

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 2nd April, 2003

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.175

POLICE POST FOR RANGWE DIVISION

Eng. Okundi asked the Minister of State, Office of the President:-

(a) whether he is aware that because of lack of a police station in Rangwe Divisional Headquarters at Rangwe, there have been insecurity occurrences in most parts of Rangwe Constituency, and in particular Gem and Kagan locations; and,

(b) what urgent steps he is taking to build a police post/station at Rangwe Divisional Headquarters to provide security to the area residents.

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

(a) I am not aware of any alarming insecurity occurrences in Rangwe Division. The crime rate in Rangwe is, indeed, lower than in other neighbouring divisions. Kagan and Gem locations are 10 kilometres apart and both of them are served by Ngegu Police Post, which is within a radius of 15 kilometres.

(b) The security situation in Rangwe Division is stable. However, a proposal was made by the Homa Bay District Security Committee to establish a police post at Rangwe Divisional Headquarters. The proposal is in the district development plan and will be implemented as soon as the Government has funds to do so.

Eng. Okundi: Mr. Deputy Speaker, Sir, I am surprised to hear the Assistant Minister say that he is not aware of the insecurity situation in Rangwe Constituency. There has been a lot of violence in this constituency. As a matter of fact, before the 1997 general election, one of the most popular parliamentary candidates in the area was murdered near the divisional

headquarters and, to date, the killer has never been known. These insecurity occurrences are taking place because of lack of a security establishment at the divisional headquarters.

Mr. Deputy Speaker: Order, Eng. Okundi! Please ask your question!

Eng. Okundi: Mr. Deputy Speaker, Sir, in view of the situation on the ground, when will a police station be established at Rangwe Divisional Headquarters?

Mr. Tarus: Mr. Deputy Speaker, Sir, I indicated that it has been proposed by the District Security Committee that it is actually necessary to establish a police station at Rangwe Divisional Headquarters. Since the proposal is in the district development plan, it will be implemented when funds will be available. The main problem is lack of funds.

I have noted the sentiments expressed by the hon. Member, and in the Ministry's development programmes, we shall consider Rangwe as one of the priority areas.

Mr. Sungu: Mr. Deputy Speaker, Sir, maybe the Assistant Minister is not aware of the situation on the ground. He has said that the police station at Tumabei is only 10 kilometres away from the divisional headquarters, but the road is so bad that it would take policemen hours to reach a scene of crime.

Could the Assistant Minister, at least, establish a police post in that area? This is a violence-prone area. There is a lot of thuggery and this is evident from what Eng. Okundi has said. Could he establish a police post in the area immediately?

Mr. Tarus: Mr. Deputy Speaker, Sir, what we can do, as a short-term measure, is to send security

personnel to the area as we look into the possibilities of establishing a fully-fledged police post.

Mr. Deputy Speaker: Mr. Assistant Minister, you have said that you will send security personnel to the area. In what form? Will you send them in the form of a patrol team or by establishing a police post? Could you clarify that issue?

Mr. Tarus: Mr. Deputy Speaker, Sir, security personnel will be sent to the area in the form of patrol teams.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, I am surprised that the Assistant Minister has said that the Government will establish a police post in Rangwe when funds will be available. That is an old cliché. Be that as it may, we now have a Medium-Term Expenditure Framework budgetary process, under which the Government plans its expenditure for three years. Is the Assistant Minister saying that the establishment of the said police post is not included in his current MTEF?

Mr. Tarus: Mr. Deputy Speaker, Sir, I said that since the proposal to establish a police post at Rangwe Divisional Headquarters has been made through the district development plan, we will consider Rangwe as a priority area. We need to confirm the situation from the officers on the ground before we address it.

Mr. Deputy Speaker: Eng. Okundi, do you have a last question?

Eng. Okundi: Mr. Deputy Speaker, Sir, let Mr. Wanjala ask his question.

Mr. Deputy Speaker: Then ask the last question, Mr. Wanjala!

Mr. Wanjala: Mr. Deputy Speaker, Sir, the Questioner has asked about Rangwe Divisional Headquarters. A division has locations and every location has a chief, who has Administration Policemen. The DO also has Administration Police Officers. Does the Assistant Minister mean that there are no Administration Police Officers at both the locational and divisional levels?

Mr. Tarus: Mr. Deputy Speaker, Sir, that is the reason why I said that, as a short-term measure, we shall send security personnel to patrol the area. When I say this, I have in mind the Administration Policemen who are usually attached to the locational headquarters.

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. The Question was: Does the Ministry have Administration Police Officers---

Mr. Deputy Speaker: Mr. Angwenyi, we heard the Question but you stood on a point of order! What is your point of order?

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that he will send security personnel to patrol the area when, in fact, he should have Administration Police Officers in every location and division?

Mr. Tarus: Mr. Deputy Speaker, Sir, we have to confirm if, indeed, every chief has Administration Police Officers. That is the reason why I said that if they are not there, the short-term solution is to provide them.

Eng. Okundi: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: No, you forfeited your chance, Eng. Okundi!

Question No. 163

TREASURY CIRCULARS ON PUBLIC INVESTMENTS

Mr. Wanjala asked the Minister for Finance:-

- (a) whether the Treasury has ever issued circulars to parastatals advising them on how and where they should invest their excess funds;
- (b) if so, whether he could table those circulars; and,
- (c) what action he is taking against parastatal heads and their boards for disobeying those instructions.

The Assistant Minister for Finance (Mr. Katuku): Mr. Deputy Speaker, Sir, I seek the indulgence of the Chair to have this Question answered on Tuesday next week. This is simply because the answer I have received is not adequate and I would like to give the House an adequate answer.

Mr. Deputy Speaker: Mr. Assistant Minister, I cannot hear you!

The Assistant Minister for Finance (Mr. Katuku): Mr. Deputy Speaker, Sir, I am saying that I seek your indulgence and the indulgence of the House to have this Question answered next week on Tuesday because the answer I have is not adequate and I would like to give this House an adequate answer.

Mr. Omingo: On a point of order, Mr. Deputy Speaker, Sir. Question No.163 is very critical for this nation. Is the Assistant Minister in order to request the Chair to defer a Question which has undergone the

normal process? He knows for a fact that some of the officers who have misappropriated these funds are still in the Government. One such officer is Prof. Meme.

Mr. Deputy Speaker: Order, Mr. Omingo! The Assistant Minister is in order to seek the indulgence of the House to be given more time to come here with a satisfactory answer.

Mr. Wanjala, is that okay?

Mr. Wanjala: Mr. Deputy Speaker, Sir, this Question was not asked by Private Notice. This is a Question which has gone through the normal process. If I may agree with the Assistant Minister, that the Question be deferred, then it should be deferred until tomorrow, Thursday, in the afternoon. This is a Question of national importance.

Mr. Deputy Speaker: Mr. Assistant Minister, could I defer this Question until tomorrow afternoon?

The Assistant Minister for Finance (Mr. Katuku): Mr. Deputy Speaker, Sir, I would like to request the House that I answer this Question on Tuesday next week. So, it is upon the Chair to make a ruling.

Mr. Deputy Speaker: Mr. Wanjala, the Chair rules that the Question be deferred to Tuesday afternoon!

Mr. Wanjala: Mr. Deputy Speaker, Sir, I will not be around on Tuesday next week. The Departmental Committee on Administration---

Mr. Deputy Speaker: Mr. Wanjala, that is okay! Could I defer the Question until Wednesday or Thursday?

Mr. Wanjala: Mr. Deputy Speaker, Sir, defer the Question until Thursday next week.

Mr. Deputy Speaker: That is okay!

(Question deferred)

Question No.134

CHANGE IN STATUS OF UASIN GISHU
DISTRICT HOSPITAL

Mr. Kipchumba asked the Minister for Health:-

whether she could explain why Uasin Gishu District Hospital changed its status to referral hospital; and,

(b) what immediate measures she has put in place to ensure that residents of the said district benefit from affordable medical care.

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

(a) The Uasin Gishu District Hospital was upgraded to a teaching hospital. By so doing, medical students at the Moi University train in the institution. As a referral hospital, it serves the whole of Western Kenya. By upgrading the hospital, more facilities like X-Ray, theatre, laboratories and mortuary were improved. The facilities have improved the provision of quality health care to the people.

(b) The residents of Uasin Gishu District can now get better health care at the hospital. The Government is also building a sub-district hospital at Ziwa Sirikwa to further improve the provision of services to the people.

Mr. Kipchumba: Thank you, Mr. Deputy Speaker, Sir. The answer given by the Assistant Minister is so insufficient that it cannot pass any medical test. However, you will realise that Uasin Gishu District has no district hospital, neither does it have a sub-district hospital as the Assistant Minister has just alluded to. This is because Ziwa is a health centre and not a sub-district hospital. My Question was "why" and not "how". The Assistant Minister has talked about better medical health care. The mortuary fee charged at Moi Referral Hospital, Eldoret, is Kshs500 per day while, initially, we used to pay Kshs120. This money has increased to the extent that people in Uasin Gishu District cannot afford it. In fact, when somebody is about to die---

Mr. Deputy Speaker: Mr. Kipchumba, ask your question!

Mr. Kipchumba: Mr. Deputy Speaker, Sir, could the Assistant Minister inform this House where they take the budgetary allocation for Uasin Gishu District? Could he reduce the mortuary fees from Kshs500 to the initial Kshs120?

Mr. Konchella: Mr. Deputy Speaker, Sir, I have just alluded to the fact that, through the funding by IDB, the Ministry is constructing a sub-district hospital at Ziwa Sirikwa, which is between Eldoret and Kitale. This hospital will serve people better than a sub-district hospital which would be within the town where there is a referral hospital. Indeed, I am aware that people requested for a sub-district hospital to be put up within Eldoret

Town, but they proposed Turuma Health Centre which has no sufficient land. The land is so small that you cannot construct a house to start with. So, the problem lies with the Eldoret Municipal Council being unable to provide enough land for the construction of a health centre. But now that can serve the district, as it were.

Dr. Galgalo: Mr. Deputy Speaker, Sir, the problem is not just experienced in Uasin Gishu District alone. In fact, all the provincial headquarters, apart from Nyanza, if I am not wrong, do not have district hospitals. The problem is that the fees which are charged in provincial hospitals are much more than those charged at the district hospitals. So, this denies the majority of the people in those districts medical care. Why would the Ministry not consider putting up district hospitals in all those provincial headquarters where majority of the population have no access to medical care because it is too expensive to get treatment at provincial hospitals?

Mr. Konchella: Mr. Deputy Speaker, Sir, it is the wish of the Government to provide each and every district with a medical facility. But due to financial problems, this is not possible. But we are prepared to do this as long as this House allocates us sufficient money to do that.

Mr. Angwenyi: Thank you, Mr. Deputy Speaker, Sir. This Ministry's plan is upside down. They upgrade a district hospital to a referral hospital, which then may provide the services of a district hospital. This means that, that referral hospital becomes a district hospital. The same has happened to Kenyatta National Hospital.

Mr. Deputy Speaker, Sir, has the Assistant Minister sought those funds in his budget for this year so that he can put up a district hospital in Uasin Gishu District?

Mr. Deputy Speaker: Mr. Assistant Minister, the question is: Can you ask for it?

Mr. Konchella: Mr. Deputy Speaker, Sir, we are going to include this request in this year's Budget. At the moment, the Ministry gets 7 per cent of our funding in a financial year. We want this House to approve and increase the funding of the Ministry to 15 per cent out of the funds that Government allocates for Development and Recurrent Expenditures.

Mr. Kipchumba: Mr. Deputy Speaker, Sir, I think the Assistant Minister has not answered my question. Could he consider reducing the mortuary fees, that are charged currently, to the previous Kshs120 that we used to pay because our district hospital was taken away from the people?

Mr. Konchella: Mr. Deputy Speaker, Sir, that is a different Question which the hon. Member can ask next time so that we can be able to answer it properly.

Question No.173

UTILISATION OF MACHAKOS HOSPITAL BOREHOLE

Mr. Mwanzia asked the Minister for Health:-

(a) when the borehole which was sunk at the Machakos District Hospital will be made operational; and,

(b) why it has taken so long to open it for use by the hospital.

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

(a) The borehole at Machakos District Hospital will be made operational within two months time.

(b) The borehole has not been opened for use as the tendering procedure for the supply of the borehole pump has not been finalised.

Mr. Mwanzia: Mr. Deputy Speaker, Sir, I am not satisfied with the answer given to this House by the hon. Assistant Minister because this borehole was sunk in July last year and it has been lying idle there for the last one year. Why has it taken so long for the tendering procedure to be completed and yet I have been informed by the hospital authorities that some money is available for the pump?

Mr. Konchella: Mr. Deputy Speaker, Sir, indeed, the funds are available for the pump but when the initial quotations were sent out in respect of this borehole, the amount available for the pump was Kshs2 million. When it was completed, the cost rose by an additional Kshs1.2 million and they were not able to pay this money until February this year. The District Tender Board had to defer the purchase of the pump because the technical specifications were not ready then. Indeed, the specifications will be ready within the next two weeks, but there is also a problem. Even though these items will be purchased with Kshs450,000, the construction of the borehole will require Kshs800,000 to cater for all the plumbing work so that we can pump the water to the desired areas. The Ministry is looking for this money. We will be able to avail the money within a period of two months so that the construction of the borehole can be completed.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, you know that Machakos Town has been going without

water for years and the hospital is forced to transport water using vehicles. Could the Assistant Minister consider making sure that the pump is put in operation so that the patients do not continue suffering? Indeed, the hospital is very filthy because of lack of water!

Mr. Konchella: Mr. Deputy Speaker, Sir, I agree with the hon. Member. This will be done as soon as possible. It will be ready within two months.

Mr. Mwanzia: Mr. Deputy Speaker, Sir, I want to request the Assistant Minister to shorten the period because the hospital is very filthy and the mortuary is unusable as we sit here.

(A mobile phone rang)

Mr. Deputy Speaker: Whose mobile is that?

The Assistant Minister for Education, Science and Technology (Mr. Gumo): Mr. Deputy Speaker, Sir, it is mine and I am sorry.

Hon. Members: Out! Out!

Mr. Deputy Speaker: Hon. Mwanzia, could you repeat your question?

Mr. Mwanzia: Mr. Deputy Speaker, Sir, could the Assistant Minister shorten the period from two months to, at least, two weeks because the hospital is very filthy and the mortuary is unusable?

Mr. Konchella: Mr. Deputy Speaker, Sir, the delay, as I said earlier, was occasioned by a technical report which was awaited by the District Tender Board before it could complete the process. As soon as this is done, we are prepared to provide the necessary funds to complete it. So, let me say that it will be done.

Question No. 179

TRIBUNAL TO DETERMINE COUNCILLORS' EMOLUMENTS

Mr. J. Mutiso asked the Minister for Local Government:-

- (a) whether he is aware that councillors earn Kshs7,000 as allowances; and,
- (b) if he could appoint an independent tribunal to determine the councillor's allowances/emoluments.

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

(a) Yes, I am aware that some councillors earn allowances as low as Kshs7,000 a month. This is because councillors' allowances are approved on the basis of respective councils' ability to pay.

(b) During the meeting held with all councillors at Kasarani on 20th March, 2003, they submitted a memorandum calling upon the Government to review their salaries. I have studied the memorandum together with the Motion which was passed by this House in 1999 urging the Government to pay councillors from the Consolidated Fund and I have started the process which will lead to the formation of a tribunal to review the salaries and allowances for the councillors.

(Applause)

Mr. J. Mutiso: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for that very good answer. However, is she aware that some councillors feel inferior because of their respective councils' inability to pay adequate allowances like other councils?

Mrs. Tett: Mr. Deputy Speaker, Sir, councillors' allowances vary from council to council. Councillors passed a resolution regarding their allowances and submitted their proposals to the Minister for approval. However, they have to take into consideration the councils' capabilities to generate revenue so that there is a provision for the allowances in the budget forwarded to the Minister. If the councils can afford, they can allow themselves as much as they want, but the councils cannot afford.

Mr. Sasura: Mr. Deputy Speaker, Sir, in the Local Government Act, there is no provision for councillors to earn any salary. They are only entitled to some allowance and that allowance is only given if it is available. However, that notwithstanding, the Minister for Local Government made a pronouncement that he was going to increase the councillors' allowances to Kshs100,000. According to the Assistant Minister, after Kasarani, the Minister doubled the figure to Kshs250,000. Now, is the Minister intending to pay that money from the Local Government Vote or does he intend to set up the tribunal that the Assistant Minister is talking about?

Mrs. Tett: Mr. Deputy Speaker, Sir, we have to follow some procedures. The councillors gave us their

memorandum and we discussed about it at length. So, we are in the process of forming a tribunal and we shall let you know in due course.

Mr. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister really clear in her mind that she is not talking outside the Local Government Act because it does not provide for salaries? Have they now, as a Ministry, made up their minds that we are actually going to amend the Local Government Act and introduce salaries for councillors so that we come and debate about salaries *vis-a-vis* allowances only?

Mrs. Tett: Mr. Deputy Speaker, Sir, I have just said that we are forming a tribunal which will review the salaries and bring a report to this House for approval. We are not talking outside any particular Act.

Mr. Deputy Speaker: I can see the interest this Question is generating, but we have got limited time for it.

Mr. J. Kilonzo: Mr. Deputy Speaker, Sir, could the Assistant Minister give us the time frame within which this tribunal will be instituted?

Mrs. Tett: As soon as possible!

(Laughter)

Mr. Deputy Speaker: Order, now!

Mr. J. Nyagah: Could the Assistant Minister confirm to this House that, in the new arrangement, councillors will be paid from the Central Government in order to protect them from the inconveniences that we have been told; that is, of councils paying them allowances according to their ability?

Mrs. Tett: I have already said that there was a Motion which was passed by this House in 1999. We are looking into all those problems. As you can imagine, there are a lot of problems facing this Ministry and we are just requesting to be given more time. It is our interest to see that councillors get enough money so that they do not think of selling land and grabbing every piece of land within their councils.

Mr. J. Mutiso: Mr. Deputy Speaker, Sir, could the Assistant Minister consider bringing a Bill on this issue for discussion in the House?

Mrs. Tett: Mr. Deputy Speaker, Sir, we shall look into that.

(Applause)

Question No. 166

COMPLETION OF KEROKA WATER PROJECT

Dr. Manduku asked the Minister for Water Resources Management and Development:-

- (a) whether she is aware that Keroka Water Project, which was being constructed by NORAD, was not completed;
- (b) whether she is aware that the materials such as pipes and water pumps left behind are still on site; and,
- (c) what she is doing to make sure the project is completed.

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

(a) Yes, I am aware that Keroka Water Project which was constructed by my Ministry between 1974 and 1978, and later taken over for rehabilitation by NORAD between 1990 and 1991, is not completed.

(b) Yes, I am aware that when NORAD withdrew from the Keroka Water Supply in 1991, the following items were left on site:-

- (i) Three uninstalled pumping sets complete with control panels.
- (ii) One hundred 200 mm diameter epoxy coated steel pipes.

However, pumping sets complete with control panels were installed at the treatment works while one pumping set was installed at the intake by my Ministry staff in 1993.

(c) My Ministry, through the *El Nino* Emergency Programme, started the rehabilitation works of Keroka Water Project in April, 2002. The works being undertaken to complete the project involve improvement of the intake, completion of treatment works, booster station and distribution system. These works are scheduled to be completed in June, 2003, at a cost of Kshs15 million.

Dr. Manduku: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for the good reply. But I want to add that, NORAD had started the works in 1990, and they had planned to do the whole project. When NORAD left in a hurry, they had done about a quarter of the project. The *El Nino* Emergency Programme is now completing that quarter of the project. Does the Ministry have any plans to complete the original project initiated by NORAD?

The Assistant Minister for Agriculture and Livestock Development (Mr. Munyao): On a point of order, Mr. Deputy Speaker, Sir. Looking at parts "a" and "b" of the Question, they talk about a she, when the Assistant Minister, Mr. Munyao, who is answering the Question is a he! Should he not have corrected that?

(Laughter)

Mr. Deputy Speaker: Order! Order! Mr. Munyao, you know the Minister for Water Resources Management and Development is a she. So, there is nothing wrong with that.

Proceed, Mr. Assistant Minister!

Mr. Munyao: Mr. Deputy Speaker, Sir, I am actually a he. When NORAD pulled out of this country, all the initiatives they had put on the ground all over the country, including my district, were affected. We lost a lot. There are many incomplete structures lying out there. But we are going to use the Kshs15 million and we intend to complete this project by June, 2003. So, there is no problem about that.

Mr. Deputy Speaker, Sir, we are committed to see that this project is completed by June, 2003.

Mr. Deputy Speaker: By the way, Mr. Assistant Minister, you said that the works were started in 2002 and the project would end in June, 2003 and the total cost would be Kshs3 million. Are you trying to tell this House that works done within that period would cost Kshs3 million?

Mr. Munyao: Mr. Deputy Speaker, Sir, I said that the project has already begun. It started in 2002 and it will cost Kshs15 million.

Dr. Manduku: Mr. Deputy Speaker, Sir, there was an original programme for NORAD to do that job. Now, they are rehabilitating the works that were done by NORAD. Do they have any plans to complete the original programme that was initiated by NORAD?

Mr. Munyao: Mr. Deputy Speaker, Sir, that was a programme by NORAD. Even in places like Turkana, Bungoma and many others, those projects are still incomplete. We have injected Kshs15 million into this project. We cannot complete those projects because they were NORAD projects.

Mr. Onyancha: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has already indicated that there were pipes that were left on site. But is he not misleading this House when we know that almost half of those pipes were taken away by a former Member of Parliament? If he is aware, what is he going to do about it?

Hon. Members: Who?

Mr. Munyao: Mr. Deputy Speaker, Sir, I am not aware of that.

Mr. Khamasi: On a point of order, Mr. Deputy Speaker, Sir. You heard the hon. Member there say that the pipes were taken away by a former Member of Parliament. Would I be in order to request the hon. Member to tell us which former Member of Parliament did that?

Mr. Onyancha: Mr. Deputy Speaker, Sir, over 60 pipes, 200 mm diameter epoxy coated steel pipes were taken away by a former Member of Parliament for Nyaribari Masaba.

Hon. Members: Who? Name him!

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. There have been two former Members for Nyaribari Masaba, one is the current Member who was a former Member last time, and now Prof. Ongeru who is the immediate former Member. Which of the two former Members are we talking about?

Mr. Deputy Speaker: Mr. Onyancha, what are you trying to say?

Mr. Onyancha: Mr. Deputy Speaker, Sir, I am talking about the immediate former Member of Parliament; Prof. Sam Ongeru.

Mr. Deputy Speaker: Mr. Assistant Minister, do you have anything to say about that?

Mr. Munyao: I am still not aware of that, Mr. Deputy Speaker, Sir.

Mr. Poghiso: On a point of order, Mr. Deputy Speaker, Sir. You heard the hon. Member mention the name of a person who is not in this House. If the hon. Member is not in a position to substantiate his claims, would I be in order to request the Chair to ask him to withdraw the name of that person who cannot defend himself on the Floor of this House?

Mr. Deputy Speaker: All I want to inform hon. Members is that it is not fair to mention names of people

who are outside this House and who cannot, therefore, defend themselves, unless you have sufficient evidence that, that is the case. If you mention the name of a person who is not here, how do you expect him to defend himself? That is not being fair. In this case, you have mentioned the name of the immediate former Member of Parliament for Nyaribari Masaba. Do you have any means of substantiating such claim, Mr. Onyancha?

Mr. Onyancha: Mr. Deputy Speaker, Sir, with the Chair's indulgence, I beg to withdraw and apologise.

Mr. Deputy Speaker: Very well.

Next Question, Mr. Moroto!

Question No.169

WATER AND SEWERAGE SERVICES
FOR KAPENGURIA MUNICIPALITY

Mr. Moroto asked the Minister for Water Resources Management and Development what plans she has to provide Kapenguria Municipality and Chepareria Town Councils with piped water and sewerage systems.

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

Both Kapenguria Municipal and Chepareria Town Councils are supplied with piped water. Kapenguria, with a total of 1440 connections, is served by two water supplies namely; Makutano and Kapenguria, whereas Chepareria Town Council, which has 450 connections, is served by Chepareria Water Supply. There are no sewerage systems in Kapenguria Municipality and Chepareria Town Council.

My Ministry was recently mandated to take over the responsibility of sewerage systems from the Ministry of Local Government and, so far, my Ministry is in the process of carrying out a sanitation situation analysis for the towns with a view to preparing a national water and sewerage investments programme for funding and implementation. The development of sewerage systems for Kapenguria Municipality and Chepareria Town Council will be covered within the programme.

Mr. Moroto: Thank you, Mr. Deputy Speaker, Sir. The answer given is exposing how ignorant the Assistant Minister is about his Ministry because, for one, we are talking about the sewerage systems and he has said that both the municipal and the town councils have no sewerage systems and water supplies. There is no water supply in Chepareria and this town council is just on the highway serving Kitale and Lodwar. The people there draw water from the local rivers, which sometimes dry up, and they are forced to go as far as Turkwel Dam to get water.

Mr. Deputy Speaker, Sir, could the Assistant Minister inform this House when the Chepareria people will get water?

Mr. Deputy Speaker, Sir, Kapenguria Municipal Council has only one water supplier, that is Makutano, because the one at Kapenguria is not working. Could the Assistant Minister inform the House when these people will get the water supply?

Mr. Munyes: Mr. Deputy Speaker, Sir, according to my Ministry's records, there is water in Chepareria. But if the hon. Member is refuting that, I am ready to accompany him so that we can ascertain the truth.

Mr. Rotino: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead the House? When the hon. Member who comes from the area says that there is no piped water and then the Assistant Minister, who is a foreigner in that place, says that there is water; whom are we going to believe?

Mr. Deputy Speaker: Order! Order, Mr. Rotino! Would you withdraw that remark, "the Assistant Minister being a foreigner"?

Mr. Rotino: I withdraw, Mr. Deputy Speaker, Sir. But could he answer the question?

Mr. Munyes: Mr. Deputy Speaker, Sir, I have promised the hon. Member that I will travel to his area to investigate the matter. But, according to the Ministry's records, we have 450 connections in Chepareria.

Mr. Poghiso: Mr. Deputy Speaker, Sir, the question, as put to the Assistant Minister, is that the information that he has about Chepareria and Makutano areas comes from his Ministry and yet the hon. Member for the area came from there just yesterday. Now, when is the Assistant Minister going to Kapenguria and Chepareria to ascertain the real truth about the water situation there?

Mr. Deputy Speaker: Mr. Assistant Minister, this is really a simple matter. The hon. Member is saying that there is no water in his area and you are saying there is water. Now, can we make progress? What is the position?

Mr. Munyes: Mr. Deputy Speaker, Sir, I am going by the records at the Ministry Headquarters. But I have accepted to make arrangements, with the hon. Member, to travel to the area.

Mr. Deputy Speaker: Very well. You do not expect the House to rule on the date when the Minister is going to visit a place.

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir. I am seeking guidance from the Chair because this is a town council matter and I thought this was a Question belonging to the Ministry of Local Government, instead of the Ministry of Water Resources Management and Development. Could there be clarification with regard to the Question?

Mr. Deputy Speaker: No! All water resources in town councils do not necessarily belong to local authorities.

Mr. Sasura: On a point of order, Mr. Deputy Speaker, Sir. In the light of what hon. Gor Sungu has said, it is important to clarify that point. Over the week, the Minister has said it very clearly that they have been mandated to deal with sewerage systems in this country, and the Minister for Local Government has said that the sewerage and water supply systems are under the Ministry of Local Government. Could the Assistant Minister categorically tell us under which Ministry the sewerage and water supply systems fall?

Mr. Deputy Speaker: Order! That would be subject to another Question. The Question we are dealing with here is that, there is water supply under the Ministry of Water Resources Management and Development in this particular area.

Next Question, Mr. Kombe!

Question No. 172

ALLOCATION OF NGOMENI SQUATTER
SETTLEMENT SCHEME

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

- (a) whether he could inform the House why area residents were left out in the allocations for the Ngomeni Squatter Settlement Scheme; and,
- (b) what measures he is taking to nullify the allocations and order a repeat of the exercise.

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

- (a) My Ministry has not allocated land in the Ngomeni Settlement Scheme to any squatter.
- (b) Since no allocation has been effected in the Settlement Scheme, the question of nullification does not, therefore, arise.

Mr. Kombe: Mr. Deputy Speaker, Sir, whereas I would like to appreciate the answer given by the Assistant Minister, he is not sincere because Ngomeni was declared an area of adjudication under Ngomeni Squatter Settlement Scheme and the whole area was adjudicated in 1994. I led the adjudication team from the word go to the end and yet the Assistant Minister comes here to say that none of the squatters was allocated land. I am one of the squatters who were allocated land and we have our numbers! The topographic map right now is lying at Ardhi House and nothing is going on! Could the Assistant Minister tell us the whole truth about the land allocations in Ngomeni Settlement Scheme?

Mr. Ojode: Mr. Deputy Speaker, Sir, let me give the hon. Member the background of Ngomeni Settlement Scheme. The Government identified the land in question, to find some families a place to stay and cultivate, with the aim of solving the squatter problem. During demarcation, a company by the name Coastal Aqua-culture Limited claimed ownership of Ngomeni Squatter Settlement Scheme where they were issued with letters of allotment. The Government could not, therefore, allocate the same to the squatters.

Mr. Deputy Speaker, Sir, the Commissioner of Lands also cancelled the letter of allotment to Coastal---

Mr. Sambu: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in [Mr. Sambu] order to mislead the House? What proves ownership of a property? Is it a letter of allotment or the title deed? It is just a letter of allotment! So, he is not in order to mislead the House.

Mr. Ojode: Mr. Deputy Speaker, Sir, if the hon. Member could wait--- I am giving the background then he can ask any questions thereafter.

(Laughter)

Mr. Deputy Speaker: Order, Mr. Ojode! You have no authority whatsoever to allow any hon. Member to ask a question.

Mr. Ojode: Mr. Deputy Speaker, Sir, after having issued a letter of allotment, the Commissioner of

Lands cancelled the letter to Coastal Aquaculture so as to allow the settlement of squatters in Ngomeni Settlement Scheme. As a result, the said company took the matter to court vide High Court (Miscellaneous) Civil Application No.301/99 which is still pending in court to date. Since the matter is still in court, the Ministry is still awaiting its verdict before any further action can be taken by the Government.

However, the Ministry has already identified 2,060 squatters from the local residents, to be settled in this scheme, and once the verdict is over, I will undertake to settle the 2,060 squatters.

(Laughter)

Mr. Kombe: Mr. Deputy Speaker, Sir, I think that is the most appropriate answer. However, could the Assistant Minister assure this House that he is going to get in touch with the Minister for Justice and Constitutional Affairs to make sure that this case is sorted out as soon as possible so that it can pave way for that settlement?

Hon. Members: Is it the Attorney-General or the Minister for Justice and Constitution Affairs?

Mr. Kombe: Whoever is concerned; the two are all acting under the law.

Mr. Deputy Speaker: Mr. Kombe, you have asked the question. Will you then sit down and wait for the answer?

Mr. Ojode: Mr. Deputy Speaker, Sir, I will consult with the Attorney-General so as to speed up the verdict on this case.

Question No.111

NON-REGISTRATION OF NDEHURO

Mr. Wamwere asked the Attorney-General:-

(a) whether he could explain why the National Democratic Human Rights Organisation (NDEHURO) was denied registration on 24th January, 1994; and,

(b) when the organization will be registered.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The National Democratic Human Rights Organization was denied registration in January 1994 because, at that time, it appears that the interest of peace, welfare and good order in Kenya would suffer prejudice by reason of its registration.

(b) The organization lodged a new application on 27th March, 2003, and the application is in the process of being registered today if it has not already been registered.

Mr. Wamwere: Mr. Deputy Speaker, Sir, could the Attorney-General tell the House what it was about this organization that made its registration prejudicial to the interests of peace, welfare and good order in Kenya? Was it something with regard to its aims and objectives, the founding officers who had applied for registration or was it a matter of the KANU Government simply denying a group of Kenyans their freedom of association?

Mr. Deputy Speaker: Order, Mr. Wamwere! Those are many questions.

An hon. Member: It was all those reasons!

Mr. Wamwere: It was all those?

Hon. Members: Yes.

Mr. Deputy Speaker: Order, hon. Members! Mr. Wako do you have anything to say?

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

Mr. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. Looking at the Question, I am not so sure whether the Question is directed to the Minister for Justice and Constitutional Affairs or to the Attorney-General. I do not know whether they now work interchangeably, so that---

Mr. Deputy Speaker: Order, Mr. Kajwang! The Attorney-General has responded, and I think it is rightly addressed to him. Otherwise, he would have referred it to someone else. Proceed, Mr. Wako!

Mr. Wako: Mr. Deputy Speaker, Sir, to answer Mr. Kajwang, the registration of societies, under the Societies Act, comes under the office of the Attorney-General under the organization of Government chart that was issued.

On the issue of the reasons, the registration was refused on security grounds. I cannot disclose those security grounds, but I can say that as far as the aims and objectives were concerned, they appeared to

have been in order, so there must have been some other security grounds.

Mr. Deputy Speaker: Could we move on to Questions by Private Notice?

Mr. Wamwere: Mr. Deputy Speaker, Sir, could I ask the last question?

Mr. Deputy Speaker: Mr. Wamwere you asked the last question, and so there cannot be another question.

Mr. Wamwere: It is very important, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Wamwere we are moving to the next Question.

Mr. Wamwere: Mr. Deputy Speaker, Sir, I would---

Mr. Deputy Speaker: Order, Mr. Wamwere! That is almost amounting to disorderly conduct. Next Question!

QUESTIONS BY PRIVATE NOTICE

KILLING OF CONSTABLE MWINGIRWA

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

(a) Under what circumstances was Constable Obadiah Thiaine Mwingirwa killed at Kipsing GSU Camp on 15th February 2003?

(b) When will the Ministry compensate the family for the loss of their son while on public duty?

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

(a) A post mortem conducted in the presence of the family of the late Obadiah Thiaine Mwingirwa confirmed that he had died as a result of a gunshot in the chest.

(b) The Attorney-General will advise the family on the matter of compensation after the outcome of the investigation.

Mr. Wetangula: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to tell us the cause of death when the Questioner is asking the circumstances under which the person died?

Mr. Deputy Speaker: Mr. Tarus, under what circumstances did he die?

Mr. Tarus: Mr. Deputy Speaker, Sir, some of the sources of the information regarding the death of Obadiah Thiaine Mwingirwa are under investigation, and I do not wish to discuss that information so that we are not accused of being prejudicial.

Mr. Munya: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us whether he is not able to answer this Question because investigations are going on so that we can defer the Question to enable him come with a proper answer? We are tired of getting shoddy answers from this Assistant Minister. We are particularly asking for the circumstances that led to Mr. Mwingirwa's death. If he is not ready with the facts, could I request that the Question be deferred?

This is a very serious matter. The family has been suffering while the police officers have been covering up the investigations. I have letters from the police indicating that this particular person committed suicide when it is very clear this person was shot dead by other GSU officers and the body transported from the scene of crime to the place where the body was collected.

Mr. Deputy Speaker: Mr. Tarus, do you need more time to investigate this issue?

Mr. Tarus: Mr. Deputy Speaker, Sir, the hon. Member should first withdraw the statement that I have given a shoddy answer before I proceed.

Mr. Deputy Speaker: Order, Mr. Tarus! Could you address yourself to the issue raised, which I think is very crucial, about the allegations that the deceased person was shot and that if you do not have more information you be given more time to investigate further in order to bring a better answer? We are here talking of the life of a person who has been killed under whatever circumstances. Mr. Tarus could you address yourself to those issues?

Mr. Tarus: Mr. Deputy Speaker, Sir, since investigations are still going on, we may not be able to provide the full information regarding the circumstances that led to the death of Obadiah Thiaine. We do not want to be subjective.

Mr. Wamwere: Mr. Deputy Speaker, Sir, I think that we are playing a game here. Somebody was shot and investigations are going on. Is it in order for the Assistant Minister to evade the responsibility of coming back to the House with a full answer that can satisfy the question that is being raised by the hon. Member?

Mr. Tarus: Mr. Deputy Speaker, Sir, I require one week to provide this information.

Mr. Deputy Speaker: Would one week be sufficient?

Mr. Tarus: Mr. Deputy Speaker, Sir, I did say that investigations are going on. If the investigations will not be complete after one week, we will advise this House.

Mr. Deputy Speaker: Hon. Members, I think it is reasonable to give the Assistant Minister some time. If a matter is under investigation, it needs quite some time and you cannot peg it to a week or so. Therefore, the matter will be re-visited after sufficient information is given, on completion of the investigation.

Mr. Munya: Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House whether he is prepared to carry out proper investigations because right now there is a cover up by police officers? They are trying to cover up the evidence to give credence to the suicide theory. I met the Commissioner of Police on the same matter---

Mr. Deputy Speaker: Order, Mr. Munya! Ask your question.

Mr. Munya: Is the Assistant Minister prepared to remove the officers who were involved in the murder from handling that case? Will the Commander of the platoon, Mr. Ndiwa, who is the prime suspect still be protected at Kipsing GSU camp while investigations are going on?

Mr. Tarus: Mr. Deputy Speaker, Sir, the Government has competent officers to carry out the investigations.

COMMUNICATION EQUIPMENT FOR IJARA SECURITY OFFICERS

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

(a) Is the Minister aware that the security personnel stationed at Sangailu, Bodhei and Kotile of Ijara District have no communication sets?

(b) What is the Government doing to rectify this anomaly?

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

(a) I am aware that Bodhei and Kotile have no communication sets. However, Sangailu has a set, but the battery is damaged.

(b) Arrangements are currently being made to acquire more communication sets. Bodhei and Kotile are among the stations that will be considered for allocation of equipment. Arrangements for replacement of the damaged battery have been made with respect to part "a" of the Question.

Mr. Haji: According to the latest information, it is not the battery which is damaged at Sangailu. Rather, I understand that the solar system was removed. The DO, Sangailu and the Administration Police have already vacated the area. I am wondering who will use the sets which the Assistant Minister says will be supplied. Will they be used by ghosts or who?

Mr. Tarus: Mr. Deputy Speaker, Sir, arrangements have been made to post Administration Police to the station and to provide the equipment required.

Mr. Bahari: Mr. Deputy Speaker, Sir, now that the Minister has given an undertaking to install the equipment in Bodhei and Kotile, could he give us the time frame within which he is likely to do that?

Mr. Tarus: Arrangements have been made to replace them so the question of time frame does not arise.

Mr. Haji: Mr. Deputy Speaker, Sir, the Assistant Minister has only answered part of the Question regarding Sangailu. I am also made to understand that the askaris have also left Kotile. There are only three homeguards left in that area. Could he also consider posting APs there as soon as possible, in view of the fact that this area borders both Somalia and the Coastal Province and that there is a huge forest whereby bandits normally take cover?

Mr. Tarus: Mr. Deputy Speaker, Sir, we shall do that.

REPOSSESSION OF SCHOOL LAND FROM PRIVATE DEVELOPER

Mr. Ole Ntutu: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education, Science and Technology the following Question by Private Notice.

(a) What action has the Minister taken to repossess land belonging to Nkorinkori Secondary School, which has been fenced off by a private developer?

(b) What is the ownership status of the borehole and the water pump on the land in "a" above?

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

(a) The land belonging to Nkorinkori Secondary School has not been fenced off by any private developer. It still belongs to the school.

(b) The borehole and water pump belong to the Government.

Mr. Ole Ntutu: Mr. Deputy Speaker, Sir, could the Assistant Minister explain to this House why a section of that land was turned into a maize plantation by a senior Judiciary official?

Mr. Gumo: Mr. Deputy Speaker, Sir, the land for the school was registered under Narok County Council as a holding ground, plot No.191 measuring 121.4 hectares. The land is still intact. In 2000---

(A mobile phone rang)

Mr. Deputy Speaker: Order, Mr. Assistant Minister! There is a cell phone ringing. Hon. Members, wherever that phone is ringing, that is the very last warning.

Proceed, Mr. Gumo.

Mr. Gumo: About the year 2000, the land was registered with the Ministry of Education, Science and Technology and given the provisional registration No.GP/A/1343/2002. However, owners of the adjacent land fenced off their respective pieces of land. As per records held at the Narok District Registry, the parcel of land still belongs to Narok County Council.

Mr. Karaba: I would like to bring to the attention of the Assistant Minister that most land belonging to schools in the country has been grabbed. Could he ensure and guarantee that all land belonging to schools will be issued with title deeds and that all those who have grabbed school land will return it immediately?

Mr. Gumo: Mr. Deputy Speaker, Sir, the Ministry has formed a committee to go round and inspect all school land. Whatever land has been taken by anybody will be repossessed. At the moment, we have asked the boards of governors of all schools to register all school land and be issued with title deeds.

Mr. Sambu: Under whose name will the title deeds of primary schools be registered? Is it the county councils, the sponsor or the Treasury? Who is the legitimate owner of school land because there are many sponsors who purport to be the owners of the land and they have titles to school land.

Mr. Gumo: Mr. Deputy Speaker, Sir, the school land will be registered in the name of the school.

Mr. Deputy Speaker: Very well.

Next Question by Mr. Wamunyinyi!

IRREGULAR PAYMENT OF HONORARIUM
TO NZOIA SUGAR BOARD CHAIRMAN

Mr. Wamunyinyi: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Agriculture and Livestock Development the following Question by Private Notice.

(a) Is the Minister aware that the Chairman of the Board of Nzoia Sugar Company has been irregularly paid Kshs1,200,000 in form of honorarium?

(b) What urgent steps is the Minister taking to ensure that these irregular payments are stopped and the surcharge process initiated?

The Minister for Agriculture and Livestock (Mr. Kirwa): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that the Chairman of the Board of Nzoia Sugar Company has been irregularly paid Kshs1.2 million in form of honorarium.

(b) The Government will carry out investigations to find out whether there have been irregular payments. If so, appropriate action will be taken against the people who effected these payments and the beneficiaries.

Mr. Wamunyinyi: Mr. Deputy Speaker, Sir, I appreciate the fact that the Minister has undertaken to investigate this issue. However, I have information here which I believe the Minister has also got. I have got payment vouchers from the time when enhanced allowances were paid to the Chairman. This is from 1st July, 2001. These payments amount to Kshs1.2 million. I also have some letters from Nzoia Sugar Company, from the Chief Executive to the Ministry, seeking approval for that increase. I have some response from the Ministry. I have copies of two letters signed by the Permanent Secretary declining to approve the payments in view of the poor financial status of the company.

In view of this valuable information, which I want to pass to the Minister, could he now undertake to act and stop these payments immediately, initiate recovery of surcharge and ensure that no such a thing happens again?

(Mr. Wamunyinyi laid the documents on the Table)

Mr. Kirwa: Mr. Deputy Speaker, Sir, what the hon. Member said is very true, indeed. It is true because the Board of Nzoia Sugar Company wrote to us on two occasions. On each of those occasions, we declined to give any authority. According to the law and the Government regulations, any letter to that effect is supposed to be referred to the Office of the President for concurrence. When that advisory position is taken then we can communicate to the Board. Unfortunately, the Board unilaterally decided to increase honorarium due to the Chairman from Kshs8,000 to Kshs60,000.

Mr. Deputy Speaker, Sir, having got that particular information, this afternoon I instructed the Permanent Secretary to write a letter to the Board of Nzoia Sugar Company instructing the Chairman to refund the money and stop forthwith any payments to that effect.

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

Mr. Deputy Speaker: Mr. Sungu, I hope it is really a point of order and not a question.

Mr. Sungu: Mr. Deputy Speaker, Sir, in answer to part "a" of the Question, the Minister said he was not aware and now he is admitting that he is aware. Is he in order to mislead the House?

Mr. Kirwa: Mr. Deputy Speaker, Sir, the English that I learnt in school tells me that there is no contradiction between the answer I gave and the Question. What I said was the obtaining position at that particular time. I have also talked about the current obtaining position and the action I have taken as the Minister.

Mr. Muiruri: Mr. Deputy Speaker, Sir, arising from the answer given by the Minister, this is a clear case of theft of public funds. He has confirmed that they, as a Ministry, declined to authorise these payments. Instead of writing the letter to the same Chairman and the Board itself, could he immediately initiate investigations and dismiss the entire board?

Mr. Kirwa: Mr. Deputy Speaker, Sir, I said I have initiated appropriate measures through the Permanent Secretary. It is not on the Floor of the House that I can do exactly what the hon. Member wants me to do. But as a man of integrity, I will move, and when I move, they will run.

Mr. Wamunyinyi: Mr. Deputy Speaker, Sir, these cases are also prevalent in other companies and parastatals. I know this happens in Sony Sugar Company, among others. There are also cases of non-executive Chairman of these parastatals interfering with the day to day running of these companies. We have evidence to the effect that some chairmen have ordered recruitment of staff and they have given direction on---

Mr. Deputy Speaker: Mr. Wamunyinyi, ask your question!

Mr. Wamunyinyi: Mr. Deputy Speaker, Sir, I am trying to build up my question. Could the Minister assure the House that he will ensure that all other parastatals will not commit such mistakes in future?

Mr. Kirwa: Mr. Deputy Speaker, Sir, I have given firm instructions to the Permanent Secretary on the way the Ministry should handle the parastatals. Those instructions are not only for Nzoia Sugar Company, but also apply to all other parastatals under the Ministry.

Mr. Deputy Speaker: Very well. That is the end of Question Time. Let us move on to the next Order!

POINTS OF ORDER

MISREPORTING OF PARLIAMENTARY PROCEEDINGS

Mr. M'Mukindia: Mr. Deputy Speaker, Sir, I rise on a point of order to bring to your attention a report by the *Daily Nation* newspaper on yesterday's parliamentary proceedings regarding a Question I asked on Meru Central Farmers Union. The Minister clearly said that he had initiated an inquiry into the affairs of the Meru Central Farmers Union and that he had not put the union under liquidation. However, the report in the *Daily Nation* newspaper says the union is actually under liquidation. Would I be in order to ask the Minister for Agriculture and Livestock to clarify this matter because he is here? I also request the *Daily Nation* newspaper to correct the report in tomorrow's edition.

Mr. Deputy Speaker: Where is the Minister for Co-operative Development? I ask Mr. M'Mukindia to raise that matter tomorrow after I would have read the story in question and compared it to the HANSARD. As of now, I have not read that report in the *Daily Nation* Newspaper. I will have to read it and compare it with the HANSARD and maybe you raise the matter tomorrow.

Mr. M' Mukindia: Yes, Mr. Deputy Speaker, Sir.

INSECURITY IN ISIOLO NORTH

Dr. Kuti: Mr. Deputy Speaker, Sir, on Thursday, last week, I stood on a point of order to seek a Ministerial Statement from the Minister of State, Office of the President in charge of internal security concerning the killing of five people in Isiolo. A son of the immediate former hon. Member of Parliament for Isiolo North, Mr. Mokku and four askaris were killed. Their guns were taken away from them. The Minister assured the House that he would give the statement yesterday. However, he was not able to do so and he promised to issue it today. Could he issue it today because it is creating anxiety in the constituency?

Mr. Deputy Speaker: Indeed, the Minister did promise to issue a statement today. Mr. Tarus, do you have it?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I have it.

Mr. Deputy Speaker: Very well! Go ahead and read it.

MINISTERIAL STATEMENT

INSECURITY IN ISIOLO NORTH

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, on 25th March, 2003, Dr. Kuti rose on a point of order and requested for a Ministerial Statement on a banditry attack on travellers. In this regard, I wish to state the following.

On 21st March, 2003, at 6.30 p.m., a Land-Rover, registration number KZP 293, belonging to the immediate former Member of Parliament for Isiolo North, Mr. Charfano Mokku, on its way to Isiolo from Merti, at Losesia area, 70 kilometres from Archers' Post, was attacked by a gang of five people believed to be Samburu morans who were armed with rifles. During the attack, five people, including two Administration Police (AP) officers, were killed. Four other passengers also suffered gunshot injuries. During the incident, the bandits took away with them, three G3 rifles belonging to the APs. A combined force of regular police, APs and police reservists was immediately dispatched to the area. The footprints of the retreating attackers headed towards Serolivi area of Samburu District. The district security teams of Samburu and Isiolo Districts are still working round the clock to arrest the culprits and recover the stolen firearms.

On 19th January, 2003, at 6.00 p.m., it was reported that an unknown number of bandits attacked Borana herdsmen and made away with 360 head of cattle. During the attack, two people were shot dead. Security personnel tracked down the bandits without making any arrests or recoveries. On 24th January, 2003, at Nguruneri Location of Salaitanis Division of Marsbit District, an unknown number of bandits engaged security officers at the AP Camp in a shootout as their accomplices made away with 200 goats from a neighbouring *manyatta* belonging to a Mr. Mohamed Ali. Subsequently, the security officers recovered all the 200 goats. However, there is no report of stock theft or banditry on record to have taken place on 12th December, 2002.

Mr. Deputy Speaker, Sir, I must admit that banditry and cattle rustling reports within and along the boundaries of Samburu, Marsabit, Isiolo and Meru North Districts have presented a worrying trend in the last two months. I have severally addressed the hon. Members concerned on the subject since the beginning of this Parliamentary Session. Only two weeks ago, while responding to a Question by Mr. Sasura, I promised to move fast against the senseless killings of our citizens by bandits and rampant cattle rustling in northern Kenya, and Eastern Province in particular. I have, indeed, lived to that promise by sending to Archers' Post Police Post last week a new Toyota Landcruiser to further boost the number of vehicles available for patrolling the banditry prone areas and highways in that region. We are still going to do more.

We are not going to relent in our fight against this menace. We will do our best to involve the leaders and local communities in this battle against localised terrorism. The Member for Isiolo North will himself confirm that he has attended a number of joint district leaders' cum security meetings with the neighbouring districts. The latest such meeting was held in Isiolo on 3rd March, 2003, where a number of resolutions were passed.

My appeal still goes to the politicians and other leaders from the affected regions. They must themselves demonstrate good will and faith in the fight against banditry and cattle rustling.

Mr. Deputy Speaker: Mr. Kuti, would you like to seek clarification from the Assistant Minister?

Dr. Kuti: Yes, Sir. The number of banditry attacks and cattle rustling incidents in the last 50 days is very disturbing. The communities against which the atrocities have been directed are getting agitated. Peace committees have been formed in Isiolo, Samburu, Marsabit and Meru North Districts. The problem is that the Government seems to have reneged on its duty and left the insecurity situation to be handled by the peace committees. Every time an attack takes place, the *wazees* sitting on the peace committees are called together and

asked to do the job of the security personnel. In the latest incident, where five people were killed, the security personnel traced the footprints of the retreating attackers, as the Assistant Minister said, for only four kilometres and returned to their base, citing lack of food and other supplies.

Mr. Deputy Speaker: Dr. Kuti, could you seek your clarification from the Assistant Minister?

Dr. Kuti: Mr. Deputy Speaker, Sir, could the Assistant Minister tell the House whether it is the responsibility of peace committee members, who are unarmed and without legal authority to handle insecurity matters, to maintain security for the people in that area?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, it is the responsibility of the Government to provide security to all Kenyans. However, we work in partnership with local communities and other organisations on the ground in ensuring that insecurity problems are solved. Of course, we regret the incidents. We appreciate that we have experienced some setbacks in pursuing the attackers, but we are addressing these setbacks by establishing additional security posts to assist in tackling the problem of bandits in the area.

Dr. Godana: Mr. Deputy Speaker, Sir, the hon. Member has tried to widen the issue regarding the particular incident in which five people, including three APs, were killed. This particular attack was very unusual. The attackers killed the three APs, a son of the former MP and somebody else. They were not looking for livestock. They did not even loot the pockets of their victims. They only took with them the three G3 rifles.

As the Assistant Minister rightly said, the footprints of the retreating attackers pointed in the direction of Serolivi. From the scene of the crime to Serolivi is not more than a day's walk. We now understand from the area Member of Parliament that the security team actually abandoned the pursuit of the bandits after only four kilometres' walk. Further - the Assistant Minister can confirm this - we understand that the identity and names of the actual six people who attacked the said Land-Rover in military style, are known and are in the possession of the police. If he confirms that, could he assure us that the police will go to the homes of these people, who are known, and pick them up? Could the security team be ferried in a truck and follow the footprints of the attackers to their destination?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I undertake to follow up the matter to its logical conclusion.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Hon. Members, I appreciate the fact that the matter before the House is very sensitive. However, a Ministerial Statement has been issued, and clarification has been sought. So, I will allow only Mr. Sasura to seek further clarification on the matter.

Mr. Sasura: Mr. Deputy Speaker, Sir, the latest incident happened on 21st February, 2003. We have dwelt on this matter for the last two weeks. You will recall that the British Government compensated the victims of the undetonated ordinances left behind by its army in Samburu District; they were paid many millions of shillings. However, these people seem to have invested that money in illegal firearms purchases. We are not asking the Government to provide us with Land-Rovers for patrols, or to send General Service Unit (GSU) personnel to go and eat what they call "Compo Man 10" on the roadside. We are asking the Government to disarm the Samburus in Serolivi and Archers' Post area. If the GSU personnel cannot disarm six bandits, then the Government has nothing to tell us.

Mr. Deputy Speaker, Sir, so, could the Assistant Minister undertake to send security personnel to disarm the Samburu residents of Archers Post, Serolivi and Wamba? If his security personnel are unable to disarm these people, he should tell us to do so; we can disarm them ourselves.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, we will look into the issue of disarmament because we must involve the communities and the leaders.

Mr. Deputy Speaker: Let us move on to the next issue. The few supplementary questions were meant for clarification. It is not Question Time. I think because of the seriousness of the matter, I have given enough time for clarification.

Proceed, Mr. Muiruri!

POINT OF ORDER

BAN ON ILLICIT BREWS

Mr. Muiruri: Mr. Deputy Speaker, Sir, I stand to seek a Ministerial Statement from the Leader of Government Business in a matter which I think is of national importance.

Mr. Deputy Speaker: Mr. Muiruri, could you address your question to a specific Minister?

Mr. Muiruri: I would like the Ministerial Statement to come from the Leader of Government Business, the Vice-President himself! Why I am saying that is because of the manufacture and sale of unhygienic brews in the whole country.

Mr. Deputy Speaker: Mr. Muiruri, you know that, that docket is not in the Vice-President's Office!

Mr. Muiruri: Mr. Deputy Speaker, Sir, I am saying that because both the Ministry of Trade and Industry and Ministry of Health have promised that they have already closed those industries in Naivasha and yet, they are operating. The Ministry of Health is misleading us and blaming the Ministry of Trade and Industry. This is a matter that we need clarification on, from the Leader of Government Business in this House!

Mr. Deputy Speaker: Mr. Muiruri, let me assist you! The Chair can assist in this matter. Could you direct your question to the Office of the President? That is because when you say the Ministry of Trade and Industry and the Ministry of Health, the superior office is the Office of the President! Could you address your question to the Office of the President?

Mr. Muiruri: Mr. Deputy Speaker, Sir, I think that is why you are sometimes *unbwogable*! The question of the sale of illicit brews, especially in my constituency and all over the country, is a matter of great concern. This matter came up in this House on 6th March, 2003 and the HANSARD is very clear. The Assistant Minister for Trade and Industry promised this House, and actually gave a guarantee, that Keroche Industries in Naivasha was closed and every room had a lock. He went further to say that the directors of Keroche Industries had been arrested, prosecuted and the case would come up on 11th of this month. That is all zero! The current position is that those brews are killing our people and they are being circulated all over the country. When KANU was ruling, we used to say that those drinks were directed at Central Province. That is not the case now. The brews are sold all over the country. Those brews have what we call methanol which poisons the blood and makes people blind.

(Mr. N. Nyagah consulted loudly)

Mr. Deputy Speaker, Sir, the Chief Whip is making a lot of noise here!

Mr. Deputy Speaker: Mr. Muiruri, could you say what your Ministerial Statement is all about?

Mr. Muiruri: I would like the Office of the President to tell the whole country whether it will allow people to keep on dying from drinking the illicit brews. The brews are condoned by the Provincial Administration and they are sold during the day. The brews are distributed to our people and they are dying. What is the Government's position on those brews? They are not good for this country and they are making our young people--- It is very annoying!

Mr. Deputy Speaker: Mr. Tarus, you have heard the Statement that Mr. Muiruri requires. When can we have it?

The Assistant Minister, Office of the President (Mr. Tarus): We will have it on Wednesday, next week.

Mr. Deputy Speaker: Very well! We will have it on Wednesday, next week.
Next Order!

BILL

Second Reading

THE CRIMINAL LAW (AMENDMENT) BILL

(The Attorney-General on 1.4.2003)

(Resumption of Debate interrupted on 1.4.2003)

Mr. Deputy Speaker: Who was on the Floor? Mr. Wetangula was on the Floor! You still have got 15 minutes.

Mr. Wetangula: Thank you, Mr. Deputy Speaker, Sir. By the time the House rose, I was pointing out to the Attorney-General that, it is improper and wrong to say that confessions from criminals and suspected criminals should be taken by magistrates because that would amount to turning judicial officers, especially magistrates, to witnesses in subsequent trials. That is because when those confessions are repudiated, the magistrate who recorded the confession has to be called to testify in court. That would be wrong. We have to respect the demarcation of duty between judicial officers and prosecutors.

Mr. Deputy Speaker, Sir, this Bill touches quite extensively, on the crude and anti-social offence of rape.

The only amendment in relation to rape that there is in the Bill is to remove the provision of corporal punishment.

I want to suggest to the Attorney-General that he has to re-look at the offence of rape, re-define it and set perimeters of punishment where convictions are reached. I believe with the scourge of HIV/AIDS in this country, it is time the Attorney-General defined in our statutes that any rapist, who infects the victim with the HIV/AIDS virus, should be charged with murder and, if convicted, face the stiff sentence that murderers get. Anybody who consciously goes out to sexually assault others and infects them with diseases that would lead to the termination of one's life, should not be treated as an ordinary rapist, but as a murderer, and should be charged as such. I would like the Attorney-General to re-look at the definition of rape.

Mr. Deputy Speaker, Sir, I also would wish the Attorney-General to define various categories of rape. We have marital rape where husbands forcefully have sexual intercourse with their own wives. A situation like that should not be treated the same way as a crude rapist who walks with a crude weapon and knocks down a woman that he does not even know, and has carnal knowledge of her. Those two scenarios should not carry a life sentence equally.

Mr. Deputy Speaker, Sir, we also have cases where young people, boyfriends and girlfriends, in the course of their relationships, end up in circumstances that would lead to an offence of rape. Again, that is a degree of rape that should not be treated at the same level as the carjackers who ambush motorists, rape occupants and do all sorts of crude things to them. Otherwise, we might end up with a state of uniform application of punishment with different degrees of offenses.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, if we want to improve the administration of justice in this country, we have to look at the set up of the courts, the remuneration of the judicial officers and the circumstances under which they work. The Attorney-General talked of having evening, night and weekend courts. I want him to go further and establish and gazette courts at our international airports. If you have criminals coming into this country, we have no business arresting them and bringing them into the country to be charged in normal courts. They should be dealt with at the airport and deported right from there, so that they do not get into the country and cause more problems and expenses of guarding them, feeding them and all sorts of other things, to give them human treatment.

There is a problem, which needs to be solved by the Attorney-General. This is the manner in which judicial officers are remunerated. If you look at the High Court, the Court of Appeal and the subordinate courts, you will find that 93 per cent of all judicial proceedings are conducted before magistrates' courts, and only 7 per cent are conducted by the High Court and the Court of Appeal. Yet you will find that a chief magistrate, who is one grade below a High Court Judge, is paid a salary of Kshs48,000 when a judge of the High Court earns Kshs300,000 per month, is provided with a car, a driver and a bodyguard. He is also provided with guards and house servants at his residence, and has a medical cover.

I want to suggest to the Attorney-General to expeditiously look into the terms and conditions of service of judicial officers. This will motivate them to work harder and enhance our war against corruption. The officers will not think that they have a right to take bribes because they are underpaid. As you know, there is a common joke that police constables believe that the Government knows that it is legitimate for them to take bribes because it pays them very little money. We do not want to have that kind of scenario within the Judiciary.

We know that under the Inter-Parties Parliamentary Group (IPPG) package in the Seventh Parliament, this House established that the country has to have 50 judges to handle the backlog of work that we have in our courts. To date, there are only 38 judges of the High Court. We need to set up facilities to enable appointments of more judges, so that there can be an expeditious disposal of cases in our courts. If you went to the High Court on any day - and my learned friend, Mr. Kariuki, will bear me witness - you will find that a judge has a cause list of 30 cases daily, and sometimes more. Even if such a judge has a computer brain, he cannot dispose of all these cases. As a result, cases are routinely adjourned because judges cannot possibly hear all of them. I want to urge the Attorney-General to find money from the Exchequer and renovate the Income Tax Building, commonly known as "Community Building", which was acquired by the Judiciary, so that an increase of manpower in the Judiciary can be carried out to enhance the administration of justice.

Mr. Temporary Deputy Speaker, Sir, it is now 40 years since Kenya gained Independence. We have trained a lot of lawyers who can work as judicial officers, yet to date, we still have lay magistrates with no training in law, acting on the Bench as if they are elders sitting in elders' councils. As we speak, we have lay magistrates sitting in Kandara, Ukwala, Taveta, Ndhiwa, Rongo, Makueni and Hamisi, 40 years after Independence, yet we

have so many trained lawyers in the market. These lay magistrates have no judicial training and have no knowledge of justice. There used to be a lay magistrate in my constituency, stationed in a Sirisia court. I once went there and was shocked at the manner in which he was conducting proceedings. An accused person would be escorted into the court by the police. The magistrate would tell him to stand up, then he would turn to the audience and ask them whether the man looked like a thief. The audience would say "yes", and the magistrate would say: "The court of the people has convicted you". He would then proceed to send the poor man to jail. These are the problems we are having in the administration of justice from the lay magistrates. I want the Attorney-General to expressly outlaw any lay persons from sitting on the Bench as magistrates. He should immediately post professional magistrates to Kandara, Ukwala, Taveta, Ndhiwa, Rongo, Makueni and Hamisi, and save the people of those areas from the injustices caused by these lay magistrates.

My learned friend, Mr. M. Kilonzo, touched on the issue of recording court proceedings. One of the greatest areas of injustice in this country to accused persons and people in litigation is the manner in which court proceedings are recorded. I want the Attorney-General to establish through the law a process of providing stenographers and computers to each and every court. If a case is going on, the accused person, or the litigants must on the following morning, see the proceedings of the previous day to enable him prepare himself for the on-going case. Justice and the process thereof are expensive, and this country must be ready to enhance the course of justice by providing more funds towards the administration of justice.

Mr. Temporary Deputy Speaker, Sir, sometimes if a magistrate or a judge has been compromised, you will find that when vital evidence is being given, the judge simply throws down his pen and stares at the witness. When the poor lawyer stands up and says: "My Lord, you are not recording that evidence", the judge turns to you and says: "This is my court. It is not your court". These are the kind of things we want to get rid of with express provisions in the law, so that if the following day the proceedings are at total variance with what went on the previous day in court, the litigant, or even the accused person, has a right to ask that court to disqualify itself from hearing his case on account of incompetence and bias. That is the only thing that will help us enhance the process of administration of justice.

The Attorney-General has also not told this House and the country at large, what he intends to do in law to rehabilitate criminals. It is not enough to send criminals to jail or hand them over to brutal prison warders to deal with them. We must have counsellors to counsel convicts in the course of trials and even after the trials. A certain period should be set, depending on the gravity of the offence committed and its social impact, within which to counsel criminals after serving their jail terms. They should be rehabilitated fully into good citizens. We do not want to have a situation where our penal system is all geared towards punishment. We want to be driven by the desire to rehabilitate criminals, so that they become good citizens and productive members of our society.

Last but not least, I want to inform the Attorney-General that he has an onerous task to strengthen the prosecution process in his office. He has a task to eliminate the injustices caused by policemen prosecuting cases of gravities beyond their capacity. He has to recruit enough lawyers and make sure that we have a provision of the law which requires every police station to have a lawyer to assist suspects, protect their rights and save them from being molested unduly.

Lastly, it would be unwise for the Attorney-General to suspend the Clause which requires magistrates to take confessions, for reasons that I have given.

Mr. Temporary Deputy Speaker, Sir, with those very many remarks, I beg to support the Bill and urge the Attorney-General to make sure that he takes into account the many things that I have said.

Prof. Oniang'o: Thank you, Mr. Temporary Deputy Speaker, Sir. I can see that these amendments have a lot of legal language. I am not a lawyer and, therefore, I will contribute to the Bill from a consumer's point of view and on specific sections.

First of all, let me thank the Attorney-General for bringing forward the amendments. But I was a bit disappointed when the Assistant Minister, Mr. Githae, seemed to make fun of girls who get married. He also made reference to a ripe fruit as opposed to an unripe one. This is not a laughing matter. We must take this matter very seriously. I would just like to urge my male colleagues that when they make fun of this, they should just think of their daughters, sisters, mothers and people who are close to them.

Mr. Temporary Deputy Speaker, Sir, clearly, when it comes to issues of rape, it is mostly the women who suffer because they are a target and are at risk. I believe that rape is a crime and we should not look at it from the point of view of sexual engagement. This is truly a crime. Therefore, it should receive the punishment it deserves. I would like to support Mr. Wetangula's view that, in fact, we should weigh the different types of rape differently. I have in mind a situation where a baby of six months is raped, for example, as opposed to a 14-year old or a 16-year old girl. I cannot imagine that somebody who defiles a six-month old baby can go to jail for seven years or whatever number of years and expect that he will come out of jail a rehabilitated person. That is a crime that deserves the harshest punishment possible. In this case, we should actually apply what is being applied elsewhere. We are aware that issues of paedophilia are being taken very seriously.

In fact, residents who find that somebody has come out of jail having committed this kind of crime will not allow him to stay in his residence. So, we should follow what happens elsewhere. We should realise that it is something very serious and we should not take it lightly.

Mr. Temporary Deputy Speaker, Sir, there is also the issue of sodomy when it comes to young boys. It is not only girls who are defiled, but also young boys are actually defiled. We have seen this in the case of the Roman Catholic Church and the people involved get away with it. This is real and present in our society. Therefore, we should address ourselves to it. In fact, it should be mentioned by name when the Bill will be amended.

Mr. Temporary Deputy Speaker, Sir, I have seen here something like "indecent practices between males". I am imagining that we are just being too nice or African not to mention it by name and, maybe, in our vernacular languages the word does not exist. I guess we are referring to homosexuality. We not only have indecent practices between males, but also indecent practices between females. I think as a society, we should have a stand on homosexuality. It is being accepted elsewhere. You have members of the same sex getting married in some societies and it is legally approved. Where do we stand as a country? What is our stand as Kenya on this matter? We also know that these kind of practices go on, and we can no longer isolate ourselves from our African value systems nor from what goes on elsewhere.

So, I would like the Attorney-General to see whether he can either separate homosexuality from the Bill which is being amended so that it can be discussed as an independent entity or to make sure that it is incorporated properly. Avoiding to call these practices by the very names which are used internationally and even locally does not really help us, but just makes the situation worse.

Another case which I thought we should touch on and I have not seen it here is the treatment of women in remand or jail. This reminds me of a lady who was sentenced to life imprisonment because she was pregnant. I recall the media reporting that how she got pregnant was still a mystery. Getting pregnant cannot be a mystery.

So, I believe that there is something which happens to women when they are in remand, and in a manner which requires that they are protected. We should realise this and spell it out.

There is also another issue which I would like to touch on now especially, in the wake of HIV/AIDS, which we know has no cure. We know that both men and women are at risk but, indeed, women are more at risk than men. In fact, this comes to a situation---

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House by saying that there is no mystery about pregnancies when we know that our Lord Jesus Christ's mother got pregnant through the Holy Spirit?

The Temporary Deputy Speaker (Mr. Poghiso): Order, Mr. Githae!
Continue, Prof. Oniang'o!

Prof. Oniang'o: Mr. Temporary Deputy Speaker, Sir, due to Mr. Githae's youthfulness, he is again making fun of a very serious matter. I would like to urge him, as an elder person to really desist from that kind of thing.

The Temporary Deputy Speaker (Mr. Poghiso): Order! Sometimes people rise on a point of order to make a point, but the seriousness of the matter or the situation should be weighed. At least, weigh the situation, if you will make a joke out of it. I do not see very many people joking about that particular issue. It is not an ordinary matter. But at the same time, I would like to say that the issues raised here have to be taken seriously. Mr. Githae, that was frivolous!

Prof. Oniang'o: Thank you, Mr. Temporary Deputy Speaker, Sir, for your protection. On the issue of HIV/AIDS, we know that women are more at risk. We know women, by the nature of their standing in the society have to submit to their men, and it is sad that now they have to submit to men who may be philandering, be HIV positive and may deliberately be passing on the HIV virus to them. We require legal provisions here to protect women. When we do this, we are not only protecting women, but we are also protecting children and society as a whole. So, some provisions need to be incorporated in this Bill as amended here.

Mr. Temporary Deputy Speaker, Sir, I would also like to point out the way our prisons are and I think we need a gender dimension here. I have a feeling that we do not have enough officers to attend to women or young girls who may be in jail or when women are actually pregnant and give birth to children in jail. What provisions do they have in the jails? I believe, when we address this, we are putting it as a package within the amended Bill as it stands at the moment.

Mr. Temporary Deputy Speaker, Sir, I would like to support the ideas that have come across from hon. Members who have contributed especially hon. Wetangula who talked about ensuring that those who deal with

these cases are properly remunerated so that they can do their jobs diligently and objectively and pay attention to what actually is a very critical matter here.

Mr. Temporary Deputy Speaker, Sir, as I end, there is the old issue of rape. We cannot treat rape lightly. We should not treat rape as if it is an act which somebody commits because he or she is sexually hungry, but indeed, it is a crime, which we as a society, should deal with very seriously.

Mr. Temporary Deputy Speaker, Sir, with these few remarks and the amendments I have suggested, I beg to support.

Mr. M. Kariuki: Mr. Temporary Deputy Speaker, Sir, I beg to support this Bill.

First, at the outset, I would like to say that the Bill is timely, but at the same time, the Attorney-General has squandered a great opportunity to bring robust and revolutionary changes in the criminal law of this country. I recall his opening remarks that this was as a result of some task forces that were put in motion. He went through the credentials of the members of those task forces, and with respect, I agree that they have good credentials, but there is one important perspective that is lacking in those particular individuals. They lack an international perspective to the development of the criminal law process. I am aware that a Judge of the Court of Appeal did work in Zambia and apart from him, the other people only appear to have worked in this country. There have been radical developments in the criminal law, both at the international and local levels and it is important that we be informed when we are making amendments to that effect.

Mr. Deputy Speaker, Sir, Prof. Oniang'o, in her last remark, said that we need to redefine rape. I happen to have been working for the United Nations as an Advisor in the International Criminal Tribunal for Rwanda for the last four years. I am aware that there have been radical developments in the definition of rape. Rape as known to our law today, has radically changed. Not only has the definition changed, but the offence today is a crime against humanity, not just an ordinary penal offence. It is important that when we have an opportunity like this to amend our laws, we should take the input in the development of legal jurisprudence at the international level and import those concepts here. This, I think is what the Attorney-General needed to do. For example, we know that most of the victims of rape during the Rwanda genocide were infected with the HIV/AIDS virus. One of the most disturbing phenomenon in that Tribunal is that while the men who were infected with HIV/AIDS virus and who appeared before it got free medical attention, the women who were the rape victims did not get any attention.

Mr. Temporary Deputy Speaker, Sir, I happened to be in that Tribunal on one occasion when a conviction for rape was pronounced and the victim asked the judges: "What do I benefit from 25 years imprisonment for this man who raped me when I cannot even buy drugs for myself?" She further said: "To hell with this tribunal," and she walked out. These are things we learn from experience. When we have to revisit our law on rape, we need to know that it is a crime against humanity. It is a crime of violence against women. It is a crime that dehumanises a woman and must be taken with the seriousness that it deserves. We need to redefine the term "rape" in a modern jurisprudence, as we learn from those jurisdictions from outside.

Mr. Temporary Deputy Speaker, Sir, secondly, in looking at our criminal law process, we have to look at the victim. It is not enough to say: "You were raped and, therefore, go home and we will jail this man." Justice is about rehabilitating the victim as much as rehabilitating the assailant. I think in this particular context, I welcome the provision leading to information on sentence. It is important to know the state of the victim at the time when the sentence is pronounced. I welcome very much the Attorney-General's initiative to bring new provisions in its place to ensure that as at the time a magistrate pronounces a sentence, the information is available as to the state of the victim so that adequate provisions can be made to compensate that particular victim so that she can, at least, enjoy her respect as a human being.

Mr. Temporary Deputy Speaker, Sir, I am submitting that if the Attorney-General took time to look at the development, for example, in the International Criminal Court Rome Convention, which we have already signed, we will be able to borrow tremendously from the ensuing jurisdictions in those particular areas. At the opening of his remarks, the Attorney-General did say that it is intended that he should bring these amendments to stamp out crime. Although I have tremendous respect for the Attorney-General, criminal law has not been able to stamp out crime throughout history. Some of the causative factors of crime do not lie within the purview of the law.

Mr. Temporary Deputy Speaker, Sir, the provision of Section 77 of our Constitution states that:- "A person arraigned before a court of law will have a fair and impartial trial." In my own belief and arising from my practice of law for 26 years, the lesson to learn from the criminal law justice process, is that the process is intended to vindicate the rights of the accused and not basically to stamp out crime. The fairness of a process is not to be judged by how many convictions are entered in our courts. All I know is that a fair process can have 99 acquittals and one conviction and be a fair process. Therefore, when we are looking at the law in terms of amending it, we cannot allow ourselves to shift from the fact that the provisions of a fair trial are within Chapter 5 of our Constitution. The emphasis in that Chapter is on the individual rights so that, in a criminal trial, the

most important thing is to ensure that there is a fair trial for the accused person. That is why we say when there is a benefit of doubt, give it to the accused person.

Mr. Temporary Deputy Speaker, Sir, it is against this background that I am opposed to the provisions to remove the elements of corroboration in sexual offences. A child can be taught and tutored to testify against an accused person and her sole evidence can lead to a conviction. That, in my humble submission, does not support the principles for which the criminal law process was set up. I have opposed any attempt to try to remove corroboration because we know from history and also from the Bible that children can be used to frame up individuals. So, it is important, even as we are overzealous to ensure that our children are protected, we have an equal duty to ensure that an accused person who is arraigned in a court gets a fair trial. Therefore, the evidence of a child of minor years alone should not suffice. We know what happens if a child is abused by an adult. There can be corroboration formed either through the violence used on her, her own clothing, the injuries she has suffered. We can also get corroboration from medical evidence, but to say her own words against that of the accused *per se* will lead to a conviction is to compromise the principles of a fair trial.

Mr. Temporary Deputy Speaker, Sir, I wish to say that we cannot consider the process a fair trial without looking at the performance of our Police Force and the Judiciary. If you look at our Police Act, it provides for the independence of an investigating officer to ensure that he is not put under pressure by any power, or authority when coming up with a conclusion that a *prima facie* case has been disclosed and as such a charge should be preferred against a suspect. So, it is in that regard that this was also another opportunity for the Attorney-General to look at the provisions of the Police Act, to try and empower the investigating arm of the law, to ensure that they enjoy their independence and to ensure that they have the necessary facilities to detect crimes. Above all, to consider to underpin their independence by putting in force a Police Service Commission, to which they will be accountable so that no politician, or any other authority can manipulate an investigating officer in the course of execution of his duties.

It is equally important, Mr. Temporary Deputy Speaker, Sir, that the independence of the Judiciary is improved in order to enhance our criminal law process. I am aware that there have been some agreements between the Judiciary and some local authorities to set up some municipal courts. In Nakuru, there is a new court which has been set up to deal with the by-laws of Nakuru Municipality, and a magistrate has been posted there. What is interesting is the fact that there is an agreement existing between the Judiciary and the local authorities that the fines that will be realised from the persons who are arraigned before that court will be shared on a 50 to 50 basis between the Government and the local authority. I wish to submit that, that is to compromise the impartiality and independence of a court. No court should be seen to be benefiting from crime, or from the fines that are imposed. It is equally immoral that a Government should benefit from the fruits of crime. In fact, the Government should strive to stamp out crime. Therefore, the agreement made between the Nakuru Municipal Council and the Judiciary that the fines should be shared on a 50 to 50 basis is against the spirit of Section 77 of the Constitution, which provides for an impartial and independent court. When the Municipal Council is a complainant in a criminal charge and *mama mboga* is taken before that magistrate, and she is fined Kshs1,000 and the Municipal Council takes Kshs500, then the complainant is already a beneficiary of that process. We cannot say that, that particular court is in any way independent or impartial. I do hope that the Attorney-General and the Minister for Justice and Constitutional Affairs will take an appropriate step to ensure that, if we are going to run municipal courts to enforce by-laws, they do not benefit from any fines imposed on the accused persons. We are talking of a situation where if we have to ensure a fair trial, the Judiciary has to be quite independent and the principles of impartiality and independence are observed.

Mr. Temporary Deputy Speaker, Sir, there have been developments at the Commonwealth level in terms of law. I am aware that there have been two agreements, one is called the Bangalore Principles reached in a city called Bangalore in India. I am aware that there is the Harare Declaration of 1990. These two declarations are important in terms of enforcing international conventions in the municipal law.

Mr. Temporary Deputy Speaker, Sir, you notice that we have signed so many conventions, including the Convention Against Torture. The Minister for Foreign Affairs has been busy doing that on many occasions, but hardly do Kenyans benefit from the principles enshrined in those conventions. One way of importing those conventions into our domestic law is repeating what they say; that a judge should use his ingenuity to apply those situations in the domestic law. This was an opportunity for the Attorney-General to import the Bangalore Principles and the principles enshrined in the Harare Declaration so that Kenyans can benefit from the international conventions that we have signed at the international level. That could have been made through a very simple amendment. We have already said that we do not want to have the principles guiding the English courts into our legal system here. It was very simple to replace that with a system which says that, once this country has signed an international treaty or convention under the United Nations (UN), or the Organisation of

African Union (OAU), then principles applied in those conventions would be applicable in our domestic law. This would have been very simple one line amendment. I do hope the Attorney-General will consider that point.

Most of these things we talk about, for instance, torture, have come as a result of the conventions that this country has signed with the outside world. A good example is what happened recently in Belgium. The Prime Minister of Israel, Mr. Sharon, was indicted for crimes against humanity, for things that he is supposed to have done in Israel, or Palestine, where Palestinian children and women were killed. The Belgium Court said that it had jurisdiction to try crimes against humanity from any corner of this world. One wonders; if somebody were to take refuge in Kenya after committing crimes against humanity in another jurisdiction, do we have the necessary law to apply on that individual? This was the moment and that is why I said the Attorney General squandered the opportunity. He should have introduced a very simple provision of the law to import very particular principles, so that people who commit crimes against humanity from any corner of this world can be dealt with. Also, Kenyans can benefit from the protection of international conventions. I reckon that for the first time, this particular House did, in fact, adopt through a statute, the Children Act of 2001. This House did adopt specifically a convention of the UN on Children and imported it into our law. That was a very positive step. I do not see why the Attorney-General would not have made a similar step in amending our criminal law by saying that this country embraces the principles enshrined in all conventions that are enshrined within the UN Charter to which Kenya is a signatory. That would have been very a positive and robust development in our law. I do hope that it is not too late to consider a one line amendment. If that is done, Kenyans would enjoy more protection than they have done in the past. We want to benefit from the actual protection enshrined in the UN Charter.

I talked about rape and the revolutionary developments that have taken place in the UN tribunals on genocide. It is important that we look at those definitions and embrace them here. There have been a lot of ingenious attempts to define rape. The other day, I was reading some humour columnist in the *Newsweek*, about possible crimes by soldiers in Iran. He said that rape is an act of an unlawfully unleashing chemical and biological weapons on unwilling female. That is the new definition of rape. The other definition of rape, and I came across it recently, is that rape is an unlawful landing in Thailand. I do not know where Thailand is. But these are some of the side comments by ordinary people to try and define rape. I am simply saying that it will take some ingenuity to define rape in terms of the evolving jurisprudence, and in terms of the fact that it is today a crime against humanity and needs to be given due weight in defining it in our legal system. I want to say something about corporal punishment. It is true that it is quite timely that corporal punishment should be abolished because it is contrary to Section 74 of our Constitution, and so is the death sentence!

Section 74 of the Constitution of this country deals with the question of inhuman and degrading punishment. The development in the Commonwealth Jurisdiction in the last three years has clearly said that, if you keep a deathrow convict on deathrow for six months without executing the sentence, then you are in breach of Section 74 of the Constitution. You are subjecting that convict to gross inhuman treatment. Given that Kenya has not carried out the death sentence since 1985, this is an opportunity for the Attorney-General to take up this matter and advise the Government that, in fact, those who have been on deathrow between 1985, and six months ago; should, in fact, benefit from this jurisprudence; because they have already been subjected to gross inhuman treatment by the Government. What the court jurisdiction should have done is to release the convict or sentence him to such appropriate terms as necessary. This initiative has come from the judiciaries that are actually very revolutionary in their thinking.

So, this is another opportunity to say that we have had so many people on the deathrow, we have not executed their sentences, and this is the appropriate time to release them. For those who were only convicted about three or four years ago, let them be given such sentences as to ensure their immediate release from custody. That is another benefit from the evolving international jurisprudence. You do not keep a deathrow convict for more than six months without executing the sentence.

But more importantly, the death sentence, runs contrary to the principle of rehabilitation. We know that every human being has the potential to be rehabilitated; we are not incorrigible! But the fact that we can mete out death sentence, it means that we are not capable of rehabilitating. It defeats the principle of sentencing. I hope the Attorney-General will advise the Government accordingly, that in modern jurisprudence, he should actually advise that, as much as possible, we should depart from the death sentence because it is terminal and does not give an opportunity to any parties to rectify their ways.

Mr. Temporary Deputy Speaker, Sir, I wish to comment on a rather important aspect of the Bill; Section 78 of this amendment is a little curious. The Attorney-General is well aware of what has been happening in our court systems. If you sued somebody for stealing your cow in a civil suit, you cannot subsequently initiate criminal proceedings before the civil suit is heard and determined. There are many cases reported locally, the Attorney-General is aware of them because he has been a party. Now, in this particular Bill, he has tried to bring

in Section 78. He has repealed Section 78 and replaced it with Section 193.

Mr. Temporary Deputy Speaker, Sir, those who do not have the benefit of the law may not know that there is some mistake with respect to that. If this amendment intends to overturn the court decisions that have already been made regarding that principle; this is not a local principle! The principle of the law, states that, as much as possible, if you initiate proceedings of a civil nature, you should not be allowed to gain advantage by using the police to charge and accuse for a criminal offense arising from the same transaction. There are, therefore, submissions that Section 78 be replaced by Section 193(A). However, it should actually be removed so that Section 78 remains. This is my humble submission because it will offend the principles of the law that prevent abuse of the court process that have already been enshrined in the court decisions.

Mr. Temporary Deputy Speaker, Sir, regarding *nolle prosequi*, an amendment is introduced by the Attorney-General that a *nolle prosequi* can be entered in the absence of an accused person and that the accused person is supposed to be informed subsequently. Again, court decisions on this line are very clear, that the Attorney-General cannot come to court any more and enter a *nolle prosequi* without giving convincing reasons upon which an accused person must have an equal opportunity to challenge the reasons given in a *nolle prosequi*. Now, if you introduced these measures where a *nolle prosequi* can be entered in the absence of an accused person, you will be denying that person an opportunity to counter the Attorney-General's allegations on the *nolle prosequi* to the extent, therefore, of trying to do away with the presence of the accused person in court at the time of entering a *nolle prosequi*. This amendment is unacceptable.

Mr. Temporary Deputy Speaker, Sir, the question of bail is being dealt with within the Criminal Procedure Code (CPC) and it is very important that at this point in our history, we should make an offence like treason bailable.

Looking at the situation in Zimbabwe, a politician charged with treason comes to court daily from his house. In Kenya today, if you are charged with treason, which is an offence for a politician, you will have to come from Kamiti Maximum Prison to attend court. In Zimbabwe, the situation is different. This is an opportunity for the Attorney-General to say that for offences like treason, which relate to the freedom of expression for politicians and other people, the accused should not be remanded.

Mr. Temporary Deputy Speaker, Sir, my learned friend, hon. M. Kilonzo did mention about the Chief Justice's recent directive on creation of night courts. We know the scare that, in 1980s in this country, trials took place at night. Many of the so-called *Mwakenya* convicts were sent to jail at night, in the absence of lawyers and members of the public. There is a big danger in starting night courts. This is because one principle of a fair trial is that the proceedings of the court must take place in public where every citizen or non-citizen has access without hindrance. If we are going to start night courts for purposes of facilitating bail, no wonder they are going to be abused. Our experience and history has it that in the past there has been abuse through *Mwakenya* trials. So, we need expeditious trials, weekend court sittings, but we do not need night court sittings. That is absolutely dangerous and departs from the principle of a fair trial.

Now, the last point that my friend, Mr. M. Kilonzo did raise relates to the offences of capital nature and whether, in fact, we should not have legal representation. There is a new principle emerging at the International Law and this is the principle of equality of arms. The constitution of every country, including ours, says that you should have equal treatment before the law. If you are a poor man, you cannot afford a lawyer, and there is a rich man out there with a lawyer; you cannot say you are equal before the law. Therefore, we have developed a principle of new jurisprudence of equality of arms. The Government has to ensure that any person arraigned before court on a capital charge gets fair representation from the State. We are doing so for other cases, and I do not see why we cannot do so for robbery.

With those few remarks, I wish to support this Bill, subject to the amendments proposed.

Mr. Haji: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill.

I will not take very long like the learned friend over there has done. I will be failing in my duty as a legislator and a leader of this country if I fail to speak on two major issues that are contained in this Bill. This relates to the question of homosexuality and rape. I think these are two issues that border on murder. They are not lesser crimes than murder. All religions in this world object to the practices of homosexuality, rape and also sexual intercourse outside wedlock. Homosexuality is the worst kind of sexual practice. It is unnatural, inhuman and degrading. It is not only objected to by religious organizations, but it is also a taboo in the African culture. I think homosexuality deserves a stiffer punishment than most of the crimes that are committed. It should be considered worse than robbery with violence, because when somebody robs another one, maybe it is the need which forces him to engage in such an act. But I think homosexuality is inhuman and unnatural, and there is no reason for anybody to be pushed into practising homosexuality.

Mr. Temporary Deputy Speaker, Sir, we know that ancient nations that existed before ours were destroyed by God because of practising homosexuality. I think what we are seeing today in the world, for example, the floods, earth tremors and other calamities that are taking place are a result of some of these things. We are seeing a situation whereby even after all religious organizations have rejected homosexuality, we are surprised that the Western World is trying to force other countries to do certain things in order to be seen to be democratic or moving in the right direction. For example, childrens' rights and womens' rights are rights which are God given. It is absurd that the Western World is now forcing smaller nations like Kenya to introduce Bills and Acts of Parliament which deal with women and children rights as if these are not God given rights.

Mr. Temporary Deputy Speaker, Sir, we are aware that the whole purpose of forcing nations to introduce these kinds of Acts, is to take us out of our culture and remove us out of humanity. Both men and women who are married have a right to correct each other just as parents have a right to correct their children. If we say that we are going to use laws under the guise of human rights, then I do not see how we are going to bring up children who will be obedient to their parents, their society and the nation. I would like to see a situation where the Attorney-General considers introducing more stiffer penalties for those who practice homosexuality. The other day we were told that a ship load of homosexuals was about to dock at Mombasa Port. You can imagine what image it would have created to the society when a ship load of homosexuals are released in Mombasa; God forbid! We would like to see this country free of this vice.

Mr. Temporary Deputy Speaker, Sir, rape is also a very serious crime, and I am shocked to see that it is being treated like robbery with violence. You can imagine, if a nomad steals one goat using violence, he is sentenced to 14 years while somebody who rapes a woman is probably jailed for seven years. I think if we are to be very serious with what we are doing, we must see to it that rape is dealt with more severely than perhaps, other lesser crimes that are given very serious sentences. The worst experience a woman can go through is when she is raped. It is going to haunt her throughout her life. There are cases of women who were raped when they were young, and up to today they cannot agree to be married by men because they look at all men like beasts. It is true that anybody who rapes a child or even a grown up woman is not better than a beast.

Mr. Temporary Deputy Speaker, Sir, I would like to submit that the use of the condom is also encouraging vices. It is driving this country into a situation where people are not mindful of the welfare of others. I do not know why churches and other religious organizations are agitating for the use of condoms. This is encouraging immoral behaviour. It is encouraging young people to start practising direct sexual intercourse with one another. This is not healthy, and we are not going to come out of the HIV/AIDS scourge as long as we allow people to use condoms. There is an advertisement on television with a young man wearing a jeans trouser with a condom in his back trouser pocket which reads: "Do you have one?" What does that really portray to our youth? I think that advertisement should be removed from the television. It should be removed completely because it is immoral. The Minister for Tourism and Information should censor those kinds of advertisements that are shown on our televisions.

Mr. Temporary Deputy Speaker, Sir, I would like to conclude by saying that if the Attorney-General and the Government are very serious, they should deal with the vices of homosexuality, rape and other immoral sexual intercourse. Those found guilty should be condemned to death. These immoral activities should be stamped out so that they do not occur.

Thank you.

Mr. Kajwang: Mr. Deputy Speaker, Sir, I would like to support this Bill. I think it is the first very serious attempt by the Attorney-General to amend the Criminal Procedure Code and criminal law generally, and in a way to deal with some of the problems which have been bottlenecks to criminal justice.

Mr. Temporary Deputy Speaker, Sir, as practitioners of law have found out, there are certain laws which have been in our books for a very long time since Independence or even earlier, which have caused those people who are victims of crime and those who have committed crime themselves a lot of problems in courts and other areas where criminal justice is applied. This is really a good job on the part of the Attorney-General and his staff to look at some of the sections of the law which make bad law. If you look at the Memorandum of Objects and Reasons the main objective is to facilitate expeditious disposal of criminal cases. I think it is a serious problem in our courts here that somebody can be charged with a minor offence of failure to register as a Kenyan citizen. Sometimes you may have just left your identity card at home and you are arrested and locked in prison. If you fail to produce evidence to show that you are a Kenyan citizen, you can be kept in those cells for many months at the expense of the public. This will also be a great inconvenience to yourself and your family. One of the things which have caused so much damage to our criminal justice is the delay in dealing expeditiously with cases which go before magistrates. The Attorney-General, in dealing with this, has identified some of the areas where the delay has been caused.

One of the other things which has caused so much damage to the citizens of this country is torture. Although committing a crime is in itself bad, we have agreed that any person who commits an offence will be dealt with according to the law. In investigating some of these offences people have suffered a great deal because, of torture. Sometimes even when offences are just presumed like in cases of political offences, the torture you get is not compensated, for. When you are later on released or tried and jailed, this leaves you in a worse state than a person who is raped. Some of our clients would come back from the torture chambers in Nyayo House after admitting to crimes which they had never committed with their finger nails pulled out. They could not tell you what had happened to them there. They could only tell us that it was very bad. For many years they could not bring themselves to disclose what happened there because of offences committed by police officers who are supposed to administer justice by torture in those places.

This is a real attempt to civilise our country, our jurisprudence and our criminal justice system. One of the things which has caused much more injury to us than anybody here can imagine is committal proceedings in murder cases. When I was a student at the Kenya School of Law in 1983, that is when this procedure was being introduced. We were taught then that it would expedite a murder trial. In fact, we were told that they were removing the preliminary trial at the lower courts to expedite trial so that the police could, after arresting somebody, put together the committal proceedings into a bundle and bring somebody directly to the High Court. That would cut short the time of trial by six months.

Twenty years down the line, we noted that committal proceedings in murder cases was abused by police officers and prosecuting agencies. You would be brought to court for mention of the case and the only thing which you are told is that the committal bundles are not ready. You would then be brought back to court two weeks later and told again that committal bundles are not ready. Some people have stayed there in those cells at Kamiti Maximum Prison - if they are lucky to be alive because life there is not very good and sometimes you do not get access to medical treatment - for several years before their cases were heard. My teacher at the Kenya School of Law is now dead, but I wanted to ask him why we changed this from preliminary trial because it was faster than this committal proceedings. There is no way you can question the police then. They would merely say in court that committal proceedings are not ready. We would then urge the magistrate to give an order that they bring the committal proceedings at least in one month's time so that the person could be tried because he had been in cell for three years. They would say they had no power to force the police to bring the committal proceedings.

Twenty years later, the Attorney-General has realised that this is one avenue in which people have suffered a great deal in remand homes. Later on, even if you are discharged after four years of staying in such bad conditions, you will have already served a substantial sentence and there is nothing that the State can do to compensate you for that suffering. I think it is a good thing that after 20 years the law has changed slowly. We were very happy last year when this Bill was brought to the departmental Committee on Administration of Justice and Legal Affairs and we said that at least the Attorney-General has realised that this has caused a lot of pain and suffering to many people who were charged with criminal offences of this nature. I want to thank the Attorney-General for that. At least now you can arrest somebody for murder, take him straight to the High Court and let the case be heard. If the police are not ready then of course, the magistrate will have the authority to deal with it in the normal way. Where a prosecutor is not ready to prosecute his case, the magistrate may discharge the accused person.

The other thing which has caused a lot of injury is the issue of confession. The police want to be promoted. When they get a conviction, it is a credit in their files that they have done a good job. So, police officers are over-enthusiastic to get people pinned down for conviction. Even prosecutors are very happy when they get convictions, especially if it is a complex case involving maybe a big personality. Sometimes when the prosecutors are being considered for promotion, they look at their files to see how many successful trials they have conducted. In trying to obtain evidence to convict a suspected criminal, they force you to confess.

Mr. Wamwere knows that some people were convicted during the Mwakenya trials on the basis of their own "confessions". They were kept in water in Nyayo House and even threatened with snakes. Sometimes their finger nails were pulled out or they would be taken to Karura Forest and put in a hole full of ants. Eventually, you would say: "Where do you want me to sign"? They would show you somewhere to sign. They then tell you that: "now you have signed, we will take you to court. When we take you to court do not change your mind because if you do so we will bring you back here." So, most of those people would be taken to court, sometimes very late in evening when there is no Press. They could not even know what the prosecutor was reading out to them as the charge. Afterwards, they would be asked whether they were guilty or not guilty and they would answer that they were guilty because they did not want to go back to the torture chambers. This is what happened in our country for many years because of these confessions. We have received this information from those who have suffered from the so-called "confessions." Therefore, for anybody to suggest that the confession should still remain in our

books is to show clearly that he does not know what goes on or why the police extract confessions. Why are we so mad about it? If somebody really wants to confess, he would go and say he is guilty. Why would you force somebody to confess in a police station and go and face him in court? If he really wants to confess because he really knows that he committed the offence, why should you deny him chance to do so? I think there should be a provision that if somebody is so enthusiastic that he wants to go and confess, then he can look for a magistrate and write a statement. He can even go there with his lawyers, if he so wishes. But I am sure there will be no need for it because you can then go to the trial magistrate and confess the offence. So, this bit about confession should be done away with. I do not know the reason why it was kept in our laws. It is high time it was removed from our statutes because it has stayed there for too long. In a democratic country where we want fair trial, it is not necessary.

Mr. Temporary Deputy Speaker, Sir, there is another issue which I want to talk about here. This is the issue of bonds. People are taken to courts very early in the morning and I do not know whether they are arrested on the road. Let me give you one good example.

One time I was coming to town and I called my brother on phone because I did not see him at home. He told me that he was in police custody. I asked him what he was doing in the police cell. He told me that he had been arrested the day before when he had gone to visit one of our sisters. He said that as he was leaving, he was escorted by one of our sisters and her husband. However, when they reached the road they were arrested and accused of being vagabonds, drunk and disorderly. I asked him whether he was drunk and disorderly and he told me he was not. He said even if he were to be drunk and disorderly, he would not have involved his sister and her husband. In this case I drove to the court and I signed a bond.

However, in such cases, if you do not have somebody to sign a bond for you, most likely you will stay there for quite a number of months before the court finds time to hear the so-called case about being drunk and disorderly, or then you confess even if you did not commit the offence quickly so that you pay the fine. If they like, they may order you to clean some place in court and they set you free.

I remember one time I went to take a plea in a Thika court. The police brought in so many of those offenders of being drunk and disorderly. They were almost 100. They accused them of being drunk and disorderly. They were all fined Kshs200. One of them was protesting, but he was ordered out of the court because he was making noise. In fact, the Magistrates are also tired of these cases of being drunk and disorderly. They know those cases have no basis. I do not know whether it is a way of collecting revenue for the Government.

Mr. Temporary Deputy Speaker, Sir, we do not want such petty offenders to stay in cells for too long. This is because it is expensive to the State to feed them, house them and there is no room for them. They cannot be treated them if they fall sick because there is no medicine for them either, among other things. Because we realised this is a big expense and injurious to able-bodied people who should be working, earning money and creating wealth for this country, we passed the Community Service Order Act. If you are lucky enough, the magistrate looks at your case and decides to sentence you for less than three years, you would then be released to go home and serve for a term in a job which would create wealth or help the public. You may go and construct a road, a bridge, clean a school or a hospital somewhere. But when the Attorney-General brought the Bill in this House and then it was brought to the Departmental Committee on Administration of Justice and Legal Affairs, I remember telling him that if he knows that this a petty offence and the individual is likely to be jailed for less than three years, why do you deny him bond? Why do you keep him in remand for so many months only later on to release him to go and work at home? He promised that when he brings the Criminal Law (Amendment) Bill, he will bring something about the bond so that it would be provided that in the event that you are convicted, and are likely to be punished for less than three years, then a person would get a bond automatically so that we do not keep people in remand homes for so long unnecessarily. In fact, if you look at other justice systems in the world, this is what happens. That is why some of us were suggesting that the Ministry of Justice and Constitutional Affairs be created, although now we are saying that the one which has been created is eating into the powers of the Attorney-General. But we say this Ministry is necessary because, currently, there is no co-ordination between the courts and the prisons. The courts just churn out people for remand homes everyday as long as the police brings them. In those remand homes, there is a fixed capacity. But they do not care because they cannot turn them away, they have to receive them. So, you find that in one evening, there are so many inmates that the remand home cannot cope with them, in terms of food and space. Yet they have to receive them because a court has said that they be taken to remand homes. Most of these people who fill the remand homes are people who would eventually be jailed for one month. But since they could not raise bonds or get sureties of similar amounts, they definitely have to go to those remand homes. Some of them die there because there is no enough food, medication, space to breath. In fact, most of them leave those places destroyed because they cannot cope with the

life there. I thought the Attorney-General would do us some good if he added that bit when we come to the Committee Stage. He should have done something about bonds because that hurts the public a great deal. It even hurts us in terms of the taxes paid because it is us who feed and treat them. It is unnecessary because we have already known in our minds that this man will not be jailed for more than three years because the Act says so, but we are still keeping him there---

The Attorney-General (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. I just want to inform my learned friend who is also a colleague here that in fact the Bail Bill has already been drafted and it will soon be brought to this House. It will be a Bill on its own because it is so important. That is why it deserves a Bill of its own.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I am very happy with the information. If the Bail Bill is so important and so big that it could not be incorporated in this Bill, I am happy. I thought the current Bill would have included a clause that says "provided that the accused person will not be jailed for more than three years, he will be asked to sign a personal bond and then be released."

Mr. Temporary Deputy Speaker, Sir, other than that, there is another thing in this Bill that I have a problem with. That is something called the victim impact sentence. This provision states that after somebody has been hurt, for example, a lady has lost a husband in a criminal act or somebody has murdered the husband, and the murderer is about to be sentenced, the wife, brother or somebody close to him is given a chance to say something before the sentence. I do not know the use of this. Is it meant to give the widow, in this case, an opportunity to moan in court? I believe most of the time, she will be pleading with the court to jail that guy for life because he has killed her husband. In fact, he should be hanged because he killed her husband who was the bread earner. She will say that she does not have money because she is a housewife and so on. I do not know the purpose for this clause. Is it to give the widow or widower, as the case may be, an opportunity to vent his spleen at the public and moan in court for days on end because there is no way to stop him or her when she or he starts moaning and the magistrate is supposed to write all the things the victim is suffering from. So, I do not understand the purpose for this provision. Maybe, the Attorney-General, when replying to this debate, will tell us its purpose.

Lastly, this Bill provides that people who will supply glue and other substances to children will be jailed. However, trading in glue is not illegitimate. Glue is used for repairing shoes, tyre puncture repairs, among other purposes. Somebody can acquire glue very legitimately. So, I do not understand how, upon its passage, this law will pin down a trader who legitimately sells glue to somebody, which then ends up being stolen and abused by a child. This provision does not impose any penalties on the user of the glue. Of course, glue is harmful. The children who inhale it have mental problems. Maybe, while preparing this Bill, the Attorney-General assumed that the affected children have already used glue until their mental capacities have been affected. So, he did not bother to provide for punitive measures against street children in this Bill. He only wants to punish the supplier of the glue.

I appreciate the fact that supplying glue to street children is a serious offence. However, if you want to curb abuse of a substance of this nature, you should not just deal with the supplier, but also with the person who abuses it. So, I believe that this is a lacuna which will make it very difficult for law enforcers to catch the supplier. If you do not punish the person who sniffs glue, how will you get to the person who supplies it? So, maybe, the Attorney-General will want to deal with this lacuna later on.

Otherwise, I support the Bill.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I thank you for giving me this opportunity to also add my voice to the debate on the Criminal Law (Amendment) Bill, 2003.

I want to begin by truly thanking my learned friend, the Attorney-General, for, among other things, this year by publishing and bringing this Bill to the House; I know he attempted to do this last year. He has now started behaving in the manner expected of him. I commend him for making this very bold attempt to remove from our criminal law books some unnecessary provisions such as the procedure of committal proceedings, which was started in or around 1983.

Indeed, I want to associate myself with what my learned friend, Mr. Kajwang, has said with regard to the then policy statement made as to the preference for the committal procedure as opposed to the preliminary inquiries that we used to conduct. That procedure, which has lasted for 20 years, has seen so much suffering meted out on suspects as they waited for the police to prepare committal documents. As most of us know, most of our police stations are not staffed with copytypists or secretaries. Those of us who have had an occasion to visit them and see how police officers go about typing documents, have seen some old police officers attempting to type. Before such an officer can complete typing one page of document, he undergoes so much agony. So, one can imagine a situation where the law requires that the same police officer types six or nine copies of committal bundles in a case with more than ten witnesses. We have been blaming the office of the Attorney-General for the delays occasioned in prosecution of murder cases, especially at the committal

proceedings stage. However, this problem has not been addressed fully. The problem has been that of lack of facilities. So, I am happy to see this obnoxious provision, which has been in force for close to two decades, being removed from our statute books. For that, I must commend the office of the Attorney-General.

While I appreciate the effort that the Attorney-General has put in this regard, I may wish to point out that in this era of greater enlightenment, the Attorney-General should also consider doing away with certain provisions which I suspect have escaped his now wide-open eyes, specifically, Sections 170 and 171 of the Penal Code. With regard to Section 170 of the Penal Code, which is about fraudulent pretence of marriage, I would like to submit that this provision is clearly discriminatory against men and, therefore, unconstitutional. I would, therefore, like to invite the Attorney-General to consider removing it from our statute books. For the benefit of the House, Section 170 cunningly reads as follows:-

"Any person who wilfully and by fraud causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, is guilty of a felony, and is liable to imprisonment for ten years."

So, you realise that, initially, this section refers to "any person" but as it progresses, it identifies the person who can be cheated. I am sure that in this country, and the world over, it is not only men who can make other persons, who happen to be women, believe that they are married to them. If this law were to be fair, it should have taken cognisance of the fact that even a woman has the capacity and, indeed, the potential, to convince an old man, like myself, to believe that she is married to him. If such a thing happens and the woman proceeds to live with the man, and they do some of the things referred to in this section, then the woman should also be considered a criminal.

Mr. Temporary Deputy Speaker, Sir, in this country, we have marriages called "come we stay", and they are very many. In all the "come we stay" marriages, if a man who has lived with a woman for a period of ten years later disagrees with her - and disagreements are bound to occur in human relationships, even in marriages which are not provided in the Bill--- We do know if you are deemed to have been lawfully married under the African, Christian Marriage and Divorce Act or the Marriage Act, your recourse is to file a divorce. But by this law, we are making it impossible for the man to seek divorce, if he also believes that he was married to the woman. It is not just the woman! It actually abuses the intelligence of the woman by saying that an adult- that is because it does not say at what age--- You could easily find a 30 or 40-year old woman saying: "This man - I am not saying the Attorney-General would do it - has cheated me for the last 15 years. He made me believe that he was married to me. We have had children." The process of having children is very long and it is the one anticipated in this provision.

Then, another adult man like himself will be sitting in judgement to say: "Actually, I think yes! You must have deceived this woman!" Surely, we are also belittling our women while, at the same time, discriminating against the men. I hope I have made my case that the Attorney-General should consider that this too, is an obnoxious provision and should be removed from the Penal Code.

Mr. Temporary Deputy Speaker, Sir, immediately following on that is something that I have always argued does not make sense to me; the offence of bigamy in this country. There may well be other people who, from religious point of view, may wish to support that, but my view is that the offence of bigamy should not be in our statute books. The section talks of marriage and says:-

"Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of husband or wife, is guilty of a felony and liable to imprisonment for five years."

Mr. Temporary Deputy Speaker, Sir, I know some people tell us the reference to "void" is with regard to marriages that existed under the African Marriage and Divorce Act or under the Marriage Act. That is the only way that it can be said to have been void. But we need to be realistic. We are Africans and laws are by and large, influenced by customs. I believe the Attorney-General would agree with me that he is not informed at all by any known African custom in this country---

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House by advocating for abolition of bigamy and yet, we know that 90 per cent of Kenyans are christians and under the christian faith, they are only allowed to have one wife?

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I had already explained that. I do not know why the Assistant Minister would want me to go back. I have said that I know those who advocate for this law to remain in our statute books would base the argument on the existence of those two laws. But I had gone on to explain that, unless we are creatures from outer space that only descend here at dawn, African customary law, or African customs - and majority of Africans do not have customs that would inform that kind of law and that, whether we

like it or not, it is a vestige of colonial legacy in this country and, indeed, it is based on the English notion of what a marriage is!

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order not to follow the reasoning he gave when he was making his case under Section 170? The reason, as I understood it, was that there should be gender equality. Is he in order not to follow that reasoning in Section 171 on bigamy, by not advocating for polyandry?

The Temporary Deputy Speaker (Mr. Wetangula): That is even more archaic!

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, the Attorney-General wants to distract me! I think he agrees with me and there is need for him to look into these two laws, if only to reflect the fact that this country's population is, by far, African.

The Temporary Deputy Speaker (Mr. Wetangula): Could you address polyandry?

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, let me not address that one! I think the Attorney-General would be more at home discussing polyandry than myself!

I want to add my voice to those like yourself, who have spoken out against what I would call extra-judicial statements, confessions and agree with my learned friend, Mr. Kajwang, that, indeed, they have no place in our law. They should actually have no place in our society today. The experience that we have seen - and I do not think that, that is something that was born out of my party or any other party having been in power---

My experience is one that shows that the police, out of zeal or enthusiasm to secure convictions in complicated matters, have always gone out of their way to torture Kenyans for only one purpose; to get a confession. Many times, experience has shown that people go and disown those confessions. We know that the law provides that in the event a sufficient case is made as to why a trial within a trial should be held, the officer that records the confession must, of necessity, be called to testify. So, I am just wondering about proposed amendment, while I agree that we should not have confessions taken by policemen of whatever rank--- That is because a complaint is made in a police station where there is an Officer Commanding Station (OCS) or Officer Commanding Police Division (OCPD) or whoever. All of them have an interest. If they are convinced - and sometimes you never know how they get convinced - that they ought to arrest, they all have an interest in the outcome of that case. So, to provide that an inspector of police can take a confession from you, when you are locked in a police station where there is an OCS is, to me, mockery of justice. It does not matter who takes the confession. If it is taken by a policeman based at a police station, he has an interest. His boss, the Officer Commanding Station, is, perhaps, the one who instructed the others to go and make the arrest.

So, one cannot really fail to see the connection between the interests of the person who is investigating the case, the person who is taking the confession and the person the report was meant for.

Mr. Temporary Deputy Speaker, Sir, my worry is that if we say that confessions should be made before magistrates, I am unable to visualise a situation where it would be necessary for a magistrate to take a confession in court if a person has not been brought before him already charged with a known criminal offence. So, unless you are saying that magistrates would be called to police stations to record confessions, if a person has already been arrested, charged and arraigned before court, the magistrate will ask him simple questions relating to the charge, the facts as set out, and seek his plea. So, if the person says: "I am guilty", or "I am not guilty", where does the necessity to take a confession from him come from? I would wish to convince the Attorney-General to remove the requirement for the confession to be taken before a magistrate.

Recent studies show that in this country about 93 per cent---

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House? He has said that a magistrate can be taken to a police station to take a confession. The proposed Section 25(a) states:

"A confession or any admission of a fact tending to the proof of guilt made by an accused person is not admissible and shall not be proved as against such person unless it is made in court".

In other words, a magistrate cannot go to a police station to take a confession. The confession must be made in court.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, that is exactly what I have been saying. I have said that if a person is taken to court, he is taken there already having been charged with a definite offence.

So, unless provisions are made for magistrates to take these confessions elsewhere other than in courts, this proposal does not make sense. If you are already charged with an offence, why should it become necessary for the magistrate to take a confession from you? We are removing offences such as treason, misprision of treason and murder from trial by magistrates. According to the proposed amendments, these cases will go straight to the High Court. Where then is the necessity for the magistrate to take a confession? In any case, I am

happy to note that the Attorney-General, a while ago, rose on a point of information and indicated that he was already preparing a separate Bill to deal with the issue of bail and bail bond. Therefore, it is not my wish to debate that issue.

I was saying that a recent study in this country shows that about 93 per cent of all criminal cases are handled by magistrates' courts, and only the balance of 7 per cent is handled by the other courts. This, therefore, means that because crime has a relationship with the economic situation of a country, then it is quite possible that a large proportion of Kenyans stand to suffer if we do not address the issue of the economic situation of the people who appear before magistrates' courts.

Mr. Temporary Deputy Speaker, Sir, I have in mind a proposal which I would like to put across to the Attorney-General. Because complaints are lodged mainly in police stations, the Attorney-General's Chambers should provide, at least, every police station with a State Counsel for purposes of perusing all investigation files of criminal cases within that police division with a view to avoiding situations where so many of our people end up being taken to court because policemen receive the reports, carry out investigations and make the arrest. In most cases, they want to make sure that the person they have arrested "rusts" in court and if possible is jailed. We should get an independent person or arm to advise these policemen. I am saying that this particular person should be a qualified lawyer or State Counsel. This should be the case instead of arresting people and taking them to courts where they spend a lot of time doing nothing. Other people are incarcerated because they may not have a relative, like the example that was given by Mr. Kajwang, nearby to go and stand surety for them in the event that bail is granted on such terms as to require a surety. If we had State Counsels in police divisions to give that advice, I believe that we would reduce the number of cases which find their way into the magistrates' courts by approximately 50 per cent. This is because majority of these cases end up in courts because the police are unable to make a proper decision as to whether or not these people should be charged. But they always say *enda kortini*. That is the language they always use. They say that *mambo haya yataamuliwa kortini*. So, we end up loading the magistrates' courts with unnecessary disputes which could have, otherwise, been resolved if we had the necessary legal advice.

Mr. Temporary Deputy Speaker, Sir, on the same note the prosecutions before magistrate courts are handled, in my view, by most unqualified fellows. The officers who handle this are policemen. Like I have said with regard to the confessions, the policemen are the ones who receive complaints, carry out investigations, decide that a suspect should be taken to court where they hand him to yet another policeman. So, this is one group, if convinced that you should go in, that has an interest all through. As a result of this, we end up having too many unnecessary cases in our courts.

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

*[The Temporary Deputy Speaker
(Mr. Poghiso) resumed the Chair]*

I would like to say that 93 per cent of these cases, according to our studies, which are before magistrates' courts could actually be reduced by well over 50 per cent.

In conclusion I would like to propose and recommend to the Attorney-General that the proposal to amend Section 7(ix) of the Criminal Procedure Code (CPC) with regard to the classes of magistrates who may make orders of transfer of cases should be re-looked at. As we all know, today, we have very few legal magistrates, if any, actually. The lowest class of magistrate is the District Magistrate Class II who are mainly professionals. These are young lawyers. To avoid unnecessary applications to the High Court, some cases could be handled by more senior magistrates like the Chief Magistrates. Instead of talking of First Class Magistrate, we can replace that reference with Chief Magistrates, Senior Principal Magistrates and Principal Magistrates as persons who can take decisions with regard to the transfer of cases.

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

The Assistant Minister for Environment and Natural Resources (Prof. Maathai): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. I would like to associate myself with many of the comments that have been made by hon. Members in respect to this Bill. So, I will only address a few points that may appear disjointed, but I think they are very important.

Mr. Temporary Deputy Speaker, Sir, first of all, I would really like to acknowledge with appreciation the fact that this law is being amended. For many years, it appeared like Kenyans were very much bent on punishing each other and looking for every opportunity to use the same colonial laws that had been instituted to punish the

indigenous population. It appeared sometimes very amazing, I am sure, to outsiders to see our people punishing their own people as if they were punishing a colonised people. I am thinking, for example, of the state of the remands.

Mr. Temporary Deputy Speaker, Sir, I happened to have spent some time in remand. Like one time I was in Kirinyaga and there was cholera outbreak in the town and almost every kiosk or hotel had been closed down. When I ended up in a police remand chamber, the first thing that I noticed was this bucket right in the middle of the chamber. It was full of human waste and we were several women in that chamber and the stench from that bucket was unbearable. Later on, we were served with food and not given any water to wash our hands. I could not eat. Personally, I spent the whole night without eating because I could not eat with that stench in front of me. However, many of those who were sharing the room with me ate. Some of them had been there for several days.

Mr. Temporary Deputy Speaker, Sir, I think these are some of the dehumanising experiences that the Attorney-General should ensure are removed from our midst because they are extremely dehumanising. There is no privacy and so if you want to help yourself, you did it right there in front of your colleagues. Sometimes you wonder whether you should do it standing because you do not want to expose yourself and especially for women, it is really very dehumanising. I also remember in the year 2000, a group of us were campaigning for the cancellation of debts. I was not arrested, but a group of us were arrested. Amongst those who were arrested were priests, nuns and some other lay people and they were taken to the Central Police Station. That night they were literally crowded in one room, both men and women. It was very disheartening to see the nuns especially in that crowded room. The following day they were taken to Makadara Law Courts and all of them were put in a huge room including men, women including those nuns. In the middle of the room was this bucket and I could not imagine it. I knew that obviously these nuns must have helped themselves at a certain time, but how did they do it? Where did they do it?

Mr. Temporary Deputy Speaker, Sir, these are some of the experiences that sometimes made us feel like we were not an independent nation, and that we were still a colony being treated like slaves in our own country.

I want also to address the issue of capital punishment and also share the concerns that were expressed with respect to killing people who commit robbery with violence. Even though we are scrapping capital punishment, this is a welcome move, but I think it is very bad to equate property with life. That because somebody has stolen using violence, we want to deny him life, as if property is more important than life! Considering the theft that we all knew was taking place in this country, sometimes by people who were participating in the debates in this very House, it made a mockery of justice that somebody would be hanged just because he stole some things. So, I want to commend the Attorney-General for joining the rest of the world in accepting that, at this time in the 21st Century, we should not take away lives of people just because they have robbed others.

I am also hoping that our policemen will stop killing suspected criminals. I do not know how many times I have read in the newspapers, and felt like crying, that young men have been shot dead on suspicion of being criminals. There is a law in this country which says that one is innocent until proven guilty. When policemen shoot dead suspects, most people just come and collect the bodies of their loved ones and disappear because they do not even want to question why it happened because they too, might be suspected of being criminals and be shot dead. So, we hope that the days when people were killed because they were suspected to be criminals are over. Again, we cannot equate life with material things. It is one thing to shoot to maim or to shoot to stop, or to shoot to scare in order to facilitate arrest and therefore, subsequent investigations. But when people are killed because they are suspected, it sends a chill down the spine and you feel extremely vulnerable as a citizen that the very people who are given guns to protect life are using them to kill those they suspect to be criminals.

Mr. Temporary Deputy Speaker, Sir, I would like to mention also that in this country, as we know, we were a British Colony and we were persuaded not to use our languages. I mentioned this the other day when I was contributing on culture. Culture is a very important part of our life and also is the language. I said then and I want to repeat that, I am glad that the new Constitution is recognising that there are other languages in this country besides English and Kiswahili.

But if there is one place where human rights are abused, it is in the courts. When a person who can hardly understand Kiswahili, leave alone English, is prosecuted in a language he does not understand and he is completely dependent on a translator, who sometimes does not understand that language either, and sometimes he mistranslates what is transpiring in the court, that is unfair.

Mr. Temporary Deputy Speaker, Sir, I think it is very important that when people are charged in a court of law, if they do not understand English or Kiswahili, the magistrate should speak in the local language so that the accused person hears what he is being accused of so that he is able to articulate herself or himself to the

magistrate in the language the magistrate understands. When all magistrates learn how to speak English and Kiswahili they do not forget their mother tongues. These are facilities that can be made available at the local level so that we do not have people feeling that they are foreigners in their own country. Much of the law we use in this country is after all, based on the English Law. So, not only are the victims being charged through a law that is foreign to them, but they are also being charged through a language that they cannot understand.

Many times that I have sat in the courts and listened to the court proceedings, I have looked at the victims and known that, such a victim is not following the conversations and proceedings. I really feel that the rights of that victim are being grossly violated and yet this person is in his or her own country; a citizen of that country. The citizens who are charging the victim understand the local language that the person talks, and yet they come here and articulate this whole thing in foreign language and, therefore, completely cutting off the victim. Eventually, the victim is told that "you have been sent to jail or you have been charged with this crime."

So, I hope the Attorney-General will see to it that the local languages are introduced in courts. After all, South Africa may be richer than ourselves, but they have recognised 11 languages of their own communities in order to make people feel that they truly belong to that country.

Mr. Temporary Deputy Speaker, Sir, here we all speak foreign languages; English is a foreign language and Kiswahili is almost a foreign language. I just feel sorry for us when our people feel so disenfranchised when they are taken before a magistrate.

Mr. Temporary Deputy Speaker, Sir, in the same thought, at the police station, it has been mentioned that there should be a lawyer who is able to explain to the victims and even to the policemen the true nature of the law under which victims are charged. I think such a lawyer should speak the local language so that he can properly advise in a language that the victims or potential victims can understand.

I want also to say something about the whole issue of criminal law. As we said, it is very much based on English Law. It is based very much on the cultural values of the English people. That is how that law evolved. I think that it is also very important for us to eventually introduce ethics as a subject in our schools. It is out of our cultures that we can develop a national consciousness of what is right and what is wrong. I know that at the national level sometimes it is very difficult to know what is right and what is wrong within our national ethics? What is our national ethics? We are about 42 communities in this country, and at the community level, most of our communities have a sense of what is right and what is wrong. But a lot of that sense is not reflected in our national laws because we are still very much guided by the English Law. So, I hope that if we continue to evolve this law, we shall also borrow from our communities, our people or citizens' sense of what is right and what is wrong. We should, perhaps, encourage a subject on ethics and our national values which will influence our concept of justice.

Maybe I have been too much in the courts, but I would also like to say that sometimes it has appeared like the magistrates are involved in fundraising for the State; bringing a lot of people into the courts and charging them with disorderly conduct. They are then fined a fee and it just seems like the magistrates are fundraising. I think this is an issue which should be corrected, because we know that young people fear the police and they hate the idea of being stopped by the police for questioning. What happens quite often is that, either because they fear parting with their money - which the police officers usually take away from them - or they fear being shot to death, so many of them agree to be taken to remand cells in the police stations and, the following day so many of them are taken to court for disorderly conduct. Sometimes it just seems like a fundraising effort for the State.

Mr. Temporary Deputy Speaker, Sir, with respect to drugs, I think I will agree with some hon. Members who have suggested that it is very important to punish not only those who deal with drugs, but those who take drugs. After all, we are not allowed to kill ourselves no matter how much we feel that we are fed up with life. The Government does not allow us to kill ourselves. Taking and giving drugs, including giving glue to our children is subjecting them a slow death. It is just like a person who infects the other person knowing and willingly with HIV/AIDS. I believe that we should ensure that those who deal with drugs and those who use them should be prosecuted.

Mr. Temporary Deputy Speaker, Sir, with respect to the street children, it may be possible to require that those who produce products that have a chemical that affects the children's brains be required to remove that chemical. I understand that it is---

Mr. Karaba: On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to move that the Mover of this Motion be now called upon to respond, because we have delved into most of the issues.

Mr. Syongo: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very important Bill, and I would like to request the Chair to give us more time to discuss it.

The Temporary Deputy Speaker (Mr. Poghiso): Order! Order! Both of you cannot decide by just standing up and saying that this is what should happen. I think someone has stood on a point of order asking that the Mover be called upon to reply. In order to remove any doubts, I will just put the Question, and it is up to you to

decide whether the debate should go on or not.

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

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

I want to thank very much all those hon. Members who have contributed very positively to this Bill. We had Mr. Githae who seconded me, Messrs. Muite, M. Kilonzo, Wetangula, Prof. Oniang'o, Messrs. M. Kariuki, Haji, Kajwang, Muturi and Prof. Maathai.

All the comments that were made were extremely useful and will go a long way in reforming our Penal Law and proceedings. I would like to state at the outset that I agree entirely with most of what was stated by hon. Members. Where we may differ is that although I agree with some comments, there are issues that cannot be included in the Bill. A lot was stated about prosecutors, but most of them are police officers and all of them ought to be professionals. That should be included in the Bill. That issue is not contained in the Bill because the Attorney-General is a prosecutor. The police are prosecuting in the name of the Attorney-General under the power delegated to them by legal notice. When we reach a stage when we can have professional prosecutors throughout the country, all I have to do is to revoke that legal notice. Therefore, it is not necessary for me to have the amendment put in the Bill.

A lot was said about the expeditious disposal of cases and computerisation of record-keeping in court and so on. Even that is not a matter for legislation; that is a matter for policy, taking into account the availability of resources the Government has at its disposal to have that. I can assure this House that when it comes to the issues mentioned on computerisation, record-keeping in court and so on, the Government is committed to providing that. In fact, it is a decision of this Government that we must provide that within the five-year period that we have today. Plans are already underway and discussions are being held. The Ministry of Justice and Constitutional Affairs organised only two weeks ago a very important seminar in Nanyuki with the donor community and donors are now coming to help us in these matters of improving the operational efficiency of our Judiciary. Matters which relate to operational and administration efficiency can be taken on board without necessarily having a legislation. In America, the court system is computerised and they do not have a legislation for that. All it took was the capacity to provide the necessary equipment.

A confession has to be made voluntarily. It should be made when the accused person goes to court and a plea of guilty or not guilty is taken. When that plea is taken, the circumstances of the case have to be set out and the accused has to agree with the circumstances leading to the commission of the crime, which is in itself a confession. A very strong point has been made that maybe, a confession can be made before a magistrate outside the court. We shall consider that, and if we find it to be valid, we shall introduce it at the Committee Stage. A lot was said about the HIV/AIDS pandemic and so on. That again is not really a matter for this Bill. However, I would like to inform Members that very soon this House will be debating the HIV/AIDS Prevention and Control Bill which we have already finalised drafting. It is now before the Cabinet. As soon as it is approved, this House will debate it. We will then decide on whether a person who knows that he is HIV/AIDS positive and deliberately goes ahead to infect other people with that virus can be considered guilty of the offence of murder. This will be dealt with in due course.

Mr. Temporary Deputy Speaker, Sir, I did mention that the issue of murder should be bailable. Yes, we agreed with that. Again, this is not really an amendment under this Bill because it is a constitutional matter. The Constitution says capital offence is not bailable. However, this matter will be dealt with under the constitutional review process.

Mr. Temporary Deputy Speaker, Sir, as to whether or not we should scrap capital punishment, I am on record in this House as being on the side of those who would abolish capital punishment. But again, that is a constitutional issue and, I am quite sure, that it will be addressed in the draft Constitution. It will be debated in due course. If Kenyans want capital punishment abolished, it will be done.

Mr. Temporary Deputy Speaker, Sir, I want also to touch on the issue that was raised, I believe, by Prof. Oniang'o, on paedophilia, homosexuality, lesbianism and so on. These are very serious issues. All these issues actually touch on the psychology of the people who are penetrating them. Some of them are sick people. Therefore, in addition to the custodian sentence, we must find a way in which they can also be mentally treated so that they do not engage in such activities where they can even rape six month or three year old babies and so on. Again, these are the issues that will be dealt with.

Mr. M. Kariuki touched on a very important issue, particularly the international aspects of this Bill.

Again, in order for the courts to take into account the international covenants to which this country is a party, it is not an issue for this Bill because the scope of international covenants is wider than just the criminal law. Therefore, the right place for it to be mentioned is the Constitution which can impose an obligation on courts, when they are interpreting our laws, to take into account the international conventions which Kenya is a party to. The other Act to be amended is the Judicature Act which again talks about the principles that should be taken into account by the courts in applying our laws. I agree that our courts should take cognisance of the international covenants which we are party to in the interpretation of our laws.

Mr. Temporary Deputy Speaker, Sir, the Committee and other hon. Members did mention that the definition of rape should be reviewed. I take that on board that it should be reviewed. Most likely during the Committee Stage, we shall come up with an appropriate amendment on the definition of rape. During the Committee Stage, I will also take on board the recommendations that were made by the Committee which were tabled in this House. I think they are good recommendations and I will table them. Of course, some of those recommendations concern my powers. It was interesting that although I had proposed to do away completely with my power of consent to prosecute certain offences, the Committee says I retain those powers in relation to what is termed as "political offences". So, it is the wish of the Committee that I should not do away with them. In fact, I wanted to do away with them in the interest of justice, but if it is the Committee's wish that I retain some of these powers, then during the Committee Stage, I will be introducing an amendment so that I retain my consent powers in what was termed by the Committee itself as "political offences."

I think it is necessary that before persons are prosecuted in relation to those offences, we are sure that there is enough evidence and there is no vendetta going on at the local level by a police officer to charge a political or religious leader, or professional in court. I think it is important that the Attorney-General focuses his mind on those type of cases to ensure that justice is being done.

Indeed, I can tell you that I did issue a directive way back in 1996 that before any leader is taken to court by the local police, I should look at the file. But I am sorry to say that my directive was honoured more in breach than observance and, therefore, the necessity, which the Committee has pointed out. The Committee has recommended that rather than it being an administrative directive that they refer the case to me, it should be obligatory under law for them to do so. I have taken all your views on board. A number of amendments will be tabled during the Committee Stage.

I thank you.

The Temporary Deputy Speaker (Mr. Poghismo): Mr. Wako, did you move?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghismo): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 3rd, April, 2003, at 2.30 p.m.

The House rose at 6.30 p.m.