues here. It has been said that Members of Parliament should not be involved in matters that concern the fight against the HIV/AIDS menace. There has been a circus. Personally, I have given Kshs30,000 for the HIV/AIDS campaign preparation and that money is lying somewhere. The circus is going on. I am losing money as a Member of Parliament because we want to help. But somebody somewhere does not want Members of Parliament to get concerned where money is involved and where the public is going to gain by the participation of Members.

Mr. Deputy Speaker, Sir, we must face reality. We want a better country for ourselves and for posterity. We also want to be proud amongst nations that we are doing things the way they ought to be done. I do not see why the Ministry of Finance and Planning is unable to follow the law when it is so clear. It is there in the book. The fact that certain aspects of that particular Act have been challenged does not mean that the law has stopped to exist. I think it is fair for the Minister for Finance and Planning to take the first step to make sure that he complies with the law. Let the money go where the law says it must go. In any case, why would we have a law when even a leading Ministry, like the Ministry of Finance wants to defy it and start allocating money like eggs? I believe if I went there with a convincing case as a Member of Parliament, I may get a small allocation of 0.1 per cent because after all there is no criteria. There is no law being applied. Where the law is not applied, you can allow canvassing or even pretenders and joyriders to be enjoined in the allocation of those resources. We want to insist and the House must accept and appreciate that this law that this House has enacted must be complied with by the Executive, having that as a bottom line. If that is not the bottom line, then Parliament becomes inconsequential and toothless. So, whatever we are doing through the Parliament Service Commission (PSC) would be a nullity.

Mr. Deputy Speaker, Sir, we have seen certain roads in this country that would have been completed by now if the Act was strictly followed. The officer in charge of roads in my constituency tells me that he has been

given Kshs500,000 to do a few bridges here and a few things there. There is no committee to guide him on priorities. Money is just being spent like he is going to buy tea and chicken in the market place. Discussions are being held in the streets. I am told all these things in the streets of a small market that we have now elevated to a district headquarters called Wote. I am told that he will be attending the road that passes near my home but I do not want to be pleased. I want service to be given to the people of the country called Kenya.

I will proceed next week.

Mr. Deputy Speaker: Order! Mr. Maundu, you have 25 more minutes to go.

Hon. Members, I did not receive any requests for the Zero-Hour, so there will be no Zero-Hour.

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time for us to interrupt our business. Therefore, this House stands adjourned until Tuesday, 12th June, 2001, at 2.30 p.m.

The House rose at 6.30 p.m.