

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 2nd December, 2003

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

DEATH OF MR. CHIWAGA KAMANZA

Mr. Rai: 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 did Mr. Clement Chiwaga Kamanza alias Jaji of Kinangoni Sub-Location, Samburu Location, Samburu Division of Kinango Constituency, meet his death on 11th November, 2003?

(b) What urgent measures is the Minister taking to ensure that investigations into the death of Mr. Chiwaga are completed?

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

(a) Mr. Clement Chiwaga Kamanza, alias Jaji of Kinangoni Sub-Location, Samburu Location, Samburu Division of Kinango Constituency was shot dead by armed robbers on 11th November, 2003 at KTDA bus stop in Changamwe within Mombasa District.

(b) The following measures have been taken to finalise investigations into the death of Mr. Chiwaga. At Changamwe Police Station, case file No.343/585/2003 was immediately opened.

Secondly, senior police officers have been assigned to lead the investigations by the Coast Provincial Police Officer. Thirdly, Some suspected criminals have been arrested and the recovered firearms sent to ballistic experts to

determine whether they have any connection with the said crime.

Mr. Rai: Mr. Deputy Speaker, Sir, is the Assistant Minister in a position to tell us the suspects who have been arrested? Since investigations are going on, who are likely to be charged in court? This is because an hour and a half after the man had been shot, someone was found with the deceased's identification cards. Who have been arrested and are likely to be charged in this particular case?

Mr. Tarus: Mr. Deputy Speaker, Sir, I do not have the names of the people who have been arrested. However, I can say that, despite the fact that few people had been arrested, investigations are still going on.

Mr. Rai: On a point of order, Mr. Deputy Speaker, Sir. If the Assistant Minister has received information that some people have been arrested, then, he is not being sincere to us.

Mr. Deputy Speaker: Mr. Rai, you told me it was a point of order and I acceded to your

request. I am yet to hear your point of order. If it is another point, just turn and catch my eye.

Mr. Rai: Mr. Deputy Speaker, Sir, is it in order for the Assistant Minister to mislead this House and state that some people have been arrested while he does not know which people have been arrested?

Mr. Tarus: Mr. Deputy Speaker, Sir, I appreciate the sentiments expressed by [Mr. Tarus] the hon. Member although it is true that I do not have the names here. However, that is something that we can confirm later.

Mr. Rai: Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House when he will come and give this House the names of the people who have been arrested and when they are likely to be charged in court?

Mr. Tarus: Mr. Deputy Speaker, Sir, I can table the list tomorrow afternoon.

PAYMENT OF SOMALI DELEGATES' HOTEL BILLS

Mr. Kipchumba: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Is the Minister aware that 13 hotels in Eldoret that offered accommodation to Somali delegates during the IGAD sponsored peace talks have not been paid to date?

(b) When will they be paid in view of the fact that they are now under threat of being auctioned by both banks and suppliers?

Mr. Deputy Speaker: Is there anyone here from the Ministry to answer? I am not getting anyone from the Ministry of Foreign Affairs. In the absence of a Minister, I will defer this Question to next week or tomorrow. I hope that there is someone here taking notes. Mr. Ochilo-Ayacko, could you ensure that the Minister, or someone from the Ministry of Foreign Affairs, answers this Question tomorrow?

RATIFICATION OF WHO CONVENTION ON TOBACCO CONTROL

(Mr. Onyancha) to ask the Minister for Health:-

(a) Is the Minister aware that Kenya, through the Ministry of Health, played a major role in ensuring the success and adoption of the WHO Framework Convention on Tobacco Control (FCTC) to its present form?

(b) Why has Kenya not signed and ratified the FCTC even after 75 countries have appended their signatures, 16 of these countries being from the African region?

(c) Could the Minister urgently consider gazetting all pending Ministerial pronouncements on the regulation and control of the marketing and use of tobacco, as allowed by the present law?

Mr. Deputy Speaker: Is Mr. Onyancha not here?

An hon. Member: Mr. Deputy Speaker, Sir, defer the Question.

Mr. Deputy Speaker: No! I will drop the Question.

(Question dropped)

SPECIALISED TREATMENT FOR MARY CHEROTICH

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

(a) Is the Minister aware that on 28th April, 2003, Crater X-Ray Clinic Nakuru, diagnosed Mary Cherotich with cerebellar and vermis atrophy, i.e damage to midline structure with internal tremor?

(b) Could she assist by ensuring that Ms. Cherotich is admitted at the Kenyatta National Hospital for specialised treatment?

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

I am aware that Ms. Mary Cherotich was diagnosed at Crater X-Ray Clinic of Nakuru on 28th April 2003 with cerebellar vermis atrophy. The child who is a six-year-old girl was taken to the above indicated institution by Bethany Crippled Children Centre which is operated by Kijabe Mission Hospital.

(b) I advise that Cherotich be taken to the Provincial General Hospital in Nakuru for examination to ascertain the nature of her illness. It will then be possible to determine whether she will be treated at the hospital to save her the expenses of travelling to Nairobi. If her case will be beyond the capability of the general hospital, she will be handled by Kenyatta National Hospital as soon as she is referred there.

Mr. Wamwere: Mr. Deputy Speaker, Sir, Ms. Cherotich should not be taken to Nakuru General Hospital because her kind of illness cannot be treated at that hospital. This is why she needs to be admitted at Kenyatta National Hospital. Given that this illness cannot be treated there, could the Assistant Minister assure the House that she will be admitted at Kenyatta National Hospital which is the only place where the illness can be treated?

Mr. Konchella: Mr. Deputy Speaker, Sir, since the child was being handled by private institutions, I would ask that she be taken to the referral hospital in Nakuru and if they are not able to handle her condition, then she can be taken to KNH. I assure the House that KNH will be able to take over her case.

Mr. Sambu: Mr. Deputy Speaker, Sir, could I request the Government to come to the aid of patients like this one and others? I have in mind a university student who requires a kidney transplant. The KNH requires Kshs 750,000 for the operation. There is already a donor who is prepared to donate a kidney to this boy. Could the Government consider such patients because, even if this one goes to KNH, the amount of money which KNH requires is enormous? Could the Government consider waiving these fees particularly in cases which require urgent attention?

Mr. Konchella: Mr. Deputy Speaker, Sir, since I am not aware of the details of that particular case, I would request that the MOH of the general hospital forwards their request to the Ministry so that we can see how best to handle this particular situation.

Mr. Mukiri: Mr. Deputy Speaker, Sir, in some of these very serious diseases, like kidney problems, one is forced to travel all the way from upcountry to come to KNH. What policy does the Government have in place to decentralise its services, for instance the dialysis machines, so that patients in other regions of the country can benefit from the services that are provided by KNH?

Mr. Konchella: Mr. Deputy Speaker, Sir, the Ministry has plans to improve facilities in our referral hospitals, that is the KNH, Nakuru, Eldoret and Mombasa General Hospitals to be able to handle some of these cases which are very crucial so that people do not have to travel. The Ministry plans to allocate funds to these hospitals to buy dialysis machines and any other equipment which will be required to handle major cases instead of referring patients to KNH.

Mr. Wamwere: Mr. Deputy Speaker, Sir, given that Crater X-Ray Clinic is a competent medical facility, why can KNH not admit this child on the basis of their examination and recommendations instead of asking that this poor child be taken to Nakuru General Hospital where the

whole process of examination will begin from square one?

Mr. Konchella: Mr. Deputy Speaker, Sir, it is the Government procedure to have patients referred by a Government doctor. Instead of these private clinics referring somebody to KNH, they should be taken to a Government institution like the referral hospital in Nakuru. The problem with this young child is that she has an irreversible disease which cannot just be treated anywhere. This disease can be handled and managed as much as possible.

TRANSFER OF KETRI
PROGRAMMES TO KARI

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

(a) Why did the Government disband KETRI and transfer its trypanosomiasis research and tsetse fly control to KARI?

(b) When will the Minister correct the anomaly by placing the trypanosomiasis research and the tsetse fly control programme directly under the Ministry of Livestock and Fisheries Development?

(c) When does he intend to eradicate tsetse fly which have heavily infested Suba District and the adjacent parts of Homa Bay District?

(d) What plans does he have to help livestock farmers in Suba District re-stock their herds following the deaths of nearly 48,000 head of cattle in the last two years, as a result of trypanosomiasis and tsetse fly-related diseases?

The Minister for Livestock and Fisheries Development (Mr. Munyao): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The disbanding of KETRI and transferring its trypanosomiasis research to KARI was a Government decision vide organisation of the Government Circular No.3 of July this year. The main reason was to consolidate research under one umbrella body in order to create synergy and at the same time cut costs. However, tsetse fly control remains the mandate of my Ministry.

(b) I later realised that placing trypanosomiasis research away from my Ministry could be anomalous and on 26th August, 2003, we appealed, through a letter to the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service against the transfer. In the appeal we indicated that:

(i) Action taken against crops and animal health research is likely to be relegated to a non-priority position.

(ii) Increased bureaucracy and inefficiency in decision-making, given that KARI is under another Ministry, is likely to occur; and,

(iii) Links to similar research bodies in the region would be affected and extension of cross border disease control initiatives.

(c) The Ministry has no definite time frame within which to eradicate tsetse fly which have already infested Suba District and adjacent parts of Homa Bay District. Tsetse fly eradication is a gradual process which begins with systematic control. The time taken to eradicate the fly depends on such factors as area to be covered and availability of adequate funds to carry out control activities sustainably. But we have started a series of activities aimed at reducing the menace to manageable levels.

(d) The Animal Diseases Act (Cap.364) does not provide for farmer compensation in the event of natural calamity or normal disease upsurge. If it is effectively carried out, control of tse tse flies in the affected areas will create an enabling environment which will encourage the farmers to restock their herds without fear of further tsetse fly menace. The affected farmers are, therefore, advised to explore ways of obtaining funds by approaching relevant financing institutions in order to re-stock.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members. Before I invite supplementary questions, may I request that we tone down consultations.

Mr. Syongoh: Mr. Deputy Speaker, Sir, I am happy to note that the Minister has realised that there was an anomaly in

[Mr. Syongoh]

transferring KETRI to KARI. Could he tell the House whether or not the Government has responded to his request to revert to the original position where KETRI was answerable to his Ministry?

Mr. Munyao: Mr. Deputy Speaker, Sir, there is some positive hope that what we are requesting will be done.

Dr. Ali: Mr. Deputy Speaker, Sir, I think this Government is joking around. It created the Ministry of Livestock and Fisheries Development and transferred the Kenya Trypanosomiasis Research Institute (KETRI) to the Ministry of Agriculture. Where is the hope? Could the Minister confirm that and return KETRI back to the Ministry of Livestock and Fisheries Development urgently? How fast can he do that? You are not controlled by the Head of the Public Service and Secretary to the Cabinet! You are in charge of your Ministry, Mr. Munyao!

Mr. Munyao: Mr. Deputy Speaker, Sir, for sure, this Government is not joking! The hon. Member, being a doctor, knows that trials bring perfection. Some of the things we are doing will achieve the intended purpose.

Prof. Mango: Mr. Deputy Speaker, Sir, is the Minister underrating Nagana as a disease? Nagana is a major disease in this country. It is a major constraint to livestock development in many areas, including Busia, Coast Province and others. How could such an important research institute like KETRI be disbanded in view of the widespread tsetse fly menace in this country?

Mr. Munyao: Mr. Deputy Speaker, Sir, the hon. Member knows that I am not joking! The Government is taking that issue seriously. One week ago, after I was told that there were a lot of tsetse flies in Busia, I had to go and see it for myself because we are very concerned.

Mr. Syongoh: Mr. Deputy Speaker, Sir, the Minister has indicated that there is no time frame in this matter. But the suffering of livestock farmers in Suba, Tana River and other tsetse fly-infested areas is so serious that it cannot be given an indefinite time frame. Could the Minister assure this House that, that issue is going to be given top priority? A concrete programme with clear time frames and funding should be tabled in this House soon because that is a very serious problem.

Mr. Munyao: Mr. Deputy Speaker, Sir, I appreciate the concern raised by the hon. Member and the House on the disease and its effects. It is for that reason that we visited Suba, Busia and other areas. We are working together with the institutions involved, including FETKA, to fight those diseases. We are even involving regional governments because that is a trans-boundary disease and for us to eradicate it fully, we must also involve neighbouring countries to fight the disease together.

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

Mr. Deputy Speaker: I am sorry, Mr. Angwenyi! If it is a question, no!

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to tell this House that he appreciates the problem when he has only talked about Suba and Busia? He has not talked about Malindi and Kilifi where we saw people with private parts the size of a head! We saw it on television!

(Laughter)

Mr. Deputy Speaker: Order, Mr. Angwenyi! Order, hon. Members. On a very serious note, Mr. Angwenyi, what you have said is not proper! I ask you to withdraw.

Mr. Angwenyi: I withdraw and apologise.

Mr. Deputy Speaker: It was also not a point of order! I said last time that if an hon. Member has a question, he should stand up and catch the Speaker's eye. Perhaps now, it is only Mr. Angwenyi remaining. He stands up and shouts "point of order", when he has a question. I hope that will stop.

Hon. Members, I had deferred Question No.2 by Private Notice to the Ministry of Foreign Affairs. I said that it will be answered tomorrow. I understand that the Assistant Minister has come in with an answer. Rather than waiting for tomorrow, I will ask Mr. Kipchumba to ask the Question now.

PAYMENT OF SOMALI DELEGATES'

HOTEL BILLS

Mr. Kipchumba: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Is the Minister aware that 13 hotels in Eldoret that offered accommodation to Somali delegates during the Inter-Governmental Authority on Development (IGAD) sponsored peace talks have not been paid to date?

(b) When will they be paid in view of the fact that they are now under threat of being auctioned by both banks and suppliers?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Deputy Speaker, Sir, I apologise for walking in slightly late.

However, I beg to reply.

(a) I am aware that the IGAD has not paid 13 hotels a total of Kshs327,241,195 for the accommodation of 900 Somali delegates to the IGAD sponsored Somali Reconciliation Conference. The costs were incurred between 15th October, 2002 and 14th January, 2003.

(b) I am concerned that the hoteliers are encountering financial difficulties resulting from the unpaid services which were rendered to the delegates. Kenya and its partners within the IGAD region are determined to clear the bills. I intend to undertake a fund-sourcing mission to friendly countries and development partners to help us settle the bills. The payments will be honoured immediately we obtain those funds.

Mr. Kipchumba: Mr. Deputy Speaker, Sir, the answer given by the Assistant Minister is not acceptable. I have two letters written by the Ministry of Foreign Affairs. One of the letters say-- It is an undertaking to the hotels to release the delegates and their money will be paid soon. That letter was written in February this year. One of the hotels is under receivership and some of them are almost being closed. I would like to request the Minister to honour his letters and pay the hotels from elsewhere, while they undertake their missions to source for funds. Otherwise, there will be no hotels.

Mr. Wetangula: Mr. Deputy Speaker, Sir, the Somali Reconciliation and Peace Process is an IGAD process and Kenya is just one of the member States of IGAD. The bills incurred in Eldoret and elsewhere will be paid by IGAD through the Facilitation Committee. The letter from the Ministry of Foreign Affairs to some hotels in Eldoret was merely to comfort them. It was not a commitment to pay because it is not the Government of Kenya that will pay the bills but the IGAD Secretariat.

An hon. Member: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: No point of order on that matter. Mr. Serut!

Mr. Serut: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister say that the letter given to hotels in Eldoret was an intent and that, it was not binding on the side of the Government. But before the Somalis were accepted into the hotels, somebody must have undertaken to pay the bills.

What is the institution that undertook to pay the bills?

Mr. Wetangula: Mr. Deputy Speaker, Sir, IGAD.

Mr. Sasura: Mr. Deputy Speaker, Sir, certainly, this Government has decided to carry a burden that it cannot shoulder. Now that the IGAD has delayed in paying those bills for the Somali delegates--- Only two days ago, another group of delegates was sent away from a hotel in Nairobi. Could the Government categorically tell the IGAD that we are not able to host the Somali talks?

Mr. Wetangula: Mr. Deputy Speaker, Sir, we have not lost hope yet. We have had consultations and we are continuing to consult the funding group, which includes the European Union (EU), the Italian Government and many others. They have promised that they will assist in settling some of these bills. The on-going peace process in Somalia is so important for the peace and security of this country, that we cannot make a rush decision to disband the process and send away the delegates.

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

Mr. Deputy Speaker: Mr. Leshore, you catch my eye, but not on a point of order. I know you want to ask a question, so go ahead and ask your question.

Mr. Leshore: Mr. Deputy Speaker, Sir, it is a point of order. Is the Assistant Minister not misleading this House, because we know that Kenya contributes towards Inter-Governmental Authority on Development (IGAD) activities? Why is he not committing the Kenya Government to pay the bills? The Kenya Government pays for IGAD activities. Why is the Assistant Minister misleading the House?

Mr. Deputy Speaker: That is a question, not a point of order! But you can answer it, Mr. Wetangula.

Mr. Wetangula: Mr. Deputy Speaker, Sir, I have not in any way misled this House. Kenya, as a member of IGAD, contributes money to the activities of IGAD; that is correct. But Kenya is not directly underwriting the bills of IGAD. It is the IGAD Secretariat, based in Djibouti, that underwrites the bills.

Mr. Samoei: Mr. Deputy Speaker, Sir, the Assistant Minister should know very well that the Government has a duty to all Kenyans to make sure that they are not hoodwinked by an organisation that is not in a position to pay its bills. When the hotels in Eldoret were contracted, it was with the knowledge that the Kenya Government was involved in the transaction. The money outstanding for those hotels in Eldoret runs into hundreds of millions. We are talking about women who supplied vegetables, small scale farmers who supplied eggs, people who supplied meat, others who were contracted for transportation and even others who were contracted to supply *miraa*, and this money is outstanding.

(Laughter)

So, the Assistant Minister cannot pass the buck to IGAD. The Government has a duty to make sure that the people who are contracted with the knowledge of the Government are paid. When are they going to pay the bills?

Mr. Wetangula: Mr. Deputy Speaker, Sir, indeed, the Government has a duty to make sure that IGAD pays these bills. I have just said that my colleague, the Minister for Foreign Affairs, hon. Musyoka, and other members of the IGAD Council of Ministers will be going out looking for money from well-wisher States after which we will be able to pay the bills in Eldoret. Our Government feels for the hoteliers in Eldoret. I know the amount of money owed to them is in millions; in fact, it is Kshs327 million, but efforts are being made and they will be paid.

Mr. Kipchumba: Mr. Deputy Speaker, Sir, the Assistant Minister clearly said that it is IGAD that undertook to pay the hotels. I want to lay on the Table, a letter written by the Ministry.

Hon. Members: Read it first!

Mr. Deputy Speaker: Mr. Kipchumba, could you ask your question or I will terminate your time?

Mr. Kipchumba: Mr. Deputy Speaker, Sir, I want to lay this letter on the Table first.

Mr. Deputy Speaker: Okay, lay it on the Table and then sit down.

*(Hon. Kipchumba laid the letter
on the Table)*

Mr. Kipchumba: Mr. Deputy Speaker, Sir, the letter here is written by the Permanent Secretary, Ministry of Foreign Affairs and it is an undertaking that the bills would be paid by the Government of the Republic of Kenya and not IGAD. It is, therefore, misleading for the Assistant Minister to tell the House that IGAD is, indeed, the authority that allowed the Somalis to stay in the hotels. The hotels would not have released the Somali delegates had it not been for this letter that was written by the Permanent Secretary. Could the Ministry of Foreign Affairs or the Government ensure that these bills are paid immediately from other sources while the Assistant Minister goes for a begging mission abroad or wherever they will get the money?

Mr. Wetangula: Mr. Deputy Speaker, Sir, I owned up to that letter right from the word go; that, it was a letter written by my Ministry as a letter of comfort to the hotels. The bills will be paid by IGAD and it is IGAD and its Secretariat that is undertaking the Somali Peace Process.

Dr. Galgalo: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is talking about 'a letter of comfort', whatever that means. But Mr. Kipchumba is talking about a solemn undertaking by the Government. We want a ruling from the Chair so that we know whether this is truly a Government undertaking or what his 'letter of comfort' means. I think we need the indulgence of the Chair to clear up this matter; the letter is here.

Mr. Deputy Speaker: Well, I have not seen the letter.

Hon. Members: It has been laid on the Table!

Mr. Wetangula: Mr. Deputy Speaker, Sir, an undertaking would be a contractual document. This is a mere letter of comfort.

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

Mr. Deputy Speaker: Order! Order, hon. Members!

*(Applause as the Vice-President
walked into the Chamber)*

Order, hon. Members! I noticed that His Excellency the Vice-President and the Minister for Home Affairs and the Minister for Finance continued walking even when the Chair was on his feet.

(Loud consultations)

Order, hon. Members! I want to say that he was out of order but I forgive him.

(Applause)

Now, the reason why I stood up was to say the following: Hon. Members, we have continued with this Question for the last seven minutes and I believe we should not continue any more. Therefore, that is the end of that Question.

(Loud Consultations)

Mr. Sambu: Mr. Deputy Speaker, Sir, please, give us your ruling on this matter. The letter that hon. Kipchumba laid on the Table says: "The Ministry undertakes---" It does not call it a letter of comfort. Kshs327 million is an astronomical amount for a small town like Eldoret.

Mr. Deputy Speaker: Alright, hon. Members! I have just had a few minutes to look at the letter, which is dated the 14th of February, 2003. This particular one is addressed to the Manager of Mountain View Hotel, Eldoret. One sentence says: "However, I wish to assure you that the Ministry hereby undertakes to pay all the authentic outstanding bills in the very near future." Now, Mr. Wetangula, in view of the sentence I have just read, what do you have to say?

Mr. Wetangula: Mr. Deputy Speaker, Sir, a letter of comfort does not carry the word comfort on its face.

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

Mr. Deputy Speaker: Order, hon. Members! The Assistant Minister will be heard.

Mr. Wetangula: Mr. Deputy Speaker, Sir, I have, from my Ministry, not reneged on any undertaking to assist for this money to be paid. That hotel is only one. There are about 15 others and we are making every effort to get IGAD to pay the money. Everybody knows that the Somali Peace Process is an IGAD-driven process and not a Kenya Government-driven process.

ORAL ANSWERS TO QUESTIONS

Question No.752

COMPLETION OF MARAGUA
IFAC-FUNDED PROJECT

Mr. Deputy Speaker: Mr. Mbau not here? I will drop the Question!

(Question dropped)

Let us move on to the next Question by Mr. Muiruri!

Question No.812

ESTABLISHMENT OF FERTILIZER
PROCESSING FACTORY

Mr. Muiruri asked the Minister for Agriculture:-

- (a) how much has been spent on importation of agricultural fertilizers and chemicals into the country in the last financial year; and,
(b) what plans the Ministry has of establishing a fertilizer-processing factory in the country.

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

(a) The Government is not involved in the importation of fertilizer and agro-chemicals as the sector is wholly liberalized. The main players in fertilizer importation are private firms.

(b) As of now, the Government has not put in place any plans to establish a fertilizer-processing factory in the country. However, my Ministry is of the opinion that it is necessary to carry out a feasibility study in order to establish the financial viability of producing fertilizer in the country, considering that the current fertilizer consumption is still below the country's consumption potential.

Mr. Muiruri: Mr. Deputy Speaker, Sir, Kenya is an agricultural country. The prices of fertilizers in this country are too high. No maize or beans can grow in many parts of this country without application of fertilizer on farms. The Assistant Minister has said that the importation of fertilizer is now liberalized. What plans has the Ministry put in place to ensure that fertilizers are affordable to farmers?

Mr. Khaniri: Mr. Deputy Speaker, Sir, the hon. Member knows that duty on fertilizer has been zero-rated. This has had a great impact on the cost of fertilizer in the country.

Capt. Nakitare: Mr. Deputy Speaker, Sir, we know very well that substandard fertilizer is dumped in this country. I would like to know from the Assistant Minister the steps the Ministry has taken to monitor substandard fertilizer imported into this country.

Mr. Khaniri: Mr. Deputy Speaker, Sir, that is done by the Ministry of Trade and Industry through the Kenya Bureau of Standards (KEBS) which vets all the imports which come into the country to ensure that they meet the required standards.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, the thrust of this Question is that the prices of fertilizers are too high. We still spend a lot of money to buy fertilizer even when duty on it is zero-rated. Could the Assistant Minister consider establishing a fertilizer factory in the country so that we can save the foreign exchange spent on importing the commodity?

Mr. Khaniri: Mr. Deputy Speaker, Sir, I believe I answered that question when I was answering part "b" of the Question. I said that my Ministry is of the opinion that it is necessary to carry out a feasibility study in order to establish the financial viability of producing fertilizer in the country, considering that the current fertilizer consumption is still below the country's consumption potential. A feasibility study on the establishment of a fertilizer-producing factory was carried out in the early 1970s. The Government contracted a Belgium company to put up the plant but it was unable to continue with the project because it was economically unviable. This was because most of the raw materials which were required for the production of fertilizer were to be imported. So, it is cheaper to import processed fertilizer than to import raw materials for its manufacture.

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

Mr. Deputy Speaker: I am sorry, Dr. Khalwale! You are out of order to rise on a point of order when you want to ask a supplementary question! Just try and catch the Chair's eye.

Proceed, Ms. Mwau!

Ms. Mwau: Thank you, Mr. Deputy Speaker, Sir. We know that fertilizers are very expensive, particularly to peasant farmers in this country. What is the Government policy on encouraging farmers to use organic manure because it is cheaper? Even if we establish a fertilizer factory in this country, fertilizers will still be expensive to peasant farmers.

Mr. Khaniri: Mr. Deputy Speaker, Sir, the hon. Member is just stating the Government policy on organic manure. Through our extension services, we do encourage farmers to use organic manure, where possible.

Mr. Muiruri: Mr. Deputy Speaker, Sir, the Kenya Tea Development Agency (KTDA) imported fertilizer valued at over Kshs1 billion, which is a lot of money, in one year alone.

Could the Assistant Minister agree with me that establishing a fertilizer factory in this country will go a long way in making fertilizer cheaper? Could he also agree with me that all types of fertilizers and agro-chemicals are more important than the Kenya Breweries Ltd.?

Mr. Khaniri: Mr. Deputy Speaker, Sir, just to correct the hon. Member, the value of the fertilizer which is imported annually into the country is more than Kshs5 billion, and not Kshs1 billion. So, I recognise that fact. But as to whether production of fertilizer in this country will make it cheaper than when it is imported, I can answer this question after a feasibility study has been carried out.

Question No.811

UPGRADING OF KHUNYANGU
HEALTH CENTRE

Prof. Mango asked the Minister for Health when Khunyangu Health Centre will be upgraded to a sub-district hospital.

The Assistant Minister for Health (Mr. Konchella): Mr. Deputy Speaker, Sir, I beg to reply. Khunyangu Health Centre was gazetted as a sub-district hospital vide Kenya Gazette Notice No.1828 of 21st March, 2003.

*(Mr. Wanjala stood up
in his place)*

Mr. Deputy Speaker: Order, Mr. Wanjala! You have just arrived. I will use the term used by Mr. Speaker: Relax, Mr. Wanjala!

Continue, Mr. Assistant Minister!

The Assistant Minister for Health (Mr. Konchella): Mr. Deputy Speaker, Sir, Khunyangu Health Centre was gazetted as a sub-district hospital vide Kenya Gazette Notice No.1828 of 21st March, 2003. However, due to fiscal constraints, it was not possible to give it a separate Budget Head this financial year. The Ministry plans to give it a separate Budget Head in the next financial year and provide funds for expanding and upgrading existing facilities at the centre.

Prof. Mango: Mr. Deputy Speaker, Sir, the Ministry is aware that three out of ten people in Busia District are infected with HIV/AIDS, and Butula Division is a high malaria prevalence area. The division does not even have a theatre or any place where operations can take place. Was the Ministry serious in upgrading the health centre without a budget for it?

Mr. Konchella: Mr. Deputy Speaker, Sir, the Ministry reacted very fast to the request by the District Development Committee to upgrade this health centre to a sub-district hospital. We did so early this year but it was too late to put the health centre in the Budget. We prepared to fund it at the end of this financial year. However, this process is ongoing and we have now written to the Medical Officer of Health (MOH) to assess the need for additional equipment, including repair of the existing facilities so that, by the next financial year, we provide the money for the facilities required.

Mr. Deputy Speaker: Last question, Prof. Mango!

Prof. Mango: Mr. Deputy Speaker, Sir, I would have expected the Assistant Minister to have put in the current Budget at least a token amount for this health centre. The Ministry claims that it is going to provide health to all. Could the Assistant Minister ensure that there is a budget for this health centre?

Mr. Konchella: Mr. Deputy Speaker, Sir, it is not possible to include it in the current Budget because funds have already been allocated. But I assure the hon. Member that we will provide money for it in the next financial year.

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

Mr. Deputy Speaker: What is it, Mr. Osundwa?

Mr. Osundwa: Mr. Deputy Speaker, Sir, I have looked at the written reply, but it does not indicate who signed it. This shows that the Assistant Minister is not serious. This is the second time he has done this. Last time he was ordered to ensure that replies to Questions are signed, but he has not done so today. Is he serious?

Mr. Deputy Speaker: Mr. Assistant Minister, there is a question of an unsigned answer that you have given to the hon. Member. What is your comment?

Mr. Konchella: Mr. Deputy Speaker, Sir, I signed the copy for the Minister.

Mr. Deputy Speaker: But you signed the original and not the copy!

Mr. Konchella: Mr. Deputy Speaker, Sir, I signed the Minister's copy.

Mr. Deputy Speaker: Very well; I think, Mr. Assistant Minister, you will understand that this time you signed the original and not the copy.

(Laughter)

Order, hon. Members! Next Question, Mr. Weya!

Question No.929

PURCHASE OF PLOTS BY KPLC

Mr. Weya asked the Minister for energy:-

(a) under what circumstances the Kenya Power and Lighting Company purchased the following plots:-

(i) L.R. No.209/12119 on Mombasa Road; (ii) L.R. No.17/19/1 Kiambu (Kitisuru) 17/111, and;

(b) which lawyers handled these transactions.

The Minister for Energy (Mr. Ochilo-Ayacko): Mr. Deputy Speaker, Sir, I beg to reply.

(a) (i) Plot L.R. No.209/12119 on Mombasa Road was purchased in 1995 from Eels Estates Limited at a total cost of Kshs50 million, as per the valuation report of the Government Chief Valuer. The plot was purchased for purpose of establishing a research and development centre. However, the proposed centre has not been built.

(ii) Plot L.R. No.17/19/1 Kiambu (Kitisuru) 17/111 belonged to the KPLC until 1997, when it was sold to Sasam Limited, a company associated with the immediate former Managing Director, Mr. Samwel Gichuru.

(b) The sale transactions for the two plots were handled by the Company Secretary's Office and M/S J.N. Njagi & Company Advocates.

Mr. Weya: Mr. Deputy Speaker, Sir, while I may appreciate the Minister's answer, this Government promised zero-tolerance to corruption. It seems that this Government has been compromised in several ways. Eels Estates Limited belongs to a senior Cabinet Minister, who was in the Moi Government.

Hon. Members: Name him!

Mr. Weya: Mr. Deputy Speaker, Sir, could the Minister tell us the directors of Eels Estates Limited?

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, a second valuation was done for the Mombasa Road Plot L.R. No.209/12119, and a lower value of Kshs28 million was given. When those who were doing the valuation, M/S Lloyd Masika, went to conduct a search at the Ministry of Lands and Settlement, they could not trace the file. They also could not trace it at the Attorney-General's office. However, it has been established that the person who signed for Eels Estates Limited was Ms. Jane Njagi of J.N. Njagi & Company Advocates.

Mr. Muturi: Mr. Deputy Speaker, Sir, the Minister has admitted that the sale of Plot L.R. No.17/111 was to a company known as Sasam Limited, whose directors, he says, are associated with the former Managing Director of KPLC. The directors are Mr. Samwel Kimuchu Gichuru and Ms. Salome Njeri Gichuru. The sale was for only Kshs5.4 million. Is the Minister satisfied that the company received proper value for its property?

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, that is in respect of part (a)(ii) of the Question. It is obvious that certain irregularities took place. One of them was that the Board minutes which approved the sale indicated that the sale was to the Retirement Benefits Scheme. However, when the sale was conducted, the plot was given to a company associated with the former KPLC Managing Director.

It is also obvious that when this subsequent sale was effected, no additional valuation was undertaken. I commissioned a committee to investigate this matter and I have the findings. I got them last week and I am looking into them. However, I do not want to announce the action I will take here. I will do it and then you will hear and see it.

Mr. Deputy Speaker: Last question, Mr. Weya!

(Several hon. Members stood up in their places)

Order! You are not to dictate to the Chair!

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members. I think the Minister has answered the question. Last question, Mr. Weya, if you have one!

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

Mr. Deputy Speaker: What is it?

Mr. Wanjala: Mr. Deputy Speaker, Sir, you clearly heard the Questioner tell us that there is a senior Cabinet Minister in this Government associated with one of these companies. Will I be in order to ask him to name the Minister because he has imputed improper motive on the Government?

(Mr. Weya stood up in his place)

Mr. Deputy Speaker: Order, Mr. Weya! If you name a person, you will have to have evidence. If you do not have it, then do not do it!

Mr. Weya: Mr. Deputy Speaker, Sir, I went to do a search at the Registry of Companies and the file has disappeared. Ms. Jane Njagi, a lawyer, acted for Prof. George Saitoti.

(Applause)

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, I think---

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

Mr. Deputy Speaker: Order! The Minister is on the Floor!

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, the information I have - and I have also

indicated that I have a report - is that, the file has disappeared. It does not have the name of any Minister. I think we have to be fair and honest.

Mr. Deputy Speaker: Order, Mr. Minister! I said that Mr. Weya can only name a person if he has evidence. I said that because, in the answer given, the Minister said that the file relating to this plot was missing. Mr. Weya, what you have said has not provided evidence for naming Prof. Saitoti. Therefore, what you did breached the Standing Orders of the House in as far as---

(Dr. Ali stood up in his place)

Order, Dr. Ali! You are ordered out of the Chamber!

(Dr. Ali withdrew from the Chamber)

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

Mr. Deputy Speaker: Order! You are also going to go. Sit down, Mr. Sungu!

Mr. Weya, therefore, in accordance with the Standing Orders, to discuss an hon. Member of this House, you have to bring a Substantive Motion. In your case, I cautioned you that if you did not have evidence, you cannot not name an hon. Member. Therefore, you have done so without evidence and I ask you to withdraw from the Chamber.

Mr. Weya: Mr. Deputy Speaker, Sir, the file has disappeared from the Registrar-General's office.

Secondly, the information got to me, and that is why I have brought it to the House. We are hon. Members of Parliament and we get into---

Mr. Deputy Speaker: Order, Mr. Weya! Does that paper you are holding have the name of Prof. Saitoti?

Mr. Weya: Mr. Deputy Speaker, Sir, it has the name of Eels Estates Limited, which is---

Mr. Deputy Speaker: Order! The question is: Does it have the name of Prof. Saitoti? Do you have any evidence to show that Prof. Saitoti is a director of Eels Limited?

Mr. Weya: No, I do not have.

Mr. Deputy Speaker: So, if you do not have, please, apologise.

(Mr. Weya resumed his seat)

Mr. Weya, I declare you disorderly! You are, therefore, ordered out of the Chamber.

(Mr. Weya withdrew from the Chamber)

(Prolonged applause)

Order, hon. Members! You do not become a hero in this House by breaking the Standing Orders of the House. I think that is very clear. We have got to go by the Standing Orders of the House. That is the only way we can maintain the honour and dignity of this House.

The Minister for Energy (Mr. Ochilo-Ayacko): On a point of order, Mr. Deputy Speaker, Sir. I did indicate that the person who signed for Eels Estates Limited as director was Ms. Njagi. Arising from the ruling you have made, would it not be in order, for purposes of record, to expunge Prof. Saitoti's name from the records?

(Several hon. Members stood)

up in their places)

Mr. Deputy Speaker: Order! I did ask Mr. Weya to withdraw and apologise but he declined to do so. So, the Chair now orders that the name be expunged from the records.

Next Question, by Mr. Ngozi!

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

Order! There will be no further points of order on that matter!

Proceed, Mr. Ngozi!

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

Mr. Deputy Speaker: Order! Mr. Moi, the Chair has ruled on that matter and that is the end; no points of order!

Question No.594

AMOUNT OF REVENUE GENERATED
FROM SPECIAL RATES TOURISTS

Mr. Ngozi asked the Minister for Tourism and Information:-

(a) how much revenue is generated from the tourists who visit the country through the special rates organized by tour operators abroad; and,

(b) who oversees these operations abroad to ensure that the rates agreed upon apply locally.

Mr. Deputy Speaker: The Minister for Tourism and Information is not here? May I request the Leader of Government to note that we are deferring this Question.

The Minister for Livestock and Fisheries Development (Mr. Munyao): On a point of order, Mr. Deputy Speaker, Sir. You have ruled very well. However, would I be in order to request the Chair to ask hon. Members like Mr. Moi that those who live in glass houses should never throw stones.

(Loud consultations)

Mr. Deputy Speaker: Order! Order, hon. Members! Mr. Munyao, you are out of order because the Chair ruled that, that matter was over and we even went to the next Question. So, you are out of order.

Hon. Members: Out! Out!

Mr. Deputy Speaker: Order! It is only the Chair that has that authority.

The Leader of Government Business has the answer to Mr. Ngozi's Question.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Mr. Clement Chiwaga Kamanza alias Jaji of Kinangoni Sub-location, Samburu Location, Samburu Division of Kinango Constituency was shot---

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! I expect you to be orderly. Mr. Awori, we are

on Question No.594. We will, therefore, move to the next Question to give the Leader of Government Business time to look for the answer.

Mr. Ngozi: On a point of order, Mr. Deputy Speaker, Sir. My question has not been answered.

Mr. Deputy Speaker: Order! Mr. Ngozi, if you only cared to listen, I said I skipped your Question for the time being.

Next Question, Mr. Chepkitony!

Question No.833

ISSUANCE OF TITLE DEEDS TO
SERGOIT RESIDENTS

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

(a) whether he is aware that State land LR. No.883/2 formerly known as Sergoit Holding Ground in Uasin Gishu District, was given out by the Government for settlement.

(b) what steps the Ministry is taking to issue *wananchi* who have been settled there with title deeds.

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

(a) Yes, I am aware.

(b) The Ministry will embark on the process of issuance of title deeds as soon as the process of survey is completed.

Mr. Chepkitony: Mr. Deputy Speaker, Sir, the answer given by the Assistant Minister to this Question is not very satisfactory. Early this year the then District Commissioner reallocated this land to new people. That resulted into infighting and court cases. I would like the Assistant Minister to clarify to this House whether it is the earlier or current allocation which stands.

Mr. Ojode: Mr. Deputy Speaker, Sir, of course, it is true that there are some new people who were allocated land after the first allocation had been done. Those new people's presence in the scheme was the cause of the crisis. At the moment, we have a civil suit case, No.589/2003 in court. All the allocations were done by the Provincial Administration. The letters of allotment were also issued by the Provincial Administration.

The contentious issues as to who should be allocated land should now be handled by the same Provincial Administration and local leaders, including the hon. Member. He should be part of the Allocating Committee.

Mr. Khamisi: Mr. Deputy Speaker, Sir, the issue of title deeds is a very serious one. In fact, there are thousands of Kenyans who have been given land by the Government but they have not been issued with title deeds. Could the Assistant Minister assure this House that the Government, as a matter of policy, will issue title deeds to all the settlers who have been given land in Government plots?

Mr. Ojode: Mr. Deputy Speaker, Sir, it is the policy of the Government to issue title deeds on all parcels of land which have not been issued with titles, including Government institutions. I want to assure the House that parcels of land which have not been issued with title deeds will be issued with the title deeds between this year and 2007.

Mr. Chepkitony: Mr. Deputy Speaker, Sir, that parcel of land was given out about 30 years ago. It has taken very long for the Government to issue title deeds to the beneficiaries. I would like the Assistant Minister to tell the House when he will send surveyors to complete the process, so that title deeds can be issued.

Mr. Ojode: Mr. Deputy Speaker, Sir, I have already assured the House that survey work will continue once the crisis we are in is over. I have said that there is a case in court. Once it is determined, we will send our surveyors to the ground.

Mr. Deputy Speaker: Next Question, Mr. Munya!

Question No.688

REVOCATION OF FORESTRY DEPARTMENT/MUCIIMUKURU
FACTORY AGREEMENT

Mr. Munya asked the Minister for Environment, Natural Resources and Wildlife:-

(a) whether he is aware of the existence of a long-standing agreement between the Forestry Department and Muciimukuru Tea Factory in which the factory participated in the conservation and protection of the Nyambene Forest in exchange for which the factory was allowed to plant and harvest trees on designated areas on the edges of the forest and which trees the factory paid for;

(b) why the Department reneged on the agreement; and,

(c) whether he is aware that tea farmers have been losing Kshs6 for every kilo of tea cured since the year 2001 due to the cost of alternative fuel after the Department reneged on the agreement.

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

(a) I am not aware of an agreement between the Forestry Department and Muciimukuru Tea Factory in which the factory was to participate in conservation and protection of the Nyambene Forest.

(b) Since there was no agreement on the onset, the Department would not have reneged on what it never agreed on.

(c) My Ministry is not aware that the tea farmers have been losing Kshs6 per kilo of tea cured since the year 2001. The Ministry was one of the sources of fuel wood for the tea factory until the year 1999, when a ban was imposed on forest exploitation in the country. During the period of the ban, tea factories in the country have been getting fuel wood from elsewhere.

Mr. Munya: Mr. Deputy Speaker, Sir, I am distressed by the answer given by the Assistant Minister. She says that there was no agreement between the farmers' company and the Government yet the farmers' company established forest plantations in the years 1967, 1978, 1991, 1996 and 2000, covering a total of 46.9 hectares. Why were the farmers planting these trees, which they were harvesting to cure their tea if there was no agreement between them and the Ministry?

Prof. Maathai: Mr. Deputy Speaker, Sir, there is no written agreement that can be seen to have ever been made between the farmers and the Ministry.

Mr. Twaha: Mr. Deputy Speaker, Sir, a few minutes ago, while answering a Question, the Assistant Minister for Foreign Affairs said that there was no agreement but a letter of comfort. Could there have been a letter of comfort in this matter as well?

(Laughter)

Mr. Deputy Speaker: Assistant Minister, if you do not have an undertaking, do you have a letter of comfort like that of the Assistant Minister for Foreign Affairs?

Prof. Maathai: Mr. Deputy Speaker, Sir, I would not understand what a "letter of comfort" would be.

Mr. Munya: Mr. Deputy Speaker, Sir, the Assistant Minister admits in the answer that there was a licence. In law, a licence is a special agreement to allow someone to enter into someone else's land and get a specific item from that land. Now that she admits that there was such a licence, and given that we have planted so much land with trees, could she allow the farmers to harvest their trees and then they will leave the Government land? The trees belong to the farmers, and the land belongs to the Government.

Prof. Maathai: Mr. Deputy Speaker, Sir, as we all know, currently, there is a ban on logging. So, such a consideration cannot be entertained by the Ministry at this time.

Mr. Deputy Speaker: Let us have the last Question this afternoon by Mr. Ngozi.

Question No.594

AMOUNT OF REVENUE GENERATED FROM
SPECIAL RATES TOURISTS

Mr. Ngozi asked the Minister for Tourism and Information:-

(a) how much revenue is generated from the tourists who visit the country through the special rates organised by tour operators abroad; and,

(b) who oversees these negotiations abroad to ensure that the rates agreed upon apply locally.

Mr. Deputy Speaker: Mr. Ngozi, the Vice-President and Minister for Home Affairs, who is also the Leader of Government Business, will answer the Question on behalf of the Minister for Tourism and Information.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Deputy Speaker, Sir, on behalf of the Minister for Tourism and Information, I beg to reply.

(a) The package tours constitute about 40 per cent of all the tourists that come into this country. Based on this fact, the amounts earned by package tours in the last three years would be as follows: In the year 2000, the total revenue earnings from tourists was Kshs21,053,000,000, which implies that package tours earned Kshs8.6 billion. In the year 2001, the total tour earnings was Kshs24 billion, implying that package tours earned Kshs9.6 billion. In the year 2002, Kshs21,239,000,000 was realised, which implies that Kshs8.4 billion was generated from package tours.

(b) There is no single entity that oversees this as package tours. It is a question of willing buyer, willing seller, depending entirely on what profit margin the package tour wants to make.

Mr. Ngozi: Mr. Deputy Speaker, Sir, I thank His Excellence the Vice-President and Minister for Home Affairs for the answer. In his reply to part (b), he says that there is nobody who oversees the negotiations, how sure are we that the returns sent to the Government are correct and that the Government earns what is due to it?

Mr. Awori: Mr. Deputy Speaker, Sir, we know that everyone who is in business wants to make profit. We believe that, because tour package operators want to make profit, the returns that they give us are correct. They cannot inflate the figure or bring it down. It reflects the profits they make.

Mr. Sungu: Mr. Deputy Speaker, Sir, it is common knowledge that package tours are extremely cheap and that they are organised from overseas. The money paid overseas hardly comes to this country. Those of us who have worked in the tourism sector know that approximately 90 per cent of the money that accrues from package tours remains of overseas. Is His Excellency the Vice-President and Minister for Home Affairs satisfied that package tours are beneficial to the Kenyan economy?

Mr. Awori: Mr. Deputy Speaker, Sir, I believe that the Kshs8.6 billion earned in a year is

beneficial to this country.

Mr. Ngozi: Mr. Deputy Speaker, Sir, could the Ministry take measures to correct these irregularities?

Mr. Awori: Mr. Deputy Speaker, Sir, I will convey the hon. Member's sentiments to the Minister.

Mr. Deputy Speaker: Very well! That is the end of Question Time. I have a request from Mr. Sasura to seek a Ministerial Statement.

POINTS OF ORDER

ISSUANCE OF VISAS TO ISLAMIC REPUBLIC OF IRAN DELEGATES

Mr. Sasura: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Foreign Affairs and International Co-operation.

In April and May, 2003, a 60-man delegation from the Islamic Republic of Iran sought to visit Kenya for the purpose of investment between the two countries. However, members of the delegation were denied visas to come to this country despite the economic situation of this country and the Government's policy to promote investment in terms of international relations. Also, in October, 2003, a group of sports men and women stopping over at Jomo Kenyatta International Airport---

*(Mr. Sirma stood up in his
place and consulted
with Prof. Oniang'o)*

Mr. Deputy Speaker: Order, Mr. Sirma!

Mr. Sasura: Mr. Deputy Speaker, Sir, in the month of October this year, some Iranians who had a stop-over flight in Nairobi were stranded for 20 hours at the Jomo Kenyatta International Airport and ended up sleeping at the airport lounge.

Mr. Deputy Speaker, Sir, in view of the above, could the Minister tell us what caused that denial of visas to that delegation, considering the good relationship between the Islamic Republic of Iran and the Government of Kenya?

Secondly, could the Minister outline if there is any sour relationship between the Islamic Republic of Iran and the Republic of Kenya?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Deputy Speaker, Sir, could I issue the Ministerial Statement on Thursday afternoon?

Mr. Deputy Speaker: Very well.

*(Mr. Ndambuki stood up
in his place)*

Mr. Ndambuki, I have no information that you are requesting anything! Hon. Members, you are reminded to make use of the Office of Mr. Speaker and Mr. Deputy Speaker whenever you want to request for Ministerial Statements. So, Mr. Ndambuki, did you make that arrangement?

KENYA'S FATE IN AGOA PROGRAMME

Mr. Ndambuki: Mr. Deputy Speaker, Sir, last week, I rose to demand a Ministerial Statement from the Minister for Trade and Industry concerning the Africa Growth and Opportunity

Act (AGOA). That is because Kenya is going to be locked out of AGOA if it is not self-sufficient in cotton production by 30th September, 2004! I would like to---

Mr. Deputy Speaker: So, you are asking when the Ministerial Statement will be issued?

Mr. Ndambuki: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: The Assistant Minister for Trade and Industry, when can we expect the Statement sought by Mr. Ndambuki last week?

The Assistant Minister for Trade and Industry (Mr. Miriti): Mr. Deputy Speaker, Sir, the Ministerial Statement will be delivered on Thursday.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, following a request for a Ministerial Statement by Mr. Sambu on the circumstances that led to the alleged arrest and incarceration of one Mr. Aggrey Rono of Kabiyet PAG Church, I wish to state the following:-

Mr. Deputy Speaker, Sir, according to the records held at the Kabiyet Police Post, it is a Mr. Julius Kipkosgey Rono, a PAG Church elder who was arrested on 13th November, 2003, and not Mr. Aggrey Rono. The circumstances that led to the arrest of Mr. Julius Rono were as follows:-

On 12th November, 2003, at about 4.20 a.m., one Christopher Koech of Legeiwet Village, Sang'alo Sub-location reported at Kabiyet Police Post that, he was assaulted by two people known to him. Initial action was taken and the complainant was issued with a P3 form.

On 13th November, 2003, the complainant went to the police post and reported that he had seen one of the suspects who had assaulted him. The police accompanied him and he identified Mr. Julius Kipkosgey Rono, who was then arrested and escorted to the police post and booked in the Occurrence Book.

On 14th November, 2003, the suspect was escorted to Kapsabet Police Station and placed in a cell at 3.00 p.m. Later on, the same day at 5.00 p.m., the suspect was released on a cash bail of Kshs2,000 to appear before court on 17th November, 2003. From the investigations and statements recorded from the suspect and other witnesses, an offence of robbery with violence was preferred against Mr. Julius Kipkosgey Rono. However, when he appeared before the Kapsabet court, he denied the charge and was remanded at the Eldoret GK Prison. The next mention of the case will be on 19th January, 2004.

Mr. Deputy Speaker, Sir, following the above circumstances, it is clear that the police acted upon a complaint brought to it by a member of the public and, after investigation, an offence was disclosed. The claim that bribery influenced the arrest is, therefore, unfounded. There was, therefore, no illegal action committed by the police in respect to that case. In any case, the matter is now before court and I am confident that justice will be done.

Mr. Sambu: Mr. Deputy Speaker, Sir, when the complainant went to the police, he complained specifically of assault. That is why Mr. Julius Kipkosgey Rono was booked by the police for that offence. Then the police told the complainant that with a charge of assault, he would not get the revenge he intended for that old man. That is why there was a change of mind. If one complains of assault, how do you allow him to change that complaint into a more serious offence of robbery with violence? That old man has been incarcerated since 13th November to date. It is a pity because he did not even assault the young man! Could the Assistant Minister take action against the police in Kabiyet Police Post because they are for sale? If you have money and you hate a church elder or somebody else, you can pay them to get the person, remand him and even vary the crime from assault to robbery with violence!

Mr. Tarus: Mr. Deputy Speaker, Sir, I concur with the hon. Member that it is not right for an offence or complaint to be changed. I notice from the reports from the police station that the

complainant had talked about assault. But the case that is in court is that of robbery with violence. I agree with that and we shall take the necessary action against those officers.

(Applause)

SIGNING OF PROTOCOL ON
COMMON EXTERNAL TARIFF
AND CUSTOMS UNION

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Deputy Speaker, Sir, this Ministerial Statement is as a result of a request by Mr. Obwocha two weeks ago, relating to the Customs Union that is being negotiated by the East African Community (EAC) States.

Mr. Deputy Speaker, Sir, the treaty establishing the East African Community signed on 30th November, 1999 provides for conclusion of the protocol on the establishment of a Customs Union within a period of four years from the time of signing. The three East African partner States, Kenya, Uganda and Tanzania have been engaged in negotiations for that protocol since January, 2000. The Customs Union provides for free trade among the partner States and a common external tariff for the East African Community sub-region, with a view to developing it as a single market and investment area. Under the common external tariff, agreement has been reached for the three-band structure of 0 per cent for raw materials and capital goods, 10 per cent for intermediate goods and 25 per cent for final goods. The process of categorisation of tradeable goods into the three-tariff bands has been going on, and it is at its final stages. All other necessary elements for the Customs Union have been negotiated among the three partner States.

Mr. Deputy Speaker, Sir, the Permanent Secretaries responsible for industry, trade and finance from the three East Africa States met in Arusha, Tanzania between 24th and 25th November this year while the East African Council of Ministers met on 28th of November this year to prepare the Draft Protocol for signing by the three East African Heads of State. Following consultations between the three Heads of State, the meeting of the Summit and signing of the Protocol has been set for mid-January 2004.

Mr. Deputy Speaker, Sir, the negotiation process has involved a team of experts at senior level who are drawn from relevant Government ministries and institutions including the Ministry of Foreign Affairs as the co-ordinator of the East African Community matters, Ministries of Finance, Trade and Industry, Planning and National Development, Transport and Communications, Agriculture, Attorney-General's Chambers and the Kenya Revenue Authority.

Mr. Deputy Speaker, Sir, the private sector has also been actively involved through representatives including Kenya Association of Manufacturers, Kenya National Chamber of Commerce and Industry and other industrial enterprises. Also involved has been the Kenya Institute of Public Policy Research and Analysis. The team of experts has been working under close consultation and guidance of the relevant Permanent Secretaries and Ministers who have also been actively participating in East Africa Community Inter-Governmental meetings at their respective levels at the headquarters in Arusha.

Mr. Deputy Speaker, Sir, on the overall, the basic benefits arising from the Customs Union exceed the expected costs. The Customs Union will provide among others, free trade on all goods across the East African sub-region which will enhance access of Kenya's exports to these markets. This will further lead to attraction of new investments from local and foreign sources and also enhance diversification of Kenya's export base, away from the narrow traditional primary exports. This is because exports to the sub-region are dominated by high value addition, non-traditional manufactured products.

Mr. Deputy Speaker, Sir, the Customs Union will also facilitate joint efforts and collective

bargaining by the partner states in negotiations for development projects and programmes among African Caribbean and Pacific (ACP) states and the European Union (EU) arrangements, the World Trade Organisation (WTO) and the Africa Growth and Opportunity Act (AGOA).

Mr. Deputy Speaker: Mr. Obwocha, did you request for that Ministerial Statement?

Mr. Obwocha: Yes, Mr. Deputy Speaker, Sir. I would like some clarifications on it.

Mr. Deputy Speaker: Go ahead please.

Mr. Obwocha: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for this Ministerial Statement but as you know, he is too late because this Customs Union Protocol was going to be signed next week but it has been postponed. The first clarification I want to seek is: Why did they postpone the signing of this Protocol to January? The second clarification I would like to seek is: Is it true that this Protocol is being complicated because Tanzania is not co-operating as it is under another regional grouping, which is the Southern Africa Development Community (SADC) and we are in the Common Market for Eastern and Southern Africa (COMESA)? What is the actual problem because when I asked for this Ministerial Statement, it is because I got it from the Ministry of Finance that there were not enough consultations between the Ministries of Foreign Affairs, Finance and Trade and Industry?

Thank you.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Deputy Speaker, Sir, the signing of the Protocol by the Heads of State of the three East African States will be at their convenience and that is why it was not done last week. It has been set for mid-January, actually 16th January 2004.

Mr. Deputy Speaker, Sir, it is true that Tanzania belongs to SADC but the enthusiasm and support of Tanzania for this Protocol has not been any less than that of Kenya and Uganda.

Mr. Deputy Speaker: Very well. Mr. Tarus, I think you have another Ministerial Statement to issue. Could I ask that we postpone that Ministerial Statement to tomorrow so that we can go to substantive business? Could that be in the morning or in the afternoon?

The Assistant Minister, Office of The President (Mr. Tarus): Mr. Deputy Speaker, Sir, in the morning.

Mr. Deputy Speaker: Therefore, that Ministerial Statement by Mr. Tarus will be delivered in the morning.

NOTICE OF MOTION FOR THE ADJOURNMENT UNDER STANDING ORDER NO.18

FINANCING OF PUBLIC WORKS MINISTER'S TRIP

Mr. Deputy Speaker: Hon. Members, I have a short Communication from the Chair. I have received a written notice from the Member for Subukia, Mr. Koigi wa Wamwere, of his intention to raise a Motion of Adjournment under Standing Order No.18(1) and (2) over a matter of an unsatisfactory answer to a Question by Private Notice No.2 answered on 12th November 2003 concerning an overseas trip to Europe by the Minister for Roads, Public Works and Housing. I have considered the matter and acceded to his request. I will, therefore, call upon the Member to move a Motion of Adjournment as an interruption of business of the afternoon sitting of Wednesday 3rd December, 2003.

Thank you.

COMMUNICATION FROM

THE CHAIR

DEFERMENT OF DEBATE: CONSTITUENCIES
DEVELOPMENT FUND BILL, PRESIDENTIAL
RETIREMENT BENEFITS BILL
AND APPROPRIATION BILL

Mr. Deputy Speaker: Hon. Members, on the Order Paper which is Order No.7, I have---

(Loud consultations)

Order, Mr. Leshore! Mr. Leshore, that is not characteristic of you. Now, I have to say as follows: As regards Order No.7, the Clerk has continued to receive a lot of amendments to the Constituencies Development Fund Bill. Indeed, many more are coming, and for the ones which have been published, the Minister has sought the indulgence of the House that he be given time to consider these amendments. The same applies to the Presidential Retirement Benefits Bill. In view of this, I would like to use the authority of the Chair to amend the Order Paper and consequently defer Orders Nos.7, 8 and 9.

(Applause)

(Debate on Bills deferred)

BILL

Second Reading

THE PUBLIC AUDIT BILL

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I beg to move that the Public Audit Bill be now read a Second Time.

Mr. Deputy Speaker, Sir, as stated in the Principal Objects of the Bill, this Bill is to provide for audit of Government, all the State corporations and local authorities. The Bill strives to introduce economy, efficiency, effectiveness and fairness in the examination and other matters carried out by the Controller and Auditor-General. The Bill further seeks to amend and replace certain parts of the Exchequer and Audit Act. Part 1 of the Bill gives its title and various definitions which are contained in the Bill.

Mr. Deputy Speaker, Sir, let me specifically say that in the past, the Controller and Auditor-General's office was split into two; to have an auditor for State corporations and another auditor for other Government services. But this Bill brings all those offices together in order to make sure that Government accounts, those of the parastatals and those of the local authorities are treated equally by the same body.

Mr. Deputy Speaker, Sir, Part II goes on to provide for Government audit each financial year, and call for Government accounts to be prepared by accounting officers, receivers of revenue and other Government agencies, and submit them to the office of the Controller and Auditor-General each financial year. Once the office of the Controller and Auditor-General has completed all the accounts, a report shall be prepared and presented to Parliament by the Minister for Finance.

One of the main aims of the current Bill is to try and get rid of the existing functions of the

office of the Controller and Auditor-General, which performs more of a post-mortem several years after the completion of the financial year. This new Bill will give the office of the Controller and Auditor-General powers to examine accounts as they proceed during the year, and to draw attention, particularly to the departmental committees and even to the accounting officers, on any malpractices noticed during the year. We believe that this way, we are going to eliminate many of the malpractices which we have noticed in the past. For instance, it has not been unusual in the past for Government officers, and senior ones at that, to be paid honoraria. There is one case which I can remember, where a Permanent Secretary (PS) drew honoraria for 464 days in a year of 365 days; a clear indication that the honoraria was clearly not being properly applied. It is my belief that once we pass this Bill the malpractices, such as the one I have mentioned, will be a thing of the past.

Mr. Deputy Speaker, Sir, there are requirements particularly in Clause 6 of this Bill which shortens the period within which accounts must be prepared and presented to the office of the Controller and Auditor-General. Let me read Clause 6(3):-

"The financial period referred to in Sub-Section 1 is the financial period provided for by law for the fund or in such a period as the Treasury may direct".

Sub-Section 4 says that:-

"The accounts must be submitted within three months after the end of the financial year".

That is a very important provision. It means that the accounts must be submitted, at the latest, at the end of September after the financial year has closed in June. However, there is a rider to that in Sub-Section 5, saying:-

"The National Assembly may extend, by resolution, the time limit provided for in Sub-Section 4".

In other words, it is only this House which can allow an accounting officer, an institution or a parastatal to take longer than three months before providing the accounts. Of course, it is understood that the House must be satisfied before it extends this period.

Mr. Deputy Speaker, Sir, as I stated earlier, the law directs the office of the Controller and Auditor-General to prepare periodic reports on how expenditure is going throughout the financial year, and such a report will be made available to the Minister for Finance, who will also prepare periodic reports in turn. This is not provided here, but I am sure the Minister will make them available to the House Departmental Committees so that they can follow up, because they are the ones given those powers.

Part II of the Bill provides for a Government audit each financial year. It calls for Government accounts to be prepared by accounting officers, receivers of revenue and Government agencies, and submit them to the office of the Controller and Auditor-General each financial year. As I said, this should be done by the end of three months after the close of the financial year. Once the office of the Controller and Auditor-General has completed its audit, it must prepare and present to Parliament, through the Minister for Finance, a report of its audit. The Act is a little detailed in specifying what will be contained in the office of the Controller and Auditor-Generals report, which includes how money has been spent in a way that was not efficient or economical, the rules and procedures to be followed, or the records kept; whether they were inadequate to safeguard property and the collection of revenue; monies that should have been paid into the Exchequer's account---

Mr. Bahari: On a point of order, Mr. Deputy Speaker. The Minister has stated that according to this Bill, Government accounts must be presented within three months after the end of the financial year.

Mr. Deputy Speaker: What is your point of order?

Mr. Bahari: Mr. Deputy Speaker, Sir, Part II of the Bill, Clause 4 reads five months. So, could the Minister clarify?

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I was talking about a Trust Fund. I am sorry, I should have made that clear. This is under Clause 7(5).

The Bills states:-

Mr. Deputy Speaker: Mr. Minister, proceed!

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, Clause 9(3) of the Bill states:-

"Without limiting what may be included in the report, the report shall identify cases in which-

- (c) money that should have been paid into the Exchequer account was not so paid;
- (d) money has been spent for purposes other than the purposes for which it was appropriated by Parliament; and,
- (e) satisfactory procedures have not been established to measure and report on the effectiveness of the programmes".

The reason I am reading this out in detail is to show that in future, the Controller and Auditor-General will be checking whether or not the Ministry of Finance has enough machinery in place to ensure proper expenditure of Government funds.

Clause 9(4) requires the Controller and Auditor-General to submit the report to the Minister within eight months after the end of the financial year or other period to which the accounts examined and audited relate. At the Moment, we are receiving audited reports which are three or four years old, and this will really be a major improvement on what has been happening. Once again, because these reports are being prepared for this House which has watchdog Committees, the House can extend under special circumstances the period within which these reports will be presented.

The other point which I need to highlight is the requirement that the Controller and Auditor-General should prepare special reports in the course of audit. I will look at Clause 11(1), page 546. It reads:-

"If, in the course of an examination and audit, a matter comes to the attention of the Controller and Auditor-General that he feels should be brought to the attention of the National Assembly immediately, the Controller and Auditor-General shall submit a special report to the Minister responsible for finance".

Clause 11(2) reads:-

"The Minister shall lay the Special Report before the National Assembly not later than seven days after the National Assembly first meets after the Minister has received the report".

Mr. Deputy Speaker, Sir, the Bill is giving the Controller and Auditor-General powers which enable him as he audits, to find out what weaknesses exist in the utilisation of funds and what practices are not proper. Then he should report to the Minister and the Minister has only seven days within which to report to the House.

In preparing this Bill, we did not even spare the Minister for Finance. We are saying that once the Minister has received the Special Report from the Controller and Auditor-General and he does not lay it on the Floor of the House within seven days, the Controller and Auditor-General himself has a right to take his report to the Speaker to make sure it reaches this House. This means that the Controller and Auditor General is definitely answerable to the House.

Part III of the Bill provides for audit of State corporations. In each financial year, State corporations shall be required to prepare and submit their accounts to the Controller and Auditor-General for audit. After the Controller and Auditor-General completes the audit, a report shall be laid before the National Assembly by the Minister responsible for finance. Other copies of the reports shall be given to the State corporations concerned and the Ministers responsible for them. Here again, it is important to emphasise the same point. A State corporation shall submit its accounts within three months after the end of the financial year to which the accounts relate. That is to be found on

page 547, Clause 13(1). Once again, the House, which is responsible for these accounts can extend the period for special reasons.

Mr. Deputy Speaker, Sir, once again, the Controller and Auditor-General will do the same. He will prepare reports and those reports will be given to the Minister and passed on. In the same way, the Controller and Auditor General has the right, as the year proceeds, to check accounts of any parastatal. If he feels there is something grossly going wrong, he can prepare a report for submission to this honourable House, so that the House can then debate those matters to make sure that they are stopped before they get out of hand. That is contained in Clause 17 on page 549.

Mr. Deputy Speaker, Sir, in the case of the corporations, they should be charged. They have to pay for the audit even if it is carried out by the Controller and Auditor-General because these are institutions which make money. We do not intend to keep on subsidising parastatals. We are already working on ways which we can offer parastatal heads or the chief executive officers contracts based on performance. Contracts will be offered and if someone does not perform sufficiently or adequately, they will have to be removed and other people hired. Let me move on to Clause 4 which provides for the audit of local authorities. Here, all local authorities shall prepare and submit Accounts to the Controller and Auditor-General each financial year. Once the accounts have been audited, a report shall be made to the National Assembly by the Minister for Finance. Copies of the report shall be given to the local authorities and the Minister for Local Government.

This is one Clause that makes me happy because today in Kenya, we have local authorities which have not prepared accounts for over 20 years. In fact, we have recently tried to use LATF funds as a "carrot" to make them prepare the accounts. We have told them that unless they prepare their accounts, and we get them, they shall not get the LATF funds. What this means is that some of them have the accounts for the last three years but, they do not have the accounts for the last 17 years, which is a very unsatisfactory situation.

Mr. Deputy Speaker, Sir, let me read the provisos in this Bill contained in Clause 22(i) on page 551. The Clause provides that a local authority shall submit its accounts within six months after the end of the financial year to which the accounts relate. This is a slight relaxation on what we were requiring of the Government and the parastatals. I believe that the reason for this is that, at the moment, the local authorities are ill-equipped to prepare their accounts. The same reports will be audited by the Controller and Auditor-General, and the Controller and Auditor-General's Report will, of course, provide information which has been provided, whether the account has been properly maintained, whether it presents a true and fair picture of the affairs of the local authority, and, if the county councils or the local authorities have made provisions for the repayment of loans because most of them, in fact, do not repay loans at all. Once the Government guarantees a loan for housing, or for water, that is the end of the matter. Local authorities do not repay and it becomes the responsibility of the Central Government. We want to stop this. We want to make sure that once the local authorities have taken a loan, they should make provision on a regular basis for loan repayment.

Mr. Deputy Speaker, Sir, the Controller and Auditor-General is expected to submit to the Minister for Finance his own audit report within 11 months after the end of the financial year. That means that we are giving him five months within which, after the receipt of reports of the local authorities, he is given time to complete his audit which will then come to this House.

Once again, Clause 28 provides that the local authority pays for the audit work to the Controller and Auditor-General. This is a service they would have paid for. Of course, they will not pay as much as they would have paid for if they hired private auditors.

Once again, it is important to point out here that because of the need to make sure that audit is not for postmortem purposes only, and that it is used to help control the use of funds and help stop the abuse, the Controller and Auditor-General is expected to carry out inspections and if he finds that there are malpractices, he should prepare a special report, hand it over to the Minister and it must be

brought to this House. If the Minister does not hand it over within seven days, he hands it over to the Speaker of the National Assembly who will submit it to the hon. House.

Mr. Deputy Speaker, I now move on to Part IV of the Bill, which deals with the Controller and Auditor-General, the Kenya National Audit Office, and the Kenya National Audit Commission. "Upon enactment of this Bill, the Controller and Auditor-General and his staff shall constitute the Kenya National Audit Office." In addition, the powers and the duties vested in the Controller and Auditor-General by the Constitution, provisions have also been made to cater for delegation of staff, appointments of auditors who are not on the same staff complements, procurements of professional assistants and to obtain legal opinion from the Attorney-General.

Mr. Deputy Speaker, Sir, hon. Members who were here during the Seventh Parliament will recall what happened to the Kenya National Audit Office (KNAO). More than 50 per cent of their staff were systematically removed to weaken the Controller and Auditor-General so that he could not carry out his work effectively. In fact, this is one of the reasons why we are so far behind in our audit work. In order to avoid this fact, Clause 35 provides that the Government of Kenya shall ensure that the KNAO has the staff that the Controller and Auditor-General believes is necessary to properly carry out his functions.

Clause 36 details the duties of the Controller and Auditor-General and I talked briefly about them. Clause 37 takes us back to the source of the powers of the Controller and Auditor-General under Section 105(3) of the Constitution which states that the Controller and Auditor-General shall have the same access to electronic documents as he has to other documents under Section 105 of the Constitution. We are moving more and more to electronic documents and information which will be stored in diskettes. This actually helps him to have access not only to hard copies on paper, but also to soft copies in the electronic media. This section actually deals with the powers of the Controller and Auditor-General; how he can hire outside staff and professional assistants if need be. The Controller and Auditor-General is also required by this law to lay a case in writing before the Attorney-General regarding the interpretation of any Act including this Act, or any other regulations.

Mr. Deputy Speaker, Sir, one point I need to point out is that the Controller and Auditor-General is given immunity by Clause 43, which states as follows:-

"No member of staff of the Kenya National Audit Office including the Controller and Auditor-General shall be personally liable for any act or omission done or omitted in good faith in carrying out any duty or exercising any power under this Act of the Constitution."

I thought I would make that point because in the past it has been quite common to victimise officers who were thought to be reporting adversely on certain "sacred cows" within the Government. I want to move on and say that the Controller and Auditor-General is required, like anybody else, to prepare a budget for his own office which must be approved.

Let us move on to page 562, Clause 47. This deals with the age of retirement of the Controller and Auditor-General. For the purposes of Section 110 of the Constitution, the age at which the Controller and Auditor-General shall vacate his office shall be 65 years. Under the old Constitution the Controller and Auditor-General's services could continue as long as Parliament was not tired of him. I think here that since we have judges who go up to the age of 74 years, 65 years is a reasonable age. By the time you are 55 years, that is the time when you really become experienced and productive. Giving somebody ten years is not too much to ask for.

The one thing which we have done in this Bill which was not the case in the old Bill is that we have established a National Audit Commission which is on page 562. It comprises of the Controller and Auditor-General and the chairman of the Public Accounts Committee of the National Assembly so that Parliament is directly involved. The people who really do the donkey work in making sure that Government accounts are properly done and looked after are the watchdog committees. In the past, it

has not been possible for the PAC, for instance, to get its recommendations implemented. In this case, we are establishing a commission which will include the chairman of the PAC, a practising member of the Institute of Certified Public Accountants of Kenya, the chairman of the Public Service Commission and the Attorney-General or his nominee. This commission will have a chairman and secretary. The Controller and Auditor-General will act as chairman and the chairman of the Kenya National Audit Commission. The Commission will appoint the secretary.

Mr. Deputy Speaker, Sir, Section 7 deals with transition and amendments because we are replacing an already existing law. Therefore, we are also showing the amendment which need to go hand in hand with the introduction of the new Bill.

Finally, this Bill, as I have said, deals with transitional matters and various amendments to the Exchequer and Audit Act and other Acts which were dealing with audit matters. The enactment of this Bill brings with it several changes to the Office and Function of the Controller and Auditor-General which will, definitely, call for additional resources. Additional funds will also be provided through the Estimates, when this Bill will be enacted, assented and becomes operational.

Mr. Deputy Speaker, Sir, as I conclude, let me say that I feel confident that we are moving away from the days when audit was supposed to be a postmortem exercise, to a time when audit will really help guide this Parliament in finding out what is going wrong with the expenditure and appropriation that we have just given, so that we can follow up and stop things from getting out of hand. I

believe that because this Audit Bill is calling for very major reforms, hon. Members will take the Bill as that which strengthens their hand in acting as a watchdog on the Government and its expenditure. Hon. Members will also support the changes on the understanding that we are doing it for the good of this country, and in order to help give the taxpayer value for his money. That will also make sure that, as we get out of the very poor economic condition we are in, we will move forward from strength to strength after ensuring that all institutions that spend Government monies are looked after, well supervised finance-wise and are delivering the goods for which they were set up.

With those rather many remarks, I beg to move.

Mr. Deputy Speaker: Who is seconding? Mr. Mungatana?

The Assistant Minister for Regional Development (Mr. Mungatana): Mr. Deputy Speaker, Sir, I rise to second the Bill that the Minister has just brought before this House. In seconding this Bill, I would like to, first and foremost, congratulate the Minister for bringing this Bill at such a time in the history of this country. I would also like to say that the Minister has kept his word. If you remember in June, when the Minister was moving the Budget before this House, he promised to bring substantial changes to the structures of management of our public resources. This Bill proves that the Minister was serious to the letter in every word that he spoke.

This Bill is an extension of the fight that we have declared against corruption and corrupt practices in the management of public affairs. Corruption can be equated to what is called in English the "Quillea birds". They attack the rice fields of Tana River. Those birds come one at a time. We have a different name in our mother tongue, which I think I will be out of order to quote in this House. But they are small birds and many of them come. They come picking and when you finally count the losses, they combine to a terrible amount that eats into the farmers' profits. Those birds pick from small loopholes. They do not grow nor work, but they pick from those small loopholes that are created. Every time the farmer goes home or is tired from looking after his fields, they come and pick.

Mr. Deputy Speaker, Sir, this Public Audit Bill is an example of the determination by the Government, through the Minister, to seal up those loopholes. It is those small picking and small loopholes that have finished public monies that have been voted by Parliament. I would like to say that the answer is in strengthening the institutions that govern the management of public money. Auditing by its very definition means looking after what is being spent. It is not only looking after the money

and how it was spent but also, whether proper procedures for spending that money were followed.

The biggest problem has been that auditing Government money has been a post-mortem exercise, as the Mover of this Bill has said. When we were adopting the report by the Public Investments Committee (PIC), we talked of how our parastatals have been mismanaged years ago. We talked about what happened in those institutions a few years ago, a time when very little action could be taken. Some of the people who committed those malpractices have left office or even died. This Bill is a genuine effort to ensure that the management of public resources is in the control of the Government and also this House.

Mr. Deputy Speaker, Sir, Parliament has been given a new role through the establishment of the National Audit Commission. The Chair of the Public Accounts Committee (PAC) will be part and parcel of the National Audit Office. What does that mean? It means that the Chair of the PAC will have interim reports of what is happening with the money that this Parliament has released to public institutions. It also means that the Chair of PAC, on behalf of Parliament, will always be ready to raise an alarm at the appropriate time, before the money is finished. This House has been given a very significant improvement in its powers.

Mr. Deputy Speaker, Sir, when I was making my contribution on the PIC Report, I said that, it is time that we changed our *modus operandi*; that the Committee should be able to handle hands-on issues. Now, the PAC is actually being given that framework, so that issues that are being raised and are current, could be tackled within the framework of the law. In the regional authorities that happen to be within the Ministry that I am currently serving in, we, in keeping with the ideas and principles of this Bill, have introduced Medium-Term Expenditure Framework. Regional authorities, which are public bodies, will be required, within a period of six months, to submit reports on what they are doing within that time so that we are able to know what exactly is happening with the money that we voted for those authorities. I think the principles that are encompassed in that action have seen, so far, within this year, a marked change in terms of management of the moneys that were voted through our ministries to those regional authorities. We have so far not had situations where public money has gone missing or over-expenditure incurred without explanation. The same principle is being implemented through the Public Audit Bill.

I think it is a good idea that interim reports would be put before the Ministers responsible. If it is the Ministry of Local Authorities, the local authorities would be reporting to the responsible Minister; and all other public expenditures, be they local authorities, regional authorities or Government offices, would be reporting back to the Ministers responsible within a reasonable time period, before the year ends. This is a marked improvement from what we have had in the past.

So, I think this is a good Bill that we must all support. This is a public-friendly Bill as it will enable the public to know what happened to their money, before things are too bad. We would be able to heal the wounds if any wounding is being done on public money before the wound becomes septic and starts causing other diseases to the body that is called Kenya.

Therefore, in seconding this Bill, I urge the House, in good faith, that we must support this Bill. It is good for all of us and for this nation.

With those remarks, I beg to second.

(Question proposed)

Mr. Deputy Speaker: I do understand that Mr. Bahari is the Official Responder for the Opposition. So, Mr. Bahari, proceed.

Mr. Bahari: Thank you very much, Mr. Deputy Speaker, Sir. I would like to thank the Minister for bringing this Bill to the House because it has come in at a very appropriate time in the history of this country. This is particularly so because Kenya, as a country, is not known for proper

utilisation of its resources. Many audits have brought to light the gross misuse of public funds.

[Mr. Deputy Speaker left the Chair]

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

This Bill will go a long way in ensuring that public resources are utilised for the purposes for which they are intended and that, Kenyans get value for their money. This is extremely important, because there is no point of us going around the world begging for resources when our own resources go to waste. It is extremely important that we address this issue very seriously. It is through such instruments and others, which are perhaps, not before this House, that we can ensure Kenyans get value for their money and that, Kenyans do not become among the most over-taxed people in the world and then get very little out of that.

On several occasions, we have been told how costs of projects and services have been exorbitant in this country and yet the quality is very low. At the end of the day, the cost doubles or trebles. It is public knowledge that many projects have stalled in this country and yet, they cost us more than double the actual cost. This is all misuse of public resources and it is high time we became accountable to Kenyans. Going into specifics of this Bill now, I am happy that a number of issues have been provided for in this Bill. Among them is the fact that--- Clause 4(i) of Part II reads:

"For each financial year, each Accounting Officer shall prepare accounts in respect of service of which the Accounting Officer is appointed and submit the accounts to the Controller and Auditor-General.

The Accounts shall include the following, as stated in this Section:-

4(2)(c),

(i) A statement of amounts guaranteed by the Government as at the end of the year in respect of bank overdrafts, loans, public loan issues and other sums."

In the past, the Government would guarantee loans for parastatals and other institutions but at the end of the day, it is not reflected anywhere in our accounting system. That exposes the public to very serious liabilities and it is important that these matters are taken into account. There is even information that in some instances, we do not know that some loans have been received by this country; there are no records at all. This is pathetic and it should not be allowed.

I am also happy that, to some extent, this Bill empowers the Controller and Auditor-General to present the accounts to the Speaker of the National Assembly if the Minister fails to do so within a specified time. This is extremely important because in the past, accounts have been delayed by Ministers. So, this provision is very good and I would like to thank the Minister for it.

Having said that, there is, however, a provision on special report, which provides that the Controller and Auditor-General's hands are not tied now and he can give "a special report at any given time in the process of examination and audit to the National Assembly and shall also submit such a report to the Minister." I am not exactly sure whether this is a routine audit or a special one as it is stated. It appears that it is in the cause of examination and audit. That means before the Controller and Auditor-General submits the full report, he is empowered to submit a special report.

Mr. Temporary Deputy Speaker, Sir, I would like to see a situation where the Controller and Auditor-General, on receiving information, can move in, carry out a special audit and submit it himself to the National Assembly. I would like this to come out clearly because it does not come out clearly in this Bill. This is absolutely necessary. The hon. Members who have contributed to this Bill have said that if this is done, we will not deal with "dead bodies" but enhance accountability. This will also

ensure that Kenyans get value for their money at an appropriate time. There is no point for us to look at audit reports which are two or three years old because it does not make sense. It is absolutely important that we clarify this aspect in this Bill. We should make this clear in this Bill. This Bill does not refer to the routine audit. We should introduce a provision in this Bill which states that on getting information at any particular time, the Controller and Auditor-General can carry out a special audit.

The time when an audit report is submitted is also very important. I have seen a clause in the Bill which states that it should be submitted after three or five months. I think we should put a standard time of three months within which an audit report can be submitted. It is important that those reports are available in good time. Already we are looking at transactions which were carried out over 12 months ago, and if you add three months to that, it becomes 15 months. So, anything more than that renders the whole exercise of scrutinising expenditure futile.

I would like to touch on Part IV on audit of local authorities. Part IV, Clause 22(1) says:-

"A local authority

shall submit its account

within six months after the end of the financial year to which the accounts relate.

(2) The Minister responsible for local government may extend, in writing, the time limit for the submission of accounts by a local authority."

That time limit is not specified in this clause. It is a blank cheque for the Minister for Local Government. The time limit should be specified. The provision should say that, that extension shall not exceed a certain period of time. This is important so that we do not seem to be condoning the same things we want to prevent from happening.

Mr. Temporary Deputy Speaker, Sir, Part III, Clause 19(1) reads:-

"A state corporation whose accounts are examined and audited shall pay for the cost of the examination and audit."

If you read through this Bill, you will realise that this clause also applies to local authorities. What about if the local authorities cannot afford the audit bills? We know some local authorities which cannot afford these bills. So, what is the Controller and Auditor-General supposed to do in this case?

How will he meet such costs? It is important that we provide the necessary staff and finances to the Controller and Auditor-General's office, so that he can go about his job without unnecessary constraints. The Bill should stipulate exactly what will happen if a State corporation or a local authority, will be unable to meet the cost of audit.

In local authorities, under the pretext of budgets prepared and approved by the Minister, or even in the central Government, luxurious budgetary proposals have been presented to the Ministers who approved them. It is important that the Controller and Auditor-General should get into some of these irregularities and give a proper recommendation, so that resources are not misused under the pretext of following budgets. It has come out very clearly in many cases, for example, that many local authorities would come up with budgets for sports. I agree that sports are important. Local authorities set aside some money which the Minister approves for councillors to go and watch matches. Expenditures which would not have, under any normal circumstances, made sense are approved, funds are spent and Kenyans do not get value for their money. These anomalies should be included in the Controller and Auditor-General's report, so that allocation of funds and the implementation of the entire Government Budget is closely monitored.

There are certain instruments which are supposed to be used by the Treasury and other institutions for purposes of auditing but are not used at all. This is the case, and yet they are clearly spelt out. These instruments are not used properly. Submitting an audit report after 15 or 20 months does not really make sense. Continuous monitoring and evaluation are extremely important. The Controller and Auditor-General should be empowered to look at some of these instruments and submit audit reports to the House, as and when necessary.

Mr. Temporary Deputy Speaker, Sir, we appreciate the fact that the National Audit Commission will be set up to oversee the functions of the Controller and Auditor-General's office. That is a good idea. We appreciate the fact that this idea has been put in this Bill, but I am yet to see the person who will audit the Controller and Auditor-General, because that is not provided in this Bill.

It is important that we get somebody to audit the Controller and Auditor-General. That person should come from the private sector so that the Controller and Auditor-General is free from any interference from any quarters. This provision is missing, and yet it is important. It is high time this was clearly provided for in this Bill.

In winding up my contribution, I would like to thank the Government for bringing this Bill before the House. I hope that it will also contain a provision which will strengthen the implementation of the Controller and Auditor-General's reports, because that has been ignored for a long time. The Controller and Auditor-General's reports contain good recommendations but nobody bothers to implement them. So, there should be an authority or a system which will ensure that his recommendations are fully implemented. Otherwise, auditing will remain an annual ritual and a waste of funds.

Mr. Temporary Deputy Speaker, Sir, I beg to support.

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to speak on this important Bill. I want to thank the Minister for Finance for bringing it to this House at this time, particularly as the NARC Government is just approving its first Budget and embarking on utilising the public funds for the first time in this country.

I was very happy to note from the Minister for Finance the fact that he has given the Controller and Auditor-General strength. He needs a lot of support from this House. The Controller and Auditor-General needs to have capacity to audit all the departments and institutions of this country. The position in which he is in today, leaves a lot to be desired. His is a very small institution, which has served this country with a lot of competence. However, it needs to have capacity in terms of personnel and equipment to be able to audit down to the district level. I say so because the funds of the Government are utilised down to the district level.

As the funds are spent, the reports must be brought back to the Controller and Auditor-General's office for him to compile reports, which he brings to this House. In the absence of a system of reporting back, he cannot even have receipts as supporting documents to assist his staff to compile reports. Therefore, I am happy to note that the Minister is in this Bill giving the Controller and Auditor-General the opportunity to do that. It is very important that he be allowed to choose the best Kenyan brains in accounting, and be given an opportunity to do so without any interference. This will ensure that he gets people whom he can reliably use to do a transparent job of putting together reports.

Mr. Temporary Deputy Speaker, Sir, without adequate equipment in terms of transport for him to move around the country, the Controller and Auditor-General will sit, as he has done in the past, at the headquarters, where all his activities are centralised, and will not know what happens around. I hope that this time, he will be given an opportunity to purchase vehicles for transporting his staff around.

Having said so, this country has been robbed of resources through many dubious schemes, outside what the Controller and Auditor-General sees. I am happy that the Minister, in presenting this Bill, has appreciated a lot of resources have been expended without control.

It has been said that the Controller and Auditor-General has merely been looking at an already dead animal and trying to perform a postmortem on it. The reality is that institutions have been left to spend money voted by this House in the manner they have liked. The Central Bank of Kenya (CBK), for instance, has not been able to monitor what happens in banks until they have collapsed and have then wound up. The CBK should have been able to monitor the movement of money and advised the

banks that their money was getting depleted long before they collapsed. Closing down of banks, as has happened in the last few years, has not been a very good thing for people in this country. We are hoping that the audit system is going to be very strict on institutions such as the CBK. This will enable the CBK to control what happens in institutions like the National Bank of Kenya (NBK), to which money is from time to time is voted, spent and finished. Then, suddenly, we again hear that money has been given to the NBK and how it is accounted for, we are not even aware.

When the Public Accounts Committee (PAC) looks at the books of this nation, it is amazing how much has been spent without any records. A lot of public money has been spent by various persons in a manner that does not allow this nation to hold anybody responsible for the money spent on behalf of the public. It is a good thing that this Bill requires reports of the Controller and Auditor-General to come to the House in good time. This will also ensure that the PAC does not have to do postmortem work, where even if it discovered any wrongs done, it is not able to do anything.

I just want to draw the attention of this House to the fact that in other countries, the PAC proceedings are public. This House should publish PAC proceedings through this Bill, so that they are public. This will ensure that those who squander public funds are known. In our neighbouring country, Uganda, the public media is allowed in PACs so that those who have done wrong, and whose names are in the Controller and Auditor-General's reports, are known and discussed. As their names are read out, the public knows who has done them wrong. This is the only way this country can stop politically-correct persons, whom I hope do not exist in the NARC Government, from doing what has been happening. People have literally gone out and squandered national resources with impunity.

Mr. Temporary Deputy Speaker, Sir, I am happy to note that the local authorities are also being called upon to submit their reports. A lot has been happening in local authorities that we do not know about. First, they do not pay their staff and other service providers, and yet they collect revenue from markets. In Nairobi, we know that the Nairobi City Council collects a lot of money from rents and car parks. However, where this money goes, nobody knows. It collects millions in a day for water and other services from the public. It does not offer services, and yet that money is not even accounted for. Workers are giving free services without salaries at the end of the month. One wonders where this money goes. If there was a system of accounting for this money as it comes in on a daily basis, this would not happen. We are hoping that the Controller and Auditor-General will be given enough resources to enable him reach each and every local authority in this country, and ensure that the revenue they collect from people is utilised to serve this nation in various ways.

I would also like to say that when this Bill is enacted, the report of the Controller and Auditor-General should come to this House as soon as it is stated in this Bill. The Controller and Auditor-General should bring his report to this House within that shortest time of eight months that he is being given in this Bill. Within that time, the accounts should be laid on the Table, so that the Public Accounts Committee (PAC) can also scrutinise them while they are still valid and make recommendations.

Mr. Temporary Deputy Speaker, Sir, one area that I would like the Minister to look at is the fact that when the accounts are tabled in the House and sent to the PAC, it is not one way this House empowers the Committee to implement its recommendations. The PAC should be able to implement the resolutions it comes up with during its deliberations. For example, as I have said, if the work of the PAC was made public, that in itself would be a deterrent measure to some of the activities of some of the members of the public who use public resources in the manner they have done with impunity. The PAC should be able to sue some of these people. Who else, thereafter, can preside over public resources other than the PAC on behalf of this House? I feel that the PAC should be empowered to take action and sue some of these people as they appear before it.

Mr. Temporary Deputy Speaker, Sir, I want to say that the Minister has done a very good thing to bring this Bill to this House at this time. When this Bill is enacted, it should be able to assist

not only this House, but will enable Kenyans to be aware that the resources this House approves are utilised properly. Kenyans need to know that when this House approves budgets like we have done this season, and sent monies to various departments, it is their responsibility to ensure that wherever the money has been sent, it is utilised properly.

Mr. Temporary Deputy Speaker, Sir, it is good to mention that in other countries, monies that go even to the districts are posted on notice boards so that members of the public in the district know, for example, that the District Commissioner, Veterinary Officer or the Public Health Officer in that district has received so much money, and that it will be used according to the Vote Head. As money is used, they should also be able to know what is remaining. Even at the district level, an audit like the one the Controller and Auditor-General does at the national level should be done by the district councils to show how they are using their money. That way, nobody would ever go out of his way to misuse public funds.

Mr. Temporary Deputy Speaker, Sir, I want to conclude by saying that I commend the Minister for Finance for bringing this Bill to this House at this time. I wish him very well in his Ministry as he looks after the very important affairs of this country. As he brings requests to this House for monies to be allocated, he should know that today, Kenya is made up of people who now know their friends, in terms of donors; the money we raise, and how it is being utilised. Kenyans have been hoodwinked into believing that monies that come to this country are grants, without knowing that later on, they are going to suffer the consequences of having to pay back. While paying back, this country has suffered a lot. We have become very poor because we are repaying loans which we do not know how they were used. Every child is born with a tag of a loan to repay by this nation. Kenyans need to know that there is no free money. This can only happen with proper control of their resources. This is going to happen when this Bill is properly implemented.

With those few remarks, I beg to support.

Mr. Omingo: Thank you, Mr. Temporary Deputy Speaker, Sir for giving me this chance to support this Bill.

It has been a trend in the past that the risk that goes along with conducting corrupt business in this nation was very low. I commend the Minister for having introduced this Bill at this crucial time, in a new Government, so that they start on a clean slate. I am saying this from a point of knowledge, that people actually used to open avenues to channel funds out of the Government's tax coffers, simply because they knew that in the end, the Controller and Auditor-General, through the Public Accounts Committee (PAC), would report on them after not less than five to six years. So, it is with that impunity that we have seen corruption really become rampant in our system.

Mr. Temporary Deputy Speaker, Sir, the way this Bill has been drafted, I want to imagine there could be a few tidying up of issues the Minister needs to address, or perhaps explain the implication of some particular clauses. I believe it is the right time that this Bill has been brought on the Floor of the House. The Controller and Auditor-General is essentially an agent of Parliament. It is for that reason that he should, and must, report direct to Parliament, if necessary. The Minister, in his own wisdom, has actually conceded and said that, in the past, the Controller and Auditor-General's legs were usually chopped off if they were running too fast, to get hold of the blue-eyed boys of the system. It is for that reason also, that I would like to recommend that the Controller and Auditor-General be wholly independent as is stated in the Constitution, both in staffing and funding. The budget they present should be approved and passed by Parliament, so that as they spend, they know they are accountable to us.

Mr. Temporary Deputy Speaker, Sir, the case the Minister was citing is true. When Goldenberg International Limited was touched, the Controller and Auditor-General's office was split into two, to cater for Government corporations and Government Ministries. They were also stripped off the staff, so that they could not run as fast as possible. I want to say that the Minister has good

intentions, and I believe he is one of the most sincere Ministers in the NARC Government. With that sincerity, we shall make progress.

Mr. Temporary Deputy Speaker, Sir, the other few issues that we need to iron out include, defining the Local Government in this particular Act. It is not defined. Although we have explained so much about it, we still need to define it like we have defined the Central Government. For us to do that, we should clearly come out on which local authorities we are talking about.

Section 7 of the Exchequer and Audit Act provides that the Controller and Auditor-General submits to Parliament on the 31st day of January of each year, audited accounts for the previous financial year. That provision gives the Controller and Auditor-General seven months to submit to Parliament the report. I wonder on what wisdom the Minister proposes that the Controller and Auditor-General be given eight months as opposed to seven months. If we are really supposed to be current, it does not make sense to extend the period within which the Controller of Auditor-General should submit the audited accounts to Parliament. A debt is as good as is fresh. The older the debt, the more useless it becomes in accounting. So, I propose that the Minister considers reducing that period to six months.

The Minister has been spending billions of shillings on computerisation of the Government system. Unless civil servants are still resisting change, with the computerisation project that is ongoing, I do not see why by 30th June, 2004, they cannot, at the press of a button, give the position of the Government's affairs. By 30th June, 2004, we should know the current status of affairs of this country.

Mr. Temporary Deputy Speaker, Sir, we must look at Kenya as a business entity with assets, liabilities, creditors and debtors. That way, we can know how much, in terms of assets, we have in the uncompleted housing project at the National Youth Service (NYS) Headquarters along Thika Road. Kenyans do not know the value of that property just because we have treated it as a game of chess. Whoever has it carries the day. As it is, the project reflects a debt. So, as a matter of necessity, we want to look at Kenya as a limited company whose shareholders are Kenyans, and its directors are the Ministers, who have been mandated to manage the affairs of this nation. Parliament becomes the auditor of that company. So, I suggest that the period of tabling of the report by Controller and Auditor-General be reduced to six months for the simple reason that we are now computerised.

On the same breath, the Minister seeks to extend the period within which reports and audited accounts for local authorities should be submitted to Parliament. I propose that we also reduce this period from 11 months to eight months. Given the kind of entities that we are talking about, providing for a period of eight months makes sense. It is because of the carelessness with which local authorities have been managed over the years that they are in the current mess. Local authorities collect revenue, but nobody knows what goes on there. One of the conditions for disbursement of Local Authority Transfer Fund (LATF) money to local authorities is production of accounts by local authorities. It is clearly stated in the regulations on LATF disbursement that every local authority must produce audited accounts for the previous year. Without mentioning names, during the disbursement of LATF money, there was a local authority which had outstanding unaudited accounts for 35 years. That means, since Independence, that local authority has never submitted audited accounts to Parliament. If we must look at Kenya as a limited company, we must bring every Kenyan to account for his or her actions.

Mr. Temporary Deputy Speaker, Sir, the Minister proposes that local authorities pay fees and that, these fees be determined by the Controller and Auditor-General. I am not sure whether the proposed fees will be treated differently or factored into his Budget. If so, there is need for projection of the miscellaneous issues, so that as he presents his Budget to Parliament, the fees and the miscellaneous incomes are also factored in order to avoid double funding.

There is the issue of special audits. The work of the Committees of this House, particularly that of the Public Accounts Committee (PAC), which I chair, has been rubbished. Nobody is concerned about what is currently happening in the Government. We have to wait until the Controller

and Auditor-General prepares and certifies a report and brings it to Parliament, so that the PAC can deliberate on it and come up with recommendations. It is like saying that even if you see your son or daughter going wayward, you should watch him until he is 18 years old, so that you can advise him or her.

Special audit is one of the most appropriate provisions. If we smell a rat, like in the case of the irregular tendering by the Kenya Ports Authority (KPA), as well as in the case where the Government is incurring unauthorised expenditure on the celebrations of this country's 40th Anniversary, we can seek a special audit so that the Controller and Auditor-General can present to Parliament a report on specific issues.

Today, there are serious audit queries which are pending like a time bomb in Government quarters, in terms of computerisation. The Government has been computerising its Ministries and Departments since 1980, but if you go into Government offices, you will only see dust on the tables where computers are supposed to be. That is a clear case which calls for a special audit. So, the provision for special audits to correct current misdeeds before they get cancerous is quite appropriate.

Mr. Temporary Deputy Speaker, Sir, why is conducting corrupt business in Kenya so juicy? The Minister for Finance knows that the higher the risk, the higher the returns. If you want to venture into the *matatu* industry, for instance, you may have realised that the return may be 30 per cent of your investment, but the risks of the vehicle rolling are very high. At the same time, you will find that in Kenya, corrupt business does not obey the law of financial management. The more you steal, the lower the risk. In the past, if you stole, you would just be transferred to another department to run it down. I believe that the National Rainbow Coalition (NARC) Government does not do things in that way.

So, we must be on top of issues. Parliament must assert itself. Parliamentarians must cause their weight to be felt because they are elected by Kenyans to oversee their affairs. They can do that by empowering the Office of the Controller and Auditor-General, so that it can be independent and report directly to Parliament. Thereafter, when the watchdog Committees of this House make recommendations, we would like to see action being taken. Again, it is pointless to make this kind of legislation if we do not act against people who make mistakes. For instance, what happens if the Minister, or the Controller and Auditor-General, does not come to Parliament to seek authority for extension of the period within which to submit the report and audited accounts for Government Ministries and Departments? The Exchequer and Audit Act is so clear, that any extension of time must be sought from Parliament through the Minister for Finance. I do not remember any time in my life when the Minister for Finance requested Parliament to allow him to extend the period of tabling Government audited accounts in the House. In the law, there is no provision for sanctions against persons who delay in submitting such accounts to Parliament.

So, there is need for us to introduce sanctions in this Bill. We should introduce a clause saying, for instance, if such-and-such a thing does not happen by such a time, the Minister for Finance must be censured or the Controller and Auditor-General should be fired. I think Parliament has also made a mistake. In the past, the President appointed the Controller and Auditor-General, and Parliament, in its wisdom, was to set up his term of office and retirement age. Parliamentarians must have been very pleased that the holder of that office is still in office, and that they have never thought of determining a retirement age for him. I am glad that such a provision has been introduced in this Bill.

What I am saying is that some of us must be held responsible for the flouting of the rules of the game. For instance, if you say that the Minister must submit to Parliament the Government's audited accounts eight months after the financial year, what happens if somebody flouts that rule? We must be having sanctions. What happens if, for example, the PAC recommends that Mr. X was a thief and there is evidence that he stole so much money? In order for the Audit Act to have meaning, must we put a provision, for example, to make it mandatory for the recommendations of the PAC to be acted upon? If they are not, we must be told why. For instance, when the Minister for Finance comes to

present his Budget before the House next year, which we hope will go through Parliament's Budget Office, we may tell him: "You did not require as much money as you requested last year simply because most of your parastatals did not give Kenyans value for their money in terms of economy, efficiency and effectiveness." You advertised the 40th anniversary in most of your parastatals. Therefore, we do not give you money. We need to have some sanctions! For instance, in the Ministry of Finance - and it is in the public knowledge - there was a year where there was rampage in the expansion of customs posts. That way, billions of Kenyan taxpayers' money was just released through the customs border posts. For example, if the Minister for Finance sanctioned a project costing in excess of Kshs500 million without any feasibility study, and we want to give him more money this year, we must say sorry! Kenyans must assert themselves! That is when this Parliament will have a meaning. That is when Kenyans will be persuaded to pay more taxes.

Mr. Minister, why do you think people are refusing to pay your taxes? It is because you invested in Loitokitok--- It is a public document. It is not anything secret. Why would Kenyans want to pay more money when the Minister invested Kshs600 million in Loitokitok - already paid on paper - but the revenue from that "animal" is just a meagre Kshs2,500 per month. How are you going to justify your expenditure in terms of input? We want Parliament to assert itself and censor the Minister or anybody flouting the rules of the game. That way, we will bring sanity to our public affairs. Let me assure you that if we lead by such an example, Kenyans will be more willing to pay taxes.

Mr. Temporary Deputy Speaker, Sir, we are talking about the retirement age of the Controller and Auditor-General at 65 years. That is fine. But suppose we have a Controller and Auditor-General who sits in--- Of course, there are more competent accountants qualifying today and getting appointed at the age of 40 years. So, he is going to be in a very sensitive job for 25 years. I am suggesting, to create sanity and censure, to give the Controller and Auditor-General a maximum of two terms of seven years each. Let us not tie it with the electioneering period. But the second term will be renewed, subject to his or her performance during the first term. Why do we want to give that person the immunity that he cannot be touched until he dies? That is wrong. That is where we went wrong! You cannot give that person that immunity and leave him to die in office! Sorry! We must stop that. We need to put a retirement age of a maximum of 65 years, with two terms of six or seven years each, whichever comes early. That way, those fellows will not carry the immunity and sit on our backs because nobody can touch them. The immunity is critical. We know that power corrupts. The Chair knows that, because he was in the last Government. Power corrupts and absolute power corrupts absolutely!

An hon. Member: When was that?

Mr. Omingo: He was in the ruling party and he still is!

The Temporary Deputy Speaker (Mr. Poghismo): Order, Mr. Omingo! The exchange of words is not necessary as the Chair does not belong---

Mr. Omingo: Mr. Temporary Deputy Speaker, Sir, actually, you were in the last Parliament!

The Temporary Deputy Speaker (Mr. Poghismo): Order! This is the Chair. The Chair is always here!

Mr. Omingo: Mr. Temporary Deputy Speaker, Sir, I am sorry! Allow me to proceed!

It is common knowledge that power corrupts, and absolute power corrupts absolutely. Guess what? That is why somebody can sit somewhere and say: "I intend to spend Kshs500 million to buy a Presidential jet", without Parliament giving approval, and he goes scotfree. We must check those powers. So, let us not give the Controller and Auditor-General those much powers, lest he becomes difficult to handle.

Mr. Temporary Deputy Speaker, Sir, on the issue of the Kenya National Audit Commission, there is some concern! It is happening in some quarters. But I do not think it gives any moral sense to have somebody attached to an organisation with an oversight role and yet, he sits as an executive or

chairman of a committee. I think that is a nullity of the entire justice system. We are not serious! How can the Controller and Auditor-General be chairing the Commission that is supposed to be overseeing the functions of the Kenya National Audit Commission? That must be re-thought afresh! We need to have a

neutral person in that position to bring sanity. I have said many times in this House that you cannot carry your own weight! It is impossible! You cannot carry yourself. So, let us look into that issue afresh and consider changing the chairmanship of the Kenya National Audit Commission. It is in that light that there can be checks and balances, and separation of powers. I am sure even the Temporary Deputy Speaker knows that.

There is an issue which my colleague in the Public Accounts Committee (PAC) mentioned. That is the toothlessness of parliamentary committees. I think this may not be the right forum to address that matter because it goes beyond the mandate of this Act, but Parliament must also re-look into its own affairs. We need to recheck our Standing Orders, to bring sanity in our own operating rules. In Uganda, for example, even public knowledge about somebody who has stolen is a deterrent feature. But, in Kenya, we keep it a secret and say: "Please, it is the office of the Permanent Secretary." You do not mention the name. Of course, files have been disappearing when we find things are not being done in the right way. Why can we not look into our Standing Orders as well? That is when reports will come with action-taken columns. That way, Parliament will censor Ministers who take internal decisions to celebrate even when Kenyans have refused. They will be brought to book. It is in that light that we are saying, just like in the case of Uganda, the PAC and other committees should be given teeth. That way, this Act can be effective and operational. We are going to put some money to administer the Act. Parliament must get value for this Act. How do we do it?

In Uganda, when the PAC is taking evidence, they do so with the Police Commissioner, Criminal Investigations Department CID personnel and witness present. The witness is then cross-examined by Members of the Committee. Upon finalising everything, and they are convinced that, that is the culprit, they do not wait for the report to be tabled in Parliament. They instruct the CID officer and the Commissioner of Police: "Get hold of 'X' and proceed." That is a deterrent factor, so that we can increase the risk of conducting business in this Republic.

Mr. Temporary Deputy Speaker, Sir, there is also a very interesting issue regarding who watches the watchdog. I mentioned - and we must consult with some learned experts on that - the genuineness of the Controller and Auditor-General chairing the Commission. Now, the Controller and Auditor-General is also supposed to audit Parliament and report to Parliament. There is going to be a circus. The story is going to be a circus. We must look into ways of separating those two. The agents of the Controller and Auditor-General will audit Parliament, and through the Minister for Finance, bring the report to Parliament for approval. The Controller and Auditor-General may not be independent as regards the financial management of the affairs and control function of Parliament. We must look at that also, so that we do not have to jumble issues up when the Act becomes operative. Then, we will say that Parliamentarians did not think seriously. I think we need to have that issue brought to the fore at the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, why do we find people giving scapegoats about what they could do or not do when they had authority in the office? I am on record as having said, and I will repeat it here, that some people who had constitutional powers in their hands refused to prosecute some culprits because of the excesses of the Executive.

I am not too sure that it may not be a similar thing for the Controller and Auditor-General failing to be independent and even when we push the issues that we find out to be wrong in his reports and take them to the Attorney-General, he says: "I think the NARC Government is becoming excessive", which I know they are not so far. However, as I said, absolute power does corrupt. Now, we must also re-examine the implementation of recommendations given by these committees through

enforcement of this Act.

Mr. Temporary Deputy Speaker, Sir, if, last year, I did not have the capacity to drink a glass of water, am I going to take two now? The answer is "no". It is the same people, some of whom are sitting in the opposite side, who served the previous regime and are now saying: "I could not prosecute because of the excesses of the Executive, and if the excesses of the Executive are felt again now, I may not be able to deliver my mandate". We must re-think our position, and it is critical that the finances of this nation--- By the way, for the information of the House, in the East African countries, it is this country that collects a fantastic amount of income, which is equivalent to 22 per cent of the Gross Domestic Product (GDP). Uganda collects between 8 and 9 per cent, while Tanzania's is 11 per cent. So, we have a fantastic and wonderful revenue base. Where do we have a problem? It is in accountability. That is where we have a problem. If we are supposed to be accountable to the people, it is through such kind of legislation that we need to move quickly.

Mr. Temporary Deputy Speaker, Sir, I do believe that the time of having scapegoats is actually over. The time we used to give excuses, that it was "X" who obstructed me from carrying out justice is long gone. We must sit and get into business. I was a tax person before I came to Parliament. I repeat it here, that it is an immorality to ask Kenyans to pay tax and when you check what the taxes are being used for, you may want to commit suicide. I really collected taxes religiously, oblivious of their usage. Now that I know how they were being used, I want to repent because it is an immorality to push Kenyans to pay tax, only for people to take it to the ocean and drop it in there or flush it down the toilet. With a revenue base of 22 per cent of the GDP, we do not require donor funding. We do not! With good management and efficient utilisation of our resources, we do not require any donor funding, which has pushed our children into misery. We are giving birth to children who have got no inheritance in this nation. I said here last week that our wealth or GDP is mortgaged in debt to the extent that 66 per cent of what our country is worth, is actually in debt. If we were to sell the country again and realise whatever we have, we can only retain 34 per cent and pay 66 per cent to the donor community or those so-called "Big Brothers", who pretend to be giving us money and calling it donor funding, but actually, they are loans.

I am suggesting that let us be more accountable. Let us take courage. I know it is sweet to be in power. Sometimes it is also very sweet when that power comes with money, but our integrity should lead us. Our integrity should supersede our thoughts and appetite for money. Our integrity should reflect back on our children and the generations that are going to come. Our position today must be used for posterity. Our position today must leave something for our children. Let us not eat the chicken, eggs and the chicks, in which case, the entire species of chicken is finished. The legacy is that we are just leaving plain dust behind for our children to inherit. The same people who sit in big offices; for instance, when you stand up in the evening and say you are from a very busy schedule of working in the Government or wherever you work, and you go back and say that you want to get some nice warm shower after a hard day's work, ask yourself: "What value did that work add to Kenya as a nation? Of what value was your move that particular day, and what value has it for the generation that is coming?"

Mr. Temporary Deputy Speaker, Sir, this Act is appropriate and timely. We should support the Minister in all his endeavours. As I said earlier, he is one of the most sincere Ministers in the Government. I am not saying others are not sincere, but he is one of the most sincere Ministers. I am not talking about the Assistant Minister, but of the Minister himself. He is one of the most sincere Ministers and also, of course, the Assistant Minister. I completely support this Bill, of course, with the amendments which we are going to move for the easy and efficient administration of this Act.

With those few remarks, I beg to support.

Mr. Kajwang: Thank you, Mr. Temporary Deputy Speaker, Sir. I want to be a bit off the mark because I will be saying something which is very different from what the other Members have

said, because I think I oppose the Bill for very good reasons.

Mr. Temporary Deputy Speaker, Sir, first, after reading through the Bill, it does not add any value to the position and powers granted to the Controller and Auditor-General in the Constitution. In fact, it does not widen his powers. In fact, it gives him no more teeth than he already has. In fact, it does not give him any new structure which he does not already have. So, this Bill as it is moved or as is drafted is superfluous. Why am I using those strong terms? First and foremost, Article 105 of the Constitution, which creates the Office of the Controller and Auditor-General, says:

"There shall be Controller and Auditor-General whose office shall be an office in the public service".

This is because he is a public servant. He is a Civil Servant, if I may use the correct words. Although he is given security of tenure, which I will come to later, basically, the Controller and Auditor-General is a civil servant.

Mr. Temporary Deputy Speaker, Sir, the officers who serve under the Controller and Auditor-General are civil servants. They can be transferred, promoted or demoted by the Civil Service or the Head of the Civil Service. This means that the Controller and Auditor-General is at the mercy of the Head of the Civil Service or the Public Service Commission, whoever is more powerful. What does it amount to? It amounts to an officer in the Civil Service auditing the Civil Service with the officers of the Civil Service who owe their allegiance to the person who pays their salary and who can give them promotion, demote them or transfer them. How can you be an auditor of the person who pays you salary? How can you be an auditor of Parliament when you are a civil servant for Parliament? You will be sacked! If they cannot sack you, then they demote you. If they cannot demote you, they will frustrate you. If they fail in all that, they will not give you work to do, and then you decide whether you want to stay or you want to go home. This means that this Bill does not add any value to the Office of the Controller and Auditor-General and yet that is what it purports to do.

Mr. Temporary Deputy Speaker, Sir, I am sure the Minister was sincere. I am sure he wanted the Office of the Controller and Auditor-General to work properly. I am sure he wanted the Controller and Auditor-General to have some teeth. I am sure he wanted the Controller and Auditor-General to have the flexibility to have his own staff, promote or sack them, but unfortunately for him, the Constitution which is currently applicable states that the Auditor-General is a civil servant; full stop! So, when you talk of him hiring some staff or having certain powers over staff, you are saying something which is not enforceable. It is dangerous for this Parliament to pass an Act of Parliament which is not going to be helpful. We are not here to do some window dressing. We are not here to make something look nice. We are here to make a law which is actually going to improve the Office of the Controller and Auditor-General. Where should we start? We should start at Bomas so that we define who the Controller and Auditor-General is going to be. We should create a constitutional office and make him an employee of that constitutional office. However, if he is still a civil servant, then what can you do to improve his power? Why has the Controller and Auditor-General been weak?

The Minister was correct when he said that the Government could withdraw the staff. In fact, when they saw that an auditor was becoming too sharp, they would withdraw him from the Controller and Auditor-General's office. If they found that he was a bit fearless, and he was asking correct questions, they would not promote him. They would promote other younger people so that he would see that, in fact, he is not benefiting from being a fearless auditor, and he had rather go back to the mainstream Civil Service and get promoted there. The Controller and Auditor-General himself could do nothing to promote his staff. In fact, at one time, the Controller and Auditor-General was with such a skeleton staff that he could not operate. That is where you are auditing the Government using its own civil servants. You are using the facilities of the person you are auditing to audit him. How can you do that? So, that is where we begin. When the Minister himself talks about weakening of the Office of the Controller and Auditor-General, and then he says that he wants to cure that malady by

using Section 35, look at what that section talks about:-

"The Kenya Government shall ensure that the Kenya National Audit Office has the staff that the Controller and Auditor-General believes is necessary to properly carry out his functions".

It is as if he did not have that option before! I am sure that the Controller and Auditor-General always told the Government:-

"I want So-and-so; he is very good for me. So-and-so has been working here very well and I need him here".

The more they work well, the more the Government wants to remove them, because the better they are, the bigger danger it is to the Government. So, how can you now say that the Government "shall ensure"? Assuming the Government does not ensure, what will the Controller and Auditor-General do? Assuming the Government does not give him the staff he wants, what can he do? We cannot make law to make things look good, when they will not be! The Controller and Auditor-General has always had that power to choose whichever officers he thinks can help him. The Government may give him or may not, and there must be some consequence. If there are no consequences, then there is no need of putting such a law. In fact to say "shall ensure" is not law! A law must say "you must give him". If you say "shall ensure", then?

Mr. Temporary Deputy Speaker, Sir, let me move on a little bit and talk of the Commission. We have said it before that the Controller and Auditor-General should have a Commission. Why did we say so? Of course, he has security of tenure and he will retire at 65 years of age, which is also good. That is the age at which you are considered not to be productive any more. That is what is done in developed countries. That is also good. But when you say that he will have a Commission, who will comprise that Commission? The Commission is made up of the Attorney-General, another constitutional office-holder, who is also in the public service; the Chairman of the Public Service Commission, who is also the head of Public Service; we know him. We now do not see the current office-holder nowadays, but at least we knew that the Chairman of the Public Service Commission is the guy who sits with his Commission, determines who should be promoted, dismissed or demoted. Today, that does not work. Now, there is a unit in the Office of the President which makes sure that some people are promoted, demoted or appointed. It was created by a circular. It is more powerful than the Public Service Commission, which has been set under our Constitution. There is a danger in this country! Some people subvert the Constitution and create offices which are outside the ambit of the law, then they give some officers more power than the constitutional office-holders.

What is the job of the Public Service Commission any more, if I may ask you, Mr. Temporary Deputy Speaker, Sir? We recently had appointments into the Public Service, when we had a new Government.

We had some people being promoted and others being dismissed. The Judicial Service Commission, another constitutional office, dismissed some judges and employed others. Are they functioning? Are you sure that you can raise the Bible and say:-

"The Judicial Service Commission called for interviews, interviewed suitable persons and appointed so-and-so, and gave the names to the President for appointment".

We are talking of constitutional offices which have been filled, by the words of my brother Magara, by power. You can use power the way you like. You can use power to kill a constitutional office. We have killed the Public Service Commission, the Judicial Service Commission and the Office of the Controller and Auditor-General. Of course, he does some autopsy. Of course, he dissects some "dead bodies" or some "carcasses" of parastatals and Government departments. I suppose he does it well, although he is behind schedule. But look at the job which the Constitution gave him, and tell me why he does not use that provision. The job which was given to the office-holder was as stated under Article 105(2) of our Constitution as it now stands:-

"(a) To satisfy himself that any proposed withdrawal from the Consolidated Fund is authorised by law, and if so satisfied, approve the withdrawal".

Who approved the withdrawal of Kshs5.8 billion from the Consolidated Fund? Was it the Controller and Auditor-General? What was he doing when Kshs5.8 billion was being withdrawn from the Consolidated Fund, paid into some unknown account in Kenya Commercial Bank (KCB), and distributed to looters? What was the Controller and Auditor-General doing? This is the power he has, which he has not used. Why are we being asked to give him more powers than he has? Look at that; there was money which was withdrawn to buy jets, as my brother said, and money to build the airport; we are now hearing of them. Where was the Controller and Auditor-General when these funds were being withdrawn? His job was to satisfy himself that the fund is authorised by law. How is the withdrawal of funds authorised by law when Parliament appropriates those funds? So, where was the appropriation when these monies were being withdrawn? Where was the Controller and Auditor-General? If the monies were withdrawn without the Controller and Auditor-Generals approval, who is the culprit? Why are we not dealing with him according to the provisions of the Constitution and according to the provisions of the law?

Wait a moment! The Controller and Auditor-General has more powers than what is just provided under Article 105(2)(a), as indicated in Article (b). He has even more far-reaching powers in the Constitution as we now have it:-

"To satisfy himself that all monies that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were appropriated".

Why is the Controller and Auditor-General bringing us reports, indicating that so much money, which was supposed to be used in Yala Swamp, was withdrawn and "eaten"? He is supposed to make sure that once money has been withdrawn for a purpose, it is used for that purpose. Where was he when money, which was supposed to be used on a road, was withdrawn in millions of shillings, and there was no road built? Where was he when money, which was supposed to be used for purposes of building a bridge, was withdrawn and no bridge was built? Where was he when money, which was supposed to buy some equipment for the Government Printer, was withdrawn and that equipment was not delivered for six years? His job is to make sure that money disbursed by Parliament is applied for the purposes for which it was appropriated. So, whom do we blame? Do we blame the law? Do we blame the inadequacy of the provisions of the Constitution? Not at all!

Look at this issue further, Mr. Temporary Deputy Speaker, Sir. The job of autopsy, which is sometimes called "dissecting dead bodies"---

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Kajwang! How do you expect the Chair to understand those medical terms?

Mr. Kajwang: I am explaining it, Mr. Temporary Deputy Speaker, Sir. "Autopsy" means dissecting dead bodies in order to find out the cause of death.

The Temporary Deputy Speaker (Mr. Poghisio): What has that got to do with the debate then? Is it relevant?

Mr. Kajwang: Now, I am telling you, Mr. Temporary Deputy Speaker, Sir. But that is the job which the Controller and Auditor-General is doing. He, of course, dissects how Kenya National Assurance was brought down, how National Social Security Fund (NSSF) and the National Hospital Insurance Fund (NHIF) have been looted. Of course, he does that after the parastatals are dead. That is what I mean.

Mr. Temporary Deputy Speaker, Sir, I am trying to use some imaging to explain the problem we have. This is not the only job the Controller and Auditor-General has. His job is to be prompt and, on top of that, if I use Mr. Omingo's words, any time money is appropriated, he must make sure that, that money is used for the purpose for which it is appropriated. Otherwise, he should not authorise it. Money is withdrawn and used, and then he comes here mourning every year that money was

withdrawn and he does not know for what purpose it was used, and he expects us to do something about it.

What will be the work of the Kenya National Audit Commission? It will not only make sure that money is appropriated lawfully by Parliament and put in use for which it was appropriated, but will also make sure that it is used efficiently. Why do I use the word efficiently? You can spend money to build a 50-kilometre road, but the road is sub-standard and not equivalent to the value that has been put in it. The Controller and Auditor-General is not an accountant. He must be an accountant, his office must have surveyors and engineers. He is the Controller and Auditor-General. He makes sure that money has been appropriated, applied properly and used efficiently. Then why do we create an office called the Efficiency Monitoring Unit (EMU) in the Office of the President? What is it doing there? How can you check the efficiency of Government departments of which you are the chief executive and the people who are messing them up are your appointees?

Mr. Temporary Deputy Speaker, the President is the Chief Executive. He has a constitutional office, but how does he make sure that departments in his office are efficient? Have you ever heard of any job done by the EMU? I would prefer to have the Office of the Controller and Auditor-General as much as I am against it. What is it about this EMU? We started hearing about it the other day when one Permanent Secretary in the Office of the President was trying to make it his department, so that he can go to check about cranes and other things. Efficiency monitoring is the job of the Controller and Auditor-General as provided for in the Constitution. His job is to make sure that money appropriated is used efficiently, tendering processes are done lawfully, and procurement processes are done properly. He should ensure that jobs are done according to specifications. That is his job. Why do we waste our time with this kind of Bill? To clothe it and make it look nice?

Let me just give you one more anomaly in this Bill. The Controller and Auditor-General is a public servant, but with security of tenure. He also has some additional protection. Article 105(5) of the Constitution states:-

"In exercise of his functions under Sub-section (2), (3) and (4), the Controller and Auditor-General shall not be subject to the direction or control of any other person or authority".

That is the kind of protection which we have given the Attorney-General. It is the kind of protection which we have now given the Director of the Kenya Anti-Corruption Commission. After the Controller and Auditor-General being given that power, we want to create a Kenya National Audit Commission. The Controller and Auditor-General is not supposed to be answerable to anybody including a Commission. The law states that he is not answerable to any person or authority. So, you cannot create a kind of a Parliamentary Service Commission (PSC) for the Controller and Auditor-General and suppose that he will listen to its proceedings and apply them accordingly. He is not supposed to listen to it. He is not supposed to listen to any person or authority. He is not supposed to listen to the Executive although he is part of it; unfortunately for him. So, how can you create a Commission for such a person? Look at the job described to be done by the Commission before I come to its chairmanship as my brother, Mr. Omingo, has mentioned. Clause 48 of the Bill establishes the Commission. It states:-

"The Kenya National Audit Commission is hereby established".

Clause 49 states:-

"The Kenya National Audit Commission shall be composed of--"

I have already spoken about the composition of the Commission. I have said that you cannot make other constitutional office holders be part of the Commission. The Judicial Service Commission does not work because you have made the Attorney-General and the Chairman of the Public Service Commission its members. These are civil servants. If you want to create a Commission which will audit Government institutions properly, its members must be leaders in industry, professions and must

be people who can have the guts to say: "This is the way we want this operation to go". But what is the job of the Commission after giving it the membership of the Attorney-General or his nominee; the Chairman of the Public Service Commission, a practising public accountant and the Chairman of the Public Accounts Committee?

Having the Chairman of the PAC in the Commission is making Parliament part of a constitutional office, which you must look at again. Then there is the Controller and Auditor-General.

The duties of the Commission are in Clause 51. It states:-

"The Kenya National Audit Commission shall-

(a) consider and approve the estimates for the Kenya National Audit Office".

I suppose you will do that in a few weeks or, maybe, in one week.

"(b) Determine the remuneration and other terms of appointment of the staff of the Kenya National Audit Office".

I hope they will do that once in five years. Then what else will they do? How do you create a Commission and make it do one job in one week and another one in five years? You cannot be increasing salaries everyday. What will the Commission sit to do? What will the Commissioners earn allowances for doing?

Mr. Obwocha: You are becoming Mr. Chunga!

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I am almost becoming Mr. Chunga. For what purposes?

The Temporary Deputy Speaker (Mr. Poghio): Order! Address the Chair!

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, why do we create a Commission if we do not want to give it a job to do? In fact, if I may remind the Minister, the draft Constitution which we are discussing at the Bomas will provide for a body which will be looking into remunerations and allowances of everybody, including Parliament. But here, we want to create a Commission with two jobs; to approve estimates, which, of course, include salaries, and to check whether we can increase salaries. *Kazi kwisha*. What is the job of the Commission?

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

Mr. Kajwang: I am sorry for the language.

The Temporary Deputy Speaker (Mr. Poghio): Put it in the language we understand now!

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, the job is done for the Commission. It will do one job only. It will determine the estimates and then determine whether it can increase salaries and terms of service. Those are jobs which can be done in

two days or one week. What does the Commission do? If you want to create a Commission the way it has been envisaged, then you must give it the power to do the following: Guide the policy and the general operations of the audit. Then it will have a job to do. It will sit down and say: "Mr. Controller and Auditor-General, there is this thing we are hearing; how come it has not come to your attention? The way you are doing your job, it could have been done better this way". Then it will have a job to do. That is how national audit commissions work in other countries. The Controller and Auditor-General is the chief executive, but the Kenya National Audit Commission is a board. It gives general directions and policy guidelines to the office, so that the office can work. You cannot just

create a Commission for estimates and promotions. If I am a member of this Commission, I do not know for what reason we will be meeting even once in three months. To do what?

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! Mr. Kajwang, you still have five minutes for next time.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghisio): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 3rd December, 2003, at 9.00 a.m.

The House rose at 6.30 p.m.