

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 11th March, 2003

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

The Statistical Abstract, 2002.

The Report of the Controller and Auditor-General with the Appropriation Accounts, other Public Accounts and the Accounts of the Funds for the financial year 1999/2000.

*(By the Minister for Local Government on behalf of
the Minister for Finance)*

Annual Report and Accounts of the National Social Security Fund for the year ended 30th June, 2000, and the certificate thereon, by the Auditor-General Corporations.

*(By the Minister for Local Government on behalf
of the Minister for Labour)*

Annual Report and Accounts of the Tea Research Foundation of Kenya for the year ended 30th June, 2001, and the certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Agro-Chemical and Food Company Limited for the year ended 30th June, 2001, and the certificate thereon by the Auditor-General (Corporations).

*(By the Minister for Local Government on behalf
of the Minister for Agriculture and
Livestock Development)*

The Annual Report and Accounts of Kenya Industrial Estates for the year ended 30th June, 2000, and the certificate thereon by the Auditor-General (Corporations).

*(By the Minister for Local Government on behalf of
the Minister for Trade and Industry)*

Annual Report and Accounts of the University of Nairobi (Enterprises and Service Limited) for the year ended 30th June, 2000, and the certificate thereon by the Auditor-General (Corporations).

*(By the Minister for Local Government
on behalf of the Minister for Education,
Science and Technology)*

The 19th Annual Report (2001) of the Kenya Law Reform Commission.

*(By the Minister for Local Government on behalf of
the Minister for Justice and Constitutional Affairs)*

ORAL ANSWERS TO QUESTIONS

QUESTION NO.011

Mr. Sungu asked the Minister of State, Office of the President:-

- (a) under what law and for what purpose were District Development Committees formed; and,
(b) in view of the current Government's stated policies, when these committees will be abolished.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, this Question was meant for the Office of the Vice-President and it was misdirected to the Office of the President.

I beg to inform the House that the Office of the Vice-President has been informed to prepare an answer.

Mr. Sungu: Mr. Speaker, Sir, I am really surprised that despite the fact that we belong to one party, the Assistant Minister did not consult me earlier. We know that the Provincial Administration falls under the Office of the President. In fact, the title of the Ministry is that of National Security and Provincial Administration. I wonder why this Question is being referred to the Office of the Vice-President, which is in charge of reconstruction and other things. I am not satisfied at all and I would like to ask the Assistant Minister to answer the Question now or give us a reason why he cannot answer it.

Mr. Speaker: But he has told you why he cannot answer it.

Mr. Angwenyi: Mr. Speaker, Sir, this is a normal Question, which means that it has stayed in Government offices for the last two weeks. If the Ministers in the Office of the President realised that it did not belong to them, why did they not re-route it to the relevant Ministry?

Mr. Speaker: In all fairness, let us give them the last chance. Mr. Assistant Minister, how soon do you think it will be ready?

Dr. Galgallo: Mr. Speaker, Sir, we know the chairman of DDC is the District Commissioner in every district and he falls under the Office of the President. This is a fairly simple Question and this Assistant Minister should be able to answer it without trying to pass the buck. When the Vice-President comes here, he will say it is under the Office of the President. This Question is obviously under the Office of the President. There is no reason why the Assistant Minister should say otherwise.

Mr. Speaker: But, maybe, he has reasons why he is saying it is under the Vice-President's office. Mr. Tarus?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, this Question was considered under the strategy for rural development. That is why we consider it to be under the Office of the Vice-President.

Mr. Speaker: Very well. We will find out soon. One week is enough, is it not?

Mr. Sungu: Mr. Speaker, Sir, I have a comment to make.

Mr. Speaker: Why do you not comment when it comes?

Mr. Sungu: I think the Assistant Minister is trying to evade the issue because we have now got different avenues for developing our constituencies, and these DDCs are totally unnecessary. Why do you not just say that it is not necessary to have these DDCs and let us go on with life?

Mr. Speaker: If you want to turn yourself into a Minister, that is very well. Would you like to answer the Question?

Mr. Sungu: Mr. Speaker, Sir, I could try if I was given the chance.

Mr. Speaker: Well, the chance has not smiled at you yet. The Question is deferred for one week.

(Question deferred)

Next Question!

Question No.009

PAYMENT OF MR. NDUSA'S SALARY

Mr. J.M. Mutiso asked the Minister for Education, Science and Technology:-

(a) whether he is aware that Mr. William Ndusa, TSC No.45343, was summoned to appear before the Teachers Appeal Tribunal on 24th April, 2001, at the Teachers Service Commission (TSC) Headquarters;

(b) what was the final decision of the tribunal regarding his case; and,

(c) why the TSC has not paid Mr. Ndusa his salary, pending the outcome of the case.

The Assistant Minister for Education, Science and Technology (Mr. Gumo): I have just come in. Which is the Question? I did not get it.

(Laughter)

Mr. Speaker: It is Question No. 009.

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

(a) I am aware that Mr. William Ndusa, TSC No. 45343, was summoned to appear before the Teachers Service Appeal Tribunal (TSAT) on 24th May, 2001, at Jogoo House B.

(b) The Teachers Service Appeal Board upheld the decision of the TSC of dismissing and removing Mr. William Ndusa from the register of teachers after he failed to convince the TSAT of his innocence. The TSC could not pay his salary as he had already been removed from the register of teachers and the payroll after his dismissal.

Mr. J. M. Mutiso: Mr. Speaker, Sir, is the Assistant Minister aware that Mr. Ndusa appealed to the tribunal stating that he had been acquitted by a court of law? Did the Tribunal take into account the decision of the court? If so, could he tell us whether the tribunal's decision is superior to a ruling given by a court of law?

Mr. Gumo: Mr. Speaker, Sir, I am aware that Mr. Ndusa had appealed, but after much consideration, a decision was taken not to reinstate him as a teacher, because he had committed a serious mistake. However, the tribunal suspended him for only three years and advised him to apply to be re-instated.

Mr. Twaha: Mr. Speaker, Sir, is the Assistant Minister aware that some politicians bribe some District Education Officers (DEO) to victimise certain teachers for holding different political views? Could he issue a circular forbidding such practices?

Mr. Gumo: Mr. Speaker, Sir, I am not aware.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. The Question raised by Mr. J. M. Mutiso was whether the decision of a tribunal is superior to a court's decision. Was the Tribunal in contempt of the court's ruling?

Mr. Gumo: Mr. Speaker, Sir, according to information with me here, I am not aware that Mr. Ndusa appealed to a court of law and he was acquitted. But I will find out and report back to the House.

Mr. Speaker: Very well. Mr. Gumo, I give you a week to do so.

Next Question, Mr. Wanjala!

Question No.012

REHABILITATION OF DYKES ON RIVER NZOIA

Mr. Wanjala asked the Minister for Water Resources Management and Development:-

(a) if she could inform the House how many kilometres of dykes are there on Nzoia River in Budalangi Constituency;

(b) how much money is needed to rehabilitate the dykes; and,

(c) what urgent measures she is taking to curb perennial flooding in the constituency.

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

(a) Nzoia River has a total of 32.8 kilometres of dykes in Budalangi Constituency. The south dyke has 16.6 kilometres, and the northern one, 16.2 kilometres.

(b) Technical studies done by my office indicate that a total of Kshs138 million will be required to rehabilitate the dykes. The Ministry budgets for the rehabilitation of the Nzoia River dykes every financial year. However, because of the low level of funding received in the past, it has not been possible to carry out major

rehabilitation works. The amounts received in the last two financial years are as follows: 2000/2001, Kshs2 million, and 2001/2002, Kshs13 million. The money was utilised to raise levels on the southern dyke at Namabuse, Lwambwa. We also reconstructed a bridge section at Tibuka and realignment of the dyke at Makoma. However, by the end of the financial year 2001/2002, only Kshs6.48 million had been paid, leaving a pending bill of Kshs8 million.

(c) In the current financial year 2002/2003, my Ministry has allocated Kshs20 million. Out of this, Kshs8 million has been used to pay the pending bill on dyke rehabilitation works. The balance of Kshs12 million was frozen at the end of the last year by the past Government, but will now be utilised to continue with the rehabilitation works.

Mr. Wanjala: Mr. Speaker, Sir, the Minister happens to be a gracious lady, therefore, she knows how women and children suffer during floods. We all know that rains are about to start sometime in April and there will be floods. What urgent measures is she taking, especially with so many willing donors who want to invest in Kenya, to ensure that we contain flooding in Budalangi Constituency?

Ms. Karua: Mr. Speaker, Sir, the only urgent measure we have taken is to allocate money in the current budget. Thereafter, in the forthcoming Budget, we will take steps to see how we can arrest the situation. I would like to inform the hon. Member that had we not inherited a completely looted Treasury, I would order that, that work commence immediately.

Mr. Sungu: Mr. Speaker, Sir, I would like to thank the Minister for such good answers. However, I am surprised that so much money was allocated for the construction of dykes and yet we still have perennial floods. What is this money actually used for? Could the Minister tell us whether this programme includes Nyando River, Miriu River, Kuja River, Migori River and Nyamasaria River, because those areas experience perennial flooding every year? What plans does the Ministry have for the construction of dykes along those rivers? How much has the Ministry allocated in this financial year?

Ms. Karua: Mr. Speaker, Sir, I and the NARC Government are not aware of a lot of money having been allocated for the construction of dykes. We are talking of the monies allocated in the last financial year, and what we will do. This Question relates only to Budalangi Constituency. However, I would like to say that it is the mandate of my Ministry to control floods to ensure that we use them sustainably, and that they are not a menace. I assure the hon. Member that my Ministry is taking reasonable steps to see that we control the floods and they stop being a menace to the members of public.

Dr. Galgalo: Mr. Speaker, Sir, the Minister has told us that they need over Kshs100 million to fully rehabilitate those dykes. From the previous budget, they received Kshs20 million only. Now that they are in charge of the Treasury, and I hope they will not loot it as she claims it was looted by the past Government, what plans does the Ministry have to allocate more funds in this coming financial year because the difference between what was received and what actually required is so big?

Ms. Karua: Mr. Speaker, Sir, the Questioner was a Member of the previous Government which was responsible for having looted the Treasury. We are in the process of processing our budgetary estimates---

Dr. Galgalo: On a point of order, Mr. Speaker, Sir. Is the Minister in order to insinuate that I was one of the looters while we actually know that many of the "looters" are now on the other side of the House?

Ms. Karua: Mr. Speaker, Sir, the hon. Member is not paying attention to the answers. I did not specifically name him. I said that he was a member of the Government that was responsible for the looting of the Treasury. All that I am saying is that we are now in the process of preparing our budgetary estimates. We will allocate as much money as will be available in this financial year. May I assure the House that we are serious about controlling floods, and that in the very near future, we will put the problem under control.

Prof. Olweny: Mr. Speaker, Sir, rivers and streams overflow their banks because of siltation and vegetation growth. Apart from construction of dykes, what other methods is the Minister employing to control flooding? Dykes alone do not work.

Ms. Karua: Mr. Speaker, Sir, the other alternative method is sensitising the public, so that they can remove the vegetation along the rivers. Also, rehabilitation entails desiltation of dams, so that they can accommodate more water. We will take all necessary measures to control the floods.

Mr. Speaker: Could you ask the last question, Mr. Wanjala?

Mr. Wanjala: Mr. Speaker, Sir, as the Member for Budalangi Constituency, I also thought it wise to assist the Minister in sourcing funding for the rehabilitation of dykes. There is a donor who is willing to fund the construction of the dykes. However, he would like the Government to accept his assistance first. So, could the Minister accept before this House that he will receive the donor once I introduce him to her, so that he can release some money from Korea for the construction of dykes in Budalangi, so as to completely control flooding in that

area?

Ms. Karua: Mr. Speaker, Sir, the Government welcomes development partners. There are channels for liaising with the Government. The doors at Maji House are open. I believe that my counterpart at the Treasury also has his doors open.

Mr. Speaker: Very well. Let us proceed to Mr. Mahamud's Question.

Question No.010

EXPANSION OF WAJIR DISTRICT HOSPITAL

Mr. Mahamud asked the Minister for Health:-

(a) whether she is aware that buildings at Wajir District Hospital are old, while facilities are inadequate;

(b) when she will expand the hospital and post sufficient medical personnel; and,

(c) what plans she has to improve access to curative and preventive health care in Wajir District.

The Minister for Health (Mrs. Ngilu): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Wajir District Hospital has old buildings, and that its facilities are inadequate.

(b) My Ministry is currently soliciting for funds from donor agencies and the Treasury to expand the hospital. In the meantime, additional beds, mattresses and linen will be provided to the hospital. I am aware that there is a ward which requires 40 beds. I am further aware that the maternity wing, which currently has six beds, requires six additional beds. So, I have put in place urgent measures to provide 46 beds to that hospital with immediate effect.

Additional personnel will be posted to the hospital when we get additional funds from the next Budget.

(c) My Ministry is looking into the possibility of starting mobile health clinics to provide curative and preventive health care services to those people who, from time to time, move from one place to another.

Mr. Speaker: Mr. Mahamud, are you happy with that reply?

Mr. Mahamud: Mr. Speaker, Sir, while I am happy with the answer given by the Minister, I wish to tell her that the hospital is 60 years old; it is much older than her. It was built by the Italians during the Second World War. Since then, it has not been rehabilitated.

So, I would like to thank her on behalf of the people of Wajir District, for hearing our cry. We would like her to move with speed and---

Mr. Speaker: Order! Order! Mr. Mahamud, you are now debating the issue. If you do not have a supplementary question to the Minister, just stay put, so that I give chances to other hon. Members who have questions.

Mr. Mahamud: Mr. Speaker, Sir, I am generally satisfied with the answer given by the Minister. However, our priority right now is to have an additional doctor posted to that hospital. Currently, the hospital has only one doctor, who serves 40,000 people.

Hon. Members: What is the total population of Wajir District?

Mr. Mahamud: Mr. Speaker, Sir, Wajir District has a population of 380,000 people, but the district hospital has only one doctor. So, I would like the Minister to post to that hospital an additional doctor with immediate effect.

Mrs. Ngilu: Mr. Speaker, I am going to look into the hon. Member's request. We will certainly post another doctor to that facility.

Dr. Ali: Mr. Speaker, Sir, could the Minister tell the House when the funds she said they are soliciting for will be available, and when the expansion of the hospital will commence?

Mrs. Ngilu: Mr. Speaker, Sir, I believe that we will be provided with extra funds in the next Budget. In the meantime, we have plans to provide the hospital with piped water. The hospital has a borehole, which provides it with water, but the water is not piped. We have funds for piping water at the facility forthwith. Subsequently, we will, generally, renovate the hospital, which has been badly run down.

Mr. Khamisi: Mr. Speaker, Sir, the problems being experienced at Wajir District Hospital are not just confined to that hospital. Hospitals in other parts of the country, including those in my own constituency, are experiencing similar difficulties.

So, could the Minister assure the House that, as a matter of policy, the Government will ensure that all hospitals in the country are provided with adequate bedding, and that additional medical personnel are posted where there are inadequacies?

Mrs. Ngilu: Mr. Speaker, Sir, I returned to the country this morning from a conference in Greece. Like many other countries, we have had to introduce the cost-sharing programme in public health institutions, so as to comply with a requirement imposed on us by the World Bank, the International Monetary Fund (IMF) and other donors.

Mr. Speaker, Sir, I believe that hon. Members will be happy to hear that this policy is being reviewed because it has become extremely difficult for the poor to access basic medical services. I believe that we are going to get more funds for social services, especially health care, education and others. When that materialises, most public health facilities will be renovated; certainly, things will be different from what they have been.

Mr. Speaker: Mr. Sasura, could you ask the last supplementary question on this matter?

Mr. Sasura: Mr. Speaker, Sir, most of the doctors who operate at hospitals in northern Kenya have stayed there after their internship at those facilities. Most of these doctors are very incompetent. So, could the Minister consider transferring doctors elsewhere, after working at one station for three years, so that they can get exposure at medical facilities such as Kenyatta National Hospital?

Mrs. Ngilu: Mr. Speaker, Sir, one of the Ministry's problems is having doctors posted to hospitals in certain parts of this country. To address this problem, we are considering training people from particular local areas, so that they can be posted back to those areas. We have realised that in most cases, people prefer to work in the regions they come from. This is being looked into. So, I would like to assure hon. Members that in future, there will be no hospital which will not have the relevant medical personnel simply because it is far away from major towns.

Question No.003

SEVERANCE PAY FOR
RETRENCHED NIB EMPLOYEES

Mr. Kofa asked the Minister for Agriculture and Livestock Development:-

(a) whether he is aware that the following ex-employees of the National Irrigation Board (NIB) were retrenched on 31st January, 2001, and have not been paid their retirement benefits to date:-

Mr. Said Wayu Jilo	Mr. Vincent Kalii
Mr. Charles Waweru	Mr. Juma Wambugu
Mr. Nelson Gichuhi	Mr. James Mwai
Ms. Ann Kimani	Mr. Peter Kimani
Mr. Robert Nyanja	Mr. M. Miano; and,

(b) when their co-operative shares, along with severance pay and Provident Fund dues, will be paid.

The Assistant Minister for Agriculture and Livestock Development (Mr. Munyao): Mr. Speaker, Sir, we ask the indulgence of the Chair to allow this Question to come on Tuesday because the answer I received is not satisfactory.

Mr. Speaker: What is your reaction, Mr. Kofa?

Mr. Kofa: Next Tuesday will be okay.

Mr. Speaker: Very well! The Question is deferred to next Tuesday.

(Question deferred)

Let us move on to the next Question.

Mr. Mwenje: Mr. Speaker, Sir, may I ask the first Question that was registered as No.001!

Question No.001

TARMACKING OF EMBAKASI-OLD AIRPORT ROAD

Mr. Mwenje asked the Minister for Roads, Public Works and Housing:-

(a) which contractor was awarded the tender for construction of the road linking Embakasi Village and the Old Airport Road; and,

(b) when the road will be tarmacked.

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Speaker, Sir, it appears as if there was a confusion regarding this Question. That is because it was initially a Ministry of Local Government project, and the hon. Member has given me additional information which requires more investigations. Therefore, I request that this Question be deferred to Tuesday, next week.

Mr. Speaker: Is that okay with you, Mr. Mwenje?

Mr. Mwenje: Mr. Speaker, Sir, you realise that the Question was sent to the Ministry a long time ago. The contract is half done and the roads are---

Mr. Speaker: That is not the issue for now!

Mr. Mwenje: I am, therefore, saying that the matter is urgent, particularly before the rains come!

Mr. Speaker: So, are you agreeing on Tuesday or not?

Mr. Mwenje: If he can assure me that it will be certainly answered on that day, I will agree. But there should be no requests for any further adjournment because there is a danger for children when the rains come.

Mr. Speaker: Very well! The Question is deferred to Tuesday.

(Question deferred)

Mr. Khamasi: On a point of order, Mr. Speaker, Sir. Did you hear the Minister saying that the Questioner has given him more information about the Question, meaning that Mr. Mwenje knows the answer to the Question? Should this Question be allowed to be asked?

Mr. Speaker: Under the rules, a Member should not ask a Question whose answer he knows! But you see, I was hearing that from the Minister and not from Mr. Mwenje. So, anyhow, let us hear how it works out on Tuesday.

Let us move on to the next Question by Mr. Sambu.

Question No.002

UTILIZATION OF SFT

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

(a) whether the Settlement Fund Trustee (SFT) is still operational and, if so, whether he could provide the list of all the planned operational settlement schemes which have been funded by the SFT and state the amount spent on each scheme;

(b) why the Government did not utilise that facility to purchase the Kapseret East African Tanning and Extract (EATEC) Ltd. farms and later convert them to settlement schemes; and,

(c) who paid for the EATEC farms at Kipkabus, which have now been converted into a settlement scheme.

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

(a) The SFT is still operational. The list of all planned operational settlement schemes which have been funded by the SFT, and the status of each scheme, is hereby laid on the Table.

(Mr. Ojode laid the document on the Table)

The amounts spent on each scheme are being compiled and I promise to lay them on the Table next week on Tuesday for the benefit of the Questioner.

(b) Kapseret EATEC Ltd. farm was not affordable to the SFT.

(c) The SFT did not purchase the EATEC farm at Kipkabus, and according to the records, it is not one of the settlement schemes under the SFT.

Mr. Sambu: Mr. Speaker, Sir, the answer to part (b) is that the Kapseret EATEC farm was not affordable. That farm was taken free of charge by the British colonial government from the Nandi people. Actually, we paid for it with blood. They have been leasing the land on a 99-year lease from the Government at Kshs1 per acre per year! Why is the Government giving the colonial British people a free hand to sell the farms at unaffordable prices, even to the SFT?

Mr. Ojode: Mr. Speaker, Sir, let me give the background of the SFT farms. Currently, we are

sponsoring about 433 schemes, since the inception of the SFT programme in 1963. To date, a total of 178,000 families have, so far, benefitted from that programme. I would also like the Questioner to know that not all settlement schemes in the country are managed by the SFT. There are other Government agencies, like the Provincial Administration, who do that. In fact, that particular one was done by the Provincial Administration.

Mr. Sambu: Mr. Speaker, Sir, the purpose of the SFT was to use money given by the British Government to allow Kenyans to buy back farms from the British, so that Kenyans could be settled on those farms throughout the Republic. Why was Lonrho East Africa company allowed to set their own prices? Why was the SFT money not used and yet, the British and Kenya Governments agreed in 1963 that the money should be used to buy out the British settlers as they left Kenyan farms? Why was the SFT money not used, and that was the agreement with the British Government?

Mr. Ojode: Mr. Speaker, Sir, the prices for the Lonrho farms were being negotiated by the Provincial Administration. The SFT wanted to buy---

Mr. Sambu: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister not misleading the House? The SFT and all the settlement schemes are under the Ministry of Lands and Settlement. How does the Provincial Administration come in? He is misleading the House!

Mr. Ojode: Mr. Speaker, Sir, I was saying that the SFT was trying to negotiate with EATEC to purchase that land. But the farms were too expensive for the SFT. They were charging Kshs80,000 per acre, which the SFT could not afford! Our main aim is to go for affordable land which can be distributed to landless people. So, we could not afford that particular land because it was too expensive.

Mr. Samoei: Mr. Speaker, Sir, I think Mr. Ojode is not stating the truth! That is because Mr. Sambu and I wrote a letter to the Minister for Agriculture and Livestock Development. We were not given the benefit of a reply. There were no negotiations whatsoever, between the SFT and EATEC. The issue of the farms being unaffordable does not arise. There was no commitment to the purchase of those farms in the very first place by the Government. So, the hon. Member should be informed!

Mr. Ojode: Mr. Speaker, Sir, let me correct the statement made by Mr. Samoei. When we tried to negotiate for the EATEC land, the owners of the farms said that they could not go below Kshs80,000. Mr. Samoei's constituents did not want to settle on a farm where they would be asked to pay more than Kshs80,000 per acre. That was why we did not go further to negotiate for that farm because it was too expensive for the SFT.

Mr. Sambu: On a point of order, Mr. Speaker, Sir. Could I ask one more last question?

Mr. Speaker: Yes!

Mr. Sambu: Mr. Speaker, Sir, in part (c) of the Question, the Assistant Minister said that the SFT did not purchase the EATEC farm at Kipkabus. I am asking: Why the discrimination? The EATEC farms at Kipkabus belonged to the same colonialists. The Government took them over, converted them into forests and bought them using the SFT money. They converted them into forests as a cover-up! After a few years, they were converted into settlement schemes. Why can he not do the same for Kapseret EATEC farm? Is it because it is the Nandi versus the other people?

Mr. Ojode: Mr. Speaker, Sir, you and I are aware that once the Office of the President enters into a dialogue or negotiations on any farm, that alone supersedes whatever the Ministry does. The Kipkabus Farm was negotiated through agencies like the Provincial Administration. It is not one of the farms over which we, ourselves, entered into negotiations. That is why it is not ours. That is why we cannot talk about something which is not ours. I do not even have records on it! That particular farm was negotiated by the Provincial Administration. As a matter of fact, you should have written a letter to the Office of the President to know more about those farms, including the rates which they charged.

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

Mr. Speaker: Order, Mr. Sambu! I think you can follow up this issue with the Assistant Minister. By leaving this Question, we are not closing dialogue between the two of you. Kipkabus is a very important area, and so are other areas. So, let us go to another area.

Question No.008

MALICIOUS PROSECUTION OF MR. GITAU

Mr. Muiruri asked the Minister for Justice and Constitutional Affairs:-

(a) whether he could confirm to the House that justice was done in the following cases against

Mr. Stephen Mwangi Gitau:-

Gatundu Criminal Case No.77/2001

Gatundu Criminal Case No.84/2001

Gatundu Criminal Case No.87/2001

Thika Criminal Case No.1231/2001;
Thika Criminal Case No.5091/2001;
Thika Criminal Case No.5545.2000; and,

(b) what action he has taken against the officers involved in the illegal arrest, detention and malicious prosecution of Mr. Gitau.

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

(a) The information available to me indicates that the accused, Mr. Stephen Mwangi Gitau, who is 48 years old, was acquitted of all the charges under Sections 210 and 202 of the Criminal Procedure Code.

(b) I am not satisfied with the manner in which these cases have been handled by the police. We have discussed this case with the Attorney-General, and have agreed that further investigations should be carried out. Action should be taken against all the officers, if any, who may have been involved in the illegal arrest of Mr. Gitau.

Mr. Muiruri: Mr. Speaker, Sir, I did not like the words "if any". In the first case, case No.77/2001, the accused was charged with stealing. In the second case, he was charged with assault, and in the third case, he was charged with burglary. The fourth charge was robbery with violence; the fifth charge was assault, and the last charge was malicious damage.

Mr. Speaker, Sir, in all these cases, the accused is Mr. Stephen Mwangi Gitau and the complainant is Mr. Gilbert Gachingiri. The two are brothers-in-law. So, this is a family disagreement.

Mr. Speaker: Will you ask your question?

Mr. Muiruri: Mr. Speaker, Sir, the Assistant Minister has said that he has already discussed the matter with the Attorney-General. Who has he assigned to investigate this matter? When will Mr. Gitau be contacted by the police to assist in the investigation?

Mr. Githae: Mr. Speaker, Sir, it is true that the complainant in all these cases is the same person, the accused is the same person and the witnesses are the same people. It is clear that proper investigations were not carried out. We have looked at the concerned file and our view is that further investigations need to be carried out, to find out whether any officers were involved in the illegal arrest of Mr. Gitau.

I want to inform the hon. Member for Gatundu North that the Officer Commanding Police Division (OCPD) has been instructed to carry out proper investigations.

If anybody, including any police officer, was involved in the illegal arrest and detention of Mr. Gitau, action will be taken against him. We cannot condone illegal arrests of our fellow citizens.

Mr. Shitanda: Mr. Speaker, Sir, the Assistant Minister has vaguely admitted that we have had cases where police officers have framed up people. Could he confirm or deny the fact that we have so many people languishing in prison cells on framed-up charges by police officers?

Mr. Githae: Mr. Speaker, Sir, I am not aware of cases of people who are languishing in prison cells on framed-up charges unless they are brought to my attention. I want to inform the hon. Member that since the beginning of this year, nobody has been illegally arrested by police officers or taken to prison wrongly.

Mr. Muiruri: Mr. Speaker, Sir, I have no quarrel with the Assistant Minister's answer. He is genuine.

Mr. Gitau has even been detained at Kamiti Maximum Security Prison for crimes he did not commit. He has suffered a lot for two years. All these cases were filed in either Gatundu or Thika Police Stations. The accused was acquitted because the complainant refused to go to court and he was the only witness in all the cases. When will the police contact Mr. Gitau to facilitate a thorough investigation? This is purely a case of human rights abuse. Mr. Gitau could have died in Kamiti Maximum Security Prison.

Mr. Githae: Mr. Speaker, Sir, the practice referred to was common in the past. But since the beginning of this year, illegal arrests have ceased. This was a very peculiar case. The accused is a brother-in-law of the complainant. The person who went to the police and recorded a statement to the effect that there was a plot to kill the complainant was a sister to the accused. This is a very peculiar case, and that was why some action was taken. After we reviewed the evidence and looked at the statements, we realised that an illegal arrest had been made. I want to assure the hon. Member that within the next one month, investigations will be complete. If anybody will be found to have committed an offence, he will be arrested. We do not condone any illegal acts on anybody.

Mr. Wanjala: On a point of order, Mr. Speaker, Sir, I am getting a bit confused and perplexed. When I look at this Question, I realise that it touches on an issue which should be addressed by the Attorney-General. The Assistant Minister for Justice and Constitutional Affairs has answered it.

Formerly, such matters were handled by the Attorney-General. Does this mean that the Attorney-General will not be coming to the House to answer Questions?

Mr. Speaker: Quite frankly, I do not know. Maybe, the Assistant Minister could tell us.

Mr. Githae: Mr. Speaker, Sir, the Attorney-General will be attending the proceedings of this House. He only happens to be away, and that is why I am answering this Question on his behalf. When I [**Mr. Githae**]

will be away, he will answer Questions on my behalf.

Dr. Ali: On a point of order, Mr. Speaker, Sir. The hon. Assistant Minister has said that he is answering this Question on behalf of the Attorney-General, when it is clearly stated that it should be answered by the Minister for Justice and Constitutional Affairs. Is he in order to mislead the House, or is he the Attorney-General?

Mr. Sungu: On a point of order, Mr. Speaker, Sir. I think Mr. Wanjala has raised a very important constitutional issue, as to whether the Attorney-General is the one who will be responsible for answers for the Ministry of Justice and Constitutional Affairs. This is a constitutional matter and it is very important.

Mr. Kajwang: On a point of order, Mr. Speaker, Sir. The Attorney-General has no deputy, according to the Constitution. Is Mr. Githae the deputy of the Attorney-General?

(Laughter)

Mr. Speaker: Order, hon. Members! All those questions you, hon. Members, are raising are substantial. I cannot respond to those questions, but only the Minister can. Let me say that the Question was drafted by the Questioner in the terms it appears on the Order Paper. So, it is not the Assistant Minister or the Attorney-General who has changed it. It was Mr. Muiruri who drafted this Question in that manner. It went that way and he has not objected. I think the questions you are raising, you may ask---

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Government Ministers should have collective responsibility. Therefore, that Assistant Minister is entitled to answer any Question addressed to the Government.

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

Mr. Speaker: I will come to you, Mr. Wanjala!

Mr. Maore: On a point of order, Mr. Speaker, Sir. We have an important Question which we need answered, and not questioning the organisation of the Government. Could we know whether the Attorney-General and the Minister for Justice and Constitutional Affairs have conflicting roles? It is important for the House and the nation to know this. So, could we be told who is responsible for Sheria House in this House and in running the Judiciary? Could we also be told who will be answering Questions raised in this House because we do not want this kind of contradiction to continue, and the House to be part of it?

(Applause)

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

Mr. Speaker: Wait! You keep on waiting!

(Mr. Maitha stood up in his place)

Mr. Maitha, do you want to answer on behalf of the Government?

The Minister for Local Government (Mr. Maitha): No, Mr. Speaker, Sir. I rise on a point of order---

Hon. Members: No! No!

Mr. Speaker: Order! Order!

The Minister for Local Government (Mr. Maitha): Just wait! You are shy for nothing!

Mr. Speaker: Order! Order!

(Mr. Maitha stood up in his place)

Order, Mr. Maitha! Mr. Maitha will be heard!

Proceed, Mr. Maitha!

The Minister for Local Government (Mr. Maitha): Mr. Speaker, Sir, with due respect to the hon. Members of the Opposition, they should look at how the Government was constituted, or the organizational chart. The department of the Attorney-General and the Ministry of Justice and Constitutional Affairs are within one "house". So, they cannot question a department within a Ministry!

Hon. Members: No! No!

Mr. Speaker: Order! Order! Next time you want to help your fellow Ministers, Mr. Maitha, give them an opinion there. This is because it does, in fact, appear like you are totally misleading the House.

(Applause)

So, before you mislead the House, could you have good counsel?

Mr. Muiruri: On a point of order, Mr. Speaker, Sir. I think I was right in addressing the Question to the Minister for Justice and Constitutional Affairs. In the early years of our Independence---

Mr. Speaker: Order!

(Mr. Muiruri stood up in his place)

Order, Mr. Muiruri! Any hon. Member who will not come to order when called upon to order will see the outside of this House! Any hon. Member who is called to order from now must respect that call and resume his or her seat [**Mr. Speaker**]

immediately! Mr. Muiruri, nobody questioned your right, unless I did!

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Speaker, Sir.

Hon. Wanjala: I have been given that chance and not you!

Mr. Speaker: Order! Mr. Kiunjuri, did you forget that you are an Assistant Minister?

(Laughter)

Nevertheless, he is allowed to point out a breach of order, if there is any!

Mr. Wanjala: On a point of order, Mr. Speaker, Sir. We all agreed and the Government promised that it would follow the rule of law. We are not going to duplicate duties because we cannot have the Attorney-General and at the same time, the Minister for Justice and Constitutional Affairs doing the same work. We reduced the Cabinet so that we can save money. Could we be told the areas the Attorney-General and the Minister for Justice and Constitutional Affairs will handle? This is because this is unconstitutional and the Government promised to lead this country by the rule of law!

(Applause)

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

Mr. Speaker: Order, hon. Members! We will not go on like this forever!

Mr. Sasura: Mr. Speaker, Sir, mine was not on the issue of a leaner Cabinet. While we forgive this Government because it is in internship, I would like to seek your guidance on the Questions which we direct to Mr. Murungi and the ones we will direct to Mr. Wako?

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

Mr. Speaker: Order, hon. Members! I really would not like to be dragged into this. I do not know whether the Leader of Government Business is here.

(Mr. Ojode who sat on Mr. Wamalwa's seat stood up and bowed to Mr. Speaker)

(Laughter)

Order, hon. Members! I think, on a serious matter like this, we must be serious! It is not sufficient that Mr. Ojode, unlawfully, occupies the seat of the Leader of Government Business and he holds himself off as the Leader of Government Business or even the Deputy Leader of Government Business. In fact, you are miles removed!

(Laughter)

So, please, let us be serious! I think I would rather leave this issue to be raised when the Leader of Government Business is here and then he can respond. This is because I do not think the Chair is the right person to respond

to this question. I think the right respondent is the Leader of Government Business. So, we will leave it at that!

Mr. Kajwang: On a point of order, Mr. Speaker, Sir. While---

POINT OF ORDER

A CRIMINAL OFFENCE TO BLOCK MEMBERS' ENTRY INTO PARLIAMENT

Mr. Obwocha: On a point of privilege, Mr. Speaker, Sir. As I was coming in to Parliament a few minutes ago, both gates of Parliament were blocked by disabled people with their wheelchairs. Our vehicles are parked on the road. These people want Mr. Maitha.

Hon. Members: Let him go and talk to them!

Mr. Obwocha: Mr. Speaker, Sir, Mr. Maitha should go, address them and remove them from the gates so that we can get our vehicles inside.

Hon. Members: Mr. Maitha, go and remove them from there!

Mr. Speaker: Order! Order, hon. Members! First and foremost, no person or group of persons are allowed by law to block the free entrance and exit of hon. Members of Parliament into and out of Parliament. It is, in fact, a criminal offence under the Powers and Privileges Act. So, that is absolutely clear, and the Serjeant-at-Arms is instructed hereby by me to proceed and ensure that all the entrances to this Parliament are unblocked.

Secondly, it is not right that pressure be brought to bear to get a Member of Parliament or Minister out of this House. Any aggrieved person knows where the various Ministries are situated.

(Applause)

They should go to those Ministries and not to Parliament. Therefore, Mr. Maitha will not be forced, and is not entitled to leave under duress, this House to go and attend to those matters. So, will the Serjeant-at-Arms ensure that all entrances to Parliament are unblocked, are free and safe? Anybody interested with Ministers should proceed to the Ministry headquarters. That is it!

Let us move on to the next Question now!

(Resumption of Oral Answers to Questions)

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

Mr. Speaker: What is it?

Mr. Kajwang: Mr. Speaker, Sir, you had recognised me. This Question clearly talks about illegal arrests, detention and malicious prosecution and it has listed some criminal cases in Gatundu and Thika. If you look at the Constitution as it stands now, since it has not been amended, it is the Attorney-General who shall be the principal adviser. Section 23(3) states: "The Attorney-General shall have power to institute and undertake criminal proceedings". So, if there is a Question about criminal proceedings arising from Gatundu and Thika about malicious prosecution, is it not the Attorney-General who instituted them and who should be answering, or is it the Minister for Justice and Constitutional Affairs? When the Leader of Government Business comes to respond, let him deal with these very serious issues.

(Applause)

(Mr. Angwenyi stood up in his place)

Mr. Speaker: Mr. Angwenyi, will you sit down? Mr. Assistant Minister, as the Leader of Government Business comes to deal with this matter, when were you ever faced with the issues contained in the Constitution of Kenya? Address those sole issues to the Attorney-General! When did you grab it?

(Laughter)

Mr. Githae: Mr. Speaker, Sir, I stated very clearly that I was answering this Question on behalf of the Attorney-General as a result of collective responsibility. In fact, any other member of the Cabinet could have answered this Question.

Mr. Speaker: Very well! Let it rest there. I am sure the Leader of Government Business will come and clarify it if he chooses.

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

Mr. Speaker: Order, Mr. Angwenyi! If you stand again, you will go out of the House. We must leave this Question. Let us now go to other business. This must rest!

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. It is provided for in the Constitution that this House will establish Ministries. Therefore, if it has not taken its mandate to establish the Ministries---

Mr. Speaker: Order, Mr. Angwenyi! I now warn that you are becoming disorderly and any further disorder coming from you will be met with the full force of the law.

(Laughter)

Mr. Speaker: Questions by Private Notice!

Mr. Sambu: On a point of order, Mr. Speaker, Sir. Last week you said that there are "political vampires" in this House. We elected you and we also respect you. Why should we live under stress when we are raising legal matters, particular pertaining to the Constitution?

(Applause)

Mr. Speaker: Order! You are not threatened to raise issues. You are threatened not to be disorderly. There is a world of difference between ventilating issues and being disorderly like the way hon. Angwenyi takes it upon himself all the time to give himself the microphone as he pleases. It will not happen and it must be understood that the Chair will not be threatened either. This Chair is very firm and will do its job.

Next Order! Questions by Private Notice!

QUESTIONS BY PRIVATE NOTICE

EVICION OF GOVERNMENT EMPLOYEES IN NAKURU MUNICIPALITY

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

(a) Why were Government employees, namely Mrs. Kalamu Omwosa (Ministry of Health); Mrs. Jane Akinyi Anonde (Ministry of Education, Science and Technology); Mrs. Lucy Oduor (Ministry of Roads, Public Works and Housing) and Mrs. Veronica Mwonda (Office of the President) unlawfully and brutally evicted from the houses on L.R. Nakuru Municipality Block 4/373 and their households confiscated and sold?

(b) Is the Minister taking any steps to recover the property and restore its employees to the occupation of the same?

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Speaker, Sir, let me congratulate you for confirming what I have said, that you are "*unbwogable*".

(Laughter)

Mr. Speaker, Sir, I beg to reply.

(a) Information on the ground holds that the Government employees, namely, Mrs. Kalamu Omwosa (Ministry of Health); Mrs. Jane Akinyi Anonde (Ministry of Education, Science and Technology); Mrs. Lucy Oduor (Ministry of Roads, Public Works and Housing) and Mrs. Veronica Mwonda (Office of the President), were unprocedurally evicted from the houses on LR Nakuru Municipality Block 4/373C, Government quarters Nakuru, House LG 423 A and B, and Nakuru House LG 424 A and B by the African Inland Church, Shabaab, in 1997. I am given to understand that the church purchased the parcel of land upon which these houses stand at a total cost of Kshs35,000 and was issued with a title deed on 3rd April, 1997. In accordance with the meeting held at the DC's office, Nakuru, on the 28th August 1998, this matter was discussed and a resolution reached that the

Government houses in question were not disposed of as required and, therefore, the buildings were still Government property.

(b) Such are among the cases of Government houses being addressed by the Ministry. As you are aware, my Ministry has constituted a Government Properties Investigations Committee to investigate such cases with a view to taking appropriate action.

Mr. M. Kariuki: Mr. Speaker, Sir, these were Government employees. Not only were they unlawfully evicted, but their personal effects were attached by the African Inland Church ostensibly because they were in arrears of rent and yet their pay slips show that they had house allowance deductions. What is the Government doing to ensure that they recover their property?

Mr. Raila: Mr. Speaker, Sir, this is a very sad case. It is one of the cases that demonstrates the kind of mercenary manner in which the former Government used to deal with Government properties. There is a clear laid down procedure on how to dispose of Government houses. The procedure was not followed. I have here a letter of allotment issued to the African Inland Church on 7th April, 1986. This letter---

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

Mr. Speaker: Mr. Speaker, Sir, could you let the Minister finish answering his Question?

Mr. Sungu: On a point of order, Mr. Speaker, Sir. I thought that sometime back there was a rule that no Member should stand between the Speaker and the Member on the Floor.

Mr. Speaker: You are right! Who is this Member? Who are you?

(Laughter)

(Mr. Konchella walked between the Chair the Member speaking)

Mr. Speaker: You are right, Mr. Sungu. Who is this hon. Member? Who are you? Are you Mr. Konchella? No, I am referring to the other hon. Member. Never stand between the Chair and the hon. Member speaking. So, keep out of that area now.

Mr. Raila: Mr. Speaker, Sir, this letter of allotment was issued without following the clearly laid-down Government procedures of disposing of property. Secondly, I have here a photocopy of a title deed issued to the African Inland Church on 7th April, 1997. Having issued the title deed to the African Inland Church in 1997, on 16th June, 1998, the Commissioner of Lands wrote to the District Land Officer, and said:-

"The above plot was allocated to the African Inland Church. Apparently, I am made to understand that there are structures on the ground, which have not been paid for. The purpose of this letter is to ask you to have the structures valued so that the allottee can pay for the same."

Mr. Speaker, Sir, the title deed had already been issued. Then the District Land Officer replied and said: "The above mentioned structures have been inspected and valued at a sum of Kshs35,000 only." These are four blocks of houses, plus two hectares of land given to the African Inland Church for a token of Kshs35,000.

Mr. Mwenje: On a point of order, Mr. Speaker, Sir. The Minister is not answering the Question asked by the hon. Member of Nakuru Town. I think the Questioner is asking, how will the owners recover their personal belongings which were taken? The Question is not asking about the houses!

Mr. Raila: Mr. Speaker, Sir, I was giving supplementary information, but I had not finished answering the Question. I was coming to the other Question asked by the hon. Member.

I have said that we have set up a committee to carry out investigations and make recommendations to the Government. Upon receipt of those recommendations, my Ministry will act on the matter.

Mr. M. Kariuki: Mr. Speaker, Sir, the point here is that the households or the occupants of these Government houses were attached by the African Inland Church, yet their salary slips showed that the Government was still deducting them house allowance. How will they be fortified by the Government? They are employees of the Government, and they are entitled to house allowance, yet they did not get it, and their household properties were attached! How are they going to recover their properties?

Mr. Raila: Mr. Speaker, Sir, I have said that we are carrying out investigations, those affected people are free to give information to the Committee which I have set up and we shall act upon the recommendation of the Committee.

Mr. Muchiri: On a point of order, Mr. Speaker, Sir. The issue of eviction of tenants and such occupants of houses is a menace in this country. Could the Minister tell us what the Government will do to safeguard against those menaces? If the church was purporting to be the landlord, there are laws in this country which safeguard the

tenants! Why were they not followed?

Mr. Speaker: Mr. Muchiri, that is a supplementary question, but because you are new, I will close my eyes. But please, learn how to rise on a point of order.

Mr. Raila: Mr. Speaker, Sir, as I have said, the then Government was not following any procedures, and I cannot be made responsible for actions of another Government.

Mr. J. Nyagah: On a point of order, Mr. Speaker, Sir. Did I hear the Minister say that AIC has a title deed? Is he telling us that a title deed is a useless piece of paper?

(Applause)

Mr. Raila: Mr. Speaker, Sir, the NARC Government respects the sanctity of property and respects---

Hon. Members: Aha! Aha! Did that apply to KICC?

Mr. Raila: Yes! The thing is that hon. Members who are making noise know very well that they are responsible. We have cases where there are three title deeds issued to the same property by---

Dr. Ali: On a point of order, Mr. Speaker, Sir. Is the hon. Minister in order to say that hon. Members are making noise?

Mr. Speaker: He is certainly out of order! Hon. Members do not make noise!

(Applause)

Mr. Raila: Mr. Speaker, Sir, hon. Members are complaining loudly! I would like to draw the attention of hon. Members who are complaining that we have cases where one property has got three different title deeds. The question is, which should be a genuine one amongst those three title deeds? But when somebody steals your car and then you meet this fellow driving your car, and he has a fake log book he is showing you; and he tells you that before you take possession of the car, you should go to court, are you not justified in telling the thief to get out of your car and take your car?

(Laughter)

Mr. Speaker: Order! Order! Those are tired arguments! Actually, they do not hold water. In law, you report the matter to the police. That is how it is supposed to be; you report it to the law enforcement agency to adjudicate.

(Applause)

That is how it should be. Quite frankly, as a House, we owe it to society to tell them the correct thing. So, you may answer, but that is my understanding of the law. You may disagree with me!

Mr. Sasura: Mr. Speaker, Sir, the Minister has stated very clearly the case with respect to houses that were sold illegally. We really appreciate the move by the Minister to curb this practice. Whoever had done it is not the issue now, but the Minister made a public pronouncement last month that those civil servants who have been living in those houses for more than ten to 15 years; who, instead of losing them, both husband and wife took loans from co-operative societies to safeguard those houses; should go to the Ministry Headquarters and collect their 10 per cent deposit. When they went there, they were told that a decision had not yet been made by the Cabinet. Could the Minister now clarify whether it is the commission we should wait for, or we will go by his public pronouncement?

Hon. Member: Roadside pronouncement!

Mr. Raila: Mr. Speaker, Sir, that is a different question altogether. Yes, you should report the matter to the police, but you should first take the vehicle from the thief and then drive it to the police station to report that you have taken it.

(Applause)

Dr. Godana: Mr. Speaker, Sir, I regret to stand before the House over this issue. We are a human society and the difference between us and the animal kingdom is that we have dispute settlement procedures; animals do not have that! When a dog finds another dog has taken the bone from it, it does not go to seek a third party

settlement, it goes for the jugular. A Minister of Government cannot say it is selfhelp that belongs to the animal kingdom!

(Laughter)

Mr. Speaker: Mr. Minister, do you want to respond?

Mr. Raila: Mr. Speaker, Sir, I do not feel that I am challenged by those irresponsible utterances.

Mr. Speaker: Order! Order! Mr. Raila, you are now insulting him. If I were to go by your logic, I would allow him to insult you again. You do not need to go to an arbiter when you have been insulted; you insult back. That is not how business will be conducted here. Would you apologise?

Mr. Raila: Mr. Speaker, Sir, I wanted to say that---

Hon. Members: No! No, apologise first!

Mr. Raila: Mr. Speaker, Sir, two wrongs do not make a right. I do not want to drag this argument endlessly because I have got facts that could substantiate the point that I am trying to make here. I was the Secretary-General of KANU and I know what I am talking about. The hon. Member is not irresponsible in his utterance. I think he was overtaken by excitement.

(Laughter)

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! Again, I am afraid when I ask you to do something, you should apologise to the House.

Mr. Raila: But, Mr. Speaker, Sir, I have apologised.

Hon. Members: No! No!

Mr. Speaker: Very well! That ends that matter.

(Several hon. Members stood up in their places)

Order! Order! Why is the House charged today, for apparently no reason? Would you all relax! I want every hon. Member now to relax, please. I think you have had enough tension, in my view, very unnecessarily. I think we can do business in a better atmosphere.

I will finish Questions at Four O'clock and I have never gone this late.

Next Question, Mr. Wario!

AMENDMENT OF NOMINATED COUNCILLORS' LIST

Mr. Wario: Mr. Speaker, Sir, I beg to ask the Minister for Local Government the following Question by Private Notice.

(a) Why did the Minister amend the list of nominated councillors submitted to him by the Electoral Commission of Kenya (ECK) for gazettelement?

(b) What is the legality of the councillors who were not vetted by the ECK?

(c) What action has the Minister taken to address the anomaly?

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

(a) I am not aware.

(b) Arising from my answer in "a" above, "b" does not arise.

(c) In view of my answer in "a" and "b" above, "c" does not arise.

(Applause)

Mr. Speaker: Order! Order!

Mr. Wario: Although I would like to sympathise with the Minister's ignorance, if not arrogance, I have the list of the names submitted by the ECK to the Minister. I have a Gazette Notice---

Hon. Members: Shame!

*(Mr. Wario moved to the Dispatch Box
and laid the document on Table)*

Mr. Wario: Could the Minister answer the question?

Mr. Sungu: On a point of order, Mr. Speaker, Sir. Is the hon. Member entitled to address the House from the Dispatch Box?

Hon. Members: Yes! Yes!

Mr. Speaker: Order! Order! To this moment, I have not received any Shadow Cabinet from the Opposition. In fact, they are all Back-benchers to this moment.

An hon. Member: *Uhuru na Kazi!*

(Laughter)

Mr. Speaker: Order, hon. Members! Order! Mr. Maitha, have you seen the document laid on the Table?

Mr. Maitha: I have not seen it, Mr. Speaker, Sir.

Mr. Speaker: Can you have a look at it?

Mr. Sirma: On a point of order, Mr. Speaker, Sir. This Minister is not serious with his work. We have discussed with his officers and it is evident that he tampered with the list of nominated councillors before gazetting. He had promised us, verbally, that he was going to rectify that anomaly. He has now come to this House arrogantly to state that he is not aware.

Mr. Speaker: Order! Order! That is the kind of language I have just removed from the mouth of Mr. Raila. Now, you too will remove it from your mouth. You must apologise.

Mr. Sirma: Mr. Speaker, Sir, I withdraw the word "arrogance" and substitute it with the word "insincere".

Mr. Maitha: Mr. Speaker, Sir, I have looked at that list and it is not authentic because it [Mr. Maitha] is not even stamped by the ECK to show that it is a true copy of the original document. But let me inform the hon. Member that after the IPPG recommendations of 1997, the powers of nominating councillors to all local authorities were vested on political parties. These powers are provided for in the Constitution of Kenya under Section 33. The role of the ECK in the nomination of councillors is:-

- (a) To apportion the vacancies among the contending political parties and inform them.
- (b) The political parties are then solely empowered to nominate their candidates and forward the names to the ECK.
- (c) The ECK then checks whether the candidates are qualified; for example:
 - (i) Whether they can read and write.
 - (ii) Whether they are registered voters in the areas recommended for nomination---

Mr. Samoei: On a point of order, Mr. Speaker, Sir. We did not ask Mr. Maitha to read to us the Constitution. We know what the Constitution and the Act says. What we are saying is that, a list was submitted by the political parties to the ECK as required by the law, and then it was submitted to the Minister by the ECK as required by law. The Minister took it upon himself, and he made it clear to some of us, to correct the anomaly. This shows that he was aware he had done something which is not correct. But now he has the audacity to tell this House that he is not aware. Honestly, if they are taking the business of this House seriously, this Minister should take this House seriously.

(Applause)

Mr. Maitha: Mr. Speaker, Sir, I had not finished what I was saying. If the hon. Member cared to listen to me properly, then he would have--- He should learn to listen to the Minister. The powers of nominating councillors are contained in the law as he has rightly observed. The Minister for Local Government is empowered by law to only gazette the names of the nominated councillors as forwarded by the ECK. The powers of the Minister in the nomination of councillors are contained in the law as he has rightly put it.

Mr. Speaker: But can we get---

Mr. Maitha: Mr. Speaker, Sir, I want to finish---

Mr. Speaker: Order! Order! Can we get this matter quickly as it is? Did you or did you not change

the list given to you?

Mr. Maitha: Mr. Speaker, Sir, I did not change the list. I gazetted it as it was brought to me.

Mr. Speaker: Very well!

Dr. Godana: On a point of order, Mr. Speaker, Sir. I think this is a very serious matter. This is a constitutional matter. A Minister of Government stands here to say, firstly, to the House that he is not aware, when it is known he gazetted the names. Secondly, members of the aggrieved party went to see him and he promised to correct the anomaly. Indeed, he did correct because I have seen a Gazette Notice under which people who were gazetted as nominated councillors had their nomination revoked and new names were put in their place, but some were not corrected. Now, he has the audacity to tell us that he has not done it. I think this is grossly disorderly conduct under the terms of Standing Order No.88(2). If the Minister would care to listen, conduct is grossly disorderly when, *inter alia*, you deliberately refuse to answer a question, or deliberately give a false answer. Is he in order to do that?

Mr. Maitha: Mr. Speaker, Sir, the hon. Member was a Minister of Government--- Let me inform this House that the nomination of councillors is done by the political parties as apportioned by the ECK. The same list is taken to the Minister for gazettelement. The confidential list of councillors nominated by the various political parties was submitted to my office on 11th February. On 12th February, we constituted and gazetted that list. When we gazetted that list, most of these hon. Members came to my office to complain that the names of some of the nominated councillors were not appearing on the Gazette Notice. I advised them to go to their parties, and I have evidence here whereby one of the members of KANU came to me to complain that his name had been substituted by Mr. Sunkuli and Mr. Biwott. He is Ario Maalimu Nuru from Mandera. He came to complain to me that the names---

Mr. Speaker, Sir, what I am saying is that a KANU aspirant came to explain to me---

Mr. Speaker: Order! Order! This is not just an ordinary Question asking whether water pipes have been laid or not laid, or whether medical services have broken down or not broken down. It is a constitutional issue; the right of political parties to make their nominations without interference by any opposing parties. That is the issue; the right of a political party to nominate the people it deems fit. This is what is in question.

According to my understanding, the issue is that the Electoral Commission forwarded names to the Minister for gazettelement. Now the issue is simply: Are the names that were forwarded the ones gazetted, or there has been a change? It is as simple as that.

Mr. Maitha: Mr. Speaker, Sir, I have already confirmed that all the names which were [Mr. Maitha] sent to my office were gazetted as listed by the Electoral Commission.

Mr. Sungu: On a point of order, Mr. Speaker, Sir. Having been a temporary hon. Member of KANU sometime back, I remember during the Kasarani II, lists of delegates were substituted; some were coming from State House and others from elsewhere. Now, could the Minister tell us whether the list he received was from Kabarak or from KANU headquarters?

Mr. Speaker: Order! Mr. Sungu, it is not as easy as that. We are not dealing with the constitution of KANU; we are dealing with the Constitution of Kenya. Hon. Members I truly hope that we become serious when matters of the Constitution are at hand. I truly hope that every hon. Member will direct his or her mind properly when constitutional issues arise. It is not partisan; it is national. If it is a constitutional issue, make it a serious issue. Let us not joke around with it. If you can joke around with the nomination of councillors today, God knows what you will joke with tomorrow. Let the Minister say his final bit and then we proceed.

Mr. Maitha: Mr. Speaker, Sir, I have just said that all names brought by the Electoral Commission were gazetted. I have informed this House that representatives of all the political parties came to my office demanding that the names which appeared in the Gazette Notice were not the correct names. I used to refer such issues to their parties. I would like to read one letter as an example, where Mr. Biwott and Mr. Sunkuli, the Secretary-General of KANU, wrote to the Chairman of the Electoral Commission saying that we should revoke a complainant's name and replace it with the correct one. It was signed by the two persons, and I would like to table it. Could I read it?

*(Several hon. Members stood up
in their places)*

Mr. Speaker: Order, hon. Members! He may take solace in that one letter. It is all right. We will even allow the Minister to read the letter. There is nothing wrong with that. But the issue is: How many of these letters does the Minister have?

Mr. Maitha: Mr. Speaker, Sir, the letter was written on 20th February after we---

(Several hon. Members stood up in their places)

Just be patient! Why are you crying?

Dr. Ali: On a point of order, Mr. Speaker, Sir. The Minister even gazetted somebody's name in Lamu, as a nominated councillor yet that gentleman has never even seen Lamu leave alone owning property there. The Minister is only telling us stories. That particular gentleman comes from Mandera. When the people of Lamu complained, he posted him to Mandera as a public officer. Could he tell us how he did that when the gentleman does not work for the Government?

Mr. Speaker: Order! What we shall do is: We will put this Question in abeyance and ask the Clerk of the National Assembly to get in touch with the Electoral Commission, so that we get the list sent to the Minister and then it will be easy to compare with the gazette. The problem will be, if what we get from the Electoral Commission compares well with the Minister's gazette, what will the hon. Members who have been alleging otherwise say? Then they must apologise to the House.

Mr. Sasura: On a point of order, Mr. Speaker, Sir. As you said, this is a constitutional matter and not simple. On behalf of my party, I was the one running between the Electoral Commission offices and the Minister's offices. The only way out is to get the original letter from ECK and a list that had been submitted by the political parties, including the slot that had been allocated by the ECK and the Gazette Notices of 11th February and 19th February. That is the only way to solve this problem.

Mr. Biwott: On a point of order, Mr. Speaker, Sir. I think the hon. Member ought to be responsible. I was a participant in the IPPG and I know why we decided that parties must have their rightful share.

An hon. Member: What is your point of order?

Mr. Biwott: Mr. Speaker, Sir, I am one of those who signed all the lists of the nominated councillors of KANU, together with Mr. Sunkuli. What he is saying is completely false because I did not alter the list. It is the hon. Minister who altered the list without any authority whatsoever, and he ought to be responsible.

Mr. Speaker: Order, all of you!

Mr. Maitha: Plus the "Total man"!

Mr. Speaker: Order, Mr. Maitha! Total or not, you must be orderly. Hon. Members, the way this matter is drifting is not good. So, let us get the correct positions from the Electoral Commission of Kenya (ECK) and the Gazette Notice by Thursday, next week, so that we give all concerned Members enough time. The Minister, the aggrieved Members and my officers should have enough time so that we can meet when we have all the correct information. I hope that Members have not deliberately misled the House.

If the position that the Minister is stating will turn out to be the correct one, then those Members who are alleging otherwise will no doubt owe an apology to this House.

Mr. Maitha: Mr. Speaker, Sir, I appreciate the way you have handled that issue. Could I be allowed to table this letter so that it can be part of the process?

(Mr. Maitha laid the document on the Table)

(Loud consultations)

Mr. Speaker: Order! Why are you all interested in this one letter and not the hundred other councillors? The Question is deferred.

We will get to the bottom of this issue. I truly hope that none of you, either from this side or the Minister, is misleading the House. Anybody who will have misled the House will have to ---

Hon. Members: Resign!

Mr. Speaker: Order, hon. Members! I suppose we will visit all those various other issues when the time comes. For now, let us move to the next order.

(Question deferred)

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

Mr. Speaker: Will you sit down? We have taken 40 minutes of normal business on Questions and other issues. Anybody who wants to raise a point of order can do so tomorrow. We must now go to the business of the

House.

Next Order!

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

*(The Minister for Justice and Constitutional Affairs
on 6.3.2003)*

(Resumption of Debate interrupted on 6.3.2003)

Mr. Speaker: Who was on the Floor? Mr. Angwenyi!

(Loud consultations)

Order, hon. Members! All those hon. Members who had wished to seek Ministerial Statements, I will facilitate all of you tomorrow morning. I will give you the opportunity to raise all those issues tomorrow morning.

Mr. Angwenyi!

Mr. Angwenyi: Mr. Speaker, Sir, we are talking about the Constitution of Kenya--

Mr. Wamwere: On a point of order, Mr. Speaker, Sir. The point of order that I am making is so urgent that if you say I raise it in the morning, a lot of harm will have been done. I have information from Kenyatta University that the Vice-Chancellor, Mr. George Eshiwani, is destroying information that has to do with the investigations that are going on now.

I wanted to request that this person be forced out of his position in order to preserve this evidence. Otherwise, if we allow people who are being investigated to continue occupying their positions as we have allowed Prof. Meme at the Kenyatta National Hospital--

Mr. Speaker: Order, Mr. Wamwere! That will not and should not disrupt the business of this House. First and foremost, there should be a Minister in charge of education. Secondly, there should be a Commissioner of Police. I can see the Attorney-General and the Minister for Justice and Constitutional Affairs are here. Their various assistants are also present. I am sure Kenyans can also get assistance from them if they do go there, but it is crucially a question of time. We have already passed that stage and that is why I said everybody should raise their points of order tomorrow morning at 9.00 o'clock. Anyway, Mr. Attorney-General, I hope you have heard.

Mr. Wamwere: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order, Mr. Wamwere! What is the matter? I have not and will not give you the Floor. So, Attorney-General, you have heard what Mr. Wamwere has to say. I hope that it is a matter that interests you tremendously. I hope Mr. Murungi has heard and that it will impress him immensely.

Proceed, Mr. Angwenyi.

Mr. Angwenyi: Mr. Speaker, Sir, it is good that I am beginning to contribute to this constitutional amendment after we have raised questions regarding the Constitution of Kenya. I do realise that you reprimanded me by trying to challenge this House to take up its mandate as per the provision in Section 16 of the Constitution of Kenya, which states that there shall be such offices of Ministers of the Government of Kenya as may be established by Parliament, or subject to any other provision made under Parliament by the President.

I thought I was being intimidated when this Section of the Constitution was raised, which we have not taken up as a Parliament. The amendment at hand deals with the Attorney-General--

(Loud consultations)

Mr. Speaker: Order, hon. Members! We are discussing the Constitution of Kenya (Amendment) Bill which is a very important piece of legislation. So, shall we, please, hear what the hon. Member has to say? In the end you will have to vote and you must know what you are voting for.

Proceed, Mr. Angwenyi.

Mr. Angwenyi: Mr. Speaker, Sir, this Bill is an attempt to establish an independent Anti-Corruption

Authority. In that attempt, we are trying to address the current issue of the work of the Attorney-General. The power to prosecute in Kenya is not exclusively restricted to the Attorney-General. We have various statutes in the Constitution that confer powers to prosecute upon other people or authorities. For example, the Kenya Bureau of Standards (KBS), the Kenya Revenue Authority (KRA), the Immigration Department and the Public Health Authority are all empowered to prosecute, and yet they are not independent authorities.

Mr. Speaker, Sir, through this Bill we are trying to redress the court decision that invalidated the KACA. That decision was wrong even to a layman. The Constitution of Kenya provides that the Attorney-General can prosecute in all courts, except a court martial. Therefore, there may not be a need to establish an independent anti-corruption authority in Kenya if the Judiciary upheld the law and Judges followed the law. The Judges who made the ruling in the Gachiengo case should have followed the law. We can have an authority prosecuting cases of corruption or economic crimes that is not independent of the Attorney-General.

Mr. Speaker, Sir, Section 26(3)(a) of the Constitution of Kenya states very clearly that the Attorney-General is conferred with powers to institute and undertake criminal proceedings against any person before any court other than courts martial in respect of any offence alleged to have been committed by that person.

This provision does not preclude corruption or economic crimes. Therefore, are we making an amendment to our Constitution because we feel it is important, or are we making an amendment in reaction to the court decision in the Gachiengo case, or the non-performance of the Attorney-General? If we are reacting to the court decision that invalidated the KACA, then we need to set up independent authorities to prosecute cases of the KBS, the KRA, the Immigration Department, the City Councils and all other cases which are currently prosecuted by other authorities or persons. If our purpose was to address the non-performance of the Attorney-General, then what we would have done is either to call upon him to improve in his performance or advise him to resign. In fact, the Government would have set up a tribunal to investigate his performance, and determine whether he is fit to hold office or be dismissed.

If we were to amend the Constitution every time we got in a problem, then our Constitution would be in tatters within a year because we face so many problems. The court decision which invalidated the KACA was discriminatory because they did not consider the fact that other parties can prosecute. The Constitution of Kenya allows many parties to prosecute. In fact, Section 26(3)(b) allows private prosecution, but it also confers upon the Attorney-General the power to take up those cases and proceed with them. Under Section 26(3)(c) the Attorney-General has power to even terminate those cases. Do we really need to amend the Constitution simply because we want to set up an independent authority to prosecute economic crimes and corruption? The Government must answer this question before we pass this Bill.

Mr. Speaker, Sir, the political environment in the country in the previous five years was so hostile to objective views that the office of the Attorney-General was unable to function. But with the current change of the political environment in the country, I do not see the need to have an independent authority or body to deal with economic crimes. Our people are looking up to the NARC Government to eradicate corruption. We have seen people who have abused their offices resigning. I am sure this will also happen even on the Floor of the House. If some Ministers abuse their offices either through commission or omission, they will have to resign. The mood in the country is such that you cannot actually transgress the laws of this country with impunity. The Attorney-General cannot avoid to prosecute special cases simply because of the political environment. The Attorney-General now has been put on his toes and he must prosecute all cases if he has to remain in the office. Is there need to have an independent authority? Should we give this authority the mandate which otherwise should have been with the Attorney-General? As a House, we must answer that question because it is so important, especially given the fact that we are looking forward to a constitutional review in another two or three months.

Mr. Speaker, Sir, I know there is a need to restore our relations with the so-called development partners. If that is the reason why we are amending the Constitution to provide for the anti-corruption authority, then we should summon those development partners to a House Committee and explain to them that there is no need to establish an independent authority which has got the powers to exclusively prosecute, just like the Attorney-General. In fact, this Bill does provide more power to the anti-corruption authority than the Attorney-General. The day we pass this Bill, we will negate the position of the Attorney-General as an independent and constitutional office.

Mr. Speaker, Sir, the Government should ask the Attorney-General to take up some of these matters. If he cannot do so, let him resign. If he cannot resign, let the Government set up a tribunal. Let the President include my name in that Tribunal and we will investigate the Attorney-General and determine whether he is fit to hold office or not. We should not amend the Constitution simply because we want to address the performance of one person or office.

Mr. Speaker, Sir, there are other countries which have already established anti-corruption authorities.

Those authorities investigate and prosecute economic crime cases or corruption. However, most of those countries have not set up those authorities as independent bodies. They have set them up under ordinary statutes and given them the mandate to prosecute economic crimes cases. They have done very well. Such countries include South Africa, Britain and Germany, where there is zero tolerance to corruption. We do have countries that have set up independent anti-corruption authorities with powers to investigate and prosecute such as Uganda, Tanzania, Malawi and Nigeria. However, those authorities are not successful because of lack of political will to let them work independently. Corruption is still rampant in some of these countries, much more than in Kenya. Before we amend our Constitution we should know why we are amending it.

The Constitution of the United States of America (USA) was made about 250 years, but it has been amended 18 times only. However, in this country, we amend our Constitution year in, year out. Consequently, there is no resemblance between the current Constitution and the original Constitution that was made in 1963.

Mr. Speaker, Sir, we do know that corruption is a cancer; this country runs mad with corruption. We know that the people we have vested with the responsibility of tackling corruption could as well be corrupted. We have seen some people in Government defending corrupt Government officials. We have seen action taken against some people who have been perceived to be corrupt. However, the same action has not been taken against other public officers who are believed to be corrupt. We have seen chief executives of various institutions being asked to resign from their positions when the boards of those institutions have not been disbanded.

I am talking about application of double standards by the Government. For instance, the Commissioner-General of the Kenya Revenue Authority (KRA) was forced to resign. However, the board members of the same institution were not asked to do likewise. Similarly, the Governor of the Central Bank of Kenya was forced to resign, but the board is still intact. We have seen what has transpired at the Kenyatta National Hospital (KNH). Funds that could have assisted poor patients were deposited in a bank which was being used as a conduit for siphoning public funds into the pockets of certain individuals. However, the chief executives who put money into that bank have not been sacked, or asked to resign, or prosecuted. The KNH Board, which has been in office for the last six or seven years is still intact although it was during its tenure that more than Kshs400 million of public funds got lost.

Mr. Speaker, Sir, at the National Hospital Insurance Fund (NHIF), close to Kshs500 million has been siphoned into that bank when, in fact, the NHIF could not meet its obligation of financing the treatment of its subscribers. Despite all this, the NHIF Managing Director and its Board are still in office. We have seen similar things happen in respect of the Pyrethrum Board of Kenya (PBK). You will find that poor old farmers have harvested their pyrethrum and delivered it to the PBK factory, but have not been paid for a whole year. These farmers have not been paid for their labour or inputs, and yet we are saying that we want to combat corruption. Are the relevant Government Ministers not taking action because they do not have the constitutional authority, or is it because they do not want to apply the existing laws?

We have seen Ministers defend people who are well known to have misappropriated public funds, and the same Ministers are still in Government. These Ministers should be reshuffled to portfolios they can manage. Some Ministers have been given portfolios they cannot manage. We have professionals who can manage those Ministries efficiently. The Government was elected to power on the understanding that it would make appointments on the basis of meritocracy. We expected meritocracy to be applied in all appointments, right from the top to the bottom. Just like the Attorney-General and the Minister for Justice and Constitutional Affairs are lawyers, we expected the Minister for Health, for instance, to be a doctor because we have many doctors in this House.

Just like the Minister for Roads, Public Works and Housing is an engineer, we would have expected the Minister in charge of sports to be a sports person; we have some hon. Members here from Eldoret who used to be good athletes. Any of these should have been appointed the Minister in charge of sports. That way, meritocracy would have been seen to have been applied. So, if we do not change our attitude as hon. Members, as well as that of public officers and members of the public, it does not matter what laws or pledges we make. Unless we change the attitude of this House, it will be enjoined as a conspirator in the protection of perpetrators of **[Mr. Angwenyi]** economic crimes. As I said earlier, this House has the constitutional mandate to fix a specific number of Ministries and, when necessary, even disband some of them. However, the House has quietly resigned itself to accepting whatever Ministries the Executive creates.

Mr. Speaker, Sir, even if we approve the proposed constitutional amendments, we cannot make much headway until we reform the Judiciary. As it is now, the Judiciary is a den of corruption. So, until and unless we reform our Judiciary, amending the Constitution will not make much difference in this country.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Is the hon. Member on the Floor in order to say that the Judiciary is a den of corruption?

Mr. Speaker: Mr. Angwenyi, maybe, you are trying to attract attention because the House is almost empty.

Mr. Angwenyi: Mr. Speaker, Sir, I am contributing to an important debate. Whether hon. Members remain here and listen to what I have to say or not, that is their business. I am doing what I have been elected to do.

Mr. Speaker, Sir, I do not know whether the hon. Member is enlightened; he has not even read today's newspapers. There is a judge who has resigned because he has been accused of corruption. The Gachiengo judgement on the constitutionality of the Kenya Anti-Corruption Authority (KACA) Act was motivated by corruption. The Gachiengo judgement specified the defunct KACA as the only Government body which could not prosecute when there are several other bodies which do prosecute cases. For instance, the local authorities, the Immigration Department and the military court martial prosecute. Why did the Attorney-General, with impunity, allow the Gachiengo judgement to stand? Was there a conspiracy between the Government and the Judiciary to allow the Gachiengo judgement to prevail? Why did the Attorney-General not challenge the Gachiengo judgement at the Court of Appeal or at a constitutional court?

The Attorney-General (Mr. Wako): On a point of order, Mr. speaker, Sir. Is the hon. Member in order to imply that the failure by the Attorney-General to challenge the Gachiengo decision was a conspiracy between the Government and the Judiciary to declare the defunct KACA unconstitutional, when, indeed, following that judgement, I issued a Press statement to the effect that the Attorney-General was not happy, or was completely dissatisfied, with the Gachiengo decision? However, I added that the Constitution did not permit the Attorney-General to file an appeal against that ruling because it was a ruling on a constitutional matter. The Constitution does not provide for appeal against judgement on constitutional matters.

Mr. Angwenyi: So, the only thing that the Attorney-General could do was to issue a Press statement; he was so impotent that he could not do anything else except issue a Press statement!

But if that has been the case, there may be need to actually establish that authority and remove those powers which have been vested in the Attorney-General and give them to that authority. That is because the Attorney-General cannot practise those powers.

Mr. Speaker, Sir, the reason why I said the Gachiengo decision was wrong--- It should have been challenged even by making an amendment in this House to vet members of the Judiciary. It was wrong because it only specified the Kenya Anti-Corruption Authority (KACA) as one authority which was based on ordinary statutes to prosecute and yet, the decision should have been made that there should be no person or authority in this country that can prosecute, except the Attorney-General. That is my layman's view. That decision was against the Constitution of Kenya. Section 26(3)(b) says that the Attorney-General can take over cases and prosecute them. He can, therefore, take over criminal cases and prosecute them. That implies that the Constitution allows somebody else to take and prosecute a case, and the Attorney-General can take over from him. Section 26(3)(c) does state that the Attorney-General can terminate cases which have been instituted by persons or other authorities. That also implies clearly that the Constitution of Kenya does give the Attorney-General the power to terminate cases which have been instituted by other people. It allows other people to institute cases and criminal proceedings, which the Attorney-General can terminate before judgement is rendered.

Mr. Speaker, Sir, when the matter regarding KACA was taken to court, it was taken, in my view, to a corrupt institution. So, what we should be doing now is to address that corrupt institution. This House has got the power to amend the Constitution to require all judges in this country to resign, reapply and be vetted by another arm of the Government. We have got an abnormal situation in Kenya where one branch of the Government appoints another branch of the Government. The central arm of the Government appoints the Judiciary branch of the Government. We should make it such that no one single branch of the Government appoints another branch of the Government alone. We should make it such that if you want to appoint the Judiciary, the Executive must identify the people and we must vet them, so that it can be seen that two branches of the Government are appointing the third branch of the Government. If we do that, the performance of the Judiciary would improve. The affinity for corruption would decrease and they could make good decisions for this country. As I said earlier, since we want to restore our relations with our development partners---

We know that the national coffers have been plundered empty. That was said five years ago by Mr. Nyachae in Mombasa and we did not agree with that. But now, the NARC Government has found out that what Nyachae told us in Mombasa was correct. The coffers were emptied a long time ago and we want to replenish them. We do not have the means of replenishing them. So, we must ask our friends and supporters worldwide to give us a hand. But they have said that we must amend our Constitution to provide for that authority and do other things. Maybe, a beggar has no option! He has got to accept the conditions. So, from that perspective, maybe, we may have to establish that authority in the belief that it would be independent and effective, to eradicate

corruption in this country.

I also believe that if we establish that authority, we must go for the whole suit. We must now approve the Anti-Corruption and Economic Crimes Bill. We must bring back and handle the "list of shame" and all the other reports of Parliament which have pinpointed people who have abused their offices and public resources. The authority should study those reports and prosecute those people. We must provide for a situation where people who have plundered the resources of this country must be asked to pay up. I hope that authority will be able to do that. Hopefully, the people who will be appointed to work in that authority will not be corrupt! If they are corrupt--- There are people who have got billions of shillings overseas. They will give them a billion or so and they will accept not to prosecute them.

With those few remarks, I beg to support.

(Prof. Wangari stood up in her place)

Mr. Speaker: Proceed, Mr. Kombo! Sorry, Prof. Wangari, I will come back to you! Actually, I saw you after I called his name. Otherwise, I would have reversed myself! Not that I hate you, or because you are a new Member!

The Assistant Minister for Planning and National Development (Mr. Kombo): I was just going to wonder why, but you have now explained!

Let me also take this opportunity to thank you for the chance to speak on this extremely important Bill. At the outset, I would like to begin by saying that Kenyans must not play politics with the fight against corruption.

The evil known as corruption has absolutely destroyed this country. It has destroyed our economy and like cancer, it has been eating us away slowly by slowly, until our economy is in a situation which Mr. Nyachae once described as Intensive Care Unit (ICU). I think if we put it in that perspective, the people should realise that playing politics with the struggle against corruption is not good for this country. Corruption in this country had become a way of life. The last KANU Government had officially sanctioned corruption. That is why the problem became so huge. We did have official corruption sanctioned by the KANU Government that had to be swept by the wayside! In fact, I believe that it is because of that position that Kenyans decided that they would show KANU the way out to the door!

Mr. Speaker, Sir, I want to support the Bill very strongly and also appeal to my colleagues on both sides of the House that because of the importance of fighting corruption in order to revive our economy, we will look at it from a non-partisan point of view. As you know, when surveys are done in this country showing our position in the world on corruption--- For example, since 1996, we have remained at the bottom of the scale. The surveys were done by Transparency International, a premier organisation that deals with corruption. It did its perception index surveys in 1996 and showed that Kenya was third from the bottom. In 1998, Kenya was number 73 out of 85 countries that were surveyed. In 1999, Kenya was number 90 out of 99 countries surveyed. In the year 2001, Kenya was number 84 out of 91 countries surveyed. So, you can see that the country has remained at the bottom---

Mr. Twaha: On a point of order, Mr. Speaker, Sir. Is it in order for Mr. Kombo to invoke Transparency International indexes when we all know they are totally subjective?

The Assistant Minister for Planning and National Development (Mr. Kombo): Mr. Speaker, Sir, if the hon. Member knows English, he should know that I talked about perception. Perception is just that. Perceptions are accepted.

Mr. Twaha: On a point of order, Mr. Speaker, Sir. Transparency International indexes cannot be authoritative and conclusive studies. The specifics do not depict the indexes as scientific. The indexes are totally subjective, and the product of bar rooms and *chang'aa* dens talk.

Mr. Speaker: What is going on between you two?

The Assistant Minister for Planning and National Development (Mr. Kombo): Mr. Speaker, Sir, I really do not know what the problem of the hon. Member is. I have no idea what his problem is. I have just realised that he does not understand the meaning of the word "perception".

Mr. Twaha: On a point of information, Mr. Speaker, Sir. A lot of weight is being given to Transparency International indexes. These indexes are totally subjective and seek to harass, intimidate and ridicule small countries like Kenya. They should not be quoted in this House as an authority. Transparency International is just a *jua kali* outfit of ex-World Bank officers!

The Assistant Minister for Planning and National Development (Mr. Kombo): Mr. Speaker, Sir, Transparency International (TI) is a premier organisation that has assisted the world to fight against corruption. It

is only the corrupt people who would be afraid of what TI says.

Mr. Speaker: Are you suggesting that hon. Twaha is corrupt?

The Assistant Minister for Planning and National Development (Mr. Kombo): Mr. Speaker, Sir, I said only those who are corrupt are afraid of what IT says. I do not think hon. Twaha is afraid of it.

Mr. Speaker: I think this House will be happy if the two of you address me. That way, we will maintain good inter-personal relations.

The Assistant Minister for Planning and National Development (Mr. Kombo): Mr. Speaker, Sir, I was addressing the history of corruption in this country, and showed where we are at this point.

I wanted to say that there was a lot of reluctance by the previous Government to fight against corruption. It made a lot of half-hearted approaches towards the fight against corruption. At one time, we had a police unit which was charged with the responsibility of fighting against corruption. When officers in this unit did something serious, it was disbanded and its files destroyed. In fact, the files were burnt and nobody knows what the unit ever did. This House also took the challenge, and in 1997, passed a Motion to set up a Select Committee, which I had the privilege to chair, to look into corruption issues. The Select Committee took a step forward and showed how to fight against corruption.

Throughout all that process, we were able to set up a premier organisation called "the Kenya Anti-Corruption Authority (KACA)", which also started doing some work, but as soon as it stepped on the toes of the mighty, the previous Government used the Judiciary to kill the Authority. That is why the Gachiengo issue is being referred to all the time.

After KACA was destroyed, the previous Government made some faint attempts to try and revive it. The Government was always insisting that within the legislation that should be in place to fight against corruption, amnesty should be provided for. When the former Government tried to bring in a Bill to reinstate KACA, it tried to legislate for amnesty. Those of us who were then on the other side said "no". We fought very valiantly and defeated that position. This struggle has been going on. We should commend the Minister for Justice and Constitutional Affairs for taking a very bold step to ensure that our fight against corruption moves on unabated.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, there are those who argue that the Minister is doing this because we want to get donor funding, but I believe that the fight against corruption is for us as a country. It is good for ourselves. We are not doing it for anybody else. If the donors come on board, that will merely be a bonus. But in reality, all of us should believe that the fight against corruption is crucial. This particular Bill that is before us is extremely well thought out. It may have some weaknesses here and there, but if you look at any Bill, you can punch holes in it. In this case, we are saying that we should have a way forward. If there are any "holes" in the Bill as it stands today, we will also have an opportunity to look at it during the Constitutional Conference in a few weeks to come, and clean it up. This is what we are saying. But for now, the momentum is on. We do not want to lose the momentum of fighting against corruption. My friend, Mr. Haji, is rather impressed by what I am saying, and, for the first time, he is nodding his head to show that he is with us.

This particular Bill deals with the Gachiengo problem. For the first time, the Bill has stated that the Attorney-General can prosecute offences, but there are other people who can also prosecute them. Under Clause 113C(1)(d), the Bill has proposed that:

"The Commission shall have the following functions: To institute and undertake criminal proceedings against any person for corruption, economic crimes and related offences".

To deal with the problem of the Attorney-General's powers of prosecution and of control of prosecution, the proposed Clause 3(a) to Section 26 of the Constitution provides as follows:

"Nothing in paragraphs (b) and (c) of Subsection 3 applies in respect of proceedings instituted or undertaken by the Kenya Anti-Corruption Commission (KACC), except that the Attorney-General may take over and continue such proceedings at the request or with the consent of the Commission".

Mr. Deputy Speaker, Sir, it is now clear that the Attorney-General cannot take over or discontinue prosecution as has been the case in the past. To fight against corruption, sometimes we needed this strong position for the Commission to be able to deal the problem. It was a major flaw in the old legislation, and it has now been rectified in the proposed legislation. Secondly, the Bill also deals directly with the holding of the High Court that only the Commissioner of Police can carry out investigations as was provided in the Gachiengo ruling. Clause

113(c) provides as follows:

"The Commission shall have the following functions: To investigate the conduct of any person who in the opinion of the Commission is conducive to corruption".

So, you can see how well thought out this Bill is to deal with the Gachiengo problem. It is now clear that the proposed Commission can both carry out investigations and prosecution of offences. The Bill has taken care of the powers of the Attorney-General under the Constitution by giving the proposed Commission precedence on matters relating to corruption only. Some hon. Members have argued that the proposed Bill will take away powers from the Attorney-General. It will not. The Bill is only dealing with one specific area, the area of corruption. That is all. The Attorney-General can perform all the other functions that are provided for in the Constitution.

The Bill has, for the first time, provided the definition of economic crimes. In the past, the laws that we had in place dealing with corruption just talked about bribery, or the giver and the taker of a bribe. Nothing was provided for in terms of those who loot the economy and those who evade taxes. For the first time, this Bill has defined what is an economic crime. So, we are getting sophisticated. The issue of corruption is a major problem. Corruption gets sophisticated and, therefore, we also, in our legislation, have to get more and more sophisticated to ensure that we can catch every person who is involved in corruption.

Mr. Deputy Speaker, Sir, the Bill also makes adequate provision for the fact that the fight against corruption is not won on penal sanctions and criminal prosecutions alone. The Bill clearly provides for education and all the other aspects because the fight against corruption is three-pronged, namely, prosecution, investigation and education. So, the Bill does provide for these pillars to ensure that as we fight against corruption, we are not just looking at prosecution alone, but the Commission will be given power to educate Kenyans on effects of corruption. As I said from the beginning, Kenyans have taken corruption as a way of life; they believe in it. So, there is a major task ahead for the Commission to try and educate Kenyans that, in fact, it is not a way of life; that in fact, you do not have to bribe to get services.

The Chair has seen, as it travels on the road, that when a policeman stops a motorist, even before he or she knows why he or she is being stopped, the first thing he or she does is to dip his or her hands into the pocket and approach the policeman with his or her fist closed because he or she is holding something in the hand. This is because he or she believes that unless he or she gives the policeman something, he or she will not get away with it. So, the Commission has this huge responsibility to educate Kenyans that the fight against corruption is not through the police or the Government alone, but is for every Kenyan.

In fact, I hope that in the course of the year, we should have a zero-tolerance day for corruption and tell every Kenyan: "Please, today, do not give any bribe," and you will be amazed at how much we can fight corruption.

There is another aspect of the Bill which is extremely interesting; that is ultimate deterrence against corruption by making it possible for restitution. That is what will be very interesting in this country. That is what will actually make us succeed in the war against corruption. Restitution will take away the fruits of corruption.

As Kenyans, all of us should demand that if somebody stole or took away Kshs100 million and put it in a bank, he should return the Kshs100 million plus whatever interest is accrued from that amount of money. So, he or she should not just surrender the Kshs100 million. If you take away only the Kshs100 million and he has made billions of shillings out of this money, it is not good enough. So, this Bill is talking about restitution and, therefore, taking away the fruits of corruption. If this is done, people might as well not get involved in this practice.

Mr. Deputy Speaker, Sir, on the issue of restitution, I think all of us, as Kenyans, must think very carefully. There are some people who have argued that when you tell somebody to return any property that was acquired illegally, that is witch-hunting. This is not witch-hunting because grabbing took place and you have those properties. Kenyans are watching and saying that so and so took all that and he is left to keep it. Without restitution, I do not think that will go down very well.

The issue of restitution actually goes deeper when we start looking at what we call "transitional justice". What do we do with the past in order to move forward? I think restitution will be a major aspect for transitional justice in this country. I always tell people that for me, as a Christian, and as a Catholic, when I go to confess, I tell the priest that I have sinned and he tells me to go and say so many rosaries.

(Laughter)

When you offer restitution, you are actually atoning yourself. You are saying that you sinned and you are giving back. That is what happens when I say my rosaries.

Mr. Haji: On a point of order, Mr. Deputy Speaker, Sir. Is it really in order to say that if you sin, you

merely take a rosary and ask for forgiveness from a Father, who forgives you? What about God?

The Assistant Minister for Planning and National Development (Mr. Kombo): Mr. Deputy Speaker, Sir, since I am not a fundamentalist, I would not get involved in that fight with the hon. Member. I know you cannot win a religious war with Mr. Haji.

All I am saying is that restitution will be a very crucial issue when we start talking about transitional justice. This is because, at one stage, all of us, from both sides of the House, will sit together and discuss all these crimes, which are so many. If we have to go for each and everyone on the other side of the House, we will fill our jails and we will get nowhere. So, we shall have to sit together and actually discuss the way forward. That is what will give us transitional justice. In the process, we will discuss the issue of restitution.

Mr. Mwandawiro: Jambo la nidhamu, Bw. Naibu Spika. Wakati tunapozungumzia Mswada huu halafu tunazungumzia magereza, ni vyema tufahamu kwamba kuna watu ambao wanafungwa kwa kutenda uhalifu. Wengine wa watu hao wamehukumiwa kunyongwa. Wakati huo huo, tunapongea kana kwamba kuna watu wengine watafungwa kwa sababu ya ufisadi na kwa kutenda makosa mengine, ninaona si vizuri. Inafaa tunapozungumza juu ya uhalifu, uwe ni uhalifu.

Mr. Deputy Speaker: Mr. Mwandawiro, I think that will be a very good point when you to contribute. I will give you an opportunity to say what you want to say, but certainly that is not a point of order.

Proceed, Mr. Kombo!

The Assistant Minister for Planning and National Development (Mr. Kombo): Thank you, Mr. Deputy Speaker, Sir. I was saying that at one stage, for the country to move forward, we will have to deal with the issue of transitional justice. That is why I am stating categorically that we have an opportunity, through the clause of restitution, to help ourselves to move forward. Mr. Speaker, I want to conclude by saying that any Kenyan that has suffered under the hands of the corrupt regime; any Kenyan that knows that there is no food on our tables; that there is no medicine in our hospitals; our schools have collapsed and we drive our cars through potholes because the roads have been destroyed by corruption, cannot really stand up and say he is against this Bill. I appeal to the whole House to support the Bill.

I beg to support the Bill.

Mr. Kenyatta: Thank you, Deputy Mr. Speaker, Sir. I stand to speak on the Constitution of Kenya (Amendment) Bill. As I contribute I recognise the fact that the Government has made it clear that this is an attempt towards economic recovery. The fight against corruption is an essential part of that war to revive and to resuscitate our economy. No single sane thinking individual would oppose that.

Mr. Deputy Speaker, Sir---

*(Dr. Galgallo stood between the Chair
and Mr. Kenyatta)*

Mr. Deputy Speaker: Order! Dr. Galgallo, the rules are very clear. You do not go between the Member speaking and the Speaker.

Dr. Galgallo: Mr. Deputy Speaker, Sir, I wanted to drink some water.

Mr. Deputy Speaker: It does not matter whether you want water. That is the rule. Very well, you can enjoy your water.

Proceed, Mr. Kenyatta!

Mr. Kenyatta: Thank you, Mr. Deputy Speaker, Sir. That said and done, I must, however, state that I am very disappointed in the manner in which the Government has brought this Bill to this House. It was introduced in a hurried manner. We will all recall that even last Thursday, there was hue and cry as Members were demanding to be given adequate time to go through this Bill.

Mr. Deputy Speaker, Sir, there have been arguments as to why we should support this Bill from hon. Members of both sides of this House. However, one would expect that with a Bill of this importance, which seeks the consensus of both sides of the House, the Government would have taken time to consult with Members on both sides of the House, to get a consensus as to the need for this Bill and its importance to the Kenyan economy. That did not happen. The Government assumed and took it for granted that the Bill would be accepted purely on the merit that it would aid the Government in its fight against corruption.

Mr. Deputy Speaker, Sir, I strongly believe that whereas that could be the intention, the hon. Minister for Justice and Constitutional Affairs would have, indeed, taken time to brief Members, to dialogue with Members and truly to even participate in a seminar that was recently held by Transparency International on this very same issue, and to hear the concerns of Members on this particular proposed Bill. None of that has happened. This forces me

to believe that the Government, indeed, has possibly other short-term intentions, namely to appease the interests of the Bretton Woods institutions and to possibly open the doors for flow of aid into this country as possibly being the main reason that this Government has brought this Bill in the manner that it did before the House.

Mr. Deputy Speaker, Sir, I say this because as they had said, they have brought this Bill because it is good for Kenyans. It is legislation that is good for our economy. However, this said and done, anti-corruption legislation on its own is not adequate to help us in our battle to revive the economy of our country. There are other issues that must also be taken into account. There are the issues of rule and law in the slums, others pertaining to the fundamentals of democracy being truly entrenched in our nation, gender and human rights, and many other issues which when put together, form part of the economic recovery, sustainability and goals thereafter.

Mr. Deputy Speaker, it has been clear to some of us that the bringing up of this Bill before this House is, indeed, an attempt by the Government to hoodwink Kenyans into believing that by being seen fighting corruption, they have, as if by magic wand, restored this economy to its health while at the same time the same Government continues to breach, in many areas, the very trust that it was given by the people of this Republic. I say this because as I support the Member from the Government side who last week stated that as we talk of governments and changing governments, let us talk of changing administration because the Government that we seek to administer as political parties in essence belongs to the people of Kenya and not to parochial party interests. Therefore, its primary role is to defend the interests of 30 million Kenyans.

Mr. Deputy Speaker, Sir, we have seen instances where the NARC administration has used Government machinery to block other political parties, and in this instance, I would refer to our party KANU, for fulfilling their constitutionally laid-out mandate of serving their various constituents throughout the country. Out of pure malice they have taken over our party offices. Whereas the NARC administration has claimed that the KICC is in dispute, we as law abiding citizens have followed the due process of law.

The Assistant Minister for Planning and National Development (Mr. Kombo): On a point of order, Mr. Deputy Speaker, Sir. I thought the hon. Member should observe the *sub judice* rule because the issue of KICC is in court. Why is he raising it in the House?

Mr. Kenyatta: Mr. Deputy Speaker, Sir, I have no intention of discussing the case, and I think as I have said, as law abiding citizens, we have followed due process of law and we believe the matter will be settled through the courts of law. However, does that give the NARC Government the right to enter and close the offices of another political party, when those offices are not the ones that administer the building? I wonder, if the KANU administration would have done this to another political party, what the situation would have been.

Mr. Deputy Speaker, Sir, democracy and the need to entrench democracy into the very roots of our society is in itself a very critical part of economic growth and stability. We cannot have economic stability or investor confidence in our own country, if our own Government will not observe the rule of law, and the very tenets of freedoms that are allowed and enjoyed in a democratic environment.

The Assistant Minister for Agriculture and Livestock Development (Mr. Munyao): On a point of order, Mr. Deputy Speaker, Sir. While I respect the Leader of the Official Opposition, the offices of KANU now and those ones before belonged to Kenyans. We participated in building those offices which were there before. If we built them, then they should be distributed---

Mr. Deputy Speaker: Order! Mr. Munyao, you are just advancing an argument! That is not a point of order!

Proceed, Mr. Kenyatta.

Mr. Kenyatta: Mr. Deputy Speaker, Sir, with due respect to Mr. Munyao, he is the very essence of the problem. I think, we even saw this problem previously, during Question Time, the same scenario recurring, when we saw Ministers dismissing issues purely and simply because they came from KANU.

Mr. Deputy Speaker, Sir, we must observe the rule of law in this land, if we firmly believe and wish our own economy to get out of the current mess. I think that is the point we are trying to get across.

Mr. Deputy Speaker, Sir, if I were to use the example of the United States of America (USA), the largest single economy in the world, President Nixon was forced to resign from office for a much lesser charge, that of merely bagging the offices of an opposition party.

(Applause)

He was forced to resign because he threatened the very fundamentals of American democracy. I can assure the Chair that it is not purely anti-corruption legislation on its own that has made the USA, one of the largest and

most stable economies in the world, but it is because their Constitution enshrines the very fundamentals of democracy, and hence institutions and their rights of being, as well as freedom of association. When the Government is seen to overstep that, action is taken. It is that action that I wish to see.

As we stand here, as Kenyans and hon. Members of this House, we must realise that administrations will come and go, but it is the Kenyan nation that will remain. If, indeed, it is the Kenyan nation that will remain, we must ensure that no administration; not the NARC administration today nor any future administration of this land, is allowed to take advantage of its position to step on the rights of others.

(Applause)

Mr. Deputy Speaker, Sir, I am saying this because there is a well intended behaviour that I have seen, but on the back of euphoria, on the back of the seemingly popularity of the NARC administration, we are tending, as a nation, to close our eyes even when they overstep their boundaries.

Mr. Deputy Speaker, Sir, as the Leader of Official Opposition in this country, I will not be governed by popularity, but by what is just and right. We must be seen to defend the interests of all, because it is only in so doing that democracy can firmly take root, and that the issues of our economy can be tackled in a complete bipartisan manner. That is what we intend to do.

Mr. Deputy Speaker, Sir, I made it very clear, both in my concession speech, and again on the Floor of this House, that I do not intend to follow the example of the Eighth Parliament. I do not intend to oppose for the sake of opposing, but I am bound on the ground of principle, and on the need to keep democracy alive in this country, to oppose this Bill.

(Applause)

I oppose this Bill because I believe that democracy is the key ingredient for any economy to thrive. We cannot depend on the goodwill of an individual or an administration for that matter. I contend that the only thing that we can depend on is the Constitution of this land. Because it is seemingly clear that our current Constitution in itself is not providing the very safeguards that we need.

It will be my suggestion that the hon. Minister reconsiders his position vis-a-vis this Bill. He should reconsider his position because, as I have said, we would like to join him and all other Kenyans in our fight against corruption. But the defence of democracy and of our overall economy would depend on our ability to have in place, within the shortest possible time, a Constitution that will not just dwell on anti-corruption issues, but on all other issues that affect the people of this particular land. The Constitution should dwell on all issues, even on the rights of those who may not happen to be in Government.

As I have said, it is the role of the Government, first and foremost, to protect the interests of 30 million Kenyans but not the parochial interests of a particular party or a few Kenyans.

(Applause)

Mr. Deputy Speaker, Sir, as it has been stated severally in and outside this House, that the total review of our Constitution is a matter of major concern to the people of Kenya. The review of our Constitution will take into account not just the anti-corruption legislation that the hon. Minister proposes to put through the Bill, as moved before this House, but an overhaul of our Constitution. It will also look into issues that will strengthen democracy in our land. It will look into issues that will deal generally with human rights, that will deal with strengthening of institutions of this land and all of which are necessary for a thriving economy.

I am therefore not opposing this Bill because some would say, that we wish to support corruption. No! I am opposing this Bill because I believe that piecemeal legislation put forward by the Government is not serving the total interests of the people of this land, but rather serving the specific needs of a Government at a specific point in time. That may be politics, but I can assure you it is not in the interests of 30 million Kenyans whom we have been put here to serve.

(Applause)

Mr. Deputy Speaker, Sir, there is something which I am finding quite difficult to understand. I am finding it difficult to understand because the NARC Administration promised us during its election campaigns

that it was actually KANU that was obstructing the constitutional process. They did, indeed, promise us - some have already turned back on that pledge - that they will give us a new Constitution within 100 days. I wonder why then has that become a secondary agenda when it was definitely the primary agenda to this House?

(Applause)

The Assistant Minister for Planning and National Development (Mr. Kombo): On a point of order, Mr. Deputy Speaker, Sir. Is it in order of the Leader of the Official Opposition to mislead the House that the NARC Government is renegeing on its [**The Assistant Minister for Planning and National Development**] promises. when we were the first to sign a document with the Ufungamano Initiative that we shall provide the Constitution in--- As we said earlier on, we have not renegeed on that one.

Hon. Members: 100 days!

Mr. Kenyatta: Mr. Deputy Speaker, Sir, I am not misleading the House because it is well known that, that was a pledge that was given for 100 days. Hence---

Mr. N. Nyagah: On a point of order, Mr. Deputy Speaker, Sir. I want to declare my interest as a member of the House Business Committee, to which the Leader of the Official Opposition is also a member. The Leader of the Official Opposition is aware that as soon as the Committee dealing with the constitutional review meets, it will tell the House Business Committee, and this House at large, when the constitutional review process is going to begin. We are waiting for that Committee to guide this House on that effect.

Mr. Deputy Speaker: Mr. N. Nyagah, that was information. It was not a point of order.

Mr. Kenyatta: I thank the Chief Whip of the Government for his point of information and, indeed, that is the case. But my position still holds, because given the fact that it was a priority agenda, there should have been no other order of business before this House, before we dealt and dispensed with that matter.

Mr. Deputy Speaker, Sir, we, on the Opposition Benches, have reason to doubt as to whether truly we are, as a House, committed to this particular process. When the Minister for Justice and Constitutional Affairs was moving this Bill, he made reference to the fact that it was KANU, for ten years, that dragged its feet on the constitutional review process. The honourable Minister is not in the House, but maybe, I could send his Assistant Minister or my good friend, the Chief Whip, to inform him of a few pertinent facts. The Attorney-General is here, although we were told that he is out of the country. So, he is also a good messenger.

(Laughter)

The Attorney-General (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to insinuate that whatever information he received earlier was wrong when, in fact, the Attorney-General of the Republic of Kenya arrived from Paris at midday today?

Mr. Kenyatta: The hon. Attorney-General is welcome back into the country and we hope by next Thursday, he shall have resolved with the Minister for Justice and Constitutional Affairs as to who is exactly responsible for what, and who is the boss of who.

(Applause)

The Attorney-General (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to say that we should have resolved with the Minister for Justice and Constitutional Affairs when the matter is very clear? Question No.008, in so far as it touched on criminal matters, is an exclusive position of the Attorney-General under the current Constitution and in the exercise of my powers, I am not subject to any authority or persons. Furthermore, the Assistant Minister explained to this House the issue of collective responsibility. I was out of the country and he was answering the Question on my behalf. In fact, it used to happen when the KANU Government was in power because at that time, Mr. Julius Sunkuli used to answer Questions on my behalf in my absence.

Mr. Deputy Speaker: Order! Order, Mr. Attorney-General! You stood on a point of order, but certainly, you have gone on and on addressing this House. I am sorry you are out of order.

Proceed, Mr. Kenyatta!

Mr. Kenyatta: Thank you very much, Mr. Deputy Speaker, Sir. I think, as I said before, and I stand by the position, he should go and clarify either with his boss or define who is who.

Mr. Deputy Speaker, Sir, as I was saying, there is a worry on our side of the House as to the commitment

to the constitutional review process. When the Minister for Justice and Constitutional Affairs was moving the Bill, he made it clear from his standpoint that failure to implement a new Constitution was a direct result of the KANU administration dragging its feet on this particular issue. As I was saying, I would like to raise some pertinent issues which are of concern to us. To begin with, we all know that the delay in the Constitution was a result of a long-drawn tension between the Ufungamano Initiative on the one side, and the Parliamentary Select Committee on the another.

As we sit here today, the majority of Members who were either in Ufungamano Initiative or on the Parliamentary Select Committee are sitting on the Government side of this House. We have reason to worry as to whether the Government is actually committed, or whether those same individuals will continue to drag their feet on this most pressing issue for another ten years. They may not be KANU by name, but they are definitely KANU in more ways than they might know.

(Laughter)

Hon. Members: Toboa! Toboa!

Mr. Kenyatta: Mr. Deputy Speaker, Sir---

Mr. Muchiri: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Leader of the Official Opposition to mislead this House when he knows that it is the previous administration that scuttled the National Constitutional Conference (NCC) at Bomas of Kenya?

Dr. Galgallo: On a point of information, Mr. Deputy Speaker, Sir. The Leader of the Official Opposition is saying that the men and women who rocked that process are now firmly on the other side of the House. They are the ones who had caused the havoc. That is why we are saying it is just the cover that is not KANU; deep inside, they are KANU!

(Laughter)

Mr. Kenyatta: Thank you very much, Mr. Deputy Speaker, Sir. It is an admission that individuals misbehaved.

Mr. Kagwe: On a point of order, Mr. Deputy Speaker, Sir. Could the hon. Member tell the House who the KANU Members on this side who rocked the constitutional process are? Some of us were not here and we were not in the process.

Mr. Kenyatta: Mr. Deputy Speaker, Sir, I fully support the position taken by Mr. Kagwe because as he says, some of them were not in the House, or party to that. In the same way, the majority of those who are sitting behind me were there. The ones who were there are now sitting with Mr. Kagwe on the Government Benches. It is them that I am referring to.

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Leader of the Official Opposition to continue ignoring that once Saul has become Paul, and he has been converted, it is wrong to continue calling him Saul because he is a new person?

(Laughter)

Mr. Kenyatta: Mr. Deputy Speaker, Sir, it will take a while for people to believe that actually Saul had been converted. It will take us a lifetime to believe that those who were responsible have actually reformed.

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. I think the Leader of the Official Opposition is right, in that, that Saul who said that he had converted to Paul is still Saul because he has not yet completed the Constitution Review Process.

Mr. Deputy Speaker: Order, Mr. Angwenyi! With all seriousness, would you consider what you have said as a point of order?

Mr. Waithaka: On a point of order, Mr. Deputy Speaker, Sir. The Leader of the Official Opposition has actually admitted that as a matter of fact, there was that group of people who disrupted the Constitution Review Process and that they are known. They were in KANU then. They should not escape the wrath of Kenyans if they know this fact. Would I be in order to ask the Leader of the Official Opposition to name them?

Mr. Deputy Speaker: Order, hon. Members! It is not just a matter of standing and advancing your argument and calling it a point of order. Mr. Waithaka, that was not a point of order. Will you sit down? Mr. Kenyatta will continue without interruption.

Mr. Kenyatta: Mr. Deputy Speaker, Sir, as I have said, we are concerned because if we are to speak in honesty, we must acknowledge the faults of the previous administration. As we acknowledge those faults, we are duty-bound as hon. Members of Parliament in the Opposition Benches to ensure that this NARC Government does not become a bigger monster than what they are claiming KANU was.

An hon. Member: We can never be monsters!

Mr. Kenyatta: You are heading in that direction, my friend! With this in mind---

Mr. Deputy Speaker: Order, Mr. Kenyatta! Address the Chair!

Mr. Kenyatta: Mr. Deputy Speaker, Sir, I would like to apologise.

With that in mind, as I said, I will not only oppose this Bill, but actually, out of principle, call upon the Minister to actually shelve this Bill and proceed directly to the Constitution Review Process. I would also like to request him to ensure that this country has a new Constitution before we debate the first Budget of the NARC administration.

Mr. Deputy Speaker, Sir, we should have faith in our institutions and not individuals. Institutions are what will protect and preserve this nation, and not individuals or administrations. As I have said, individuals will always come and go, but if we are truly intent on serving the interests of Kenyans, we should join together as 222 hon. Members of Parliament and put the interests of Kenyans first, and debate our Constitution comprehensively and thoroughly. We should ensure that as we move forward, we will not have constant questions as to who is in charge of what, who is responsible for what and who has which right and who does not, but rather a Constitution that will defend the strong in as much as it defends the weak. As I have said, within the confines of our current Constitution, we beg the question as to whether that will, indeed, be possible.

Mr. Deputy Speaker, Sir, it is by so saying that we believe if we are, indeed, committed, there is no reason why we cannot move forward. I recall, in the Eighth Parliament, hon. Members sought to entrench the Constitution Review Process into our Constitution, in order to ensure that it is devoid of executive interference. Today, some of those who were most vocal on that particular issue, and are sitting on the Government side are the ones who are giving us the quotes end quotes "agenda" of the Constitution Review Commission. That Commission was put in place as a direct result of an Act of Parliament.

Mr. Deputy Speaker, Sir, through you, I would like to ask when this House ceded the responsibility of that Commission to the Minister for Justice and Constitutional Affairs. That is the Commission given the mandate by this House. It is a result of this that we wonder whether the Government is serious. The only way we can establish that sincerity is to move, as a matter of urgency, to that particular process and to the satisfaction of all hon. Members and the over 30 million Kenyans.

Mr. Deputy Speaker, Sir, choice is based on popularity, but governance is based on respect for rule of law as stipulated and stated by the Constitution. If within the confines of the current Constitution, we find ourselves unable to respect the rule of law, then we have no choice, once again but to ask for an immediate overhaul of the Constitution as a priority to this land. Despite any administration, now and in the future, we shall never again, be at the mercy or dictates of any individual. It is only in that environment that we can truly have an economy that thrives; An economy that will outlive each and everyone of us; an economy that is here for posterity. It is only then that we can ever hope to become like those economies of the Western World, where it makes no difference except on a point of view of policy as to which administration is in power or not. The Constitution protects all and sundry, and their rights given clearly.

Mr. Deputy Speaker, Sir, I do not wish to speak further on this particular issue. I think my position has been made clear and my colleagues on the Opposition Benches will even go further to explain why, from even a technical point of view, we should reject this Bill. That said and done, and in the spirit that the hon. Minister and Ministers of Government are saying that we should approach this issue from a non-partisan or a bipartisan point of view; and we should join hands together, I call upon them to join hands not just with me, but all Kenyans, in providing that Constitution that will ensure that all our rights are protected equally.

With those few remarks, I beg to oppose.

The Assistant Minister for Environment, Natural Resources and Wildlife (Prof. Maathai): Thank you very much, Mr. Deputy Speaker, Sir. I want to support this Bill. This country has come a long way in at least acknowledging how it has been deeply and negatively affected by corruption. In 1995, I prepared a statement with the intention of using it to address the women's conference in Beijing, China. I called the paper "bottlenecks of development in Africa". Amongst the bottlenecks was corruption. I remember that when I first wrote that statement, I was asked to remove the word "corruption because it would be very difficult to have that paper read by a delegate from Kenya even though I was not going there as a member of the Kenyan delegation; I was going as a member of the civil society. I had to indicate on top of the paper that, that statement was presented at the United

Nations Conference on Women's Decade in Beijing. Therefore, I am extremely delighted that today, I can stand here in Parliament and listen to hon. Members advocating for us to establish an organ that will deal with this cancer in our society.

I know that some people think that we are doing this for the donors. In fact, as Kenyans we ought to be ashamed of ourselves for running a country that has been so impacted negatively by corruption. I do not think there is anybody who has not been affected negatively by this ill in our society. It is a shame that we have been running our country so badly and at the same time we were busy going all over the world begging for aid. In the year 2000, we participated in a global campaign that was trying to have the debts of our country cancelled by the same donors to whom we go for aid. So often, I would be confronted by the statement that we cannot have our debts cancelled because we are very corrupt. I was made to understand that although it was the poor people from this country who were suffering from corruption, they would not benefit from the cancellation of our debts because our leaders are very corrupt.

The aim of putting this organ in place is not to please any outsiders, but to put in place an organ of good governance. We ought to be proud that we can manage a country that would advocate for transparency, accountability and that would have citizens who are proud not to be known as corrupt. In the last few weeks we have read in the Press of many cases of alleged corruption. It has not been something to be proud of when you see people at the top being brought down because of corruption.

Mr. Deputy Speaker, Sir, corruption has many faces in this country. It is very important for us as citizens to look at ourselves no matter where we are, and see to what extent we contribute towards corruption. We know for example that there are many people who are greedy, liars and thieves in this country. There are people who are engaged in selling alcoholic brews that are destroying our youth, especially our men. They are making the lives of women miserable. These people are stealing because they are misrepresenting the drinks that they sell. This is a form of corruption. For those who produce and those who approve such drinks, there is no difference between stealing from such families and robbing a bank.

I am also glad that *Harambees* were banned because they have been used in this country to aid in corruption. They steal from people, for example, coffee and dairy farmers. Now we can see what was happening in the parastatals where people in leadership would use their office to parade as leaders contributing huge sums of money to the poor and making them believe that they were generous when, in fact, they were corrupt leaders. They were just simply thieves. It is very important that we, as a nation, develop new ethics in our country. I would really like to even see ethics taught in schools so that we can develop a very serious culture against corruption in our country.

Mr. Deputy Speaker, Sir, as you know, my main preoccupation in the last 25 years has been to try to protect forests from corrupt leadership. These are the people who would literally excise sections of the forest and privately pretend to own them when, in fact, they stole them from the public.

There are many cases of corruption; sometimes I watch Kenyans on queues and I feel bad to see some of them jumping it. Even at the airport, I see very important people jumping queues so that they can have their passports stamped before others. These are cases of corruption.

For us to fight corruption we have to be extremely sensitive to the kind of culture that we develop. We are very intolerant and insensitive to the damage done to other people when we engage in corruption.

Mr. Deputy Speaker, Sir, I am sure you know of people who have built dams around rivers to stop water from flowing downstream to be used by other people. This is a form of corruption. There is no difference between such a person and a person who pollutes the air that we breathe and the waters from which we fish.

Mr. Deputy Speaker, Sir, I want to emphasise that as we introduce this concept of good ethics into our governance, we should think of how we can entrench it in our education system and in every aspect of our culture so that we will stop seeing corruption only when it is practised by the top leadership, but also recognise it when it is practised in our everyday life. When we do that we shall really begin to change our culture and have a very responsible society. Whether we are leaders in church, Parliament, parastatals or cattle dips, we have to be responsible to the people that we lead.

This Bill is very timely and important to our country. It is not only important to the present, but to the future generations. I would urge all hon. Members to support it.

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

The Member for Bomet (Mr. Salat): Mr. Speaker, Sir, thank you very much for giving me this opportunity to make my maiden speech. My names are Mr. Nick Salat, Member for Bomet.

First of all, I would like to thank the good Lord for making it possible for me to be here today. I would like also to thank the people of Bomet for electing me. I floored a giant in the last general election. There is still another giant ahead of me and we are working on ways of flooring him.

For the last ten years or so, Bomet Constituency has suffered autocratic leadership. Thank God, a new dawn has emerged, and the constituency is going to enjoy visionary leadership from me.

(Laughter)

Mr. Deputy Speaker, Sir, I must applaud the Kenya African National Union (KANU) for not replacing democratically-nominated parliamentary aspirants with political rejects during its nomination exercise, unlike other political parties which chose to do otherwise. I would also like to congratulate you and---

(Loud consultations)

This is my maiden speech. So, please, remain silent.

Mr. Deputy Speaker, Sir, I would like to congratulate you and all other hon. Members who were elected to this House.

Mr. Deputy Speaker: Mr. Salat, I am sorry for interrupting you. Be reminded that it is the responsibility of the Chair to tell hon. Members to be orderly, and not yours. Please, do not do my job.

The Member for Bomet (Mr. Salat): Mr. Deputy Speaker, Sir, I thank you for your guidance. Forgive me for making such an error.

Mr. Deputy Speaker: As you contribute to this debate, remember to be relevant to the Bill before the House.

The Member for Bomet (Mr. Salat): Mr. Deputy Speaker, Sir, I am very pleased to have the opportunity to contribute to this Bill, which seeks to address the issue of corruption. When we talk about corruption in this country, we associate the vice with certain ethnic communities. So, we should address the corruption issue without pointing fingers at communities.

Corruption should be fought by both sides of the House because it is the sole monster that has brought this country's economy to its knees. The Bill before us does not address the issues relating to corruption, but rather is an attempt by the Government to please certain foreign elements. I do not support this Bill because even after its passage, in accordance with the current Constitution, the President, who is our parliamentary colleague, will still remain above the law. Really, that is an issue that this House should address, so that nobody will be above the law. When it comes to corruption, nobody is an angel.

Mr. Deputy Speaker, Sir, allow me to end my contribution on this Bill by speaking on the issue of education in Bomet Constituency.

Mr. Deputy Speaker: Order! Order, Mr. Salat!

The Member for Bomet (Mr. Salat): But this is my maiden speech!

Mr. Deputy Speaker: Order! Order! That does not give you a leeway to breach our Standing Orders. So, stick to the Bill before the House.

The Member for Bomet (Mr. Salat): Mr. Deputy Speaker, Sir, I will oblige.

As leaders, we should not address the issue of corruption piecemeal through this Bill.

What we require is a total overhaul of the whole Constitution. The Bill that we have today and the ones that are coming do not address the core of the problem. The core of the problem is that corruption, as I put it, does not have a face. You find that when we talk about corruption, we have a time limit. When we are talking about corruption, we should not just look at a certain era. We should look beyond a certain time period. We should reverse back and talk about corruption from 1963. To address corruption, we should not say what the Minister said, as if corruption began in 1978, when the late Mzee Kenyatta died and former President Moi took over. We want to address the issue of corruption right from 1963. Better yet, if that is not enough, we would like to go back to 1900s, in order to uproot the monster called corruption.

Mr. Deputy Speaker, Sir, as has been said, most of the persons who perpetuated corruption are neither here nor there. We are going to say that those who were in the last Government but crossed over are still party to corruption. We know that they entrenched corruption. So, what we want is that when it comes to corruption, no person will remain like an island. Everybody shall account for their actions.

With regard to the constitutional review process, when it comes to the issue of corruption, we want a comprehensive Constitution that deals with all factors that contribute to corruption. Corruption has to be fought by both sides of the House because the Kenya we want is not the Kenya of five years ago. We want a Kenya that will last longer than any other Member of this House. What we are asking is that when we address the issue of corruption, we are building a future for our children; we are building a future that will remain after each and

everyone of us is gone. That future will not be taken by a single Bill. It is a future that can only be guaranteed when we have a comprehensive Constitution. That is because to some people, the new Constitution is very light and, to some people, it is a passing document. But to most of us, on both sides of the House, we should oppose the Bill before us because we want to build a future for our children for the next 30 years down the line.

An hon. Member: Your time is up!

The Member for Bomet (Mr. Salat): I still have got some time! It feels good to be standing here! I am going to make sure that I use all my time! The Bill before us--- I must say that I had a lot to talk about Bomet, but you have restricted me to speak about the Bill. But I must abide by the rules of the House.

Mr. Deputy Speaker: Talk about Bomet in relation to the Bill!

The Member for Bomet (Mr. Salat): Mr. Deputy Speaker, Sir, the people of Bomet Constituency are not corrupt. Most hon. Members of the National Rainbow Coalition (NARC) Government are corrupt. I hope I will get some time in future to talk about the people of Bomet Constituency, the people who voted for me.

With those few remarks, I beg to oppose the Bill.

The Member for Kiharu (Mr. Kembi): Mr. Deputy Speaker, Sir, this is my maiden speech, and so I should start by introducing myself. My names are Mr. Kembi Gitura, the Member of Parliament for Kiharu Constituency, Murang'a District.

I do not think that one needs to repeat what has been said. I have listened to the debate carefully, and I think the issues have now been settled. It appears very clearly to me that the issue now is whether the Bill should be supported or deferred. We are talking about corruption here. All of us know - it has been repeatedly stated - that corruption is extremely endemic in this country. It has gone on for many years now, and it is as if we have been told that we can afford to wait a few more years, engage in corruption and then sort it out once and for all. My view is that we do not have time for that.

I have listened to the very eloquent address by the Leader of the Official opposition. I did not hear him challenge the Bill in the least. He said that the Bill is fine, but he does not want to have piecemeal legislation. People talk about corruption on both sides of the House, but nobody has said that KANU as a party is corrupt, or NARC as a party is corrupt. It is individuals who are corrupt, and it is those individuals who must be dealt with. Time is running out. It is not right to oppose this Bill for the sake of opposing it. It is not right that KANU, or the Leader of the Official Opposition, should give a conditionality, if I may call it so, that we must deal with the constitutional review first so that we can include this Bill in the new Constitution. A stitch in time saves nine.

Mr. Deputy Speaker, Sir, our house is falling. We can only deal with this problem if we tackle the issue of corruption. It is not right that we should be given conditions on how to go about it. I am an advocate by profession, and I will be right in stating that corruption has been legitimised by the law courts. It is not only the High Court that has legitimised corruption. It starts from the very lowest courts, the tribunals, the subordinate courts, all the way to the High Court and to the Court of Appeal. Until that issue is dealt with, I do not believe that we will end corruption in this country. But how do we deal with corruption? Will we wait until we have completed the constitutional review process to ask the corrupt judges to vacate their benches in the High Court and in the other courts? If we do that, then we will have a continuity that we will not be able to sort out for a very long time.

There are very many cases that one can cite. I can talk about corruption in Kiharu Constituency. Maybe, I think about small cases, but corruption starts from the lowest level. It starts with councillors, the assistant chiefs, the district officers and the district commissioners. We are trying to fight against corruption. We must come out strongly and ask why anybody would want to oppose a Bill like this one at this point in time. We must come out strongly and ask why we are being given conditions by the Official Opposition. Why is the Official Opposition saying that the Bill is good, but it must wait?

I did not have an opportunity to contribute to the debate on the Presidential Address. In Kiharu Constituency, people are dying in their hundreds everyday. Every morning you wake up, you receive a telephone call that so-and-so has died. They are dying because Murang'a District Hospital has no drugs any more. Patients are not being taken care of. There are no drugs in the hospital because members of the hospital's board are mismanaging the funds. Sick people cannot be transported to the hospital because there are no roads. People are dying on a daily basis. There are also no dispensaries in the area. The biggest killer in our country, including Kiharu Constituency, as far as I am concerned, is corruption. This is because people are dying like flies because of the illicit brews which we discussed here the other day. What I find most difficult is that, that issue was discussed here and the Minister for Health gave us an assurance that the brew would be banned, but it is still being sold in our rural areas. That is part of corruption. That is what we call "public person" in the Bill which we are debating.

Mr. Deputy Speaker, Sir, in the law courts, we know very well how the Office of the Attorney-General has abused Section 26(3) of the Constitution. We know that cases have been terminated because there are interests either of political persons or senior persons in the Government. When a magistrate is about to conclude a case, and it is quite clear that an offence has been committed, it is terminated by the Office of the Attorney-General under Section 26(3) of the Constitution, which we propose to amend. It is this abuse of power that constitutes corruption. At least, I saw in the newspapers about a magistrate who found it very difficult to have a case withdrawn under *nolle prosequi* because she said that the person who was accused had tried to bribe her, but she refused to take the bribe. Somebody else must have been given a bribe when the *nolle prosequi* was subsequently entered into and the case terminated. It is these kind of things which cannot wait any more.

We do not know when the writing of the new Constitution will be completed. There is a Government in place, and we are Back-benchers. We cannot force the Government to ensure that the new Constitution is in place. There is goodwill because every Kenyan wants the new Constitution in place as soon as possible so that we can have that good country which we talk about all the time for the 30 million Kenyans. When will the new Constitution be in place? What will we do in the meantime? Will we wait until there is total collapse of the system so that we can say that we are waiting for something in the future, which we do not know when it will be completed? We have been told that the Constitution could be ready by July this year, but I am saying that July could be too far. July might be too far for us, Kenyans. We might not wait until July, August or December. I am certain it will not be the ten years that the Leader of Official Opposition Party has spoken about. But we are saying that this country cannot afford to wait any more and see our people dying because of endemic corruption in our country.

The Bill before us transcends party lines and it is for the benefit of every single Kenyan. I do not think one can talk about his or her small empires, be it in NARC, KANU or FORD(K). This is a matter of national importance and we cannot procrastinate any more; we cannot give conditionalities or say that we shall wait until "a,b,c,d" is done. Those people giving us conditionalities are as bad as the donors, who have given us conditions to do "a,b,c,d" before they can resume aid to our country. We have a country to manage. If it means passing this Bill immediately, let it not be seen as a piecemeal legislation, but let it be seen as a legislation that works for the good of all Kenyans. The new Constitution will be written. We are the people of this country. I am in NARC, and I am happy and proud to be in that party. That does not make a KANU person any worse in my eyes, if he is not corrupt!

(Applause)

I am sure that not everybody in KANU, FORD(K) or FORD(P) is corrupt. I would like to reiterate that it is individuals who are corrupt and not the parties or institutions. These individuals must be curbed at the nib. Even in NARC, if there are found to be people who are corrupt, they should be prosecuted. This Bill is not going to protect anybody; this Bill will not look at the party and say that since NARC is the governing party, therefore, somebody in this party will not be subject to the rigours of this Act.

Mr. Deputy Speaker, Sir, let people stand up and tell us what is wrong with the Bill as proposed; how is it going to affect us negatively and how is it going to make our country ungovernable if it is passed. Let people come up with these issues because it talks about corruption. We know what corruption is. We do not have to identify corruption since all of us know what it is. The issues are: Is the Bill good or bad for our country? Is it good for the 30 million Kenyans who are looking upon us to legislate in order to make their lives better? If corruption is done away with, is Murang'a District Hospital going to have medicine? Are we going to have more doctors in Murang'a District Hospital? Is the mortuary going to be operational? Is the theatre finally going to have electricity, surgery knives and whatever they use in theatres? Are those things going to happen? Those, in my view, are the questions which we should be asking ourselves. The question is not: "When is the NARC Government going to bring back the Constitution on track, so that it is legislated?"

Mr. Deputy Speaker, Sir, the Select Committee for the Constitution does not again know party lines. It is on both sides of the divide. So, nobody can stand here and blame the other and say: "You are spoiling the constitutional review process". All of us want the Constitution to be reviewed. All of us want to have a new Constitution. However, my parting word is this: We do not know whether that will be tomorrow or the day after. All I know is that we need this Bill now because we must have a country that is governable. We must have everybody, be they in NARC, the Official Opposition or in the other parties. If they are corrupt or have been corrupt, let somebody be able to catch up with them. I do not want to hear the Minister for Local Government telling us everyday that there should be no houses on road reserves and that they will be demolished. Let him come out with an edict and draw lines and say: "This house is on a road reserve and we are going to demolish it,

whether it belongs to Kembi Gitura or Maitha himself." Let us not have ultimatums being given to people. If a mistake has been done and if the way forward is to demolish a house on a road reserve, let it be demolished, but let there be legislation. If property illegally acquired has to be repossessed, let it be done within the law. That is all I can say.

(Applause)

Mr. Deputy Speaker, Sir, we must have a system that works. All I am begging hon. Members is this: There is a country to be run. There are issues to be dealt with. The major one is corruption, which cannot wait for tomorrow and it has nothing to do with which party one belongs to. It is something for all of us. It is urgent and must be dealt with now.

Thank you very much, Mr. Deputy Speaker, Sir.

Mr. Twaha: Thank you, Mr. Deputy Speaker, Sir. A lot has been said about this Bill on corruption and I would like to add my views on it. In Lamu, we have two communities which are comprised of hunters and gatherers. One harvests timber and the other fish. Through corruption, they have been stopped by some people from carrying out those activities. Their way of life has been corrupted. I am talking about those NGOs which are receiving bribes from foreign countries, and some of the people involved are sitting in this House, to set the agenda for economic and social development of this country.

Mr. Khamasi: On a point of order, Mr. Deputy Speaker, Sir. The hon. Member is saying that some members of the NGOs who have corrupted the people in his constituency are in this House. Could I be in order to ask him to substantiate that statement?

Mr. Deputy Speaker: Yes, certainly, you are in order. Mr. Twaha, can you substantiate that statement?

Mr. Twaha: Mr. Deputy Speaker, Sir, there are a lot of hon. Members in this House and they know themselves. They operate NGOs, some of them call themselves "environmentalists", others "national convenors"; it does not matter. If they are receiving thousands and thousands of dollars from a foreign country to pursue certain agendas in an important institution as this House, that is corruption.

Mr. Deputy Speaker: Are you satisfied with that, Mr. Khamasi?

Mr. Khamasi: Mr. Deputy Speaker, Sir, is the Chair satisfied that the hon. Member has substantiated his statement?

Mr. Deputy Speaker: Mr. Twaha, I was actually going to ask you whether you are satisfied that if what you are telling us is substantiation? There is only one way to it; you made a statement to this august House. If you are not able to say who these people you are referring to are, you just withdraw and proceed!

Mr. Twaha: Thank you, Mr. Deputy Speaker, Sir. I would rather not mention names, but if you check the HANSARD today, you will find that there are hon. Members who have given themselves credit for protecting forests, and we know the organisations that they run, which are foreign-funded.

Mr. Deputy Speaker: Mr. Twaha, first of all, you said there are NGOs in this House who are corrupt. In the first place, I do not think this House is comprised of NGOs. So, if you are unable to substantiate or make sense in what you are saying, withdraw so that you can continue. But you cannot just continue without, first of all, clearing that area.

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

Mr. Deputy Speaker: Order, Mr. Angwenyi! I have already communicated the Chair's version to Mr. Twaha.

Mr. Twaha: Mr. Deputy Speaker, Sir, we have African, Christian, and Muslim customs. We know that all these three customs condemn sodomy. But there are people in this House---

Mr. Deputy Speaker: Order! Order!

(Laughter)

Mr. Twaha, before you come to put yourself into more trouble about what you are about to say, could you now withdraw the remarks about NGOs in this House being corrupt? Address yourself to only that issue and withdraw.

Mr. Twaha: Mr. Deputy Speaker, Sir, I withdraw the remarks. What I am trying to do with my speech is to introduce a new dimension into the way we view corruption. Corruption is not just a practice of a black man bribing another black man. The black man has the best brains in this country. They are wasting their energy.

Instead of engaging in productive activities, they are just calling themselves civil societies. They receive a lot of money for doing nothing, and starting agendas which are foreign! I can speak for hours about this issue.

Mr. Deputy Speaker, Sir, farmers in Lamu---

*(Prof. Anyang'-Nyong'o stood up
in his place)*

Mr. Twaha: Mr. Deputy Speaker, Sir, this is my maiden speech!

Mr. Deputy Speaker: Order! It is not your maiden speech, Mr. Twaha!

The Minister for Planning and National Development (Prof. Anyang'-Nyong'o): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Twaha, after he has withdrawn the statement that he made, to come around in a circumlocuting manner, to make the same statement again? Could it be in order for me to inform Mr. Twaha that the Bill of stigmatising the NGOs ended with the Nyayo era? **Mr. Deputy Speaker:** Mr. Twaha, make your point.

Mr. Twaha: Mr. Deputy Speaker, Sir, my point is that I have farmers in Lamu who are suffering because of the free market policies. Free market policies were part of the Structural Adjustment Programmes (SAPs). The SAPs corrupted the way the Kenyan economy was being run, and it was done through inducements. We were told that we would be given foreign aid, restructure the economy to expose our farmers to the vagaries of the free market, whereas America itself, the architect of the "New World Order", gave subsidies to their farmers.

Mr. Deputy Speaker, Sir, we are here today hurried to pass this Bill in an effort to secure, at least, a little bit of aid. That is also corruption because we are being pushed to do something because we need money as a nation.

(Applause)

Mr. Deputy Speaker, Sir, this country is suffering from poverty. Poverty will not be defeated unless we have a strong stable shilling. Sometime in 1991, the World Bank advised the Kenyan Government to trade its coffee and tea in US dollars. When the tea declined, they eliminated demand for the Kenya shilling, and increased demand for the US dollar. When you look at the value of the Kenyan shilling it is determined, like every other commodity, by the forces of supply and demand.

Mr. Deputy Speaker, Sir, a lot has been said in this House about Goldenberg and the printing of money for the 1992 General Elections. That was the supply side of the shilling. What about the demand side, which is going on even today? There is no reason for anybody to hold the shilling, except for a speculative motive of buying Kenya coffee and tea. But when you conduct auctions in the US dollar, you are eliminating demand. That is why our currency declined in strength in the last ten years. That was corruption.

Mr. Deputy Speaker, Sir, when you are told that you would be given US\$50 million, you sell your currency; and we went from Kshs20 to Kshs80 today, and we are still suffering from poverty.

Mr. Deputy Speaker, Sir, I am sorry, some people are not accustomed to hearing new ideas, and some people resist new ideas. But I will talk about it, if I will be given time to talk about this subject. I stand by my earlier statement, that if we are going to have an anti-corruption authority, we should very quickly make it-- Some hon. Members in this House are already shaken and are panicking because they have been funded by foreigners using the conduit of NGOs.

Mr. Khamasi: On a point of order, Mr. Deputy Speaker, Sir. Hon. Twaha is making very serious allegations here, and he should not get away with it. He is saying that some hon. Members here have been funded by foreign masters! Who are these hon. Members? Could he explain?

Mr. Twaha: Yes, I will tell you.

I talked about the people who are hunters and gatherers in my society---

ADJOURNMENT

Mr. Deputy Speaker: Order! Order, Mr. Twaha! You will have a balance of 21 minutes to contribute to the Bill tomorrow. If I were you, I would read the Bill thoroughly well before tomorrow.

Hon. Members, it is now time for the interruption of the Business of the House. The House, therefore, stands adjourned until tomorrow, Wednesday, 12th March, 2003, at 9.00 a.m.

The House rose at 6.30 p.m.

