

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 5th April, 1995

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

- (i) Annual Report and Accounts of Coffee Research Foundation for the year ended 30th June, 1993 and the Certificate thereon by the Auditor-General (Corporations).

(By the Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima) on behalf of the Minister for Agriculture, Livestock Development and Marketing)

- (ii) Annual Report and Accounts of East African Portland Cement Factory Ltd for the year ended 30th June, 1994 and the Certificate thereon by the Auditor-General (Corporations)

(By the Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima) on behalf of the Minister for Commerce and Industry)

- (iii) Annual Report and Accounts of National Hospital Insurance Fund for the year ended 30th June, 1991 and the Certificate thereon by the Auditor-General (Corporations)

(By the Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima) on behalf of the Minister for Health)

- (iv) Annual Report and Accounts of Kenya Trypanosomiasis Research Institute for the year ended 30th June, 1988, and the Certificate thereon by the Auditor-General (Corporations)

- (v) Annual Report and the Accounts of Kenya Trypanosomiasis Research Institute for the year ended 30th June, 1989, and the Certificate thereon by the Auditor-General (Corporations).

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(vi) Annual Report and Accounts of Kenya Trypanosomiasis Research Institute for the year ended 30th June, 1990, and the Certificate thereon by the Auditor-General(Corporations)

(vii)Annual Report and Accounts of Kenya Trypanosomiasis Research Institute for the year ended 30th June, 1991 and he Certificate thereon by the Auditor-General (Corporations)

(By the Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima) on behalf of the Minister for Research, Technical Training and Technology)

(viii)Annual Report and the Accounts of Kenya Power and Lighting Company for the year ended 30th June, 1994 and the Certificate thereon by the Auditor-General (Corporations).

(By the Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima) on behalf of the Minister for Energy)

(ix)Annual Report and Accounts of National Museums of Kenya for the year ended 30th June, 1993 and the Certificate thereon by the Auditor-General (Corporations).

(By the Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima) on behalf of the Minister for Home Affairs and National Heritage)

ORAL ANSWERS TO QUESTIONS

Question No. 041

DE-REGISTRATION OF CLARION

Dr. Ombaka asked the Minister of State, Office of the President:-

- (a) why the Centre of Law and Research International (CLARION) was de-registered; and,
- (b) whether the Minister was satisfied that the de-registration was in accordance with the spirit and provisions of the Non-Governmental Organisations Co-ordination Act 1990 and the Non-Governmental Organisations Regulations 1992.

The Assistant Minister, Office of the President (Mr. Awori): Mr. Speaker, Sir, the answer that I received is unsatisfactory and we have agreed with Dr. Ooko-Ombaka, that I will research and get a satisfactory answer and give it next week, on Tuesday. Thank you.

Mr. Speaker: What is your reaction, Dr. Ombaka?

Dr. Ombaka: Yes, I totally agree with the Assistant Minister that the answer I have is totally unsatisfactory. So,

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I have no objection to the Question being put forward to Tuesday, next week.

Mr. Speaker: Very well. The Question has been deferred to Tuesday.

(Question deferred)

Question No. 032

SUB-DIVISION OF SUB-LOCATION

Mr. Karan asked the Minister of State, Office of the President, when Kochieng' Sub-Location in Kadibo Division will be sub-divided into three sub-locations and hence upgraded to a location as per the Kisumu District Development Committee recommendations.

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

Kochieng sub-location will be considered for sub-division into three other sub-locations and the sub-location itself, will also be upgraded to a full location when the matter has been discussed at the sub-District Development Committee (DDC) and DDC, and recommendations brought to us. We have no problem at all.

Mr. Karan: Mr. Speaker, Sir, the subject of sub-division of Kochieng sub-location has been recommended through sub-DDC and the DDC and since a number of districts have been created without appearing in the Estimates, why can the Government not extend the same facility to Kochieng' because the procedure is you sub-divided and look for funds later on? So, why can Kochieng' sub-location not be sub-divided and in the normal pattern of the Government, we look for funds?

Mr. Awori: Mr. Speaker, Sir, as soon as we receive those recommendations, it is possible that the sub-DDC and DDC did indeed recommend but the recommendations have not arrived in Harambee House. As soon as we receive them, we will accede to your request.

Mr. Mulusya: Mr. Speaker, Sir, Arising from that answer that has been given by the Assistant Minister, this is a very good move to sub-divide divisions into locations and sub-locations. What is the Government doing to make sure that when it has sub-divided divisions or created new districts, it carries out development of the infrastructure existing there like for example, constructing chiefs' offices, district officers' offices and Administration Police Lines instead of leaving this to the wananchi to contribute from resources which do not exist and which is a burden to them?

Mr. Awori: Having made that contribution, will you please then pose the supplementary Question?

(Laughter)

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Mr. Speaker: Next Question.

Question No. 016

COMMISSIONING OF POWER PROGRAMME

Mr. Speaker: Is Ms. Wanjiru not here? Let us move on to the next Question. We will come back to that Question.

Question No. 053

WATER FOR KIINI LOCATION

Mr. Mbui asked the Minister for Land Reclamation, Regional and Water Development:-

- (a) whether he is aware that parts of Kiini Location in Ndia Division were not supplied with water during the construction of Ndia Water Project; and,
- (b) what plans the Ministry has to ensure that the area is supplied with water possibly from Mathira Water System.

The Assistant Minister for Land Reclamation, Regional and Water Development

(Mr. Ligale): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that although Ndia Water Project was designed, to among other areas, supply water to the entire Kiini Location, some parts of it do not receive adequate water all the time due to the areas topography.

(b) The Ministry has, however, identified an alternative source which will augment the supply and enhance total coverage of the Location.

The work entails:-

- (i) A new intake at Ragati River,
- (ii) a treatment plant,
- (iii) a booster pumping station and
- (iv) Pumping mains to connect the existing distribution system. It is not possible to supply Kiini with water from mathira Water System because that particular water system is already oversubscribed.

Mr. Mbui: Thank you, very much Mr. Speaker, and thank you very much for the answer given by the hon. Assistant Minister. However, people in that location are already fetching water from the old Ndia Water System and they are currently being billed. Can the Assistant Minister direct the water officials to stop those charges?

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Mr. Ligale: Mr. Speaker, Sir, I am ware that these people are already connected to the existing water supply which was designed to supply about 13,000 cubic metres of water per day, but the demand in that area is 17,000 cubic metres. So, there is no adequate water to reach everybody. However, I will discuss with officers on the ground to see what can be done in the light of the fact that they do not actually receive the water.

Mr. Nyagah: Mr. Speaker, Sir, in the neighbourhood of Kirinyaga District there is the big Masinga Dam. Currently the Government is organising to supply piped from this dam into Kitui North and Masinga Constituencies, all of them Kanu strongholds. Would the Government consider piping this water to Kirinyaga through Embu District so that we can also benefit and reap the fruits of what we contribute to Government as revenues?

Mr. Ligale: Mr. Speaker, Sir, it is much cheaper to get the water from the sources identified.

Mr. Ndicho: Mr. Speaker, Sir, can Assistant Minister consider giving water from the big Ndakaini-Nairobi water pipe to people of Gatanga, Gatundu, Juja and Githurai? This water is harvested from Thika District and yet the people in that district are not benefiting from a drop of water.

Mr. Ligale: Mr. Speaker, Sir, the water referred to was specifically designed to meet the requirements of the City of Nairobi. At the moment we are not even able to meet all those requirements. So, it is not possible for us to allow off-takes from mains into the areas specified.

Mr. Gitau: On point of order, Mr. Speaker, Sir. I think the Assistant Minister is misleading the House because some areas of Gatundu are enjoying that water. The President had given instructions that St. Francis Girls' High School and Igegania Health Centre be supplied with that water. We would like the same instructions to be given in favour of Chania and Ruiru Locations so that they can get water from this water supply. The Assistant Minister is supposed to surrender the Government water pipes to the City Council so that people in the lower zones of the Ndakaini Water Supply can get water and pay for it.

Mr. Ligale: Mr. Speaker, Sir, I am sure you will agree with me that that is not a point of order.

Mr. Mbui: Mr. Speaker, Sir, I think the Assistant Minister did not get my question properly. I said that these people are paying for water which they are not using - the corporation is still charging them. Can he instruct the corporation to stop charging these people because they are not getting water?

Mr. Ligale: Mr. Speaker, Sir, in fact, I answered that part of the Question and said that I will discuss with my officers on the ground and see what can be done.

Mr. Speaker: Let us go back to hon. Wanjiru's Question.

Question No. 016

COMMISSIONING OF WATER PROGRAMME

Mr. Speaker: Since she is still not here the Question is dropped.

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(Question dropped)

QUESTIONS BY PRIVATE NOTICE

OUTBREAK OF MALARIA

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

(a) Is the Minister aware that there is a severe outbreak of malaria in Kilome, Mbooni, Kibwezi and Wote Divisions of Makeni District?

(b) Is he further aware that there are no drugs in the health centres in the district for treatment of malaria?

(c) If the answers to (a) and (b) above are in the affirmative, what action is he taking to rectify the situation?

Mr. Speaker: Well, since there does not seem to be anybody from the Ministry of

Health the Question is deferred.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. You will realise that we are reverting to the old ways of Ministers missing to answer Questions in this House. This morning a lot of Questions were not answered. This afternoon the Ministry is not represented here at all. Will I be in order to request the Chair to urge Ministers to be serious with this House? It is evident that there is no seriousness from the Government side!

Prof. Rashid-Mzee: On a point of order, Mr. Speaker, Sir. I would like it to be noted that this is the second time this Question is being deferred. Secondly, this is a very serious matter because people are dying of treatable diseases. I was hoping that the other side of the House would take this Question very seriously.

Mr. Speaker: Very well; I think we have heard those sentiments. In fact, all hon. Members must take the business of the House seriously.

Mr. Ndilinge: On a point of order, Mr. Speaker, Sir. Since this Question concerns people's lives it needs an urgent attention from the Ministry. So, when will the answer be brought to the House? Perhaps, the Minister and his Assistants should travel to Makueni to attend to this very serious case!

Mr. Speaker: Well the Question is deferred until tomorrow afternoon.

(Question deferred)

POINTS OF ORDER

Mr. Mwavumo: Jambo la nidhamu, Bw. Spika. Ningependa kumuuliza Waziri wa Nchi katika Ofisi ya Rais alieleze Bunge hili ni kwa nini polisi wa Likoni wamewapiga watu na kuwahangaisha watu wa Likoni nzima bila ya sababu yoyote. Jana mtu mmoja alikufa kutokana na kisa hiki.

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The Assistant Minister, Office of the President (Mr. Awori): Bw. Spika, sina habari zozote kwamba kulikuwa na msako wowote wa polisi kule Likoni. Hata hivyo, nitalipeleleza jambo hili na kuliharifu Bunge kuhusu matokeo ya upepelezi wangu Alhamisi ya wiki ijayo.

Prof. Rashid-Mzee: Jambo la nidhamu, Bw. Spika. Mambo mabaya sana yanatokea katika sehemu ya Likoni. Ofisi ya Rais imeambiwa kwamba watu wanapigwa kwa sababu ya ugawaji mashamba. Leo tumearifiwa kwa simu kwamba mtu mmoja amekufa na wengine wakapigwa risasi mikononi na miguuni kwa ajili ya zogo hili. Tunataka Ofisi ya Rais ituambie kwa nini mambo haya yanatokea katika sehemu ya Likoni.

The Assistant Minister, Office of the President (Mr. Awori): Bw. Spika nimemweleza mhe. Mwavumo kwamba nitayaleta hapa matokeo ya upelezi wetu juu ya jambo hili. Kwa wakati huu sina habari yoyote juu ya jambo hili.

End of B.

Mr. Shamalla: On a point of order, Mr. Speaker, Sir. Arising from a point of order by hon. Ruhiu yesterday, you did rule, and correctly so, that it is in contradiction of the Standing Orders for Members to discuss outside this august House, business that is before the House. In today's *Nation* newspaper, page 4, I am reported as having called for a fresh probe in the Goldenberg affair. I have not! I have not spoken to any newspaper since yesterday. The last time I was involved in a Press conference was the day before yesterday in Kakamega with my colleague Members of Parliament and, at no time did the issue of the Public Accounts Committee and, more specifically, Goldenberg, arise. I do know, however, that the *Nation* newspaper has taken a partisan position as far as the Goldenberg affair is concerned. If that paper is soliciting for support, I happen to be the last person that would lend it that support.

The Assistant Minister for Transport and Communications (Mr. Morogo): On a point of order, Mr. Speaker, Sir. Hon. Ruhiu was supposed to substantiate an allegation he made in relation to the allocation of the City Mortuary.

Mr. Speaker: Is Mr. Ruhiu here?

An hon. Member: He is coming in!

(Hon. Ruhiu was observed walking in)

(Laughter)

Mr. Speaker: Order! Order! Indeed, I see the hon. Member for Embakasi arriving. I had made a ruling that Mr. Ruhiu should avail himself in the morning to substantiate the allegation he made and, as soon as Mr. Ruhiu takes his place, I will require him to comply with the order that I had made previously. Failing which, of course, he will be forced to withdraw and apologise.

Mr. Ruhiu: Thank you, Mr. Speaker, Sir, and thank you, hon. Members for that unwarranted excitement when I came in.

Mr. Speaker, Sir, I promised to substantiate that the City Mortuary grounds that had been reserved by the Nairobi City Council for extension had been grabbed. I now wish to state that my reason for absence this morning was that I was trying to get the vital document. Since I have a lot of faith in our media, particularly the newspapers, I want to state that the man who is holding this document is out of Nairobi. I want it to go on record that I shall revisit the matter at a later date. At this juncture, I wish to withdraw the statement.

Mr. Speaker: Order! I am sorry, Mr. Ruhiu. In fact, you are supposed to have made your substantiation last Tuesday, which was yesterday. Yesterday, I did allow you further time and ordered that this morning, you come forth to substantiate. This morning you were not here. You have come late this afternoon but nevertheless, you are here. I think the most honest thing to do, hon. Ruhiu, is to say that you have nothing to substantiate, withdraw the claim and apologise, and proceed.

Mr. Ruhiu: Mr. Speaker, Sir, I have a newspaper here which says that the land was ---

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Mr. Speaker: Order, Mr. Ruhiu! Order! I do expect hon. Members to be honest to themselves and to the House. Hon. Ruhiu knows quite well that the Chair has ruled several times that an hon. Member will never use a newspaper as a substantiation of an allocation of a

plot. You know you cannot. If you do not have anything to substantiate, the easiest and most honourable way out is to withdraw and apologise.

Mr. Ruhiu: Mr. Speaker, Sir, I withdraw and apologise, and state that I will revisit the matter at a later date.

The Minister for Information and Broadcasting (Mr. Makau): On a point of order, Mr. Speaker, Sir. Although hon. Ruhiu has withdrawn and apologised, he stated that the person with the document is away. Could he also withdraw that because there is no -----

Hon. Members: Aaah!

The Minister for Information and Broadcasting (Mr. Makau): Wait! Wait! I have not finished! Mr. Speaker, ---

Mr. Speaker: Order! Order! Can I hear afresh what the hon. Minister was saying?

The Minister for Information and Broadcasting (Mr. Makau): Mr. Speaker, earlier, before Mr. Ruhiu talked about withdrawing his allegation, he had stated that the person with the document is away. Could he also withdraw that because we will be waiting for that person? Could he also withdraw the fact that the person is away?

Mr. Speaker: Order! Order! There is nothing for hon. Ruhiu to withdraw. If he has said somebody is not present, it means he is not present, unless you can prove that that is not the case.

The Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima): On a point of order, Mr. Speaker, Sir. I would like to register my feelings regarding an incident that happened in my constituency last weekend. Six policemen from Nyamebene District went to Gatiriri(?) market in Tharaka-Nithi, in Tharaka constituency and started collecting taxes from wananchi by force. The residents resisted and two were shot and wounded. I have been in touch with officers concerned in the Office of the President and I was assured that these people would be arrested and taken to court. However, to date, nothing has happened.

(Applause from the Opposition side)

Mr. Speaker, Sir, I am not calling on the Opposition to celebrate, but I am speaking as a Member of Parliament for Tharaka. It is very unfortunate that these policemen attacked innocent wananchi. I am asking that the Minister in charge of internal security investigates the matter and reports to this House what action has been taken against those six Administration Policemen who attacked and shot innocent wananchi.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. Are we not witnessing history in the making? I think the hon. Member is an Assistant Minister. If my thinking is right, is he in order raise such an issue? We have never had this experience. He is part and parcel of that Government. Can he stand up now and say he is speaking as the area Member of Parliament? He is part and parcel of that Government. He is should get that organised internally. Is he in order to talk as an ordinary Member when he is an Assistant Minister in that very Government which does nothing for his people?

End. C.

Mr. Speaker: I do not know how the hon. Member was asking a Minister a question when he is also a Minister! Anyway, that is their own arrangement.

Mr. Mak'Onyango: Mr. Speaker, Sir, I also want to take this opportunity to raise what I consider to be a very unfortunate incident that occurred in my constituency about a week or so ago. In this regard, I would like to ask for a statement from the Minister concerned.

Mr. Speaker, Sir, to be precise, on the 17th March, 1995, an 18 year old boy who was walking near the DC's office and felt it appropriate to convey greetings to one of the administration policeman guarding the DC's residence ended being shot and killed. It is high time the Government took human lives seriously.

Mr. Speaker Sir, investigations indicate that it was an act of sheer irresponsibility on the part of the person concerned. Can the Minister tell this House whether the Government takes lives seriously and that all peoples' lives are going to be protected?

The Assistant Minister, Office of the President (Mr. Awori): Mr. Speaker, Sir, the responsibility of this Government is to take care of all citizens. So far as the case may be, what my hon. colleague is mentioning, certainly has not come to my attention. I am going to find out, and make a Ministerial statement here sometime next week. Thank you.

MOTIONS

(applause as Mr. Wamalwa proceeded to the Table)

Mr. Wamalwa: Mr. Speaker, Sir, I do thank you for giving me the opportunity to introduce debate on the Report of the Public Accounts Committee of the Government of Kenya Accounts for the Financial Year 1992/93.

Mr. Speaker, Sir, may I now formally move the following Motion:

THAT, this House adopts the Report of the Public Accounts Committee on the Government of Kenya Accounts for the year 1992/93 which was laid on the Table of the House on 30th March, 1995.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. I have no intention at all of interrupting the hon. Chairman of the Public Accounts Committee (PAC). But I think it is very important, given the grave seriousness and importance of this issue that we are quite clear about the procedure from the very beginning. In this respect, I would like to seek your indulgence in guiding the House accordingly.

Mr. Speaker Sir, you are very concerned and rightly so about following the rules of this House, and particularly about the rules pertaining to *sub judice* rules. I believe in the course of moving the Report and in the course of the debate on the Report, we are going to refer to certain Sections of that Report. I am here alluding to paragraphs 38-40 of the Report on pages 18-21. Those paragraphs are in connection with what has come to be called infamously as "the Goldenberg Scam". The issue I would like to raise here is: Is it going to be possible for the Chairman of the Committee to move this Report and is it going to be possible for this House to debate this Report and particularly to debate those paragraphs without infringing the rules of *sub judice*? Standing Order No.74 deals with matters that are *sub judice* or matters that are before courts of law. In my understanding, as we sit here this

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is not for me to say, but there are two cases already pending in court in respect of Goldenberg scam. Unless this House can be clearly directed and guided as to what is in court and what is not in court, as to whether or not the matters that are covered in the report are also wholly or partly in court. Then, clearly we will be in a lot of trouble in this House. And that is why I was---

Mr. Speaker: Hon. Anyona, which case are you particularly referring to?

Mr. Anyona: Mr. Speaker, Sir, I am referring particularly to the case filed by the Law Society of Kenya (LSK) and I am also referring to a case filed by a member of the Committee. Merits or demerits notwithstanding, this is what is being adjudicated on right now and we do not know which way the courts will decide. If those two matters hold, then I would like the Chair to guide the House as to whether court and Parliamentary Proceedings can go on simultaneously. If not, then which one takes precedence over the other, if it is true that the same matters are simultaneously before the courts of law and before this Parliament. Which of the two national institutions gives way or which matters go ahead and which ones wait for the other to be completed?

Mr. Speaker, Sir, in this case, therefore, I am asking if that happens, then what are the constitutional and legal implications with regard to doctrine of separation of powers between the Judiciary and the Legislature? As I said, I think it is important for us to get this clear from the very beginning, so that if, in fact, the same matters are in court, then this House must decide whether to go ahead with the debate or to wait until the courts have disposed of it or if they are not the same, then we will proceed without any difficulty. I thought it is important to raise those issues at the beginning. Thank you.

Mr. Speaker: Order! Obviously the hon. Member is concerned about the procedures of this House, the integrity of the House and obviously also he is concerned about the rule of law which I do appreciate. I am aware, the hon. Member did point out to me that to me, I am aware of the existence of a case filed by the Law Society of Kenya of Kenya on matters that were pending at that time before a Select Committee of this House. At that time hon. Members will recall, that the House was in recess.

At that time I did instruct the Clerk of the National Assembly, in pursuance of the provisions of Cap. 6 of the Laws of Kenya, to file an affidavit as he is duly mandated by me to do when the House is in recess. He stated to the court that the matters before it are pending before this Committee, and I think that has been duly filed. The reason for my doing that was because I have powers to do it when the House is not meeting, but when the House is in session, it is for the House to give that authority. But the reason why I did that was to enable the Committee which began that work before that suit was filed, to proceed with the matters that were before it without being encumbered by matters that were to be allegedly subsequently to be *sub judice*. I did bring that issue to the attention of the court that the **D.3 - 05.04.95** matter was pending before this House. But as to the details of what the hon. Member would like me to do at this particular moment, I think that is not a matter that he would expect me at this moment to give a considered opinion. with regard to what I have to say about whether or not which takes preference, whether it is the court or this House, on a matter that is pending in this House, there is not doubt, this is a matter of great moment. And I would not like to give that ruling without giving it a considered thought.

END. D

I would like to give it considered thought to see if there has been any precedent before, either here or elsewhere and then communicate to the House.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. Having listened to your ruling and particularly that section where you told the House that you asked the Clerk to go to the High Court and swear an affidavit to the effect that the matter was still being discussed by the Public Accounts Committee, which he did, where do we stand now? You have made a ruling but now we seem to be--- I think that having done that, and this Committee has now Tabled, the report, I do not think they can go on until we are through with it here.

Mr. Speaker: Order! Indeed, as a matter of fact, the whole purpose of filing that affidavit in the first place was to allow this Committee to complete its work unhindered. The Committee has completed its work and has Tabled the report. I think that as far as that part is concerned, I have no doubt in my mind that since the Committee was seized of this matter before it ever went to court this matter must proceed. As to the earlier issue which the hon. Member raised about separation of powers and who takes precedence, I will address that. But for now, the hon. Member must proceed.

Dr. Otieno-Kopiyo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Not on this issue any more.

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, I am a Member of this House and---

Mr. Speaker: Order! Dr. Otieno-Kopiyo, I know that you are a Member of this House and you are entitled to address the House. I have already made a ruling on this matter and I do not think you will persuade me now to overturn my ruling.

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, I am rising on a point of order, under Standing Order No.161 which is related to the aspect of the case which you have not dealt with in your ruling right now. That deals with membership of Select Committees of the House; as to whether a Member who has the privilege to sit in a Committee can take evidence which he receives before that Committee and take it to a court of law when in fact this Committee of which he is a Member is actually sitting. We need your guidance on that one, Sir.

Mr. Speaker: Very well. I will take that into account in my ruling. Can we allow hon. Anyona to proceed?

Mr. Anyona: Mr. Speaker, Sir, this is an extremely delicate matter and I would not want us to make any faulty move. Standing Order No.74 says:-

"No member shall refer to any particular matter which is *sub judice*."

This matter is before the court; here we are and there is a likelihood of us referring to it. Can we really deal with that issue now?

Mr. Speaker: Order! I would like to say one thing here. I think I have already brought to the attention of the High Court of Kenya or the Clerk has, under my direction, brought to the attention of the High Court of Kenya the fact that a Committee of this House was seized of this matter. In the same vein that this House does respect the High Court, we also expect, of course that the High Court will in the same vein, respect this House. Secondly, as far as it relates to Standing Order No.74, yes, indeed, this House does not in ordinary circumstances deal with matters that are pending before the court. But in the

same breath what happens when a Member moves out of this House knowing very well that this House is seized of a matter, goes to the court and files a suit to stop this House from deliberating on the issue--- Those are the issues that I will address fully in my ruling at an appropriate time. Let us proceed.

Prof. Mzee: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Overruled! Proceed, Mr. Wamalwa.

Mr. Wamalwa: Mr. Speaker, Sir, I am glad that you are going to make a ruling on that matter because that matter has exercised the minds of the Members of Public Accounts Committee as to who is superior; Parliament, courts of law or whether they rank parallel with each other. We have had a lot of arguments within the Committee but I am glad now you will give a comprehensive ruling on that matter.

Mr. Speaker, Sir, going back to the report of the Public Accounts Committee, I would like to observe that unfortunately after the report was laid on the Table of this House last week, it seems to have touched off a very acrimonious public debate and the condemnation of the Public Accounts Committee before we even had a chance to be heard on the matter. I am grateful to the Chair for cautioning the House on this matter; that once a matter is pending before the House, it should not be the subject of debate outside the House.

Mr. Speaker, Sir, just like last year, the Goldeberg saga has tended to overshadow and even obscure other even more serious incidents of fraudulent mismanagement of public funds involving much bigger sums of money than Goldenberg but yet Goldenberg remains the most emotive word in the Kenyan public's mind. For that reason, I will take to deal with the Goldenberg issue blow by blow towards the end of my submission.

As horrendous as this scam was, as emotive as the word Goldenberg is, this report of the PAC is about much, much more than just Goldenberg. Allow me to start by clearing one misconception at the very outset. The PAC that produced this report consisted of 11 very honourable and very able Members of Parliament. I point this out for two reasons. First, in order to express my highest regard and thanks to each one of the Members of the Committee for their hard work and patience which enabled the Committee to complete its work in record time. Secondly, I allude to this matter in order to dispel the popular but misguided Press image of Wamalwa as the sole Member of the Committee who sat down and singlehandedly wrote all the recommendations by himself. Or the alternative but equally misguided view that I dictated all the findings to the Committee.

The Committee of which I had the privilege to be Chairman consisted of the following Members:

The Hon. Col. (Rtd) Kiluta, M.P.

The Hon. John Mumba, M.P.

The Hon. David ole Sankori, M.P.

The Hon. Willy Kamuren, M.P.

The Hon. George Ndotto, M.P.

The Hon. Henry O. Obwocha, M.P.

The Hon. Agnes Ndeti, M.P.

The Hon. George Nyanja, M.P.

The Hon. J.M. Shikuku, M.P.

The Hon. Raila Odinga, M.P.

End of E.

Mr. Speaker, Sir, how does one begin to dictate to an hon. and experienced Member like the hon. Joseph Martin Shikuku? How does one begin to dictate to a highly opinionated Member like the hon. Raila Odinga? I wish to point out that this argument is fallacious, that this Report is the Report of the Committee of this House and that the recommendations in this Report were arrived at unanimously.

Mr. Speaker, Sir, last year, when the Committee was dealing with the Goldenberg matter, there was a disagreement in the Committee. We voted separately and the voting pattern was recorded in the Report according to how everybody voted. This year, the voting was unanimous and even the preface of the Report itself says so. I would like to stress---

(Loud consultations)

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

Mr. Speaker: Order! Order, hon. Raila. Order! Every Member of this House who has any view contrary to what the hon. Wamalwa is going to say will, with good luck, get a chance to explain. I would like to ask the totality of the House, like I did when we were discussing the Presidential Speech, that unless the point of order that you rise on, is really a serious point of order, I will not entertain it. If you rise by any chance, not on a point of order, but on a point of argument, the Chair will not entertain it. This is an important Committee of the House, and what is being deliberated on is very, very important, and I think it is right that the hon. Member on the Floor shall have his train of thought flow uninterrupted unnecessarily.

Mr. Wamalwa: I do thank you, Mr. Speaker, Sir, for that ruling. I would like to stress the point that the recommendations contained in the Report were arrived at unanimously after very thorough objective and constructive discussions. The Committee also took due regard to ensure that there was sufficient institutional capacity in the Public Service to implement these recommendations. The Committee held 61 sittings during which all the Accounting Officers appointed by the Treasury to look after the financial operations of every Ministry and Department appeared before the Committee to explain and answer the chosen questions which had been raised by the Controller and Auditor-General in his Report and those which were raised by the hon. Members during deliberations.

Mr. Speaker, Sir, apart from the oral and written evidence made by the various Accounting Officers, the Committee also summoned witnesses who are not public officials to appear before it and give evidence. In the course of receiving and evaluating evidence, the Committee was concerned that there are some public officials who have been charged with very serious financial responsibilities but who are still not sensitive to the ever rising public demand for transparency and accountability in the handling of the public issues. This laxity in itself has occasioned some audit queries which would otherwise have been expunged from the Report of the Controller and Auditor-General had the relevant Accounting Officers responded to them promptly. As the Civil Service reform takes shape in Kenya, it is important that the civil servants exhibit a high degree of efficiency in their work. For a long time to come litmus test for this efficiency will continue to be contained in the Reports of the Controller and Auditor-General.

F.2 - 05.04.95

This, notwithstanding, I would like to point out that there has been a marked improvement in the standard of performance by Accounting Officers. These days nearly every Accounting Officer who appears before the Public Accounts Committee (PAC) arrives armed with a written brief. What is even more important is that in the course of their presentations, the accounting officers have exhibited total mastery of their written brief and they have been able to answer questions fired by Members of the Committee from the Floor of the Committee.

Mr. Speaker, Sir, there were many sterling performances by Accounting Officers who were well on top of their job and who knew their roles but let me mention that Mr. Mbova and Mrs. Sally Kosgei continued to impress most as Accounting Officers who were completely on top of their job and they deserve the commendation of this House.

(Applause)

This time also, the Permanent Secretary in the Ministry of Environment and Natural Resources, dazzled the Committee with his ability to come to grips with issues that had been a problem to him in the previous year. I give him a B for endeavour as the most improved Accounting Officer in the Government.

(Applause)

Mr. Speaker, Sir, among the issues that the Committee was most concerned with were things like the Excess Votes. The Excess Votes continue to plague this Government. Almost every Ministry in the whole government had run up an Excess Vote. In simple terms, this means that the Accounting Officer exceeded his budgetary limits. This is a matter of grievous concern to this Legislature because the guiding principle for any Parliamentary democracy is the age old principle that there shall be no taxation without representation. In other words, nobody shall spend the taxpayer's money without that taxpayer's elected representative deliberating upon that matter.

Mr. Speaker, Sir, in the year under review, the Committee was aggrieved at the escalation in the Excess Votes from K£48,216,360.16.85 in 1991/92 to K£75,932,971.3 during the year under review.

End.F

CNJ.

G.1. - 5.4.95.

[Mr. Wamalwa]

That was the year under review and this is what the Report says:-

"The Committee was concerned that some of the Accounting Officers failed to adequately explain the causes of these excesses"

However, the Committee did make a separate recommendation regarding the excess vote for each Ministry having listened careful to the pleas of each Accounting Officer. The hon. Members of this House can acquaint themselves with these recommendations.

Mr. Speaker, Sir, I now touch upon another feature that has become chronic in the financial management by Accounting Officers in this Government, and that is, pending bills. Pending Bills are all the unsettled bills which each Ministry carries forward into the next

financial year having failed to settle them in the course of the current year. Nearly every Ministry in this Government without one exception, has pending bills. In fact, the question of pending bills forms the greater part of the discussion of the Public accounts Committee with the "Big five", that is the Head of the civil Service, the Permanent Secretary, Treasury, the Attorney-General, the Controller and Auditor-General and the Accounting Officer, Treasury. The Public Accounts Committee met with these five big people at the end of their deliberations to consider matters of policy which usually do not fall within the purview of an Accounting Officer. Year after year, the Public Accounts committee has discussed the problem of pending bills which have become a millstone around the neck of every Ministry in the Government. You find that a Ministry starts the financial year by carrying a big burden of pending bills that have not been settled. Some Ministries have had their telephone or water disconnected due to these pending Bills. At the moment, the operating principle is that pending bills form the first charge on each Ministry's vote after the budget. That means the moment this House passes various votes for various Ministries, the first thing that each Ministry does is to take that money and pay pending bills and then begin accruing more bills. At the end of the current financial year, the Ministry finds itself in the same position it was in the previous financial year where it could settle its pending Bills. A way must be found of getting rid of this vicious circle where a Ministry gets its provision today, pays the pending bills and then starts by making more and more debts which at the end of the year it cannot pay until the beginning of the new financial year.

Mr. Speaker, Sir, in the year under review, the Committee noted with concern that as at 30th June, 1993, an amount of K£228,118,907 3s.50c. constituted pending bills relating to 1992/93 and earlier years. The Committee strongly recommended that the Government should find a lasting solution to this perennial problem of pending bills.

Another common feature in terms of financial mismanagement is the simple question of imprests. Imprests are a device whereby a civil servant requisitions a certain amount of money for a specific purpose and surrenders that imprest within 48 hours after accomplishing that mission. This is very simple and quite often one does not even have to pay back any money. One just needs to fill in forms to declare that one spent the money.

However, this does not appear to have been done and one can only put this down to lack of tight administrative machinery within the Ministries. Regulations relating to the issuance and surrender of imprests state categorically that imprests should be accounted for within 48 hours after the imprests holder returns to his duty station. However, imprests have remained outstanding long after the purposes for which they were issued were accomplished. As at 30th September, 1993, a sum of K£1,701,292, 16s. 10c. issued as imprest remained outstanding.

G.2 - 05.04.95

In the course of 1992/93, the Central Bank of Kenya incurred very huge debts that make Goldernbeg look like (cheap play) ? The Committee was most concerned about this and expressed great concern at the huge losses made by the Central Bank of Kenya due to irregular advances made to commercial banks. The Committee noted with concern that a sum of K£888,076.350 or Kshs.17,761,566,794, was overdrawn by three commercial banks which are currently under liquidation. How the Government plans to recover this money is probably a problem that is going to exercise the minds and energy of the PAC for the next two or three years.

These banks are: Trade Bank Ltd. - Kshs.2,172,329,283 and is under liquidation. Postbank Credit and Finance - Kshs.2,063,986,511 - also under liquidation. The Exchange

Bank - Kshs.13,525,211,000. The Committee heard in disbelief how these irregular advances were made and strongly advocates for changes in the operational rules and procedures in the Central Bank of Kenya to avoid recurrence of such losses. I will have occasion to come back to the case of these three banks. However, I would like to say that this is a matter that the Committee took very seriously and even summoned the Government of the Central Bank to appear before the Committee twice. This is because these are huge sums of money and the Committee was surprised to not that the way they were dished out was like there were not regulations at the Central Bank at for regulating advances to banks. It looks as if anybody could just walk into the Central Bank and get the money as they wanted.

The Committee was also concerned about the loss of cash at the district treasuries. Perhaps one of the greatest innovations that the Nyayo Government ever came up with was the district focus for rural development programme. This enables people at the local district level to have a say in the development of their district. In fact, to us in the Opposition see it as the forerunner of the abolition altogether of the provincial administration. I am saying this because when we vote money in this House it goes directly to the district treasury where the district development committees meet to decide on how the money should be spent by prioritizing development projects and so forth. This is a very good idea which by-passes the provincial administration altogether and rendering the provincial commissioner an anachronism in this country today. However, this system has been so abused that I do not know what one can do.

Money at the district treasuries seem to be at the disposal of the district commissioners to do with as they like. We have even heard cases where these district commissioners have given money to the Kanu delegation going to Nairobi to attend the annual delegates conference. This is in the Report which said that money spent in this way amounted to shs.210 million.

END. G

ART

H. 1 - 05.04.95

"The Committee observed with dismay the lack of financial control at the District Treasury and, as a result, the Government has suffered losses due to misappropriation of funds in District Treasuries. A case in point was the Kwale District Treasury where several cases of misappropriation of funds were reported".

Hon. Members: Hon. Boy Juma Boy!

Mr. Wamalwa: In fact, that is where money was given to a Kanu delegation to travel to Nairobi!

"The Committee strongly recommends that the District Treasury should be under the direct control of the Treasury and not the Office of the President; i.e. meaning not under the DC".

I think the Treasury ought to have its people at the District level to make sure that they have the last word how as to how money from the District Treasury is withdrawn and for what purpose instead of leaving it under the control of the DC because the DC bullies the District Treasurer any time and gets the money. In fact, there is one particularly notorious DC called Ali Korane. He is the one who was in Kwale when this mess happened; he moved to Mombasa and he is the current DC, Mombasa, and matters at the District Treasury, Mombasa, are just as bad as they were in Kwale when he was there. In fact, this led the Committee to go to Mombasa to the District Treasury and try to find out exactly what was going on. There were also too many

IOUs chits and I think this must be stopped, if the District Focus for Rural Development Strategy is going to work. The money must be looked after at the District level.

Mr. Speaker, Sir, the accounts of the Local Authorities were also not properly kept during the year under review.

"The Committee was once again gravely concerned that the books of accounts of most the Local Authorities were in arrears, some dating as far back as 1980s and further, and some of the Local Authorities did not even maintain any accounts at all. The Committee strongly recommends that all the Local Authorities should update their accounts and have the same audited by the Controller and Auditor-General".

Mr. Speaker, Sir, there is an area where the Treasury must take very serious steps if it is going to save the taxpayers' money in this country, and that is there does not seem to be enough qualified accountants at the District level, and even in some of the Ministries. The preparation of accounts has always been late; the submission of statements of assets and liabilities quite often are not available even by the time the Public Accounts Committee is meeting. One hopes that Treasury will take very serious view of that.

As in the past, the Committee noted with concern the perennial problem of presentation of inaccurate accounts and failure to provide correct statements of assets and liabilities for audit. This problem is further compounded by the fact that most of the inaccurate and incorrect accounts are submitted for the sake of beating the deadline for submission of accounts for audit. Some of the cases in this connection have been outstanding since the early 1980s. The Committee strongly urges every Accounting Officer to take personal initiative to ensure accounts are correctly prepared and submitted for audit on time.

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Mr. Speaker, Sir, in the reports of 1990/91 and 1991/92, it was indicated that Members of the Committee could not reach a consensus on the issue of irregular payments of Export Compensation to Messrs Goldenberg International Limited. Therefore, the issue was left in abeyance. This time it is my pleasure to inform the House that during the year under review, the Committee reached consensus and agreed on an acceptable recommendation on this issue on paragraphs 38 to 40.

Mr. Speaker, Sir, I have read with interest a lot of the financial writers comments on Goldenberg. I have also noted how some have failed to even refer to the provisions of the Local Manufacturers Export Compensation Act. One of the writers said that the Public Accounts Committee must explain where the gold and diamonds originated from in Kenya.

Mr. Speaker, Sir, I want to take some time to explain the provisions of the Local Manufacturers Export Compensation Act. This Act says that for an ex-factory item for export to qualify for Export Compensation must comprise of 30 per cent of local Kenyan input or component. So, the Committee went to great length. It dealt with that case last year and this year the case also came up again. We had some disagreements among ourselves as to whether the whole thing should be heard all over again or not, and eventually it was agreed that the whole case should be re-opened and the whole issue to be re-examined.

Mr. Speaker, Sir, the Local Manufacturers Export Compensation Act, therefore, allows a lot of latitude to a manufacturer. We established by interviewing the Commissioner for Mines and Geology and the Commissioner for Customs that there are no diamonds to be found anywhere in Kenya. But there are limited deposits of gold found in Kenya. For instance, there

are people who mine gold in West Pokot and the hon. Lotodo knows that. There are also people mining little gold in Macalder mines in Nyatike, Kakamega, Sakwa in Nyanza and so on. So, there are limited deposits of gold in this country.

Now, according to the Government there was a lot of smuggling business in gold and diamonds in this country and because the dealers in these things were operating in grey areas, the Government was not getting its due share of its pound of flesh. So, they came up with a system where they said "let us bring the whole business to the surface and allow anybody who wants to deal in gold and diamonds to do so and then have them pay tax".

Now, the Local Manufacturers Export Compensation Act requires that there has to be a 30 per cent local content, in which case exporters did not export gold or diamonds per se. However, they exported gold and diamond jewellery or gold and diamond jewellery mixed together. So what had to be established in this case was, given the fact that there are no diamonds and gold in Kenya, it had to be established that the diamonds and gold jewellery exports from Kenya, probably worked by Kenyan workers using Kenyan fuel and so on constituted the local component and, therefore, qualified for Export Compensation.

(End H.)

AWN

I.1-05.04.95

Mr. Speaker, Sir, the people who appeared before the Committee could demonstrate very easily how 30 per local content could be achieved. So, that was not the problem that faced the Committee. The problem that faced the Committee was whether, in fact gold and diamond jewellery was exported from Kenya to merit the payment of Export Compensation. We had to get the Commissioner for Mines and Geology to explain to us---

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

Mr. Speaker: What is it? I hope you are serious, Mr. Ruhiu.

Mr. Ruhiu: It is a serious point of order, Mr. Speaker, Sir. Hon. Wamalwa must say in this House to which company overseas these were exported?

Mr. Speaker: Order! That is a false point of order, Mr. Ruhiu. You must leave the House now.

(Hon. Ruhiu left the Chamber)

Proceed, hon. Wamalwa.

Mr. Wamalwa: Mr. Speaker, Sir, I would like to seek your indulgence to take time to read to the House some of the interviews so that the House can hear the kind of answers the Committee was getting. Thank you.

"Mr. Chairman: Hon. Members the meeting is called to order and we shall start by looking Paragraphs 38 to 40.

Paragraph 40 - Irregular payment of Export Compensation.

This is an old story in Kenya and we on this side of the House feel that we want to get rid of it once and for all. So we will expect the officers concerned to give us honest, indepth information to enable the Committee dispose of this matter once and for all. We do not want the Goldenberg affair to carry on unresolved. Mr. Halake, (this is the Financial Secretary) what evidence is there to confirm that gold and

diamond for which Export Compensation of K£73,977,521.19.20 and an additional amount of K£105,731,798.11.40 was claimed? What evidence is there that these originated or were processed in Kenya for the exports to qualify for Export Compensation under the Act? Would you be kind enough also to confirm whether the import content of the same did not exceed 70 per cent of the ex-factory value as provided for in the Act for the export to qualify for compensation? In other words, we want to know whether the diamonds and gold actually originated in Kenya in order for them to qualify for Export Compensation or if they came from neighbouring countries, did the Kenyan input in the processing of these jewellery reach the required percentage to make them qualify for Export Compensation? **I.2 - 05.04.95**

Mr. Halake: Mr. Chairman, you will excuse me for drinking water first. (He drank some water). I know this is a contentious issue and one needs some Dutch courage.

Mr. Chairman: In fact, you will need something stronger than water.

Mr. Halake: That is so sir. As I have said, this is a contentious issue and I may perhaps in the process not satisfy the Committee depending on your good judgement but I will attempt to do so. It is true that the Customs and Excise Department is holding unpaid claims amounting to K£105,731,798.11.40 which were lodged by the company, Goldenberg International before Export Compensation on gold and precious metal and jewellery and other articles was discontinued. This amount could not be paid within the year under review due to inadequate budgetary provisions for the estimates of Expenditure and Revenue. It is proposed that subject to approval by Parliament that this payment will be staggered and made over a number of years starting with 1995/96 financial year. Can I continue to paragraphs 39 and 49?

Mr. Chairman: I think the Committee should be given a chance to look at that statement again of Mr. Halake. In spite of everything that has gone on and even from the events of the recent past, do we understand from your answer that it is still Treasury's intention to pay this extra amount of money to this company?

Mr. Halake: It is sir, because these were payments due by the time Export Compensation was disbanded. Mr. Oyula and the Commissioner of Customs and Excise who are here will confirm this. In our view, these payments which became due before Export Compensation was disbanded are legal. We are, therefore, treating them like a pending bill. They are like pending bills for water, electricity and wildlife compensation claims which have been pending for the last 15 years. This is nothing special about this claim since it was lodged before disbandment of Export Compensation not only for export of gold but also for export of all other items of Export Compensation". In other words, the Accounting Officer was stating or admitting that Treasury owed Goldenberg Company Export Compensation money due to exports sent out of the country. We wanted to know under what circumstances and how the Government could be sure that one made these exports. The explanation was that when one wanted to export gold jewellery they informed the Commissioner for Mines and Geology and the Commissioner for Customs who then sent their agents to the intending exporter's premise to vet the items to be exported and verify that they meet the

requirements of the Export Compensation Act, i.e, that if the raw materials did not originate from Kenya at least the finished products had 30 per cent Kenyan component. In this case, they verified the jewellery and then they sealed the box in which the

jewellery was to be exported with a tamper-proof seal and left the same box in the premises of the intending exporter. Now, when the box arrived at the airport, there was a Customs man at the airport to verify that the tamper-proof seal had not been tampered with, escort the box into the aircraft and make sure that it has left the country. Alright, so the Committee said fine. So the goods left the country.

Mr. Speaker: Address the Chair, Mr. Wamalwa. Disregard everybody else except the Chair.

Mr. Wamalwa: Mr. Speaker, I was addressing you even though I was looking at the door.

Our question then was: The consignment having left the country how do we know that we received value for that consignment in foreign exchange? How do we know that the exporter earned foreign exchange for this country? The answer was that these consignments are accompanied by CD3 Forms a lot of which were made available to the Committee and Central Bank admitted that they could verify that foreign exchange was received for the exported consignments.

End. I

JNM

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Mr. Speaker, Sir, one may be left in doubt because there was a time when we checked various documentation and found that some of the deposits in foreign exchange were actually made locally and we wondered how this was done. The explanation was that some tourists would visit the factory of the exporter, see something they liked, pay for it in foreign exchange and had it delivered to their homes when they got back and that this is the money that was deposited locally here. We asked questions like, how do we know that the same consignment was not exported, brought back and exported again? There was no way anybody could explain in fool-proof manner that that could not be done.

So, what I am trying to portray here is the predicament of the Committee. The PAC is supposed to go by the evidence of the Accounting Officer. Each Accounting Officer is supposed to satisfy the Committee as to what happened in his or her Ministry. In fact, ideally only the Accounting Officer need appear before the Public Accounts Committee (PAC). All the other people he brings along are just technical experts whose evidence is not paramount. It is the Accounting Officer's own evidence which the PAC is supposed to go by. If the Accounting Officer tells the PAC that he is sure that jewellery was exported, value was received and the Central Bank of Kenya (CBK) comes up with forms to prove that value was received, the question is, even if an Member of the PAC doubts that this is true at all, what can the PAC do to adduce contrary evidence? It becomes a very difficult thing because the PAC does not have powers of investigation. The Committee is supposed to accept or go by the evidence of the Accounting Officer - whoever else is called is probably to verify the evidence of the Accounting Officer.

This is the predicament in which my Committee found itself. There are people who suspected that this may not have been true, but there was no way we could adduce contrary evidence to prove that it was not true. And yet all the recommendations of the PAC are

supposed to be based on evidence, just like in a court of law. You cannot recommend by what you have heard in the streets or what you have read in the newspapers; you can only recommend by what you heard from the Accounting Officer and how he has answered questions in cross examination. So, our Committee was left in a situation where the Accounting Officer admitted that exports were made, value was received and his story is corroborated by the CBK officials who came with documents to show that value was received. So, it is not the Committee that is giving Mr. Pattni the money; it is not hon. Wamalwa who is giving Mr. Pattni the money; it is the evidence that was adduced before the Committee, and for lack of contrary evidence, the Committee is hard put to recommend otherwise other than according to the evidence.

Perhaps, one would like to suggest in this connection that Parliament considers giving more powers to the PAC; giving the PAC powers to investigate issues, for example, by going to the CBK or a commercial bank and demanding production of documents.

Until this is done the Committee has to continue going by the evidence of the Accounting Officer. Further I would like to suggest that Kenya joins the modern trend in the world today. In the United Kingdom and the United States hearings of the PAC

are public. I would like to propose that this Government considers seriously making the hearings of the PAC public, may be in the old Chamber. If this can happen it will give the tax-paying public a chance to witness the procedure, process, cross examination in the Committee and, certainly, to clear any doubts or suspicions of foul play. I would like to urge the Government very strongly---

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Hon. Members: No; urge Parliament!

Mr. Wamalwa: Yes, Mr. Speaker, Sir, I would like the Government to bring a Bill to this House to make the hearings of the PAC public so that we will be in keeping with the cry of transparency and accountability.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. For the purposes of the record so that we do not mislead the country I thought that the hearings of the PAC to be in camera is a requirement of Parliament under Standing Order 161. In that case, is it not more right for hon. Wamalwa to say that this Parliament should make that amendment rather asking the Government to do it when it is not its responsibility? I think it is important that we get this correct.

Mr. Wamalwa: Mr. Speaker, Sir, I thank hon. Anyona. I think I had said that Parliament should consider this.

Mr. Michuki: On a point of order, Mr. Speaker, Sir. I rise to seek your guidance because this debate is very important. The guidance I am seeking relates to the point stressed by hon. Wamalwa, the Leader of the Opposition, that the Committee had to go by the evidence of the Accounting Officer. Is it in order for the Chairman, PAC, to stress the evidence of the Accounting Officer when, in fact, the originating evidence is that of the Controller and Auditor-General?

Mr. Speaker: Order, Mr. Michuki! Next time, I think you better know when you are on a point of order and when you are giving a contrary view. He is giving his side of the story; if you are unhappy about that you have to catch my and make your point as loudly as possible.

Mr. Wamalwa: Mr. Speaker, Sir, for the information of the hon. Member the Controller and Auditor-General in person sits with the PAC throughout. At every hearing and session of evidence he is there guiding us at every stage of the way.

In relation to the irregular payments of export compensation, I would like to move on to what happened at the CBK.

End of J.

GKI

K-1. 05.04.95

It is my considered and humble opinion that if operations at the Central Bank and the Treasury were tightened, then we would not be in the mess we are in today. In fact, verbatim evidence shows that there is an admission even from the Governor of the Central Bank himself that his officials were acting in collusion with the various banks that occasioned the losses of over K£888 million.

Mr. Speaker, Sir, the Governor admits that there was a period during which there was some kind of madness in financial circles in Kenya involving the Central Bank. One is reminded here of a statement made by hon. Martin Shikuku who once asked: How come everybody is pointing fingers at Asian businessmen, yet there has never been an Asian Governor of the Central Bank and there has never been an Asian Minister of Finance? Who helps these people to con the country? When the Governor of the Central Bank appeared before us, he spoke practically in weeping terms about how the Asians have defrauded this country, and how, if he had his way, he would give Africans Kshs100 million each rather than see it go to these people. He made some very deep statements, that in the year under review, the then Governor who is not himself was perched at the top of the Central Bank but he did not seem to know what was going on below him. For example, at that time, Kenya was going through a very difficult period. It was not receiving foreign aid and foreign exchange was a major problem for the country to pay for its imports. So, the Central Bank embarked upon a system of purchasing dollars and other foreign currencies from the banks at commercial rates and then the Central Bank sold the same to the Government at Central Bank rates, and Central Bank rates were, naturally, much lower than the commercial rates. Just that transaction alone occasioned a lot of losses. There were three banks involved in this tremendous loss; Trade Bank, Post Bank Credit and Exchange Bank. It seemed there was a time when banks could just walk to the Central Bank and say, I want so many billions of Kenya Shillings in exchange for dollars. Because the Central Bank wanted dollars so badly, they seemed to have accepted any proposal that came their way. This is the story of, for example, the Exchange Bank.

The Exchange Bank of Kamlesh Patni approached Central Bank and told Central Bank that they could give it US\$210 million, and that was worth Kshs13.58 billion. The Central Bank, without even asking questions, advanced the money. About six weeks before that, the Exchange Bank had taken more money from the Central Bank but they had not delivered the dollars. However, nobody seemed to ask them; how come you have not delivered the first lot of dollars and now you are promising to give us more dollars? This is because the people below the Governor were involved in this racket and the whole thing was being done very quickly. The rule at that time was that if you got Kenya currency on the promise of delivering dollars, you were supposed to deliver those dollars within two days. Now, here was a bank which had been given the money six weeks before, it had not delivered the dollars, it comes back and it is given more money and, eventually, it was not able to deliver the dollars. This is the beginning of the saga of Kshs13.5 billion that the Central Bank is claiming from the Exchange Bank.

Now, this happened with Trade Bank, Post Bank Credit and hence, the Kshs17.7 billion shillings that the Central Bank lost on these endeavours alone. However, what amazed the Committee more than anything else was that, when the Governor appeared before the Committee on 22, September, 1994, he was very adamant about the pursuit of this bank to recover this money and the Committee was very impressed by this. In fact, we paid **him**

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great compliments. On 27, September, 1994, a Mr. Marambii appeared before the Committee, now to prove how this whole thing happened. The Committee had taken the liberty of summoning Mr. Kamlesh Patni also. The two sort of went for each other's throats, Kamlesh Patni carrying a lot of files to show how everything was legal and Marambii told the Committee; "if I could show you my files, you would be shocked how much this man is lying". So, we said; "fine! We want you to show us your files". He said: "But I cannot do it in front of this businessman. I have to come another day." So we said, fine. He came on 30, September, 1994, and the Committee was all agog with expectation. We were going to see the inside of this whole saga, but lo and behold! When Mr. Marambii got the Floor, he told the Committee: "I am not going to show you the files. We have reached an agreement". He said they had reached an agreement with Patni, and I said to him: "I presume you mean you have a written agreement", because this was a huge sum of money, and he said, "yes". So, he tabled, before the Public Accounts Committee an agreement of Kshs13.5 billion, equivalent to the US\$210 million that had been advanced to the Exchange Bank. He showed how this money had been discounted and the net result was that the Central Bank, by Mr. Marambii's own admission, owed Kamlesh Patni Kshs3.8 billion. This was an admission by Mr. Marambii who is No.3 in the Central Bank. Now, I would like to be told what the Committee was supposed to do under those circumstances.

Mr. Speaker, Sir, I do not know whether hon. Members have carried their reports, but if you turn to page 280 of the report, you will see the whole agreement there. On pages 280 to 281, you will see the whole agreement there, on Central Bank stationery, dated 29th September, 1994, addressed to Mr. Patni, headed: "Debt due to Central Bank". It reads as follows:-

We refer to the debt of Kshs13.5 billion owed by your bank to Central Bank, following the non-delivery of US\$210 million.

End K.

PAO

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"As a further step to repay the outstanding amount, we have both agreed that you will assign and transfer the assets and liabilities of Pan African group of companies to the Central Bank. The Central Bank will give you a credit for KShs.6.3 billion. This is the total of the KShs.4.5 billion overdraft which the Pan African Bank had incurred at the Central Bank plus KShs.1.8 billion, sums which you deposited as investors' funds with the Pan African Bank.

The status of the debt will now be as follows:- It says here:- Undelivered - US\$.210 million; recoveries in form of Treasury Bills - KShs.4.653 billion; Forex Cs - KShs.1.9 billion; National Bank - KShs.1.256 billion; Transnational Bank - KShs.269 million; Export Bank - KShs.100 million; and cash - KShs.19 million; less hotel charges - KShs.2.5 billion; Pan African Bank overdraft - KShs.4.5 billion; Pan African Bank equity - KShs.1.8 billion. So, balance owing to Exchange Bank - KShs.3.585 billion".

Mr. Speaker Sir, this letter was signed by the Governor of Central Bank of Kenya, Mr. Pattni and Mr. Marambii as a witness. What was my Committee to do about that?

(loud consultations)

Mr. Speaker, Sir, I think while we may blame entrepreneurs and Swashbuckling businessman, I think first we must of all look for the faults within our own body politics. We must look for the fault within our own officers manning financial institutions. That is where the whole thing starts and ends.

Mr. Speaker, Sir, the Committee was most disappointed because when the Governor appeared we said, "Here is Jesus coming to save this country". Then, less than a week later, the Governor, who was threatening, hell fire, about all these guys, signed an agreement saying they owe Mr. Pattni money!

Hon. Members: Shame! Shame on him! And he is here!

Mr. Speaker: Order, order, Mr. Wamalwa! Hon. Members of the House shall address themselves to Mr. Speaker; they shall not address to anybody else. Proceed!

Mr. Wamalwa: Mr. Speaker, Sir, this is the situation in which we were left, and then a few days later, we heard about another agreement signed on the same day and, in fact, other two agreements. In the verbatim report, the Controller and Auditor- General says the second agreement of KShs.19.8 billion was meant for the Paris Club and this one was the real one. Even against the Paris Club one, there was yet another agreement literally assuring Pattni that he will not be held responsible on the terms of the one KShs.19.8 billion!

Mr. Speaker, Sir, there is a bit of a mess that needs sorting out and I think the Government must take this thing seriously, sort it out once and for all, and make sure that things at the Central Bank are running according to regulations.

Mr. Speaker, Sir, there has been a lot of acrimony about the legality of the extra 15 per cent Export Compensation. I think this a nettle that must be grasped; I do not think we can avoid it. The House will remember that last year, it was explained how the extra 15 per cent was allowed by this House under customs refund. The law required that anything beyond 20 per cent to come to this House for approval. That item was brought to this House under customs refund and approved as such. I remember last year, the hon.

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Anyona argued very convincingly that the House did approve of that amount of money, although under a different heading. This is a matter which only this Parliament can resolve. If the Sixth Parliament did not mean to approve the extra money for Export Compensation or did not understand what they were doing, then only this House can change that situation now.

Mr. Speaker, Sir, we members of the Committee prepared our Report according to the evidence that we received and the Report was prepared for this House. We brought the Report to this House and I think every hin Member of the Public Accounts Committee, who subscribed to this Report, now prostrates himself before the wolsack for this House to accept or reject this Report. This Report is before this House.

Mr. Speaker, Sir, my Committee did not authorise anything that did not come out of the evidence it received from the Accounting Officers. It will be up to this House to accept these recommendations or deny them. I think it would be less than honourable for any hon. Member, who was a party to this Report, for any reason of political popularity, to turn around and say they did not subscribe to this Report.

(Applause)

Mr. Speaker, Sir, I believe that leadership is also a matter of integrity. Leaders can be wrong, but if they have the integrity to admit that they are wrong, if they have the integrity to admit, yes, I was party to this decision, maybe now it is wrong, I think that is a sign of leadership

also.

(applause)

Mr. Speaker, Sir, you will be hearing that an hon. Member of my Committee wrote a letter, disassociating himself from certain recommendations. I am on record as saying I never received that letter. In any case, an hon. Member of a Committee does not really need to write a letter. He should just raise the matter on record within the Committee.

(applause)

This letter was written when I was away in the United States and I was told that it was put in my Pigeon Hole. I did not find it there; I do not think I was intended to receive it.

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[Mr. Wamalwa]

Mr. Speaker, Sir, the final session of the Public Accounts Committee was convened to approve the preface which has formed the basis of my presentation in this House this afternoon. When I came to the paragraph on Goldenberg, and other Members of the Committee will bear me out, I asked hon. Raila Odinga whether he prescribed to consensus on that paragraph or not and he said "Yes."

(Prolonged applause)

Mr. Speaker: Order!

Mr. Wamalwa: So, Mr. Speaker, Sir, there may have been letters written or not written. That letter is not on record anywhere but Members of the House who have a modicum of honour will attest to the fact that I did ask Members whether they subscribed to consensus or not and everybody said "Yes." I am therefore glad to report to the House that this report was unanimous.

With those few words, I beg to move.

(Loud consultations)

Mr. Speaker: Order! Order! The fact that the Mover has finished speaking does not mean that the issue is now less important than it was. It continues to be important up to the very end. Proceed, Mr. Obwocha.

Mr. Obwocha: Thank you, Mr. Speaker, Sir, for giving me this opportunity to second this Motion. At the outset, I would like to say that I wholly concur with the sentiments expressed by the Mover who was the Chairman of the Public Accounts Committee. I know that Members of this House and also members of the public are very anxious to hear what the Committee has to say on the Goldenberg saga. Last year was the climax of the debate on the Goldenberg saga. However, as the Chairman said, this report has a lot of details which this House and the country at large should look at. But you will find that the focus has now gone to one issue which I will touch on in a greater detail later; on the evidence we received and on what transpired in the Committee and how we arrived at the decisions that we made.

Mr. Speaker, Sir, I would like to say that we are indeed very grateful, as a country, to the current holder of the Office of the Controller and Auditor-General. I think the Controller and Auditor-General has done a wonderful job. I am sure that if ever somebody would go to Heaven, I think that is one person who would be considered to go to Heaven. On pages one and two the report deals with the Office of the Controller and Auditor-General. When we met the "Big Five" our main concern as a Committee was that we would like to strengthen this office. We would like this office to protect the Kenyan taxpayers' money. Within the course of the year the Executive went out and made certain reshuffles in that office without following the correct procedures. It was the view of the Committee that this should not be allowed to happen again. The Committee considers the independence of the office of the Controller and Auditor-General to be vital for the effective performance of his duties and responsibilities and that this independence must not only be guaranteed but must also be seen to exist. In this regard, the ability to independently recruit and retain staff necessary for the performance of the duties of that office cannot be separated from the

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independence of the office accordingly. So, the PAC strongly felt and recommended that the terms of service of the staff of the office of the Controller and Auditor-General be reviewed with a view to improving them in order to attract and retain qualified personnel in that office. These are auditors and we want to retain them so that they can do a good job for this country.

Mr. Speaker, Sir, the Committee also recommended that the Controller and Auditor-General be provided with adequate funding to enable him to carry out essential and important work necessary for the efficient and effective audit service.

Finally, and that was the most important part of it, the Committee recommended that a constitutional provision for the protection of the staff of that Department be made when the Constitution is finally reviewed. This is because currently, the holder of that office is given independence under Section 106 of the Kenya Constitution but the staff under him do not enjoy the same independence. So, we would like this office with other constitutional offices to be strengthened so that the people of this country can enjoy the fruits for which these offices were created.

Having said that, Mr. Speaker, Sir, I would also like to state that the PAC also recommended, last year and this year, that the staff of the Kenya National Assembly, who worked tirelessly with the two Committees be paid for the extra work they put in. But so far this recommendation, we understand, has not been implemented in so far as the staff of the National Assembly are concerned. These are the people we work with. These are the people who work long hours to produce the verbatim record of the proceedings of the Committee. They are always with us, taking the Minutes and so on. So, it would be basically very wrong if these people are not considered for payment along with other staff for the extra work and effort that they put in.

Mr. Speaker, Sir, there is also the question of the implementation of the Committee's recommendations. In this report and other reports for the previous years there are very, very many recommendations but when we get these memoranda from Treasury there are very, very few of those recommendations that are implemented.

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Before some of us came to this House, there was a provision that there should be an implementation Committee of the House to look into the recommendations made by the two Committees of the House to the effect that all recommendations are implemented. We would request that when the Committee in charge of Standing Orders comes to review the situation, they do consider reinstating that provision that we should have an implementation Committee of this House and not an implementation Committee of Government, that is, Treasury officials some of whom are implicated in this Report. Mr. Speaker, Sir, there are issues which are also covered in this Report, and these relate to, for example, incidents whereby Government gave out loans to parastatals interest free. These loans, as we know, is public money and if it is invested, obviously we expect interest to be earned. For example the Government during the year in question gave the Coffee Board of Kenya an interest free loan. We are bound to ask the Committee to question the legality of giving this kind of loan without due interest being paid on such a loan. This is on paragraphs 286-289 where Coffee Board of Kenya was given a loan of £20,800,000. When calculated, that is a loan of approximately 400,000,000 interest free. Using the current rate, you can see what kind of money is involved.

Mr. Speaker, Sir, I do not want to bore Members on an issue that the Chairman has elaborately touched on about Local Authorities. When the Committee was deliberating on these issues, the most recent of the local authorities whose accounts have been prepared and audited is in the year 1991/92. There is a Local Authority which had not prepared its accounts as early as 1980s. This is a very deplorable situation and we know the Minister for Local Government is very vocal when it comes to issues where he is being touched. But here, issues of public funds are being given to the Local Authorities but he cannot, through his Permanent Secretary, take action on Local Authorities that have not been prepared. It is very absurd. There was the question of the donor funded projects where in most cases the records kept were in a deplorable situation. Sometimes the Accounting Officers were unable to give us an account on projects - what kind of money has been involved, what has taken place, how the money has been used and so on. I do not think the donors are going to be very happy with this country if they are going to give us money and they are not satisfied in the manner we put this money to use.

Mr. Speaker, Sir, let me come to other issues that were just touched because I would like to come to the big issues that concern the loss of money in this country. We were very unhappy with certain Ministries where accounting matters have remained outstanding for a long time. The Statements of Assets and Liabilities have never been prepared. There are no Bank Reconciliations and there is no way you can run a Government if you do not know which cheque has been cleared, which cheque has gone through and which cheque is outstanding. If your accounts are not prepared up to date, then you do not know what is happening in Government.

Mr. Speaker, Sir, the other issue I would like to discuss is the question of collection of money. I do not want to touch on that one because I would be anticipating debate but arrears of Appropriations-in-aid is a very important area because if money is not collected by officers, it is very difficult to know what kind of money is available to be used in the country. We had also an opportunity to look at legal issues where courts in this country have passed judgements and the Office of the Attorney General has not been very helpful in trying to find out what is happening and whether these claims have been settled.

Some of them go as far back as 1980s. The Government loses revenue or money if claims are

not settled on time. I am sure the Attorney-General will take up these issues because they are some of the things that are pulling us back. I do not wish to dwell so much on these other issues because there are very many issues on the Report that the Committee has recommended and we hope the Government will take over these issues and act on the recommendations of the Committee.

Mr. Speaker, Sir, I will now come to some of the substantive issues that have been touched. The one I would like to start with touches on paragraphs 129 and 130. These two paragraphs are on payment for goods not received. The Government ordered for security equipment, they drew payments and first payment was for US dollars 4,842,500. If you convert that with the exchange rate then, even the current exchange rate, you will find out that is approximately Kshs.200,000,000. They went ahead and paid Sterling Pounds 3,176,150 to two overseas firms for the supply of security equipment for the Administration Police Training College (APTC).

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Mr. Temporary Deputy Speaker, Sir, with the current exchange rate of about shs.70 per dollar, there was an excess of Kshs.200 million. Then they also paid to local firms Kshs.1,600,210/- and Kshs.15,442 9s. 45c. All this money was paid towards the end of 1987/88 and 1988/89 financial years. The question here is this: why did the Government in the first place pay this money in advance before the goods were delivered? We know that in banking, if you order equipment or any imported item, there is what we call a Letter of Credit. Why did the Government not raise the Letter of Credit so that this money is not lost?

Mr. Temporary Deputy Speaker, Sir, some Accounting Officers were liable to misleading the Committee. When we asked for evidence from one Accounting Officer, he brought a memorandum regarding good purchased through a certain company called Impex Universal Limited. This Company together with other companies called Dalabell Limited, Campwel Limited and Horcust Limited all owed by one of the Asian tycoons in this country, were involved in the supply of certain items. However, the evidence that was brought to the Committee by this Accounting Officer was contradictory. For example, he said that they ordered enemy sargets - figure 11/59b where the quantity order was 10,000 items but the quantity received was 8,000 items thereby having a shortfall of 2,000 items. That was the first submission he gave to the Committee. After a few days, that was on 7th February, 1995 the Accounting Officer wrote to the Committee saying that the items ordered were 10,000 and that the quantity received was nil, saying therefore that the 10,000 items were not in any way supplied. He gave the value of the supplied items as £400,200. In such a situation, what then is the Committee supposed to believe? Is the Committee supposed to believe the first submission or the second one? What I am trying to say is that the Accounting Officers in a number of cases misled the Committee by bringing evidence to confuse the Committee.

Mr. Temporary Deputy Speaker, Sir, we did summon this businessman but he was not able to appear before the committee. However, we believe that when the next Public Accounts Committee is constituted, the members of the Committee will follow this issue very closely so that we do not continue to be taken for a ride.

Having said that, I would now like to come to the issue of Goldenberg. As I said, this issue touches the hearts of many Kenyans. The Committee was being asked to make decisions

on three paragraphs. The first issue which is covered under paragraph 38 of the Public Accounts Committee Report which in part says the following:-

"Available information indicates that the Customs and Excise Department is holding unpaid claims accounting to K£105,731,798-11-40 which were lodged by the company before export compensation on gold and precious metal jewellery and articles was discontinued in April, 1994"

That was the first issue that the Committee was supposed to look at. The second issue is covered under paragraph 39 regarding the category of exported goods that qualified for compensation. The last issue was regarding taxes that were owed by some of these companies which exported these goods without paying taxes to Government. So, I intend to follow these issues one by one to indicate to this House how the Committee received the evidence from the beginning up to the end so that the House is clear how the Committee arrived at the recommendation they made.

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[Mr. Obwocha]

Mr. Temporary Deputy Speaker, Sir, when the issue of Goldenberg was discussed in this House, it was said that there were no diamonds produced in this country at the time the export compensation was paid. However, there were some pieces of gold that were produced in some parts of this country. When the issue came before the committee, the Committee received the same information that no diamonds were being produced in this country although there were a few places where gold was being mined. Therefore, since there was clear evidence that no such items were being produced in the country at that time, then where did the diamonds and gold that were purported to have been exported come from?

Mr. Temporary Deputy Speaker, Sir, as the Chairman did say, the issue was put to the Commissioner of Mines and the Assistant commissioner of Customs, and I would like to refer to the verbatim report of 19th August, 1994. This is what the verbatim report says:-

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We are still on paragraphs 38 to 40, concerning Export Compensation.

"The Chairman: The question which I had put to you before we adjourned for tea was to give the Committee evidence as to whether the Export Compensation money claimed here and the Export Compensation already paid are properly so claimed or properly so paid in the sense that the goods involved met the standards where they qualified for Export Compensation or did they originate from Kenya. Did the gold and diamonds originate from Kenya, and if they did not, did the Kenyan component in the processing of the jewellery sufficient to qualify for Export Compensation?"

"Mr. Halake: Thank you very much, Mr. Chairman. Here allow me to ask the Customs and Excise Officials to chip in. I have Mr. Mulili on my right who is the Deputy of Mr. Cheruiyot who is the Commissioner. He is the man on the ground. I do not know whether I got your question right. You asked whether the previous payment before we come to the subject matter were properly documented and whether they originated in the country? Were they processed within the country? Am I right or not?"

"The Chairman: Not the documents, Mr. Halake. The precious metals and stones."

"Mr. Halake: I will ask Mr. Mulili to comment on that."

Mr. Obwocha: This is the crux of the matter now.

Dr. Otieno-Kopiyo: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very important matter we are dealing with and we want to get clarification as to whether this thing happened the way it has been reported in the Press. Hon. Members are talking so loudly we cannot follow the debate. Can you ask them to consult quietly, please?

Mr. Obwocha: Thank you, hon. Kopiyo. This is not a matter to joke with because the Committee is held responsible for the decision it made. On what basis did the Committee make that decision? Basically, this is what we want to lay down A-Z so that this House and the public can judge the Committee as to whether it made the right decision or not. I quote:-

"Mr. Mulili: The law covering eligibility of Export Compensation says that such goods must either be wholly produced in Kenya or have been produced in Kenya and the value of materials imported from outside Kenya or from undetermined origin which have been used at any stage of reproduction of the goods does not exceed 70 per cent of the exported value of the goods."

Mr. Obwocha: Now, I did explain earlier that as far as goods that are wholly produced in Kenya are concerned, there was no problem, and that as far the origin was also concerned, regulation three of the Local Manufacturers Export Compensation Origin of Eligibility Regulation says for the purposes of section two, which shows that goods are eligible of the Act and the following goods shall be regarded as having been produced wholly in Kenya. At the very top, there is an item called "Mineral Products Extracted from the Land of Kenya".

Now, when it comes to gold, it was explained here by the Commissioner for Mines that we have mines in Kenya. For quite a chunk, the stuff that was exported was actually extracted from the land of Kenya. It was accepted that there were some that came from outside Kenya and which were subjected to some processes which did give them the Kenyan origin. The rule is very simple in that any material used in the manufacturing process, say, labour, energy, fuel, plant, machinery and so on are all costs which would be included to cover the 30 per cent.

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Mr. Temporary Deputy Speaker, Sir, last year the Committee did visit the premises of this company and saw what was being done. As a result, we were convinced beyond doubt that the goods did certify the rule about origin and that is why we paid them from the Customs Compensation Act. Thank you.

Now, that is the presentation of the Commissioner of Mines who paid those claims. However, the rule of eligibility says that if you import raw diamonds or gold, if it comes into the country and goes through all those processes, then there are certain production costs that are incurred that will automatically have those goods have the 30 per cent content and thereby making them have the Kenyan origin status.

Now, we do not want only to quote the Customs. We also had an expert called Commissioner of Geology and Mines and I will not go into details of what he said. But I want to quote one or two things on an exchange that took place after he presented his case to some Members of the Committee who knew what "cutting" of diamonds was. This is the Commissioner of Geology and Mines, Mr. Owayo.

"Mr. Owayo: Thank you, Mr. Chairman, for your clarification on the matter. First, let me start by stating very clearly that I have no new information to give other than this matter has

been very long and everything that I needed to say before the Committee is on record. Specifically on this particular question, I can only repeat the information. I did produce some papers here - a simple paper - talking about "cutting" and probably if I did not go on record, so I would like to read that one page document to repeat what I said at the time.

Mr. Chairman, with your permission and approval of the Accounting Officer, I would like to explain two points which maybe of help to this Committee in the following and putting into proper perspective the matter which you may wish me to explain or clarify. The two points are, one, the reasons why diamonds are cut; two, the process of diamond cutting."

Mr. Obwocha: Why am I reading that, Sir? It is because we were told that there is no cutting of diamonds in this country. There is no way I can know that there is cutting of diamonds in this country because I am not an expert. But here we have the expert telling us that.

"Mr. Owayo: Diamonds are cut for the simple reason that one may get the piece that is suitable for his purpose. The purposes are numerous and I will discuss them in the process of diamond cutting. The term "cutting" is a process used in the diamond industry to include cutting, to get one or several pieces or smaller stones from a big one; it also includes unwanted pieces to be discarded so that when you have a piece of diamond and there are certain parts that are wasteful, you have to cut them off and separate two or more pieces which are different in grades, colour and purity. It may also include the creation of flat or round up faces to make a stone more beautiful. Different stages of cutting may be undertaken at different locations or different countries as follows:- At mine, you cut diamonds or spread the waste from the useful part of the mineral. That is the time it is

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coming from the ground and it is together with the rock. So, at that time, you have to cut it and leave the waste and recover the useful part of the mineral. Two, at the grading centre, to separate the bad part from the good part or to separate different types or sizes, colours from one another. At the jewellery shop to make a stone more beautiful, they are being cut to make them more beautiful. Then he goes on explaining other stages such as sowing, clipping, bruiting, grinding and so on."

(End P.)

AWN

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Mr. Temporary Deputy Chairman, what I am trying to do is to get to the actual truth here. I have had to explain issues before this Committee in stages for the benefit of members. So, I find myself in agreement with Mr. Owayo.

An hon. Member: How! How!

Mr. Obwocha: This is about the stages of cutting. What Mr. Owayo has talked about can also be classified in three stages, marking, clipping, sowing, guarding and faceting. Sowing is not only done at the mines and he has given a very good analogy of timber.

"It is true that you sow timber in the forest but you also sow timber at the carpenter's shop. You cannot brooch if you smuggled diamond that is brought into this country and moved to the stages of guarding and faceting unless you also did marking, clipping and sowing before you move the diamond because those are

actually the finishing operations"

"I would like him to put to Mr. Owayo that we do not have the facilities to sow and guard in Kenya and, therefore, you cannot move to the final stages"

That was one of the members who knows something about this. He is himself an engineer. Mr. Owayo replied:-

"This, Mr. Chairman, is a question of semantics"

In other words, these two gentlemen were agreeing on the same things except that they were using different languages. That is the bit about the origin bit of it. Now, let me come to the question of the export and the money being received in this country as we are told. I was one of the people who last year questioned whether indeed the Central Bank of Kenya got this money that is being talked about. This information is contained in a report dated Monday, 12 September, 1994 and it can be found on pages 12 and 27. Now, I will quote an extract from page 12.

"The Chairman: When these audit queries were raised and the Treasury is the accounting body, I am sure the Treasury would have taken steps to acquaint themselves with these matters. Could the people from CBK tell us. Now, Mr. Wabuti the question put by hon. Ndotto is whether or not value was received for each consignment against which these claims are being made.

Mr. Wabuti: Mr. Chairman, this question did come up last year when the Exchange Controller of CBK was asked the same question. We said that we followed up the CD3 forms in order to monitor the repatriation of foreign exchange with regard to export out of the country. We said that we were satisfied that all export proceeds relevant to this case came into the country. The bone of contention that arose was only that that portion which related to export proceeds received in case".

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Mr. Wabuti went further to say:-

"We know that there was a question about cash but that was a drop in the ocean in relation to the total amount."

Mr. Temporary Deputy Speaker, Sir, on page 27 Mr. Wabuti goes ahead and says but before that, the chairman asked a question.

"The Chairman: You may not know the answer but surely the Central Bank would know, they have the records.

Mr. Wabuti: Mr. Chairman, according to our records from December, 1990, to February 1993 the total amount received was US\$ 445,877,027 against what has been quoted by the Controller and the Auditor-General of US\$ 520 million which is likely to be at variance".

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

[The Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, if this was confirmed to us by the Central Bank of Kenya, what is the Public Accounts Committee supposed to do? What is it supposed to do when the Government bank has confirmed that they received this money? What are we supposed to do? I would like to say that we did ask at one stage the Controller and Auditor-General to tell us in precise terms what processes were still pending before the audit report was complete. Personally, I remember asking in the Committee, being an auditor, whether I could look at those documents. The answer I was given was that hon. Members are not auditors. Members of Parliament are in this Committee to listen to the evidence and based on that evidence make a decision. Then that issue was shifted from us as members of the Committee re-examining those documents to the Controller and the Auditor-General doing so. Indeed, the Controller and Auditor-General took a heap of these documents, they examined them but when they came back, they said that they had seen all the documentation and they appeared proper. Everything was said to be okay from A to Z but what is in the back of our minds is the question whether these transactions took place or not? Now, how are we supposed, as members of the Public Accounts Committee, to react to that? The Controller and the Auditor-General is supposed to guide that Committee and tell us that; this is the information we have and this is the information we are lacking so that the Committee, if it is in doubt can ask for that additional information.

I would like to say that the exercise which some of us had a chance to look at last year, was perfected this year. Whether the exercise was properly carried out or was supposed to mislead the Committee, the Committee members went back and dug out all the information right from the origin of how the export of jewellery was conducted. All the receipts concerning the transactions were produced before the Committee.

I would, at this stage, blame the procedures that are set in that Committee. There is no way that that Committee, now and in the future, will run smoothly unless the existing regulations are changed. It is only after this that this Committee can sufficiently say that this

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information that has been brought before this Committee is correct or not correct. The Public Investments Committee and the Public Accounts Committee must be given another arm of investigation so that when the Accounting Officers present all the information they come up with, a considered opinion can be arrived at other than having one line of evidence from the Accounting Officer. So, the relevant Standing Orders should be changed to accommodate and give another free hand to the Committee to get the additional evidence it requires to make an accurate decision that would be acceptable.

End Q

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Mr. Deputy Speaker, Sir, having said that I would like to turn to the question of the K£105 million that the Committee recommended be paid. When we looked at this particular issue the evidence produced before the Public Accounts Committee (PAC) was that these outstanding claims fall under the claims covered by the 20 per cent provision of the Local Manufacturers' Export Compensation Act. Let me quote from the HANSARD what Mr. Mulili said about this 20 per cent:-

Mr. Mulili: Mr. Chairman, I would like to make one correction in response to hon. Ndeti's question as to the K£105,731,798-11-40 was calculated in accordance with the rate provided for in the law, having in mind the fact that the rates have been changing. They moved from 20 per cent to 18 per cent and, in fact, at the time discontinuation, it was 10 per cent. I would like to correct that impression and say that K£105 million is certainly not in respect of any of the rates. It is a combination of the whole of the lot. That is the one aspect where I gave incorrect information and I thank you for allowing me to correct it".

Now, Parliament was talking about 15 per cent being paid to Ms Goldenberg International, which was over and above the 20 per cent which is provided for in the Act. However, this K£105 million was not part of the amount over and above the 20 per cent. Further discussion on this issue continued as follows.

The Chairman: While at it, Mr. Mulili, does any part of this £105 million for any claim thereof fall under export compensation over 20 per cent?

Mr. Mulili: No, Sir; it is only in respect of the rate that is provided for in the Local Export Compensation Manufacturers Act, which, as I said, has 20 per cent; this rate was reduced to 18 per cent and further to 10 per cent. The additional payments that were made are not part of the K£105 million."

Mr. Obwocha: Mr. Chairman, I am glad that this has been clarified, although I would like to ask the Accounting Officer why in his submission he is saying that he wants to pay this money subject to approval of Parliament. I thought this is already provided for; why is he seeking Parliamentary authority or further authority from Parliament?

Mr. Halake: Thank you very much, Mr. Chairman. We are not presenting a Bill to ask Parliament to authorise us to pay Ms Goldenberg International K£105 million. We are saying one of the items under the Ministry of Finance will be the settlement of pending of Bills. We were talking of Parliamentary approval in that context and not for this specific purpose and we have not reached that year yet."

Here is the Accounting Officer saying that up to that level these claims were within the Act and that the authority he wanted from Parliament was by way of including the claiming in the Finance Bill. Which illegality are we then talking about here?

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Now, we do appreciate that Sixth Parliamentary gave authority for this extra 15 per cent irregularly. However, since Parliament gave the approval I do not know whether the payment was legal or not. Maybe the lawyers will tell us.

Mr. Deputy Speaker, Sir, let me come to duty and Value Added Tax (VAT) that was due to Government. Our discussion of Monday 12.9.94 on this issue went on as follows.

Acting Chairman: We are now going to conclude this particular paragraph but the question that has not been fully address in paragraph 40 is the issue the of import duty and VAT. Mr. Halake, we would like you to tell us whether these should be paid or not. In other words, we would like to know whether duty and VAT paid on the company's baggage of

81 killogrammes and 31.5 killogrammes are due.

Mr. Halake: Mr. Chairman, with regard to paragraphs 39 and 40 you have my submission in front of you and I will late invite Mr. Cheruiyot to comment on one or two issues. It is true that the consignment of 81 killogrammes of gold was imported from foreign countries in October and November, 1991 in brief cases as accompany baggage by two persons connected with a bag company. However, since the arrival of these consignments no duty and VAT have been collected. It has, however, been decided, though belatedly, that duty and VAT amounting to K£275,400 and K£247,860 respectively be collected from importers based on the rates applicable at the time of importation. At this point, I would like to ask Mr. Cheruiyot to comment on one or two points.

Mr. Cheruiyot: Mr. Chairman, I would like to add that we have demanded the duty and VAT due in respect of the 32.5 killogrammes.

The Acting Chairman: How much VAT is payable?

Mr. Cheruiyot: The total amount of duty and VAT that we are demanding is K£14,598,600 in respect of both 81 killogrammes and 32.5 killogrammes of gold."

The Committee has recommended that total duty and VAT due on the 81 killogrammes and 32 killogrammes of gold respectively amounting to K£729,930 be collected. We hope that that can be done.

Now, let me come to the conclusions.

End of R.

GKI

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Mr. Speaker, Sir, it has been very disturbing that a very prominent Select Committee of this House is being maligned by various people who are claiming various things, some of them who are hon. Members of that Committee. There was a letter in the Press that is claimed to have been presented to the Public Accounts Committee. I wish to deny that this letter was ever brought to the Public Accounts Committee and I would like to back that with evidence. If you look at the HANSARD of 13th, March, which was one day to the close of the report, this issue was brought up and the Chairman had this to say:-

"Let me make my view on the point raised by hon. Nyanja of not responding or reacting to a letter which I have not received up to now and I do not even know what the letter says. The only way a letter can be served upon this Committee is that it must be tabled here and it must go on record. If that letter is not on the record of our proceedings and it has not been served, it has no effect at all on our proceedings and it does not exist. So, if hon. Raila wishes to serve that letter on the Committee, it has to be served right here. He must read it, let it go on the verbatim and permanent record, that he disassociated himself from something. Otherwise, if it comes through the pigeon-hole, it is like a letter from my constituent or anywhere else, and it has no bearing whatsoever on this Committee. That is why we do not just talk about documents here. We insist on going on record because it forms part of the record of this Committee. But be that as it may, I think whatever our ambitions and aspirations may be in politics,

if you agree to serve on the Public Accounts Committee, you agree to play by certain rules and by certain standards of behaviour." The Public Accounts Committee is the most important Committee of any Parliament. I remember, when I presented my Report to Parliament last year, I said; when we come to that door, we leave our party labels at the door. Once we enter this Committee, we are Members of Parliament, doing a job given to us by the National Assembly, and that is how we stand. I do not give a damn about my position in politics. Who knows what is there tomorrow? I have seen many people plan, scheme, play chess day and night and still get nowhere. I do not think that any politician serving on this Committee really, should try and play politics with this Committee to capture certain favour outside. I would like to go on record saying this clearly: As Chairman of this Committee, I would like to protect the integrity of the Committee. while I agree with the general thrust of the argument that Saitoti has been left out of that case and that the case is truncated, if I was to go to court, I would first have had the integrity to resign from this Committee and then go to court, because as long as you are in the Committee, it would be inferred that you are using privileged information you have from this Committee to fight your case in court, whether it is true or not. You cannot really say that it is not true because where do you draw the line between what you knew before and what you have known since you sat on this Committee? It becomes very difficult. So, this is a very awkward situation in which we find ourselves and I have had the occasion to discuss this with a few Members and colleagues. That is just like what hon. Shikuku says: If you come out and say "that is wrong", then everybody is

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going to say; "oh, you are supporting people who fl...(?)"

money. But that is not the question here. The question here is that we want to protect the integrity of this Committee. We want this Committee to be respected and it is irregular to be in this Committee, handling a matter which is still before this Committee and you still go to court. That is a fact. I say this with the highest respect for my colleague Raila and with the highest respect for all my colleagues on this Committee. It would be irregular to do so."

Mr. Deputy Speaker, We are saying here that, if, indeed, this Member of the Committee wanted to help that Committee arrive at a reasonable decision that Kenyans want, he would have done us a lot of good if he gave us that information. In fact, the Controller and Auditor-General told him this; and I read on page 30 of the same verbatim report of 13th March, 1995. These are Mr. Njoroge's words:-

"Mr. Chairman, I had not seen the recommendation of this Committee, but now I have heard what has been said. There is one thing that is going through my mind right now. We have a view expressed by the Committee which more or less says that the compensation was in order and such and such an amount should be paid. We have, on the other hand, a case going on in court that, in fact, there has been, to use the word, fraudulent practice. The two are at variance. So, the two cases go on. One assumes that there are enough grounds and that there is enough evidence to continue with the court case. In which case, the recommendation of the Committee is at variance with that. I will go back to what I had suggested earlier. Would it be too much to ask the hon. Member, Raila Odinga, if he has

information that would help this Committee change its recommendation to share that information with this Committee? I think the two actions are at variance. Well, I am not a politician, but you know what people will say outside."

Mr. Deputy Speaker, Sir, here is Mr. Njoroge, pleading with hon. Raila, that if he has any information that can help the Committee arrive at a different recommendation from the one we arrived at, to share it with the Committee. So, what were we supposed to do? To conclude on that bit, when it was suggested that he gives us more information, he declined and then the Committee agreed that an affidavit be sworn in court to say that this matter is before the Public Accounts Committee. On page 13, the Chairman asks the Members:-

"The proposal before the Committee is; would the Committee like to ask the Clerk to swear an affidavit to the effect as proposed by hon. Shikuku?

Hon. Members: Yes.

The Chairman: Is that okay with you, hon. Raila?

Mr. Raila: I have no objection at all, Mr. Chairman.

Here, we have a Member who is calling himself an angel and calling others devils. We were elected by people to come and serve them in this place, to come and protect their money.

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If there is a way you can assist me, it is to give me more information so that I can make the correct decision that will help my people, and not to condemn me because I am a human being and I can make mistakes. I am not an angel. We say this with a very heavy heart because we have been labelled many things. We have been told that we have been compromised. Indeed, I wish to deny here categorically that no man or woman has compromised Henry Onyancha Obwocha standing here.

End S.

PAO

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Mr. Obwocha: Mr. Temporary Deputy Speaker Sir, if I were compromised, I would not be driving the "ramshackle" I am driving currently. I would not be staying in those parts of Eastlands, where I am staying. I would be staying in Runda, Kileleshwa or Lang'ata, where that hon. Member owns those properties.

(applause)

I want to say that no man has compromised me. The decision that was arrived at---

Mr. Icharia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to continue referring to hon. Raila as if we are discussing hon. Raila here? We are discussing the PAC Report; not hon. Raila-Odinga.

(Loud consultations)

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, I only had to refer to those because as the Chairman said, this decision was a consensus of the Committee of which hon. Raila was a member and he now turns to be an angel. The Chairman said that what the hon. Member should have done if gracefully he wants to lead this country or have any position in this country is to say "Look we made this decision, we did not have enough information", it is either a wrong decision or a right decision. We would expect him to do that honestly. This was a unanimous decision arrived at by the Committee, having deliberated this and given that evidence. As I said that Committee was in a dilemma. As long as we are going to base our recommendations on the evidence adduced on one line from A to Z, from the Accounting Officers that is going to be a problem with the recommendations that the Committees is going to make because you need something else to counter check what has happened.

Mr. Temporary Deputy Speaker, Sir, I would like to say that some of those hon. Members of that Committee, who have gone out to tell untruths to the public, are doing a lot of disservice to this country. If indeed, they want the leadership of this country, they should follow the right channel. That is why we are crying left and right, day and night that let us have the necessary Constitutional reforms put in place so that we can continue ahead.

Prof. Anyang' Nyong'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is in order for the hon. Member to say that the Committee arrived at this decision unanimously when the hon. Raila wrote a letter to the Chairman of the Committee---

Hon. Members: No! No! Shame! He did not do that.

The Temporary Deputy Speaker (Mr. Wetangula): Order, order! Hon. Members on both sides of the House, it does not matter whether you like what your colleague is saying or not.

Heckling is definitely dishonourable. Listen to what he is saying, disagree with him when you are given the opportunity.

An. hon. Member: Throw them out!

Prof. Anyang' Nyong'o: Mr. Temporary Deputy Speaker, Sir, I am very impressed that KANU is so excited about this piece of evidence. I will continue. Is it in order for hon. Obwocha to say that the decision of the Committee was unanimous when hon. Nyong'o] Raila wrote a letter, dissenting on that particular recommendation? And the Committee has that letter.

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Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, we are democratic. That is a good point of order although I have already dealt with this particular issue earlier that if indeed, hon. Raila had an objection to raise in the Committee,---

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Obwocha, hon. Wamalwa said he did not receive any letter.

Mr. Obwocha: Thank you, Mr. Temporary Deputy Speaker, Sir. Hon. Wamalwa says in the verbatim report that he never received the letter. Hon. Raila never had the courtesy to even lay it thereafter before the Committee.

Mr. Temporary Deputy Speaker, Sir, to summarise, all I need to say is: When issues come before Committee these are Committees of this House. You may not agree with me, that is why you are in a different political party. We may be in the same party, but your aspirations may be different from mine. But we are members of that Committee. When this Committee brought the recommendation out here and tabled it before the House, what we are seeing outside is verification of one person. This Report here is not a "Wamalwa Report". All of us, who were Members of that Committee, must carry our cross.

Hon. Members: Yes!

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, we are the ones responsible for all these recommendations that are in here. When some very honourable senior politicians I respect, who are with me in the Opposition here, go to a rally and says that this and this was done by the Chairman of that Committee. Just imagine his own Vice-President sits in that Committee. What is the public going to think? We should carry our burden. If we have erred, the Parliament is perfectly right to say: "Here you did wrong, we think you should have done this."

Mr. Temporary Deputy Speaker, Sir, with those very many remarks, I beg to second.

(Applause)

(Question proposed)

The Minister for Information and Broadcasting (Mr. Makau): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I think my colleagues who have spoken before me have done a marvellous job. It is good to have a lawyer as Chairman and a Chartered Accountant as a seconder to this very important Motion.

Mr. Temporary Deputy Speaker, Sir, allow me to preface my comments by asking the hon. Members to adhere to the Standing Orders. Standing Order No.161 that deals with the conduct of hon. Members of Select Committee of this House state clearly that:

"No evidence by and no documents presented to a select committee shall be published or otherwise disclosed to any person other than an hon. Member of the House until the report of that committee shall have been presented to the House."

Mr. Temporary Deputy Speaker, Sir, while condemning the conduct of hon. Members, who have now been named in the verbatim report, I would like to state that those hon. Members who have been mentioned and those hon. Members who thought that they would impress the Kenyans by trying to show the attitude of "holier than thou" have now been nailed by their colleagues who were in that Committee. I need not go further.

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Mr. Temporary Deputy Speaker, Sir, I would like to state one issue that: No hon. Member of the committees like the power Public Accounts Committee and even those hon. Members who claim to have served for many years and who also claim that they are the experts on Standing Orders have no right to go out and give Press Conferences as hon. Members of the PAC and accuse other hon. Members of having been bribed. That shows how low they are in morals.

Hon. Shikuku had gone---

Mr. Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Makau. You are flouting the rules.

END. T

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The Temporary Deputy Speaker (Mr. Wetangula): Order! Hon. Makau, you cannot discuss the conduct of hon. Shikuku or indeed any other Member. Bring a Motion if you want to do that.

The Minister for Information and Broadcasting (Mr. Makau): Thank you. The Speaker said that he is going to make a statement about those who talked to the Press. I hope that the Speaker will use Standing Order Nos. 1 and 161 which give him the power to decide on what to do with anybody who violates Standing Orders.

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

The Temporary Deputy Speaker (Mr. Wetangula): Is it on what I have ruled?

Mr. Shikuku: No, Sir. The Minister is misleading the House about Standing Order No.1. Is he in order to mislead the House. Can I read Standing Order No.1 for him?

The Temporary Deputy Speaker (Mr. Wetangula): Order, Mr. Shikuku! If I understood hon. Makau correctly, I think he has not misled the House at all.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, those who claim to have more knowledge than others are sometimes proved wrong. What I am saying that I was trying to figure out what punishment should be meted out to a Member who goes out to talk to the Press but then I will leave it to the Speaker.

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. With all due respect, I will not sit here and let the Standing Orders be violated. Standing Order No.1 that the hon. Member is referring to does not give the Speaker power to punish any hon. Member. This is because the punishment is provided for under Standing Order Nos.188 and so on. But Standing Order No.1 says:-

"All matters not hereinafter expressly provided for shall be decided by the Speaker."

Mr. Speaker, Temporary Deputy Speaker, Sir, according to this Standing Order, the Speaker is not going to punish anybody. So, hon. Makau is misleading the House.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, there is one thing that haunts human beings. When you have been caught the way others have been caught then you find yourself in that situation. Members of Parliament and the whole country were extremely dismayed when a Member of the Public Accounts Committee used his privilege, being privy to certain information, to rush to court and try---

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

The Temporary Deputy Speaker (Mr. Wetangula): Order! I have not given you the Floor, Mr. Mulusya!

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, all that I am saying is that we should go for maturity of Members of this House; especially when they get that privilege of being appointed in this powerful Committee. The PAC is the most powerful Committee of the House. So, if you have that privilege do not think that you can use that privilege to play cheap politics.

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Mr. Mulusya: On a point of order, Mr. Temporary Deputy Speaker, Sir. Earlier in the day the Speaker said that he will make a ruling on what transpired outside this House pertaining to utterances of Members who are Members of PAC. Is hon. Makau in order now to pursue that issue when the Speaker has yet to make a ruling on it?

The Temporary Deputy Speaker (Mr. Wetangula): Order! Hon. Mulusya, this House cannot be fettered by the fact that the Speaker is going to give a ruling. It can only be bound by the Speaker's ruling.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, we are very unfortunate especially those who come from--- I am sorry! The last general election made a lot of collections.

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

The Temporary Deputy Speaker (Mr. Makau): Order, Makau and Mulusya! We are not going to turn this House into an arena for parochial politics from your village. I am warning both you and hon. Makau that this is not a forum for parochial politics.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, we are not going to pursue that any further. We are here again debating the PAC report. As I said earlier, the Chairman moved this Motion very eloquently. Hon. Obwocha seconded the Motion and gave us details regarding what transpired. Last year I had the honour of speaking for two days on the Motion of the adoption of the PAC report for that year. The PAC Members have now revisited the issues that were raised in the PAC last year and they have now come out with decisions that are in conformity with the legality that we spoke about; that the controversial customs refund that called for the extra 15 per cent--- That was a subsidy and it has been well explained. The PAC has come out with a detailed report of what makes one to qualify for 20 per cent export compensation for any product that has been produced

in this country.

Whatever has transpired in the so-called Goldenberg saga is a scheme that was intended to discredit the Kenya Government. From the word go the Controller and Auditor-General's report contained a paragraph that meant to be supported. This is because the whole world had been told that the Goldenberg issue would bring down this Government. You only need to look at the consistency of the arguments and the pledges that have been made by people to donors to know that this was a scheme intended to discredit the Government. Even some donors made statements expressing hope that the Opposition will prove a point that will discredit the Government; by proving that there was a fraud. I am happy that this PAC report, and what is contained therein, has proved that the Kenya Government is committed to transparency and accountability. Last year everyone was excited about this Goldenberg saga but now we are getting used to the realities of the situation.

End of U.

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We have come to senses of saying what is true and what is right as hon. Members, and that is a credit to those who were in this Committee. Having said that, I would like to say that when you look at the background of how Goldenberg International came to be given that monopoly - although it was said that there would be no monopoly - it is because by then the country was undergoing difficult situations as far as foreign exchange was concerned. It is explained that the smuggling of gold and diamond - especially gold - from this country had created a situation that there was no income that the Government would get from those who are involved in the selling of gold. Studies had been done regarding that issue and it was found that businessmen would be given a motivation which means that there was need to sell over 20 per cent export compensation to have another extra compensation in either the form of subsidy or whatever you can call it. Then they would be able to be involved in a market which had been taken by smugglers. I would not like to go into details because it is contained in this Report but those who applied were Goldenberg International that had given the undertaking that they would be able to bring in over 60,000,000 dollars if they won that contract or tender. It is said in this Report that Goldenberg was able to bring in foreign exchange to the tune of Kshs.600,000,000. That was something that helped this country and everybody who is in this House because people in this country, during those difficult times, had not queued for oil. Let me have water because that is what others have been having.

(Loud consultations)

A hon. Member: You have been bought.

The Minister for Information and Broadcasting (Mr. Makau): You have the freedom of expression. Those who are bought are the ones who speak loud about being bought and people know about whoever has said that. Here is a situation that the Goldenberg International, as I said, brought in, what they promised and hon. Obwocha has gone into these details and I need not go into them because last year, those who contributed were in doubt. Now that they have realised that the foreign exchange came in and we have been given the details by the Chairman and the person who has seconded this Motion.

Mr. Temporary Deputy Speaker, Sir, there is one issue which has been confused and those Members like the one that has filed a case in court - which needs to be clarified, that the

so called Goldenberg, all the monies involved - sometimes you read in the press of Kenya shillings 18 billion. When you go through these reports, it was only Kenya shillings 1.4 billion.

(Loud consultations)

Wait, wait. 1.4 billion shilling is 20 per cent Export Compensation, and it is here, if you have cared to read the Report. There was 250,000,000 shillings extra. That is 1.4 billion shillings. Whatever is here that has been recommended to be paid, which is outstanding is 2.1 billion bringing to 3.5 billion Kenya shillings, and that is all what we call Goldenberg issue.

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Mr. Temporary Deputy Speaker, Sir, the other one, if you look into the Report, these are facts that are contained here. When you talk about 13.5 billion Kenya shillings that is the overdraft of the Exchange Bank in Central Bank and it has nothing to do with the Goldenberg issue. That is a different thing and I am coming to that. It is here, I can read it. Everything is here in the Report and I need not read it.

Mr. Michuki: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to mislead the House when we know that the two situations are connected in that the 210 million shillings which had been pledged to the Central Bank in order to Create an overdraft was a part of that situation?

Mr. Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Michuki! The Speaker told you this afternoon to keep those views and air them when you get an opportunity. That is not a point of order.

Mr. Michuki: I am a hon. Member of this House.

Mr. Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Michuki! You cannot pursue an argument under the guise of a point of order. You will be given an opportunity to say all you know about it.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, last year when we were contributing, some people committed themselves and they are so ashamed of having misled this nation. That is why they are stung by that, and the previous Member who raised that point of order, I would like to refer to him here that what I am explaining is that we have the Export Compensation issue which is the 1.4 billion shillings plus whatever is not paid, and we have now the three overdrafts from the bank. That was Exchange Bank 13.5, the total of 17 billion. Trade Bank and the Credit Bank - I am sorry about you having served in the Treasury and I think by that time you were very fortunate to have that opportunity. People of that calibre these days do not go there. This House has been explained on that issue and we are very happy that the whole country and the world has been told the truth.

Mr. Temporary Deputy Speaker, Sir, another area that I would like to touch is on the banks. This country is very fortunate that those who are managing the economy, those who are managing the Treasury and those who are in the Central Bank have continued with prudent management of the financial institutions of this country. We might be talking about 17 billion and it is very fortunate that out of that amount, a lot has been recovered when these three financial institutions were put under the management of the Central Bank. One thing I would like to find out is that let us give credit where it is due. Let us appreciate the fact that Kenya is not the only country in the world where banks have gone under receivership or where banks have a problem.

Recently you have read of the bank called Barings, a bank that has been there for centuries.

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(Hon. Mulusya made inaudible voice)

Mr. Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Mulusya!

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, I will avoid heckling and that is why I said that I am ashamed, but I come from Makueni, I do not come from Machakos. I have stated that let us give credit where it is due. Let us praise where we need a praise. Let us condemn where it is necessary. The economic reforms that are taking place in this country, the economic reforms that are taking the management of the central bank is an institution that oversees the workings of financial institutions and banks. They are doing a very good job.

End V

CNJ.

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First and foremost, Mr. Temporary Deputy Speaker, Sir, if today you went to a doctor who, after diagnosing your problem he detects your illness, he goes ahead to treat you. This is what the Treasury and the Central Bank are doing. That problem existed and it is not an unfortunate problem because we are a developing country. Kenyans have been investing in financial institutions and many banks in this country, for example, The Standard Chartered Bank, the Barclays Bank and the rest have been existing for a long time. However, it is pleasing to note that Kenyans have started indigenous banks---

An hon. Member: How many do you own!

The Minister for Information and Broadcasting (Mr. Makau): It does not matter how many I own. I wish I was a banker who is able to own a bank. I am saying this because Kenyans who have been able to start bank business, have been able to do a good job. However, the fact remains that some of them have found themselves in management problems and that is why the Central Bank has come up to their assistance. The three banks that I have quoted here have received assistance from the Central bank and I would therefore like to say that I commend the Central Bank for this. I am pleased to note that the report says that there is improvement in the management of financial institution. The Committee has recommended that those excessive overdrafts should not be given and I am quite sure that this is not going to take place. I would like hon. Members to appreciate Government effort where things have been going on well. For example, the work that the Minister for Finance, the Permanent Secretary, Treasury and the Governor of Central Bank are doing is commendable. So, I am sure that we shall not come to a situation where the shs.17 billion that we are talking about, will be recovered.

Mr. Temporary Deputy Speaker, Sir, another point that has been raised in the Public Account Committee Report is that we in Kenya feel that a time has come for us to manufacture our own cars.

Hon. Members: Question! Question!

The Minister for Information and Broadcasting (Mr. Makau): You can say what you want to say, but I want to say that economic disasters are there for those who take risks in business. If we in Kenya want to make a car like they did in India, there is absolutely nothing to stop us from doing so. India started this a few years ago and now they have managed to make three cars and they have now allowed many people to invest in their business due to the policy of

open market economy. I have read this Report thoroughly and seen the money involved but if we are going to undertake any business venture, we must know that we are taking a risk. However, even if the business is not able to repay at a certain time, do not give up. So, all these things are done with good intentions but something went wrong somewhere in the middle. Although we in Kenya do not have enough money to make our own car, we hope one day we shall be able to make a car.

Mr. Temporary Deputy Speaker, Sir, I am saying that the recommendation that has been made here regarding making a pioneer car or a Nyayo car is a very good recommendation. What we lack is money to invest in this business but it is my sincere hope that one day we shall be able to enter into this business of manufacturing our own cars here in Kenya.

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Mr. Temporary Deputy Speaker, Sir, having said that, I would like to appreciate the fact that this Report has been presented very well and I am extremely impressed by this. However, there is an issue that has been disturbing this country. Today the hon. Members in Kanu and those in the Opposition are in agreement that the members of the Public Accounts Committee are intelligent, mature and honest. This is why they did not want to hoodwink the public regarding what has been happening in this country. So, we all agree that everything was done extremely well but if there was any error made, we all know that error is to human.

So, Mr. Temporary Deputy Speaker, Sir, I would like to once again to highly commend those Members of the Public Accounts Committee for the good piece of work that they have done in compiling this report. However, I would also like to condemn those who violated Standing Order No.169 and those who want to continue claiming to be the watchdog of the poor when they themselves are driving cars costing more than shs.8 million. The public is fully aware of their---

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is an honourable House which is made of hon. Members who should say things that they know. No hon. Member worth his salt should use the Floor of this House to say things that are not true. The hon. Member on the Floor has said that people who claim to be the watchdog of the poor are driving cars worth shs.8 million. That is a very serious statement and it is unfortunate that the same statement was made here the other day by an hon. Member from Turkana. I think we have reached a stage where some of us in this House so no longer be called hon. Members. Could the hon. Minister substantiate his allegation that certain people who claim to be the watchdog of the poor, are driving cars worth shs.8 million?

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, I do not want to violate Standing order No.74 by casting aspersions. However, those who have claimed to be the champions of the poor people in this country, know themselves, but I am not ready to name them.

END W.

ART

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Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am the only one who claims to be "champion of the poor" and everybody knows that! I am the one who speaks for the poor and I will continue to do so. Now that the hon. Member has come out in his true colours, can he now substantiate that I own a car worth KSh.8 million?

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Makau, you asked for it!

The Minister for Information and Broadcasting (Mr. Makau): Okay, Sir. One thing that is very clear is that hon. Shikuku has named himself, and so I am not violating Standing Order 74.

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Makau! Hon. Shikuku is asking you to substantiate that he who calls himself "president of the poor" drives a car worth KSh.8 million. That is what you have said!

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, there is a technical problem here! I did not know that Mr. Shikuku is the one who claims to be "champion of the poor" or "president of the poor". But now that he has confirmed it, let me substantiate what makes him not to be "champion of the poor".

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Makau! I have asked you a very simple thing. We are not discussing hon. Shikuku and there is no Motion against him. He is also not referred to in this Public Accounts Committee Report. So, he is not an issue. You have said that he drives a car worth KSh.8 million and he has challenged you to substantiate that. That is all I want you to do!

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, let us look at who claims to be "champion of the poor". Okay, I know hon. Shikuku had a Peugeot 505, --

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Makau! I have asked you to substantiate very simply that hon. Shikuku drives a car worth KSh.8 million. If you cannot, you withdraw, apologise and carry on with the debate.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, I have now started to do so. If you can now listen to my substantiation --

Mr. Kamuren: On a point of order, Sir.

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Members! You all know very well that when an hon. Member is responding to a point of order, you cannot rise on another point of order. Proceed, hon. Makau.

The Minister for Information and Broadcasting (Mr. Makau): Okay, Sir. Here are the facts which are meant for the public to see what the value of the "champion of the poor" is. How much does a Nissan Patrol cost? How much does a Mercedes Benz cost? How much does a Peugeot 505 cost? How much does a luxurious house in Nyali, Mombasa, cost? How much does a --

(Applause)

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Members! Hon. Makau, you are unable to substantiate your allegation. I order you to withdraw, apologise and carry on!

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The Minister for Information and Broadcasting (Mr. Makau): Okay, Sir. I have a lot of respect for the Chair, but those who have ears have heard. I withdraw and apologise to the House.

Mr. Salat: On a point of order, Sir.

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Members! Hon.

Salat and hon. Kamuren, you have to leave the Chamber for being a nuisance!

Order, hon. Members! You must understand that you are discussing the lifeline of this country. So, it is not a matter for every hon. Member to stand up, laugh and make unnecessary jokes!

Hon. Kamuren and hon. Salat, you are now "strangers" in the House! Please, leave the Chamber!

(Hon. Salat and hon. Kamuren ordered out of the Chamber)

The Minister for Information and Broadcasting (Mr. Makau): Thank you, Sir.

In conclusion, let me say that let us all as hon. Members not be involved in trying to let the public think that we are their champions. Let us be champions of the people and tell them the truth. Let us respect those who have been selected to serve in the Select Committee.

With those few remarks, Sir, I beg to support and let the Report be adopted as it is. Thank you.

Mr. Michuki: Thank you, Mr. Temporary Deputy Speaker, Sir, for granting me the opportunity to speak on this Report which the Public Accounts Committee has tabled before the House for consideration.

In the first place, my understanding of the reaction of the Committee is to the Report of the Controller and Auditor-General. The Controller and Auditor-General has initiated certain shortcomings which he has identified in the various Ministries and, of course, in the institutions of Government.

The Controller and Auditor-General is also the principal advisor to this Parliament on these matters and, therefore, he is the source of information for the Select Committee which is the PAC (Public Accounts Committee). I am, therefore, surprised to learn from certain hon. Members of the Committee that they reached a point where they did not know what to do with regards to the search for information to enable them arrive at a recommendation that would be consistent with the original findings of the Controller and Auditor-General. It is not for the hon. Members of the Committee, whether they are qualified accountants or not, to begin going to audit institutions. But it is enough for them to communicate with the Controller and Auditor-General and tell him that the information he has brought on a certain paragraph is not enough. "Can you, please, go back and look for fresh information?" That is how that Committee works. Therefore, let us not hear about the predicaments of the Committee on the search for information because they took the wrong turn instead of following the right one. They should have kept sticking to the original Report by the Controller and Auditor-General.

Mr. Temporary Deputy Speaker, Sir, we have heard the Chairman of the Committee come up with a number of issues here. For instance, we have heard -- **X.3 - 05.04.95**

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Michuki, you will carry on tomorrow. It is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 6th April, 1995 at 2.30 p.m.

The House rose at 6.30 p.m.

(End X.)