

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 12th May, 2004

The House met at 9.00 a.m.

*[The Temporary Deputy Speaker
(Mr. Ethuro) in the Chair]*

PRAYERS

ORAL ANSWERS TO QUESTIONS

Mr. Mahamud: Mr. Temporary Deputy Speaker, Sir, I do not have a written answer, but I will ask my Question.

Question No.148

RETRENCHMENT OF CIVIL SERVANTS

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

- (a) how many civil servants have been retrenched so far and what impact this had on the Government's wage bill; and,
- (b) what the Government policy on future retrenchment is.

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I believe that the Minister is just late. I am sure that by the time you round up the other Questions, somebody will be here to answer this Question.

The Temporary Deputy Speaker (Mr. Ethuro): We shall come back to this Question later. Next Question!

Question No.166

PROVISION OF PHYSICAL FACILITIES

/TEACHERS TO SCHOOLS

Mr. Owino asked the Minister for Education, Science and Technology:-

- (a) what immediate plans the Ministry has to put up the required physical facilities to cope with the influx of children in schools, especially now that Harambee fund drives meant to assist in provision of such facilities is in the process of being done away with; and,
- (b) what immediate plans he has to provide adequate teachers to schools.

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

(a) At the moment, the Ministry is focusing on the provision of instruction materials, repairs and maintenance. Currently, the Ministry does not have money set aside for the provision of

physical facilities. However, the Ministry is carrying out school mapping to establish areas that need support, and will direct any funding from donors, well-wishers and any other sources. The Ministry of Education, Science and Technology expects leaders, communities and parents to support the Government in the provision of physical facilities in the rapid expansion and rehabilitation of our schools.

(b) The Ministry will endeavour to recruit teachers, once funds are available, to cater for the shortage across the country.

Mr. Owino: Mr. Temporary Deputy Speaker, Sir, is the Minister aware that at the moment, whereas the Government has done a good job in providing free primary school education, the ratio of teachers to pupils is about 1:120? Is this giving our children quality education? If it is not, could the Minister rush with the employment of more teachers so that our children get quality education?

Prof. Saitoti: Mr. Temporary Deputy Speaker, Sir, I am fully satisfied that, indeed, the free primary education project has been a success. It has brought more than 1.3 million children, who were not in school, back to school. It is quite clear that instruction and teaching materials are now more available than before. We still have teething problems as far as teachers and physical facilities are concerned. This is an issue we hope to address in the next financial year.

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, the Minister is a renowned professor. He knows what quality education means. Could he tell us how much money he has budgeted for recruitment of teachers in the next financial year, and when it will be available?

Prof. Saitoti: Mr. Temporary Deputy Speaker, Sir, I am sure that the hon. Member, who is a long-standing Member of Parliament, knows very well that it is improper for me to pre-suppose how much money will be in the Budget in the next financial year. At this time, the Ministry of Finance is busy working on the next Budget.

Eng. Muriuki: Mr. Temporary Deputy Speaker, Sir, the country is very happy with the work the Government is doing in providing free primary school education. However, the first part of this Question is very specific: What are the immediate plans for providing physical facilities? Some schools have been given books, other facilities and equipment, although they do not have anywhere to keep them, while some do not even have toilets. Parents are asking the Minister to provide money so that they can come up with physical facilities. Assuming that the free primary education programme will go on, the Minister should allow parents to deal with the immediate problems in the schools, instead of giving them more books while they already have them. They should be given money to put up, maybe, a storeroom or any other facility that they are lacking. Could the Minister respond to that?

Prof. Saitoti: Mr. Temporary Deputy Speaker, Sir, I will elaborate on one issue. The free primary education entails Government providing all the books for learning and teaching. There is also another component called "operational costs." In the case of operational costs, there is, indeed, a sum of Kshs25,000 which has been provided by the Ministry to every primary school, which is dedicated to provision of storage facilities. Secondly, as part of operational costs, there is a sum of Kshs112 per pupil which is supposed to pay security wages. Every school should have no reason not to employ a security person. Also, as part of the operational costs, Kshs127 per pupil is dedicated to repairs, maintenance and improvement of physical facilities. There is also a sum of Kshs10 per pupil to cater for electricity, water and conservancy. There is also Kshs29 per pupil for quality assurance. However, I would like to say quite boldly that it is true that we have a number of schools which have been overwhelmed by large numbers of enrolment. Therefore, there is, indeed, shortage of physical facilities. This is an issue that we intend to address in the next financial year.

Mr. Poghiso: Mr. Temporary Deputy Speaker, Sir, I have an issue to take with what the Minister is calling "success" because his success is really one-sided. There is money given by the Government---

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

Hon. Members: The microphone is here!

The Temporary Deputy Speaker (Mr. Ethuro): Proceed, Mr. Poghiso. Maybe you need to adjust the microphone to your height.

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir---

The Temporary Deputy Speaker (Mr. Ethuro): Capt. Nakitare, who has given you the opportunity to speak? Sit down!

Proceed, Mr. Poghiso.

Mr. Poghiso: Mr. Temporary Deputy Speaker, Sir, you have to protect me from my neighbour here, Capt. Nakitare. I am talking about the success story that the Minister is talking about, and yet the question of the teething problems happens to be larger than the success story. How long will the teething problems period for this Government take before teachers are recruited for success to be seen?

Prof. Saitoti: Mr. Temporary Deputy Speaker, Sir, I think the hon. Member should flash back his memory. He and I were in the same Government before and we did not have more than 1.3 million children in school. We now have them in school. Parents were being asked to pay a substantial amount of money in the form of charges and fees, but we have abolished that. The hon. Member should be honest enough to admit that there is great success in the implementation of the free primary education. If he has got any issue to raise, then he is questioning the fact that 7.5 million Kenyan children are in school.

The Temporary Deputy Speaker (Mr. Ethuro): Last question, Mr. Owino.

Mr. Poghiso: On a point of order, Mr. Temporary Deputy Speaker, Sir. You will notice that the Minister is imputing improper motives on me and my person, and referring to his days as a Minister in the previous Government. I am talking about the teething problems that he has talked about. Enroling 1.3 million children in school is not success in itself. The 1.3 million children will fail if there are no teachers. That will not be a success. My question is, how long will the teething problems take?

Prof. Saitoti: Mr. Temporary Deputy Speaker, Sir, first, let me correct the figure. The number of the new enrolment that we have today in school is 1.5 million, making a total of almost 7.4 million school children. I have said quite boldly that there are problems, and we are addressing them. Come the next Budget, we will deal with these problems. In this financial year, we had to deal with the recurrent costs, and have ensured that virtually every child in school has got access to textbooks, which they did not have previously.

The Temporary Deputy Speaker (Mr. Ethuro): Last question, Mr. Likowa.

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

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! I appreciate this is a good Question, but we have spent more than ten minutes on it.

Mr. Owino: Mr. Temporary Deputy Speaker, Sir, if you recall this Question was deferred. One of the reasons why it was deferred was that it was not answered properly. My question to the Minister, who is a professor, is this. Last time when his Assistant Minister tried to answer this Question, he said they would recruit 20,000 teachers by August. Could the Minister confirm that the number will be 20,000 or more and not less?

Prof. Saitoti: Mr. Temporary Deputy Speaker, Sir, I think I did indicate earlier, while answering a similar question, that the actual number will be determined by the financial resources availed to the Ministry at the time of the next Budget.

The Temporary Deputy Speaker (Mr. Ethuro): Next Question!

Mr. Billow: Mr. Temporary Deputy Speaker, Sir, I have not received a written answer to date.

PROVISION OF MEDICAL FACILITIES TO
RHAMU SUB-DISTRICT HOSPITAL

Mr. Billow asked the Minister for Health when the Ministry will build wards and maternity facilities at Rhamu Sub-District Hospital.

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

Mr. Billow: Where is the answer?

The Assistant Minister for Health (Mr. Konchella): A copy of the answer should be somewhere in the lobby.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Assistant Minister! Facilitate the hon. Member to have a copy of the answer because he will find it difficult to ask supplementary questions. Mr. Billow, you may just make do with what the Assistant Minister will give you. If you feel you are not satisfied, then we will know what to do.

Proceed, Mr. Assistant Minister.

Mr. Poghio: Mr. Temporary Deputy Speaker, Sir, it was necessary for the Assistant Minister to have sent the answer, not just to the hon. Member, but also to the Clerks-at-the-Table. Apparently, there is nothing. I think this Assistant Minister should be made to provide the written answer, or the Question should be deferred until the reply is ready.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members. I sympathise with hon. Members. Ministers are fully aware that they need to give written answers to hon. Members. Since the Assistant Minister has an answer, we cannot just defer the Question. Let us continue. Mr. Billow, if you feel that you are not happy with the answer after it has been given, then we will know what to do.

Proceed, Mr. Assistant Minister.

The Assistant Minister for Health (Mr. Konchella): Mr. Temporary Deputy Speaker, Sir, I would like to say that one of the reasons for not having a written reply is due to delay in getting information from our field officers. I sent this answer in the morning and it should have arrived at the hon. Member's pigeon hole by 9.00 a.m.

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

The Ministry has requested the Medical Officer of Health, Mandera, to prioritise the requirements for upgrading of Rhamu Health Centre so that funds can be budgeted for over the next three financial years. However, medical cases requiring further management are referred to Mandera District Hospital, which is 80 kilometres away from Rhamu, and a vehicle is available for such services.

Mr. Billow: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister is obviously not informed that Rhamu has a sub-district hospital. Mine is not a request to him to upgrade it to a sub-district hospital. It is already a sub-district hospital, and serves over 50,000 people in that area. But it is only a hospital by name. It does not have a laboratory, wards or maternity facilities. Three years after it was upgraded, it still receives dispensary kits. Could the Assistant Minister tell us what action he will take to provide facilities which suit a sub-district hospital in accordance with the specifications of his Ministry?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, the hon. Member is right. The health centre was upgraded to a sub-district hospital. If it has not been getting kits for a sub-district hospital, I will instruct the Provincial Medical Officer to provide them.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Konchella, this is not a matter of "if". The hon. Member should be aware whether his getting these kits or not. So, what is the correct position?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, I am aware that they are getting the essential drugs in plenty. If not so as alleged by the hon. Member, I will ensure that they are provided with the necessary kits. However, due to financial constraints, we can only prioritise additional facilities based on availability of money at the Ministry. We will do this over the next three financial years.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, this Question addresses a very important aspect; the lack of maternity facilities. Since we know that the Ministry is not about to build a maternity wing in the next few months or maybe years, could the Assistant Minister tell us what plans the Ministry has to support the traditional midwives around Rhamu Sub-District Hospital who take care of majority of deliveries? Women will not wait until the Ministry builds them a maternity wing for them to deliver. What will the Ministry do to help them?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, the Ministry has adequate staff to handle maternity cases in Rhamu Sub-District Hospital. So, the issue of supporting traditional midwives will really be based on the needs and requirements. We leave this to the medical officer in charge to be able to implement the requirements and do whatever is necessary.

Mr. Bahari: Mr. Temporary Deputy Speaker, Sir, Rhamu Sub-District Hospital is 80 kilometres away from the district hospital. In the arid areas there are many such cases where health centres have been upgraded to sub-district hospitals. However, they have not been provided with commensurate facilities. This Ministry looks like it is not in control of itself. Could the Assistant Minister tell us what concrete nationwide plans are there to make sure that those facilities which have been upgraded get the adequate facilities within the shortest time possible?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, the Ministry of Health is not able on its own to make decisions on provincial requirements other than based on what ceiling this House provides. So, what I would like to request the hon. Members to do is to consider providing the Ministry of Health with enough resources to be able to provide adequate facilities to our health centres and hospitals. We can only manage and plan on what we have, so that we are able to provide adequate facilities to all health institutions in the whole country.

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that the House has not been approving the amounts requested by the Ministry to provide services to our people?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, I said the Ministry of Health receives money that is allocated by this House. We are able to plan based on what is available. So, we cannot provide what has not been approved by this House.

Mr. Billow: Mr. Temporary Deputy Speaker, Sir, I am not satisfied with the answer given by the Assistant Minister. The Question is about Government policy on a sub-district hospital. A sub-district hospital serves several health centres and dispensaries. There is no Medical Officer of Health (MOH) in this sub-district hospital contrary to what he has said. When will this Ministry, as a matter of policy, provide all the required facilities, including the wards and the maternity wing?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, I talked about the Medical Officer of Health from Manderu District giving the priority in terms of construction needs of upgrading the facility to a sub-district hospital status. So, we will plan over the next three years; based on the priorities and the needs. One of the priorities is the construction of a maternity wing. I know how important it is to have this unit based on the distance we are talking about. So, I am aware about this. The Ministry takes priority of this issue very seriously.

The Temporary Deputy Speaker (Mr. Ethuro): Next Question, Dr. Ojiambo!

Question No.171

UPGRADING OF SIO PORT HEALTH CENTRE

Dr. Ojiambo asked the Minister for Health considering that the residents of Funyula Division have difficulties in assessing in-patient services at Busia District and Port Victoria sub-district hospitals, if she could consider upgrading Sio Port Health Centre to a sub-district hospital.

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

The Ministry has no immediate plans to upgrade Sio Port Health Centre to a sub-district hospital due to financial constraints. However, within the available budgetary ceiling, the Ministry will improve the existing facilities so that this facility can offer services as expected.

The improvement will be based on the priority to be identified at the district level. However, cases requiring further management are referred to Nangina Mission Hospital or Port Victoria Sub-District Hospital which are five kilometres and 16 kilometres away respectively.

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, I have not received a written reply from the Ministry. However, it is obvious that the Assistant Minister does not know the distance between Sio Port Sub-District Hospital and Port Victoria Sub-District Hospital, and Sio Port Sub-District Hospital and Nangina Mission Hospital. Our people cannot afford fees charged in this private hospital. Port Victoria Sub-District Hospital is about 20 kilometres away and Gucha District Hospital is about 50 kilometres away. Could the Ministry provide affordable services to the people around Sio Port?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, in terms of distance, the mission hospital is only five kilometres away while the other one is 16 kilometres away. The facilities that are within the hospital will be improved, based on the need for the hospital to be able to cater for the people around. The Ministry does not have a current budget to be able to upgrade Sio Port Health Centre to a sub-district hospital. At the moment, we are able to provide health services to the people of Sio Port.

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, the question of facilities at Sio Port---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Dr. Ojiambo! I have not given you the chance to ask your question! Prof. Oniang'o!

Prof. Oniang'o: Mr. Temporary Deputy Speaker, Sir, the Ministry of Health wants to put in place a National Health Insurance Fund (NHIF) policy so that all Kenyans can access health care. Yet, there are no adequate facilities. Could the Assistant Minister tell us which facilities they will be accessing when, in fact, they do not exist? We do know they do not offer proper services.

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, part of the funds that could be availed from the NHIF will be utilised to improve facilities in our hospitals. It is not only public facilities which will benefit, but also the private hospitals will be taken on board. The Ministry will get into an agreement with every medical provider to ensure that they are able to meet the needs of Kenyans. They will be paid through the NHIF; whether it is a private, mission or a public hospital. Certain standards will have to be met by those hospitals before they are taken on board.

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, I am not satisfied with the reply given by the Assistant Minister. I wish to request that he be allowed to go back and do some research about Sio Port Health Centre. I know Sio Port Health Centre has got all that it required for it to be upgraded to a sub-district hospital. It has physical facilities such as an X-Ray room, in-patient wards and enough staff. He should tell us when Sio Port Health Centre will be upgraded to a sub-district hospital. Maybe, the problem is that he does not know where Sio Port Health Centre is.

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, the Ministry will consider this. However, a number of things are required for this health centre to achieve this status. For example, it will require a 24 female bed ward, a men's ward, paediatric wards, theatre, X-Ray facilities, kitchen, laundry and mortuary, among others. So, this is quite a lot. We will plan for it over the next

three years and see what can be done.

Mr. Mwandawiro: Jambo la nidhamu, Bw. Naibu Spika wa Muda. Kutokana na jibu hilo, inaonekana wazi kwamba Wizara haielewi hali hiyo. Hata mimi najua hali hiyo iko katika Wundanyi Constituency. Kuna umuhimu wa Wizara kutembelea sehemu mbali mbali nchini na kuelewa hali halisi iliyoko. Je, Wizara itafanya nini kuleta jawabu halisi badala ya kutuambia inajua na haijui?

The Temporary Deputy Speaker (Mr. Ethuro): Bw. Mwandawiro, hilo si jambo la nidhamu. Hilo ni swali!

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

The Temporary Deputy Speaker (Mr. Ethuro): What is it, Dr. Ojiambo?

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, the same Assistant Minister promised to take us to Pumwani Maternity Hospital! He has not gone there! We have been waiting for him to take us to Pumwani Maternity Hospital. Is he in order to cheat us?

(Laughter)

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, I would like hon. Members to be ready to go there on Friday. They will be led by the Assistant Minister, Ministry of Local Government.

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

The Temporary Deputy Speaker (Mr. Ethuro): The Assistant Minister is reacting to another point of order and you are rising on another one! You are completely out of order! The Assistant Minister has just said that, on Friday, we will be led by Mrs. Tett to Pumwani Maternity Hospital. So, let us wait for Friday next week, God willing.

Next Question by Mr. J.M. Mutiso!

Question No.223

RELOCATION OF MUINGA BAILEY BRIDGE

Mr. J.M. Mutiso asked the Minister for Roads, Public Works and Housing:-

(a) whether he is aware that the Ministry, vide its letter Ref. MPW/A35.34/Vo1.IX dated 15th August, 2003 granted permission to relocate Muinga Bailey Bridge to Muangini-Mumela Road (E404); and,

(b) when the Ministry will start its works on the bridge.

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am aware that the Ministry granted permission to relocate Muinga Bailey Bridge to Muangini-Mumela Road (E404), vide our letter Ref. MPW/A35.34/Vol.IX dated 15th August, 2003.

(b) After the Muinga Bailey Bridge was recommended to be relocated to Muangini-Mumela Road, it was found to have been vandalised while still at Muinga before the re-launching.

Secondly, an inspection of Muangini-Mumela site, on the 7th August, 2003 revealed that the new river crossing needs a bridge with a span of 50 metres, while the re-launched one at Muinga is only 36.7 metres. In that regard, arrangements have to be made to source for funds for a new bridge. We are in the process of sourcing for funds to do so.

Mr. J.M. Mutiso: Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this chance. Muangini-Mumela is a very important road connecting Mumela Location and Kasikeu Division. That is the only access road to the entire location. The area has been severed off because the Muangini River has expanded its width. So, it is almost impossible for members of the public to

access that location. Could the Minister give a commitment on when the Ministry will allocate funds for the construction of that bridge on the Muinga-Mumela Road?

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I have said that we are concerned because we know the importance of that particular road. As Mr. J. M. Mutiso has confirmed, the river has expanded. Initially, we thought that it needed a bridge with a span of 36.7 metres. But now, it needs a bridge with a span of 50 metres. Bailey bridges are usually used for emergency purposes; for example, when floods have washed away bridges. We are sourcing for funds and we will try to put it in next year's Budget.

Question No.088

ACCIDENTS DEATH TOLL AMONG
SCHOOL GOING CHILDREN

Mr. Ndolo asked the Minister for Transport and Communications:-

- (a) whether he could inform the House the number of school going children who have died as a result of road accidents since 1990; and,
- (b) what special training requirements school bus drivers need.

The Assistant Minister for Transport and Communications (Mr. Ligale): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) A total of 5,390 school children have lost their lives as a result of road accidents since 1990. The details are as follows:-

YEAR	CHILDREN SERIOUSLY KILLED	SLIGHTLY INJURED	SLIGHTLY INJURED
1990	266	610	1,097
1991	303	671	1,157
1992	423	766	1,482
1993	371	796	1,557
1994	355	729	1,230
1995	394	722	1,232
1996	505	966	1,612
1997	404	783	1,309
1998	399	817	1,496
1999	339	739	1,308
2000	398	774	1,427
2001	409	993	1,477
2002	353	796	1,178
2003	369	785	1,212
2004	102	196	303
TOTAL	5,390	11,143	19,077

(b) The current qualifications for a school bus driver as stipulated in the Traffic Act are as follows:-

(i) He must be a holder of a valid driving licence endorsed with class "A".

(ii) He must be over 24 years of age. (iii) He must have, at least, four years driving experience in respect of motor vehicles, including commercial vehicles.

However, there is currently no special training requirement for school drivers. That will, nevertheless, be addressed in the Integrated National Transport Policy which is under preparation.

Mr. Ndolo: Mr. Temporary Deputy Speaker, Sir, I thank the Assistant Minister for that answer. But we have come across different types of transport vehicles taking children to school. We have seen *matatus* and other vehicles operating as non-statutory transport. Under what Act do those

vehicles operate in this country?

Mr. Ligale: Mr. Temporary Deputy Speaker, Sir, they all operate under the Traffic Act.

Mr. Mukiri: Mr. Temporary Deputy Speaker, Sir, the last question that my colleague has asked is very important. We have seen many vehicles transporting children to school. We are not sure whether they are insured. Sometimes, when accidents occur, those children are never compensated. Could the Assistant Minister tell us what measures he has taken to ensure that those transporting companies are well insured?

Mr. Ligale: Mr. Temporary Deputy Speaker, Sir, as I have said, we are trying to come up with an integrated transport policy. Some of the recommendations are as follows:-

First of all, we want to ensure that private buses, which are used by schools that do not have buses of their own, are fitted with speed governors to reduce their speeds.

Secondly, we want to ensure that drivers who drive school buses go for advanced driving to get additional driving skills other than the basics.

Thirdly, they must possess certificates of good conduct from the police.

Mr. Mukiri: On a point of order, Mr. Temporary Deputy Speaker, Sir. I asked a very simple question. I asked what the Ministry is doing to ensure that those vehicles are well insured. What the Assistant Minister is answering---

The Temporary Deputy Speaker (Mr. Ethuro): I agree with you. Mr. Ligale, I agree with Mr. Mukiri! As we speak now, those children are still being ferried to school. We cannot wait for your policy recommendations. So, what actions are you taking immediately?

Mr. Ligale: Mr. Temporary Deputy Speaker, Sir, we have given instructions that vehicles ferrying school children must be adequately insured. But insurance is not the most important thing. That is why I was referring to additional requirements to ensure that our children are safe on the roads.

Mr. Muchiri: Mr. Temporary Deputy Speaker, Sir, you have heard how many children have been injured while going to school. Could the Assistant Minister confirm that, to ensure safety, those school vans will be fitted with safety belts?

Mr. Ligale: Mr. Temporary Deputy Speaker, Sir, we have given very firm instructions that buses transporting children are not only fitted with safety beats but also speed governors.

Mr. Ndolo: Mr. Temporary Speaker, Sir, I am talking about the design of the vehicles which take children to school. Could the Assistant Minister tell this House what plans are in place for the Ministry to make sure that the designs of these vehicles are up to standard for safety?

Mr. Ligale: Mr. Temporary Deputy Speaker, Sir, design is one aspect and affordability by the parents is quite another. We would wish that those buses were not only fitted with the safety gadgets like speed governors and safety belts, but also that they are actually driven by qualified drivers. We also know that many schools cannot afford buses for all their schools and this is why we are specifying that where they are using private vehicles, they should have those specific gadgets to ensure that our children are safe.

Question No.082

COLLECTION/ALLOCATION OF
SUGAR CESS MONEY

Mr. Were asked the Minister for Local Government:-

(a) whether he could give an account of funds collected as cess from Mumias Sugar Company by the local authority in Butere/Mumias County Council in the past three years;

(b) whether he could explain how the funds have been utilised for the past three years in Matungu Constituency; and,

(c) the criteria used in allocation of the funds by local authorities to the various constituencies and civic wards.

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

(a) Butere/Mumias County Council has been paid by Mumias Sugar Company a total sum of Kshs22,706,584.45 in the last three years as follows:

<u>Year</u>	<u>Amount (Kshs)</u>
2001	13,565,266.30
2002	5,907,912.55
2003	<u>3,233,405.60</u>
Total	<u>22,706,584.45.</u>

(b) Funds collected have been utilised in Matungu Constituency as follows:

2001/2002: (i) Opening, grading and installing of culverts for storm drain along Lung'anyiro-Mayiakalo Road at Kshs1,235,3000 (16 kms.)

(ii) Grading and maintenance of Bulimbo-Namulungu Road for Kshs2,147,800.

2002/2003: (i) Installation of box culvert bridge on Bulimbo-Namulungu Road and approaching murraming at Kshs3,848,400. Routine maintenance and administration charges for all other roads, Kshs220,000.

(ii) On the 6th of August, 2003, Kshs10,316,150 was paid directly by Mumias Sugar Company to Pan African Trucks and Equipment East Africa Ltd for the purchase of a grader which is to serve the entire sugar zone area.

(iii) In 2004, Kshs652,486.50 has been spent in routine maintenance of Namulungu-Bulimbo Road (10 kms.).

(iv) Kshs707,815.20 has been used in opening Koyonzo-Ngairua Shikhondi Road. The work is still going on.

(c) Area farmers representatives and area councillor select projects to be implemented in these areas.

Mr. Were: Mr. Temporary Deputy Speaker, Sir, we realise that Kshs22 million was collected from Mumias Sugar Company while, in the constituency, when I look at the performance, we see that this cess money is only being spent on a road or two in a year, yet the constituency has more than 50 roads which are used to transport sugar-cane. Is the Assistant Minister satisfied that this money is being used properly?

Mrs. Tett: Mr. Temporary Deputy Speaker, Sir, as I said, the area farmers representatives and the area councillor select these projects.

Mr. Osundwa: Mr. Temporary Deputy Speaker, Sir, the Butere/Mumias County Council has defied a directive from the Minister that farmers be allowed to elect their own representatives to sit on the cess committees. Is she now going to direct the county councils to allow farmers to meet and elect their representatives, because over Kshs12 million was misappropriated and two cases are in court right now since farmers do not have their representatives on these cess committees?

Mrs. Tett: Mr. Temporary Deputy Speaker, Sir, we shall take over the problem and we shall inform the Member.

Mr. Were: Mr. Temporary Deputy Speaker, Sir, before this cess was introduced, Mumias Sugar Company was maintaining all the sugar-cane roads within the district and all the roads were in very good condition. Since the introduction of cess, all the roads have not been repaired and they are in a poor state. Is it possible for the Minister to consider Mumias Sugar Company to retain this

money and repair the roads and only be giving statements to the county council?

(Applause)

Mrs. Tett: Mr. Temporary Deputy Speaker, Sir, the Ministry has no problem with that, if that is what the people on the ground want.

Question No.034

REHABILITATION OF WATER DAMS IN SUBUKIA

Mr. Wamwere asked the Minister for Water Resources Management and Development whether she could consider rehabilitating the dams in all farms around Subukia to provide water for irrigation of horticultural crops.

Mr. Temporary Deputy Speaker, Sir, I would like to amend the question by inserting the word 'centre' after the word 'Subukia'.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Wamwere, sorry, you cannot amend the Question!

The Minister for Water Resources Management and Development (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I beg to reply. My Ministry has carried out an inventory of dams in Subukia Constituency and identified nine public dams that require to be rehabilitated at a cost of Kshs42.5 million. During the current financial year, my Ministry has allocated Kshs4.4 million for rehabilitation of dams in Nakuru District and out of this sum, a sum of Kshs1.12 million will be used to rehabilitate Kianyoro and Kijabe dams in Subukia Constituency. These dams will be used to supply water for domestic and livestock use. Due to limited financial resources, my Ministry has prioritised rehabilitation of small dams and water pans in the country for domestic and livestock use. It is expected that when the economy improves and more financial resources become available, priority will be expanded to include large and medium-size public dams which are used for irrigation. My Ministry will continue providing technical assistance to owners of private dams used for irrigation.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Wamwere, the Question remains as it is in the Order Paper.

Mr. Wamwere: Mr. Temporary Deputy Speaker, Sir, I do not think I have much choice. But I wish to thank the Minister for the answer. But she also knows that Subukia is one of the constituencies that had been most neglected by the KANU regime, water-wise. What other plans does the Minister have to redress the discrimination that Subukia suffered for the long 40 years that KANU was in power?

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, we are looking at the whole country and specifically at areas which are in dire need and we are going to prioritise them.

I also want to let the hon. Member in the House know that we have constituted a total of seven water service boards catering for specific areas in the country. The Rift Valley Water Service Board will look into priority issues within its area of mandate, which includes Subukia and other areas. We will definitely prioritise the areas that have dire need for water.

The Temporary Deputy Speaker (Mr. Ethuro): Next Question by Mr. Angwenyi!

Question No.020

SETTLEMENT OF SQUATTERS

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

- (a) how much land the Government has to settle squatters throughout the country; and,
- (b) when and how the exercise of settling squatters will commence.

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The Government does not have readily available land for settlement of squatters.

(b) Settlement of squatters and other landless Kenyans is a continuous exercise which is undertaken whenever suitable land for re-settlement becomes available. The exercise of selecting beneficiaries is conducted by the District Selection Committees chaired by the District Commissioners. Members include elected hon. Members of Parliament from the respective districts and other local leaders.

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, it looks like this Government is trying to follow the *nyayo* of the previous Government.

(Applause)

In fact, probably it is doing worse than the previous Government! This Government, in its manifesto, said that it was going to settle all the squatters in this country.

Hon. Members: Yes!

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, did they have any land in mind where they wanted to settle these squatters? If so, could they tell us where that land is and how much it is?

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, the hon. Member is engaging in fantasy in suggesting that this Government is following *nyayo* of any other Government. It does not! This Government has a very clear policy on land. For the hon. Member's information, I want to give him details of how the Government goes about settling squatters. Where there is squatting in some Government land, the Government plans the land in order to give squatters security of tenure.

Mr. Temporary Deputy Speaker, Sir, the second strategy is where the squatters are on private land, the Government negotiates the purchase of the land with the owner after which the process of settling squatters is undertaken.

The third category is where private land owners donate part of their land so that they can free the rest of the land for development.

Mr. Temporary Deputy Speaker, Sir, this is not the policy that was followed by the previous Government. This is a new policy which is aimed at making land available to needy Kenyans.

Mr. Mwandawiro: Bw. Naibu Spika wa Muda, swala la maskwota ni nyeti sana. Hivi sasa tunajua kwamba watu wanavamia mashamba kama kule Taita Taveta na sehemu zingine za Pwani. Je, Serikali hii inaelewa kwamba maskwota wamechoka kuahidiwa mashamba?

Mr. Raila: Bw. Naibu Spika wa Muda, Serikali imesema hapa Bungeni ya kwamba iko tayari kusikiliza maoni ya Wakenya. Lakini sio halali kwa Mkenya yeyote kuvamia ardhi yeyote bila idhini ya Serikali. Hii ni kwa maana ikiwa sisi tutafanya hivyo, hatutakuwa na Serikali.

Hon. Members: Yatta!

Mr. Raila: Bw. Naibu Spika wa Muda, ni vibaya zaidi kwa Wabunge! Tunataka kusema ya kwamba kuvunja sheria hakuwahusu tu wananchi. Wabunge pia wameonywa ya kwamba kama wataendelea kujaribu kuvunja sheria, hatua ya kisheria itachukuliwa dhidi yao.

Hon. Members: Ndile!

(Mr. Ndile stood up in his place)

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! Capt. Nakitare!

Capt. Nakitare: Thank you, Mr. Temporary Deputy Speaker, Sir. When the issue of squatters is put under the docket of Provincial Administration, it is questionable. We would like the Government to come clear, because we have had problems with the Provincial Administration *vis-a-vis* the District Commissioners and the District Land Committees. Instead of giving land to squatters, they have been dishing it out to themselves. What is the Government going to do to clear this mess?

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, that is why hon. Members of Parliament have been sitting in those committees. They are supposed to ensure that fairness is done when land is being allocated to those who need it.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, time is not on our side. We will proceed to Questions by Private Notice.

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I need to ask the last question.

The Temporary Deputy Speaker (Mr. Ethuro): You are right, Mr. Angwenyi, ask the last question!

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, from this answer, the Minister says that we have committees that select squatters for settlement by the Government. I would like any hon. Member of this House to raise his hand if he has participated in this selection process. Please raise your hand!

Hon. Members: Aah!

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, if they have not---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Angwenyi! Please ask the Minister questions and do not force hon. Members to do anything. Mr. Angwenyi, you are completely out of order and let us proceed!

Questions by Private Notice!

(Mr. Angwenyi stood up in his place)

Order, Mr. Angwenyi! You are out of order!

Hon. Members: Out! Out!

The Temporary Deputy Speaker (Mr. Ethuro): Questions by Private Notice! Mr. Ngoyoni!

Before that, there is Question No.148 by Mr. Mahamud.

Question No.148

RETRENCHMENT OF CIVIL SERVANTS

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

(a) how many civil servants have been retrenched so far and what impact it has had on the Government wage bill; and,

(b) what the Government policy is on future retrenchments.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Mahamud, you had spoken to the

Minister and so we will defer this Question.

The Assistant Minister of State, Office of the President (Mr. Dzoro): Mr. Temporary Deputy Speaker, Sir, I would like to seek the indulgence of the House to defer this Question until next week. This is because the answer I have received is not satisfactory and I have asked our officers to do a thorough research.

Thank you.

The Temporary Deputy Speaker (Mr. Ethuro): Question deferred to next week!

(Question deferred)

Hon. Members, let us proceed! The first Question by Private Notice, Mr. Ngoyoni!

QUESTIONS BY PRIVATE NOTICE

COMPENSATION FOR VICTIMS OF UNEXPLODED ORDINANCE

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

(a) Is the Minister aware that on 18th February, 2004, two boys namely Sukule Timado (12 years) and Iltina Mirgichan (14 years) were injured by unexploded ordinance at the British Army Training Field at Lore Soro?

(b) Is he further aware that 15 head of cattle were also killed during the above incident?

(c) What measures is the Minister taking to ensure that the families of the victims are compensated and hospital bills incurred at Wamba Hospital settled?

(d) Could the Minister halt any further military exercises until the area is cleared of any unexploded ordinance?

Mr. Sasura: The Assistant Minister for indulgence!

The Assistant Minister of State, Office of the President (Mr. Tarus): Mr. Temporary Deputy Speaker, Sir, may I seek the indulgence of the House to answer this Question tomorrow afternoon. I know this is the third time. Could I request the House for understanding? I have the answer here but I want to give sufficient answers tomorrow afternoon.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Ngoyoni, what do you have to say?

Mr. Ngoyoni: Mr. Temporary Deputy Speaker, Sir, this is the fourth time this Question is being deferred. Moreover, I have two similar answers which I was given last time. Maybe, tomorrow when the Assistant Minister comes, could he come with a different answer?

Mr. Tarus: Mr. Temporary Deputy Speaker, Sir, it will be slightly different from what he has.

Mr. Sasura: On a point of order, Mr. Temporary Deputy Speaker, Sir. Certainly the Office of the President is converting itself into the Ministry of seeking indulgence every other time we ask Questions here.

I am standing up on a point of order on this particular Question. Last time it came up, the Speaker ruled that while the Assistant Minister is going to bring a substantive answer, there is the issue of the bills in Wamba Hospital. The Speaker asked the Assistant Minister to make arrangements so that the bills will be paid while they are getting their answers every other week. Could the Assistant Minister confirm this to us?

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, the Question has been

deferred to tomorrow afternoon. Let us wait until that time.

(Question deferred)

Next Question, Mr. Sirma!

IRREGULAR RELEASE OF
ROBBERY SUSPECT BY POLICE

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

(a) Is the Minister aware that Evans Kipkemoi Kosgei, Felix Kosgei and Phinias Kipngetch were arrested on 1st May, 2004 and recorded on Occurrence Book No.36 of Eldama Ravine Police Station on a charge of robbery with violence?

(b) Is the Minister further aware that Evans Kipkemoi Kosgei was released on bond, contrary to provisions of Section 296(2) of the Penal Code (Cap.63 of the Laws of Kenya)?

(c) What disciplinary action is the Minister taking to deal with the police officers who released him?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Temporary Deputy Speaker, Sir, again, I seek the indulgence of the House. This Question reached our office yesterday, and the reply is not yet ready. May I request that I answer it on Tuesday?

Mr. Sirma: Mr. Temporary Deputy Speaker, Sir, I handed over this Question to the Clerk of the National Assembly early last week. Probably, Parliament Buildings and Harambee House are so far apart that one would need an aeroplane to take the Question there. I agree to the Assistant Minister's request, so long as he provide a good answer.

The Temporary Deputy Speaker (Mr. Ethuro): When will you bring the answer?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Temporary Deputy Speaker, Sir, I will bring the answer on Tuesday afternoon.

The Temporary Deputy Speaker (Mr. Ethuro): Well done!

Mr. Rotino: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very serious issue. When a Question is asked by Private Notice, it is very urgent to the hon. Questioner and his constituents. The Standing Orders provide that a Question by Private Notice be answered within 48 hours. Is it in order for the Assistant Minister to always seek the deferment of Questions by Private Notice? It loses the meaning. The Assistant Minister must be serious.

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, Mr. Rotino! The Assistant Minister has pleaded for more time. We want a good answer. So, let us give him an opportunity to bring his reply to the Question. You will raise those issues on Tuesday.

(Question deferred)

Next Question, Mr. Salat!

Mr. Salat: Mr. Temporary Deputy Speaker, Sir, before I ask the Question, I would like to inform you that I have not received a written reply.

ESCAPE OF PRISONERS
FROM NAIVASHA PRISON

Mr. Salat: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Vice-President and Minister for Home Affairs the following Question by Private Notice.

(a) Under what circumstances did 28 murder and robbery suspects escape from the Naivasha Maximum Security Prison on the night of 21st April, 2004?

(b) How many of the 28 escapees have been arrested?

(c) What steps has the Minister taken to ensure that hardcore criminals do not escape from prisons, as this will compromise security in the country?

The Temporary Deputy Speaker (Mr. Ethuro): Is anyone here from the Office of the Vice-President and Ministry of Home Affairs?

Hon. Members: Mr. Munyao will answer it!

The Minister for Livestock and Fisheries Development (Mr. Munyao): Mr. Temporary Deputy Speaker, Sir, we have taken note.

An hon. Member: You have taken note of what?

The Minister for Livestock and Fisheries Development (Mr. Munyao): We have taken note of that Question.

(Laughter)

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

Mr. Sirma: On a point of order, Mr. Temporary Deputy Speaker, Sir. Could you, kindly, assist Mr. Munyao? I think the Secretary-General of the Democratic Party of Kenya was asleep when Mr. Salat asked the Question.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Munyao, Mr. Salat has asked Question No.3 by Private Notice, which is directed to the Office of the Vice-President and Ministry of Home Affairs.

The Minister for Livestock and Fisheries Development (Mr. Munyao): Mr. Temporary Deputy Speaker, Sir, I stood up to say that His Excellency the Vice-President and Minister for Home Affairs is out of the country. Also, the written reply to the Question is not here. So, it is unfortunate that the hon. Member can make such remarks, which I cannot repeat.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Minister, when will the Question be answered?

The Minister for Livestock and Fisheries Development (Mr. Munyao): Mr. Temporary Deputy Speaker, Sir, could you defer it to Tuesday next week?

The Temporary Deputy Speaker (Mr. Ethuro): Very well, the Question is deferred.

(Question deferred)

MEASURES TO PREVENT LAY-OFFS IN EPZ FIRMS

(Dr. Khalwale) to ask the Minister for Trade and Industry:-

(a) Is the Minister aware that Apparel Manufacturers within the Export Processing Zones (EPZ) plan to shed off at least 10,000 jobs over the next three months?

(b) What steps is he taking to prevent the sackings?

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, the Minister for Trade and Industry had asked for the deferment of Dr. Khalwale's Question by Private Notice. So, by the mutual consent of the hon. Questioner and the Minister, the Question is deferred.

(Question deferred)

Next Question, Mr. Kipchumba!

LIBERALIZATION OF OIL SUB-SECTOR

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

(a) Is the Minister aware that Small Oil Companies (indigenous ones) with 1 per cent market share are threatened with closure if the Open Tender System (OTS) regulations are not reviewed?

(b) Why should the Minister protect Kenya Petroleum Refineries Limited, which is 50 per cent owned by Caltex, Kenya Shell and BP, which are competitors of the other oil companies?

(c) When will the Government liberalise the oil sub-sector?

The Assistant Minister for Energy (Mr. Kiunjuri): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am aware that small oil companies are having problems in meeting their financial obligations to the OTS. However, it should be noted that the OTS was introduced to help the small oil companies to acquire fairly priced crude oil to process at the refineries. Prior to the introduction of the OTS, only the major oil companies had the ability to import crude oil to a maximum of 80,000 metric tonnes. These oil companies would then sell to the small oil companies their crude oil requirements at exorbitant prices. Most of the small oil companies advocated for the OTS, which would be cheaper to the country and to the small oil companies. If the OTS collapses, the industry will revert to the old system, which the small oil companies were against. It will also pose a threat to the supply security of petroleum products to the country. Currently, we are holding meetings with the small companies to see how they can be helped without compromising the country's petroleum supply security.

(b) The Kenya Petroleum Refineries Limited is jointly owned on a 50-50 basis by the Government of Kenya and three oil companies, namely, Shell, BP and Caltex. In liberalising the sector, the Government, partially, removed the requirement that the oil companies process all their local requirements through the refineries. They now process at least 1.6 million tonnes of crude oil annually, an oil quota which was arrived at after considering the fact that the country had inadequate import handling and storage capacity for Liquefied Petroleum Gas (LPG), and that the bulk of the country's requirement for this product had to be met through Kenya Petroleum Refineries Limited. Presently, the refinery supplies over 85 per cent of the country's LPG requirement. It also meets 70 per cent of the country's petroleum product needs with the balance being imported as refined products.

(c) The oil industry was liberalised on 27th October, 1994, prior to which the oil marketing companies were required to meet their domestic petroleum demands from the crude oil processed at the Kenya Petroleum Refineries Limited. As mentioned earlier, the oil companies are required to process at least 1.6 million tonnes of the crude oil in order to meet the country's supply of LPG. The Ministry is in the process of selecting consultants to establish the demand for the LPG in Kenya and the East African region, and develop a preliminary design for LPG import handling facilities. Once the facilities are constructed, dependence on the refinery will be reduced and liberalization of the supply can be done.

Mr. Kipchumba: Mr. Temporary Deputy Speaker, Sir, I appreciate the Assistant Minister's statement that small oil companies are faced with financial problems as a result of the introduction

of OTS. However, he has not said what he is doing about that problem. In part (b) of the question, I sought to know why the Government must protect the Kenya Petroleum Refineries Company Limited. I have stated very clearly that the refinery is owned by multinational oil companies. Small oil companies are supposed to import oil, together with the big oil companies, which own the refinery. The refinery is not wholly-owned by the Government. Why can the refinery not be commercially viable, so that it does not enjoy any protection from the Government? The oil industry is not fully liberalised. Even the Assistant Minister has admitted that it is partially liberalised. The industry is only liberalised in terms of fixing the oil prices. There would be no supply security risk if the industry was fully liberalised, because all the required oil products would be imported into the country. So, why must the Government protect this refinery?

Mr. Kiunjuri: Mr. Temporary Deputy Speaker, Sir, a study is being conducted on the viability of the refinery. It should also be understood that there are other by-products from the refinery. This Government is adhering to its pledge of creating employment. Therefore, closing down of the refinery will render those employees redundant. These facilities are managed by multinationals in most countries. So, these multinationals will be the first ones to ask us to close down this refinery because they already have other refineries back home. In addition, there are a lot of mining processes going on in Africa, especially in Sudan and Rwanda. These are the markets which we want to capture. Therefore, it will not be for the good of this country to close down this refinery. However, if this study is completed and we feel that this refinery will be a liability to this country, then it will be closed.

Mr. Mwandawiro: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister assure this House that no retrenchment will take place at the oil refinery because there are rumours to that effect?

Mr. Kiunjuri: Mr. Temporary Deputy Speaker, Sir, I have already assured this House that the Government will not retrench any worker in the factory. In fact, what we are trying to do is to improve the refinery. There are some Indian companies willing to come and undertake the process. We believe this will be more profitable. However, as much as we complain about the refinery and the pricing of oil and other fuel products, we should remember that we had the National Oil Corporation of Kenya (NOCK) that could have competed fairly with the multinationals. Investigations are underway to establish why the NOCK was brought down.

Mr. Kipchumba: Mr. Temporary Deputy Speaker, Sir, I think the Assistant Minister is aware that when the Open Tender System (OTS) was introduced, there was a memorandum of understanding signed by various companies. It was, indeed, agreed that the crude oil delivered to the refinery must be obtained as by-products from depots owned by the multinationals. Is the Assistant Minister aware that the multinationals have not signed the MOU and, therefore, OTS should be suspended until such a time that all requirements are met?

Mr. Kiunjuri: Mr. Temporary Deputy Speaker, Sir, it is the small oil companies who pleaded with us that they could not meet the requirements. In fact, we are trying to favour the small operators. However, Mr. Kipchumba, will agree with me that the only saviour of our small independent petrol stations is the NOCK. It is a pity that it was run down and it owes the Government over Kshs300 million. It is only the NOCK which had a leading arm in the whole country. Therefore, we expected it to compete equally with multinationals. However, once we study the Mbela Commission Report and investigate the malpractice at the NOCK where we lost a lot of money through the selling of duty-free products meant for the Department of Defence to local people, we will be able to address the question of the independent operators. Another cause of this problem is that independent petrol stations which could compete equally with the multinationals were bought at exorbitant prices.

The Temporary Deputy Speaker (Mr. Ethuro): Next Question, Mr. Ndambuki!

WATER SHORTAGE CRISIS
IN NAIROBI EASTLANDS

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

(a) Is the Minister aware that the Nairobi City is facing a water shortage crisis especially in Eastlands?

(b) What has caused this crisis?

(c) What urgent measures is he taking to restore water supply to the affected areas?

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

(a) Yes, I am aware.

(b) On the weekend of 17th and 18th April, 2004, there was a supply problem which was caused by a faulty control valve. This was rectified on 19th April, 2004. Again, supply was further disrupted on 1st May, 2004 because of heavy rains in Ndakaini, thereby, making water muddy in the river. This muddy water caused temporary clogging of the treatment plant thereby reducing the amount of treated water coming to Nairobi. The situation was normalized by Monday, 3rd May, 2004.

(c) The following measures have been taken to correct the situation: One, the Nairobi City Council has purchased a chemical to treat the muddy water during heavy rains and, therefore, sustain supply. Secondly, the Nairobi City Council has written to the Nairobi Provincial Commissioner alerting him of vandals who vandalise and destroy water fittings and, therefore, cause supply disruption.

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has just said they purchased chemicals and wrote letters to the Provincial administration. During the period in question, the water vendors had water which they were selling to the residents. How come they had this water? Is the Assistant Minister satisfied that the actions they have taken will ensure that people will not run short of water?

Mrs. Tett: Mr. Temporary Deputy Speaker, Sir, some of those water vendors get water from dubious sources. We do not know where they get the water from. I can assure you that we are doing all our best to make sure that this situation is rectified. Indeed, it has already been rectified.

Mr. Ndolo: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister knows that area very well because she was brought up there. The Nairobi City Council officers are the ones who are collaborating with those people who are selling water to the residents of Eastlands. What actions will the Assistant Minister take against her officers who are doing such illegal things in Eastlands? Right now, people in Eastlands are not getting enough water because most of these water vendors are selling water.

Mrs. Tett: Mr. Temporary Deputy Speaker, Sir, I will be very happy to get the information on our officers who collaborate with the water vendors because this is, indeed, corruption. If the hon. Member could give me the names of the vendors or our officers who are involved, I would appreciate.

Prof. Oniang'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. This Assistant Minister has the habit of coming here and asking hon. Members to collect information for her Ministry. Is she in order to imply that the Ministry does not have a mechanism of collecting this information itself?

Mrs. Tett: Mr. Temporary Deputy Speaker, Sir, I cannot remember any other occasion when I did this, except when I asked Mr. Kamanda to give me a report. However, this House has the responsibility to stop any corrupt deals everywhere, including in the estates. I am not saying that we do not have the machinery to get information, but if the hon. Member can give us more information, we will be grateful.

Mr. Salat: On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise on the issue of my Question by Private Notice. It was said that the Minister is not here, but I can see Dr. Machage! My Question has been deferred and, yet we have so many criminals out there.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Salat! You are advised to take the Chair seriously. We had not concluded this other Question. That is the only time you can rise on a point of order to talk about your Question.

Last question, by Mr. Ndambuki!

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I do not have further questions on this.

The Temporary Deputy Speaker (Mr. Ethuro): Question Time is over. Let us move on to the next Order!

MOTIONS

AMENDMENT OF THE COTTON ACT

THAT, in view of the fact that problems of cotton sub-sector have continued to increase and that Kenya stands to lose its quota under the Africa Growth Opportunity Act (AGOA) if it does not produce enough cotton by September, 2004; concerned that the textile industry which depends on cotton has collapsed and needs to be revived; further concerned that the collapse of the sub-sector has led to loss of livelihood of over eight million Kenyans; aware that the Cotton Act 1990, Cap.335 has failed to adequately address the problems of the sub-sector, this House do grant leave to introduce a Bill for an Act of Parliament to amend the Cotton Act in order to comprehensively address the problems affecting the cotton sub-sector.

(Dr. Ojiambo on 5.5.2004)

*(Resumption of Debate
interrupted on 5.5.2004)*

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

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! We are running out of time. We are now on the Motion. We have five minutes for any hon. Member to contribute and ten minutes for the Mover to reply.

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

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Munya, I know your case. I will give you a chance in the afternoon. Who wants to contribute to this Motion?

Proceed, Mr. Rotino!

Mr. Rotino: Mr. Temporary Speaker, Sir, I want to thank you for giving me this opportunity to say something about cotton because this crop is important to the economy of this country. If you look at cotton as a cash crop, you will find that 75 per cent of this country would

solely depend on it.

*(Several hon. Members
withdrew from the Chamber)*

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! Leave the Chamber quietly.

Proceed, Mr. Rotino!

Mr. Rotino: Mr. Temporary Deputy Speaker, Sir, two-thirds of this country is semi-arid and cotton could be grown in those areas as a cash crop. This Motion is quite timely and I would like to support it by saying that the NARC Government should be serious on the development of the cotton sub-sector. If you look at the textile industries, for example, Raymonds Textile Mills in Eldoret which employed about 3,000 people and the RIVATEX which depended on cotton, have collapsed. The RIVATEX was destroyed by hon. Members in the previous Government. Textile is a very important industry. If you look at the ginneries which collapsed, you will find that they depended directly on cotton, like Salawa Ginnery, which employed more than 2,000 people in that remote part of Baringo District. The Government should address the factors which led to the collapse of this industry, so that the people who depend on it can lead better lives. This sub-sector should be treated the same way the coffee and the tea sub-sectors are treated. So, cotton farmers should be supported by the Government.

The Ministry of Agriculture has not given a lot of importance to the cotton sub-sector. The reasons are best known to the officials who run the Ministry. If you go to the Ministry of Agriculture, you will find that there is not even a division---

(Loud consultations)

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! Can we hear the hon. Member in silence?

Mr. Rotino: Mr. Temporary Deputy Speaker, Sir, you have realised how these hon. Members underrate this sub-sector. That is why they do not even want to listen to what I am saying.

(Mr. Samoei consulted with Mr. Kones)

The hon. Members who are consulting loudly depend on tea, coffee and wheat, like Mr. Samoei whose area depends on wheat farming. Could he consult quietly?

Those of us who depend on cotton are very serious. We want the Government to be very serious, take deliberate steps and come up with a policy on how to improve cotton in those regions. I would like to repeat now that in my store, I have about 100 bags of cotton which nobody has collected. Many of my constituents have cotton in their stores and nobody has gone to collect because there is no system in place to sell this cotton. The Government has not put in place a system for the delivery of cotton to the market. Even the funds which are supposed to be used to collect cotton--- There is an office which was based in Kabarnet and the officers from there used to go all over the valley to collect cotton and deliver it to the headquarters of West Pokot District and Kabarnet which is in Baringo District. This office did a lot of disservice to us. This is because the valley could not be served from Kabarnet. The farmers in the valley should be served by those officers right in the valley where cotton is grown. So, the officers who are supposed to do that job should be posted to that area. The role of the Kerio Valley Development Authority (KVDA) as far

as cotton-growing is concerned is--- There is no officer within the Authority who deals with cotton, and yet the KVDA is supposed to help cotton farmers in Kerio Valley. Look at even the Lake Basin Development Authority (LBDA) and Tana and Athi Rivers Development Authority (TARDA). Those authorities were established to improve cotton growing in those areas. If you go to the KVDA, you will not find any officer who deals with cotton. Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support the Motion fully.

Dr. Ojiambo: Thank you, Mr. Temporary Deputy Speaker, Sir. This Motion has been very popular amongst hon. Members and there are many hon. Members who still want to contribute to it, although time is against us. I would like to donate two minutes each of my ten minutes to Prof. Oniang'o, Mr. Akaranga, Mr. M. Kariuki, Dr. Awiti and Prof. Mango.

The Temporary Deputy Speaker (Mr. Ethuro): Dr. Ojiambo, those are five people and if you donate two minutes to each one of them, it comes to ten minutes. So, you will not reply.

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, I will move.

The Temporary Deputy Speaker (Mr. Ethuro): But you will not have time to move your Motion.

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, then I will donate one of my two minutes to Mr. Akaranga.

(Laughter)

Prof. Oniang'o: Thank you, Mr. Temporary Deputy Speaker, Sir. Let me compliment my former teacher for being foresighted in bringing this Motion forward before the AGOA for Kenya expires in September this year. I do not understand why we have not taken full advantage of the AGOA which was put in place by the former President of the United States of America (USA), Bill Clinton to try and jump-start economies of Africa, and to also create wealth for Africans so that we can stop begging and instead, participate fully in trade. So, I would like to compliment the hon. Member for bring that Motion before this House.

I would like to say that the cotton industry concerns all of us and particularly, the small-scale farmers, the people who process the cotton, those who take the yarn and the threads and use it to produce garments and those people who wear the cloth itself. As leaders and as Kenyans, we should be concerned about this crop. This is one crop which can grow anywhere and can assist us create wealth and sustain our economy. This is the case, and yet we have not taken full advantage of this.

As we talk about coming up with a national dress for Kenya, one would like to hope that such a dress will be made from home-grown fabric and cotton, blended with other fabrics. So, it is very important that we do this.

Thank you, Mr. Temporary Deputy Speaker, Sir. I support the Motion.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Akaranga, you have got one minute to contribute!

Mr. Akaranga: Mr. Temporary Deputy Speaker, Sir, I would like to support this Motion. First, let me mention some of the factors which are killing farming in this country. First, there is lack of cheap finance and trade facilities for farmers. Unless we finance our farmers to produce their crops, the cotton industry will not succeed.

There is also the aspect of delayed payment for delivered produce. If you look at the Nzoia and Miwani Sugar Companies, you will find that all of them have failed to prosper because of the delayed payments for delivered sugar-cane. Therefore, as we talk about the cotton industry, let us see how our farmers will benefit from the delivered produce.

There is also unfair competition from imported clothes commonly called "*mitumba*". To protect the cotton industry - I am not saying that *mitumba* clothes are bad because I have even used them - in order to create employment opportunities for the youth, we should curb importation of those clothes.

Mr. Temporary Speaker, Sir, I support the Motion.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. M. Kariuki, please, proceed!

Mr. M. Kariuki: Thank you, Mr. Temporary Deputy Speaker, Sir. I also wish to support this Motion. Let me say something about Africa Growth and Opportunity Act (AGOA). I think we need to demystify it. There is a lot of blind faith about AGOA. If one had the occasion to look at the deliberations of the Congress when that particular Act was passed, you will see that there were a lot of reservations, particularly from black senators, about its effectiveness.

Today, the industries that we have at the Export Processing Zones (EPZs) have a very large component of imported material from the United States of America (USA). Indeed, 60 per cent of the raw materials that are being used at the EPZs are from the USA itself! Only 40 per cent comes from our cotton lint here. So, in terms of net gain, it is really peanuts. It is, therefore, important that even as we talk about the stimulation of cotton growth in this country through AGOA, we should think of one local mechanism of ensuring that we have ways of stimulating growth of cotton locally, without having to rely on AGOA.

Mr. Temporary Deputy Speaker, Sir, as far as AGOA is concerned, there are some undisclosed conditions that we have given to the USA. We have given special treatment to their companies to enable us to benefit from AGOA. That is hardly talked about.

Finally, we are in a world where the West has subsidised its farmers to the World Trade Organisation (WTO). That is the crisis that we are having at the WTO. The Western farmers are heavily subsidised as far as the growth of cotton is concerned. That is what makes it difficult for our farmers to grow cotton at a cost-effective rate. Therefore, they do not become competitive. That is because the USA has subsidised its cotton farmers. As far as Kenya is concerned, the Government does not give any subsidies to the cotton farmers at all. Therefore, it is very difficult to put up a competitive cotton production which can match the American market.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Ethuro): The Professor Lady, please, proceed!

(Dr. Awiti stood up in his place)

The Temporary Deputy Speaker (Mr. Ethuro): Dr. Awiti, you are not a lady!

Prof. Mango: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Motion. The AGOA initiative was to jump-start the cotton industry in this country. But we have to live beyond AGOA because it is a short-term initiative. After AGOA, what are going to do with ourselves?

Mr. Temporary Deputy Speaker, Sir, we need to put in place many things to support the cotton industry. In the past, the cotton industry supported the whole of Busia District. When it collapsed, it enhanced poverty in that district. Therefore, I would like to add that the Government should support the farmers by giving them proper seeds, financial support for cultivation and collection centres for the cotton. Then, the Ministry of Trade and Industry should go beyond AGOA and put in place a value-adding mechanism to boost cotton production. It is of no use to produce cotton and the farmers do not benefit beyond selling the crop as a raw product. The Ministry of Trade and Industry should, therefore, put in place cotton industries to prepare the yarn, process cotton seed into animal feeds and make clothes for Kenyans to wear. In Western Province, like in

Budalangi, the cotton industry should be enhanced through irrigation. Egypt exports coffee to the whole world! Western Kenya could produce finished products to be used locally within Kenya, in the East African Community and beyond. Therefore, we should look at long-term benefits and not just depend on AGOA, whose mandate is ending in a few years.

Mr. Temporary Deputy Speaker, Sir, with proper planning, cotton is a crop that can considerably reduce poverty in this country and make it industrialised. But, the way we seem to be going about it, we are only thinking about AGOA. We should look beyond AGOA! We should look at how Kenyans can dress properly in clothes made from cotton, instead of dressing in *mitumbas*. We should make cotton clothes affordable, so that Kenyans do not buy *mitumbas*. We should go beyond selling to AGOA and make it a mainstay for this country.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Ethuro): Dr. Ojiambo, please, proceed!

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, I would like to give one minute to Dr. Awiti?

The Temporary Deputy Speaker (Mr. Ethuro): No! Just proceed!

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, I want to take this opportunity to thank the House---

An hon. Member: Give Dr. Awiti one minute!

Dr. Ojiambo: Can you speak for one minute, Dr. Awiti?

The Temporary Deputy Speaker (Mr. Ethuro): Dr. Ojiambo, please, proceed!

Dr. Ojiambo: I want to take this opportunity to thank the House for allowing me to bring this Motion. I also want to thank hon. Members for being positive and supportive. As you have heard, the issue of cotton is very important.

In conclusion, I would like to say that, currently, the defunct Cotton Lint and Seed Marketing Board of Kenya has been given Kshs10 million. We understand that it is just about to return that money to the Treasury. I would like to take this opportunity to call upon the defunct Cotton Lint and Seed Marketing Board of Kenya to give that money to the ginneries to buy the existing cotton in the country. Ginneries like Kimilili, Luanda, Masinga and Karachuonyo could benefit from that money to buy cotton from the farmers in this country. Right now, farmers have nowhere to take their cotton.

With those few remarks, I beg to support and move the Motion.

(Question put and agreed to)

AMENDMENT OF COMPANIES ACT

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:- THAT, in view of the fact that the Companies Act Cap.486 was enacted in 1948; considering the fact that the business environment has changed considerably ever since and that E-commerce world needs to address the changed business world, this House urges the Government to amend and repeal sections of the Act which are not in conformity with the modern business world.

Mr. Temporary Deputy Speaker, Sir, from the outset, I want to say that I brought this Motion to address the inadequacies and shortcomings of the Companies Act due to a changed business environment. The Companies Act, Cap 486, was enacted in 1948 which is 56 years ago. It was revised in 1962; that is before independence and since that time, a lot of things have changed. We want to repeal and amend this Act to give greater freedom to the shareholders of companies, so

as to run the companies, change the boards of directors when they want and change the management as and when the need arises. We want to address the issue of fraud that is more sophisticated now than when this Act was enacted and obviously, try and address the issue of the missing files in the registry of the Attorney-General.

Mr. Temporary Deputy Speaker, Sir, this Act has 13 parts and 406 sections. It is one of the longest or most voluminous Acts. So, as I have said, this Act has been in operation in its current form since 1962. The Act has not been reviewed, despite the fact that a task force was formed by the Attorney-General, headed by the former Registrar, J.N. King'arui and its findings have not been given out to the public. The few amendments to the Act over the years have been minor; for instance, the provision relating to qualifications of a company secretary and the retirement benefits of employees upon winding up, and these are very few.

Mr. Temporary Deputy Speaker, Sir, in view of the fact that the business environment has changed considerably in the last 42 years, there is need to review the outdated and unworkable provisions and to make the operations of the companies more transparent, efficient, simpler and governed by principles of corporate good governance. This will require the repeal of the Act or amendment to the sections to suit the current trend on corporate good governance. Reforms are needed for instance, to ensure easier incorporation, improved reporting, greater disclosure of information to shareholders, efficiency in general, annual general meetings, protection of minority shareholders and extension of the responsibilities of the auditors and liquidators.

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

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

Mr. Temporary Deputy Speaker, Sir, let me start with the formation and registration of companies. Part I, Section 3 of the Act deals with the Register of Companies, where all records are kept and entered. This is a very slow process that slows down the efforts of investors and entrepreneurs. Now, in the actual registration of a company, it is very difficult to try and trace some of the information that is required. The simple fact, that Section 5 says that:- "The memorandum of every company shall be in the English language in accordance with Part 2", is obviously very colonial because many of the shareholders now in many of the companies are ordinary *wananchi* who would follow proceedings in Swahili or the local languages. So, this section should be amended to include other languages that are understandable by Kenyans.

Mr. Temporary Deputy Speaker, Sir, when filing the articles and memorandum of association, if you default in altering or filing the alterations, Part 2, Section 8 gives a fine of Kshs200. What is Kshs200 when we know that the articles and memorandum of association is the core information you require in forming a company? In my own opinion, we should enhance and give realistic fines. In the same section, it is written that if you change the name of the company, the defaulters fine is Kshs100.

Mr. Temporary Deputy Speaker, Sir, you and me know that change of a name of a company can do a lot of harm. You may have done very bad things and you just want basically to change your company's name to conceal certain frauds you have undertaken. So, I feel this fine is too small to change names to deceive the public. I think this is a very serious matter and should be avoided at all costs and the fine should be enhanced.

Mr. Temporary Deputy Speaker, Sir, in registration, I am saying that to keep abreast with the technological developments, a copy of the register of companies should be kept in electronic form. This would make the registration of companies and updating of the register easier and overcome the difficulty of tracing the lost files. On the requirements of the memorandum, I am saying they should be prepared in plain English, with an option of using Swahili, especially for public companies.

Mr. Temporary Deputy Speaker, Sir, in Section 39, we need to re-look at the debentures issue afresh, in view of the size of the debentures. On the management and administration of companies which is covered under sections 125 to 129 about annual returns, how many companies that are required to make annual returns do actually make those returns? What penalties are available for those companies that do not make those returns? Section 125 (3) says:-

"If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine of very minimal amounts".

I believe this is an issue that should be addressed. Sections 130 and 131 talk about the meetings and proceedings of meetings. Now, many companies go round the issue of calling for annual general meetings. Sometimes, if an annual general meeting collapses and you ask for a special annual general meeting, sometimes the management of those companies ignore your request.

Mr. Temporary Deputy Speaker, Sir, for example, I know of an Annual General Meeting (AGM) of one of the tea factories in my constituency that aborted. We asked for a special AGM to address the issue of accounts and management by the board of directors, but for a whole year, that meeting was never held. I am talking about Kebirigo Tea Company Limited. This is a serious matter and in event of matters where people do not accede to the demands of shareholders, then, they should be made to pay very heavy fines.

On the length of the notice to call the meetings, given the vagaries of the postal services and the fact that no consideration is given to weekends and public holidays, a 21 day notice does not appear short. Private companies may opt for a shorter notice since they have few members. Therefore, this is an issue which I believe should be addressed so that we can change or repeal these sections. I have talked about the issues of notice of meetings, voting via proxies, powers of the court towards meetings and the right to demand for inspection of the books of accounts. These are very important issues which ought to be addressed in the repeal.

Mr. Temporary Deputy Speaker, Sir, Section 176(3) which concerns inspection of minute books states that where an officer of a company fails to furnish a member with minutes, the company is liable to an outdated fine of Kshs40. What is Kshs40? That is only a one "Kibaki coin!" So, these are issues we want revised, amended or repealed. They are outdated. Section 162 states that in addition to making a report on whether the financial statements of a company give a true and fair view of the affairs, the auditors could be required to disclose any fraudulent or questionable transaction that may become apparent during auditing. The first thing that I want to address is the issue of auditors. Auditors are automatically appointed under Section 159. It says that the auditors, Mr. So-and-So, who are re-appointed during the year have expressed willingness to continue in office and do so in accordance with Section 159(2), Cap.486 of the Companies Act. This does not give shareholders a chance to get the auditor's reports. You know of the scandals that are now emerging in the USA. So, these are issues that we want addressed.

Mr. Temporary Deputy Speaker, Sir, Section 165(1a) talks about investigation of company affairs by members. Where a company has shareholders, investigations of its affairs can only be carried out by not less than 200 members who must hold at least 10 per cent of the shares. This Clause restricts the right of individual shareholders to institute investigations and, therefore, it needs to be reconsidered. A small number of shareholders should be entitled to request for an

investigation. Section 181 which talks about the validity of acts of directors, may have a high financial cost on the company and a proviso should be included to make directors of a company liable for any fraudulent act which they ought to have prevented when conducting the affairs of the company.

Concerning the minimum age of appointment, presently, the Act recognises the age of majority as 21 years and not 18 as is the case in our country. In addition, persons who are over 70 years of age and are still in the possession of their mental capacities should also be considered to become directors of a company.

Section 276(3) starts with a declaration of solvency. A director who falsely declares that the company is able to pay debts in full during a voluntary meeting for winding up is liable to 12 months imprisonment or a fine of Kshs20,000. Given that creditors may suffer a great financial loss from such a declaration, a higher deterrent fine ought to be introduced, possibly, of a minimum amount of Kshs1 million. So, if you form a company only to wind it up fraudulently, you should be fined highly.

Section 281(2) specifies the duty of a liquidator to call for a general meeting. It states that: "A liquidator's failure to summon a meeting of creditors can result into a fine of Kshs1,000." His failure to summon a general meeting at the end of the first year from the commencement of the winding up may result in an outrageous fine of Kshs200. Failure to call for a general meeting after the final dissolution warrants a fine of Kshs100. What is Kshs100 after doing all those illegal things? The meeting of creditors under Section 286(5) states that: "A director who fails to provide a statement of affairs or to hold and preside over a meeting of creditors, is liable to a fine of Kshs2000 for frustrating the efforts of creditors." Clearly, this is ineffectual. The directors' obligation to detect and combat fraud is not specific. Legal obligation is placed on any officer to prevent or detect fraud making directors of a company responsible for preventing and detecting fraud that exists amongst the company's employees. So, officers who, knowingly, carry out a business intended to defraud the company, ought to be held personally liable. Directors should, therefore, ensure that their companies establish internal control systems designed to combat fraud.

Mr. Temporary Deputy Speaker, Sir, all in all, we are talking about fake registration, fake formation of companies that want to defraud Kenyans. More information should be sought from persons who want to register companies. You walk into the offices of the registrar of companies and in one day or week you get registered. These companies are meant to defraud our forex. Also, our files keep on disappearing. That is why I have suggested E-Commerce so that should files disappear, then, there will be information kept somewhere easy to trace. However, the bottom line of this Motion is not E-Commerce, rather it is about keeping information readily available. The missing files, the operation of companies, the liquidators and information about people forming companies are issues that need to be looked into seriously.

Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg to move and request hon. M. Kariuki, Member for Nakuru Town Constituency to second this very important Motion.

Mr. M. Kariuki: Mr. Temporary Deputy Speaker, Sir, I wish to second this Motion. Even a cursory look at the Companies Act of this country will reveal that we obtained these particular statutes in 1948 basically from the English Company Law. The English Company Law has drastically changed with time. There have been numerous amendments meant for companies to adjust to changing technologies and different modes and styles of managing business. We are certainly lagging behind as a nation given that this is an era of globalisation and E-Commerce whereby if a company is located and operates in Kenya, it can at the same time exist in another part of the world. It is, therefore, important that we not only adjust to the new technologies, but also we update our statutes in line with the international corporate management practises.

Mr. Temporary Deputy Speaker, Sir, I am aware that currently the registrar's office is undergoing computerisation. This is really not the Government's effort. It is the effort of a few lawyers who have taken the initiative to offer the personnel to computerise the companies' registry. It is very important that one should be able to obtain information about a company easily and clearly on the internet. This is an era where we are trying to invite investors to invest in this country. Even a basic inquiry about how the company registry operates and what is required for company formation will reveal that that data bank is certainly not there. We hope that in the fullness of time when this exercise is complete, for example, any person looking forward to buying shares in a company should be able to have access to that information at the press of a button on the internet and be advised accordingly as to how that particular company is performing.

Mr. Temporary Deputy Speaker, Sir, we know that companies are supposed to file annual returns, and that there are inspectors of companies who are supposed to oversee the activities of these companies. Unless there is computerization and easy access to information, the number of companies registered in that registry are not easy to manage. But I think with computerization, we will be able to access the information and also to have a quick check as to who has defaulted in filing the annual returns and also calling for an annual general meeting. These are the issues that we have to look forward to.

Mr. Temporary Deputy Speaker, Sir, if one has to look at the Companies Act as constituted today, you will realize that in most other jurisdictions, disputes arising from companies do not even go to court. There is an in-built mechanism of arbitration, because in the business world, a small delay in a dispute can cause an enormous amount of loss. So, what is really happening in other jurisdictions is that there are in-built arbitration procedures that, should a company have a dispute with a section of its shareholders or a dispute between itself and another company, then an in-built mechanism is available. A quick reference within two or three weeks and the dispute is resolved and any possibility of occasioning loss is really averted. So, this is the kind of thing we should be looking forward to.

A quick look at the provision relating to the High Court practices relating to companies reveals that the procedures are too complex. One does not know whether to approach the court via a notice of Motion, a petition or an originating summons. Those are technical terms, and more often than not, persons who have gone to court to seek redress have been shut-off because the procedures for accessing court and to seek resolution are too technical. So, we need to simplify them and to shorten the time period.

I am aware that today we have the Commercial Court Department at Milimani. But now, the commercial court section has been reduced like any other court; it takes about two or three years to resolve a dispute. The initial idea of starting a Commercial Court Department in the High Court was essentially to ensure that disputes relating to commercial ventures are resolved very quickly. But that is not happening any more. The same bureaucratic tape that obtains in the civil registrars in the main High Court is now obtaining in the commercial court. This is a major problem. So, we are trying to make sure that the investments that people put in these companies are secure; in the event of a dispute, it is quickly resolved. So, we need to think of modern ways of resolving commercial disputes, and I think these are the kind of amendments that we are looking forward to if the Act has to be amended.

Mr. Temporary Deputy Speaker, Sir, looking at the provisions of receivership and appointment of managers, the Companies Act as we have it today does not even give the bare minimum in terms of qualifications. Who will qualify to be a receiver manager in a particular venture? What will be required of them in terms of qualifications? What are the obligations of a receiver manager? All these details are lacking! This will open up doors for fraud. We have

situations today where persons appointed as receiver managers end up liquidating the assets of a company and the shareholders get nothing at the end of the day. So, I think we need to tighten these particular provisions to be able to secure the investments that shareholders have put into companies. This is very important.

Mr. Temporary Deputy Speaker, Sir, there are certain provisions in the Act which also require to be looked at, more particularly the ones relating to the winding up of companies. These provisions are too long and elaborate, and therefore, it takes too long to wind up a company. But there is one major contradiction here; while it takes too long to wind up a company, the registrar has such draconian powers that even a failure to submit returns 14 days after their deal, he can strike out that particular company. So, what are you trying to protect? If shareholders can lose the entire investments they have put in a company because a director of the company failed to file returns in time, why then do we have these elaborate mechanisms for winding up? Because I thought that basically, the winding up provisions are supposed to ensure fairness and that the shareholders get their dues. So, we need to reduce these powers of the registrar to strike out companies because of a fault which is not of the shareholders.

Now, looking at Sections 96 of the Companies Act relating to debentures, if a company today was to borrow from a bank and charge its property or have a mortgage and the directors fail to register the debenture with the registrar of companies within 14 days, they will have no course of action in the event of a default. These are really mischievous provisions, because we can have a default created by a company in terms of registering the debenture and yet, the money has been borrowed and you cannot go and enforce that through the court process. This is something that needs to be put right.

Mr. Temporary Deputy Speaker, Sir, the provisions relating to the corporate personality or the legal personality of a company have been grossly abused. As hon. Obwocha has said, in the recent past when there has been a lot of grabbing of public land, the style of grabbing of public land has been in such a way that you form a company as a convenient outfit to defraud the public. The allotment letters are then given in the name of that particular company, and when you get a buyer thereafter, because these are basically speculators, they then sell that particular parcel of land to an individual and then the company is immediately wound up. So that if you try to find out who got the allotment letter initially, you will not find any records there. The issues here are distinguishing between the legal personality of the company and the shareholders, and they need to be dealt with now. There have been a lot of decisions which have been made on these points, but we now know that with the money laundering legislation all over the world, any company now doing business anywhere or which has to even borrow money has to make a full disclosure of who the directors are. Because the veil has to be lifted to establish who really owns these companies. It is true that a company is a legal person in its own right, and that the shareholders and directors are also independent legal persons. But the issue here is one of fraud, as hon. Obwocha has said clearly. If you are going to use a company as an outfit to commit an act of fraud, it is, therefore, necessary that there be a full disclosure of who the directors of this company are. They also have to ensure that they make their own personal guarantees, for example, in the event of a loan.

Mr. Temporary Deputy Speaker, Sir, I look forward to a time when we are going to have an anti-money laundering legislation in this House, because it is clearly important that the way money has been moving from one country to another has been through the conduit of companies. Companies move assets and money from one company to the other, and this relationship between, for example, a parent company, a holding company, and a subsidiary company has to be redefined now in terms of the war against money laundering strategies. We are clearly behind time in terms of updating our legislation, and given that we are now trying to attract foreign investors to come into

this country, we must have a readily available data bank where a potential investor can come and seek relevant information to form a company, and then the bureaucracy that has been there of having to wait for such a long time has to be done away with.

On that note, Mr. Temporary Deputy Speaker, Sir, I beg to second.

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

(Question proposed)

Proceed, Prof. Oniang'o!

Prof. Oniang'o: Thank you, Mr. Temporary Deputy Speaker, Sir.

I wish to commend hon. Obwocha for bringing this Motion forward because the issue of companies and businesses in this country is a very crucial one and we require an enabling environment, not only to assist Kenyans to start as many companies as possible, but also to be assured that the management of those companies is carried out in a well governed manner, and that all Kenyans can participate in their management, be they in the urban or the rural areas. This will help to create the many jobs that this Government wants to create. It will also help to jump-start the economy.

Mr. Temporary Deputy Speaker, Sir, it is amazing that we still have laws which were enacted in 1948 operating in this country, and yet we have a Law Reform Commission. I wonder what the Commission is doing. The Companies Act is a fat document which is clearly not user-friendly. It has too much wording. As a person who has tried to register a company and has worked with various bureaucracies in this county, I can assure you that the registration of a company is not difficult. Like Mr. M. Kariuki has said, some people register companies in order to cheat the ordinary unassuming *mwananchi*. They register companies to operate for one or two days or a week, then they wind it up and go into hiding. Therefore, we should have a complete overhaul of these laws that were enacted in 1948. We should enact new Acts to be in conformity with the laws and practices in the business world.

Mr. Temporary Deputy Speaker, Sir, I believe that business practices anywhere in this country and across the world have changed drastically in terms of size, the type of businesses, record keeping and the laws that are required to run those businesses. Mr. Obwocha is trying to ensure that there is proper record keeping using, for example, the internet and other electronic systems. As he has mentioned, we are aware of missing files in offices. In the electronic world, there are many ways of keeping files and not just in computers where somebody can destroy the records, either through theft or fire. We are aware that in the electronic world, you can zip your records and keep them somewhere else. These are some of the aspects we want to impact to the business community, especially to the young people who want to go into businesses. They should be assured that their companies can be run, protected and managed properly. We want to encourage as many Kenyans as possible to go into businesses, even those who are not very well educated. To be an entrepreneur, you do not necessarily have to have a degree. We have businessmen who have gone only up to Standard Eight, but they have the business acumen in them. We would like such people to be assisted. If this Act is properly formulated, it can have an arm that will assist many Kenyans to start businesses of all types through the formation of companies, but those companies have to be protected by the law.

Mr. Temporary Deputy Speaker, Sir, we also have some aspects of management of companies which have to go through the legal system. These aspects are extremely bureaucratic. For example, if a foreigner wants to go into partnership with Kenyans, which is something we would like to encourage, he has to walk through so many offices. There is no clear-cut information

as to where they should go and what they require to register their companies. This bureaucracy is our undoing in this country and is not helping us at all. We believe that when the new Act will be enacted, it will remove all these hitches, so that we can have a proper and friendly business environment.

Again, many Kenyans have been hoodwinked out of their resources. That is one of the reasons why we want to have a new Constitution in place. The Draft Constitution has in it issues of language that have been addressed here, so that it is a user-friendly document. As many Kenyans as possible can understand what they are supposed to do whether it is in Kiswahili or English. These aspects are in the Draft Constitution. Therefore, we want to urge the Government to ensure that Kenyans have the new Constitution by 30th June, 2004. Many young people will be encouraged to form companies as long as they understand what they are supposed to do. We would like to urge the Government to provide training in this particular area. Our institutions of higher learning should have some offices where graduates can be taught how to start a company before they leave universities or colleges. We are not preparing our young people on how to go into entrepreneurship. As a way of addressing unemployment, we should provide this service.

Mr. Temporary Deputy Speaker, Sir, I want to conclude by saying that Italy grew on cottage industry. These were very small companies and many of them were house companies. We can have that kind of environment here. I want to underscore what Mr. M. Kariuki has said, that we have to make sure that businesses are efficiently run. For example, KISS 100 FM lost a lot of revenue by going off-air for four days. Small businesses and companies require an enabling environment, which can be provided especially by the Government by having in place proper laws and regulations.

With those few words, I wish to support.

Mr. ole Metito: Mr. Temporary Deputy Speaker, Sir, I wish to contribute to the debate on this very important Motion. In the emerging market, there is potential for growth. To take advantage of that, some key governance issues need to be addressed. These are issues such as enhancing the board effectiveness and making it independent from the management level. This will ensure that there will be no undue influence in the decision-making processes, such as in the appointment of the board of directors, the managers, the chief executives and others.

There is need to improve the financial reporting of these companies. Although most of these companies follow the international accounting and financial reporting procedures, there is need to enforce compliance. This could be achieved by establishing a body to audit even the work of the auditors. We have heard the importance of information technology. We have heard of missing files and fake registration. This could only be curbed by the introduction of the electronic commerce in the running of these companies, as Mr. Obwocha has mentioned.

Mr. Temporary Deputy Speaker, Sir, the private sector is an engine of economic growth. However, the environment in which these companies operate is very dynamic. This calls for the legislative framework of these companies not also to be static.

Temporary Deputy Speaker, Sir, in order for these companies to survive, their goods and services must be competitive enough to counter both the internal and external threats they face on a daily basis. One way of doing that is by establishing an information system. The information communication technology is a resource for economic prosperity, and it is a basic requirement in modern businesses today. It will enable businessmen not just to compete locally, but also globally in all aspects of development. Today, e-commerce is the order of business the world over. It allows the clients to interact on-line and also offers the industry an opportunity to market their goods and services at a lesser cost. So, there is need for legislation that will allow these companies to do their businesses both efficiently and effectively.

Mr. Temporary Deputy Speaker, Sir, the cost of computers and computer accessories should

be brought down. There is also need to transmit information. I would like to see digital transmission of information as opposed to analogue being encouraged.

I would like to end by saying that although corruption is no longer officially sanctioned unlike before, there is also need to strengthen the control processes in both the public and the private companies. That will assist the new initiative of zero-tolerance to corruption to bear any fruits.

With those few remarks, I beg to support the Motion.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir. This is a very good Motion, although I think Mr. Obwocha should have directed this Motion to the Office of the Attorney-General and not the Minister for Finance, because what he is seeking to achieve can be done by the Office of the Attorney-General. I can neither see the Minister for Finance nor the Attorney-General here.

Mr. Temporary Deputy Speaker, Sir, I support the Motion. It is a Motion that ought to have come here earlier. The current Companies Act, Cap.486 of the Laws of Kenya, was enacted in 1962 and revised very nominally in 1978. It has remained very long, bulky, winding, complicated and totally unhelpful to the changing patterns of business. There is urgent need to re-look at the entire co-ordinate structure and its legal governance in the country. When we talk of companies, Mr. Obwocha should have equally talked about partnerships and all other corporate structures under which persons do business in this country.

Mr. Temporary Deputy Speaker, Sir, from what has been going on around the world; the collapse of a famous company in Italy called Parmalat, and the collapse of Enron in the US, one is tempted to think that it is absolutely necessary for the change in the law, so that shareholders of companies should not double as directors. This has always given a conflict of interest role that has ended up in having major insider activities in companies, that by the time they are discovered, you have lots of losses. Equally, I would want any change in the Companies Act to provide for a role played by auditors and accountants in managing and advising on the finances of such companies, with clear provisions for sanctions, including criminal sanctions, where they knowingly and wilfully mislead shareholders of companies. You may recall, we had an insurance company called Access in this country, where a very well known auditor, year in, year out, gave them a clean bill of financial health, only for the company to collapse with millions if not billions of shillings of people they had insured.

Mr. Temporary Deputy Speaker, Sir, I would also want to point out that in the Companies Act, we have provisions that govern receivers and receiver managers. Here again, there is a loophole where companies have been ransacked, run down and virtually destroyed. Every time the courts have put companies under receivership, it has amounted to handing over the assets and the activities of that company to fraudsters, who move in, do whatever they want and get away with it. This can be supported by the fact that there is no single company in this country that has ever been put under receivership, and the receiver-manager turned it round and put it back in business.

Mr. Temporary Deputy Speaker, Sir, then we also have the issue of annual returns. When you look at the forms of annual returns in the Companies Act, they are so complicated that when filling them you think you are submitting a tax return to the tax man, yet all the annual returns form requires is to file a report to show that the company is still in place, it is still in business and its directorship has not changed. This needs to be changed. The Act also needs to be amended to bring it in tune with the current sophistication of international crime and international activities by dubious persons who form companies and never register them and use them to do all manner of things. The other day we were told that certain companies engage in activities in this country, said to have been registered in foreign countries and not registered there at all. We need a coordinated structure, empowered by the law under the Act, where the Registrar of Companies and the Office of

the Attorney-General can go beyond the jurisdiction of this country in looking at activities of companies.

Mr. Temporary Deputy Speaker, Sir, I also believe that we need a provision in the Companies Act for foreigners who come to invest in Kenya. If a foreigner wants to incorporate a company in this country, it is desirable that we have some requirement for local shareholding, so that we can pull up our local business people, so that they can also participate in the running of business in this country.

Mr. Temporary Deputy Speaker, Sir, we have been trying to liberalise and decentralise activities. I think it is time that the office of the Registrar of Companies was decentralised and branches opened up to the level of divisions in this country. This will be able to assist entrepreneurial Kenyans in registering companies, partnerships and other corporate organs that can do business. This should be a service that the Government can give to Kenyans as we encourage them to venture into business. The current Companies Act does not have any provisions, for example, in dealing with persons who interfere with coded messages, computer hackers and all manner of e-criminals. In amending the Act as required by the Motion, all these are issues that need to be looked at. Equally, we need to visit the issue of how many companies one can register. We have had situations where persons register companies, transact some fraudulent businesses or dubious businesses, abandon the companies, move on, change the companies description to something else, and so on and on. In this respect, I am calling upon the office of the Registrar of Companies to fully computerise and be able to detect any suspicious records that come their way in terms of registering of companies.

Mr. Temporary Deputy Speaker, Sir, there is the issue of winding up of companies in the current Act, which is very complex. A simplified way of winding up companies ought to be found. When a company has ceased to exist, it should be easy for the directors to wind it up without the complications of going through court processes. We also have the problem of directors of companies hiding behind the corporate identity, and getting away with all manner of ills.

Mr. Temporary Deputy Speaker, Sir, in company law, under the common law, we have the doctrine known as "lifting the veil". Under this doctrine, if hon. Obwocha was a director of a company and committed acts and omissions which are prejudicial shareholders, he cannot hide behind the corporate identity of the company. We can remove the veil behind which he is hiding, and deal with him as an individual. Our Companies Act is not very clear on this. Quite often, we have had people arguing and claiming to be different entities from the companies, even when we know that there is no difference between them and the company. They argue that it is the company that committed and offence, yet we know that there is no difference between him or her and the company he or she is trying to run away from. We need a simplified legal structure that will hold persons legally squarely accountable if and when they use corporate liability to commit transgressions that hurt other Kenyans. I know that my colleague from the relevant Ministry is not here, and so, on behalf of the Government, I support the spirit of this Motion.

Mr. J.M. Mutiso: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this important Motion, which seeks to amend some relevant sections of the Companies Act. The Motion is intended to help in the functioning of the Attorney-General's Office as far as the Registrar of Companies' office is concerned, and in line with the modern trend in information technology.

In this era of globalisation and intense business interactions, it is important that all contracts preserve integrity. This country is lagging behind, and particularly the Government departments, and even this Parliament. If you visit the Attorney-General's Office, the department of company affairs, you will be struck by the volumes of files piled up on each other. You will wonder when the

staff members search for important documents. I dare say that the running of the office of the Registrar of Companies at the Attorney-General's Department is cumbersome and outdated.

In the month of March, I had the privilege of attending a conference in Seattle, Washington.

On my way back, I met a medical doctor who happened to have some contacts in this country. She wanted to open a charitable organisation to help slum children access basic medical services. When she came to this country, through an arrangement by her home country, she had agreed with the organisation that was sending her here on a particular name to be used as the logo of the charitable organisation. On landing here, she approached the registrar's office and, to her utter dismay, it took her three weeks to find the documents in the hands of the registrar. Moreover, because of the bureaucracy and corruption in the department, she was told that just because of a mere "s" in the name which was proposed, it was not possible to register that company.

Mr. Temporary Deputy Speaker, Sir, this is just one isolated incident. We have other isolated incidents, which have also affected the business environment in this country. I do remember that sometime back in 2001, we also had a foreign investor who wanted to invest in the Kenya Railways Corporation. He happened to come to this country with an intention to invest and create business opportunities in this country. However, on approaching the Registrar of Companies in the Attorney-General's Office, he received the same rude shock. First, he was told that in order for the company to be registered, he needed to pay a bribe. Secondly, registration would depend on the shares he would be able to give to those who were assisting him to establish his company. This is outright corruption.

Information is very important because it is used to make intelligent decisions. No one would be able to make a business decision without information. Information is power. Apart from the Companies Act being outdated and having been revised a long time ago, there are particular important sections which should be amended to reflect the modern trend in e-commerce. For example, we have Section 34 which deals with negotiable instruments. Negotiable instruments are the tools of trade as far as settlement of debts and pledges are concerned. Under this category, we have cheques, bills of exchange and promissory notes.

Most developing countries have already put their contractual instruments in an electronic form. I do remember one time when we were negotiating to purchase the second fleet of our Boeing 737, and when I was in Washington. We happened to pay a visit to the Boeing Company. It told us that it took the Kenyan team about three months to be able to sort out technicalities, merely because the systems we use here in relation to negotiable instruments are not in conformity with electronic forms. Therefore, Section 34, which deals with negotiable instruments, needs to be amended, so that electronic forms of negotiable instruments like bills of exchange and promissory notes can be used by contracting parties.

Mr. Temporary Deputy Speaker, Sir, I would also like to comment on the issue of share capital and debentures. Disclosure requirements are a must, particularly when we have companies being quoted in the standard stock exchange markets. I am not very conversant with our Capital Markets Authority Act, but I do believe it has a reflection of this inability of the Companies Act. We have had many cases before our law courts which have failed on the mere grounds that the documents in which the companies had entered into contract prior to a particular deal were not on a website. For example, if a multinational's information is available on a website, or the world-wide-web (WWW), somebody may subscribe to a prospectus, get information and subscribe to buy a number of shares in that company, just to realize later that he was dubbed. Even when you approach the courts, you are not able to get justice because our courts system does not admit evidence in electronic form. Therefore, besides amending the Companies Act, we need the Attorney-General to bring a comprehensive Act---

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

The Temporary Deputy Speaker (Mr. Poghisio): What is your point of order, Mr. Khamasi?

Mr. Khamasi: Mr. Temporary Deputy Speaker, Sir, is it in order for Mr. Osundwa to carry a glass of water and go on showing it to us here? This could be a weapon!

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Osundwa, what do you have?

Mr. Osundwa: Mr. Temporary Deputy Speaker, Sir, I found this glass lying here. I am also wondering why it is here. It is a dangerous weapon.

Mr. Khamasi: Mr. Temporary Deputy Speaker, Sir, he had it. He was showing it to us.

The Temporary Deputy Speaker (Mr. Poghisio): Order, Members!

Mr. J.M. Mutiso, proceed!

Mr. J.M. Mutiso: Mr. Temporary Deputy Speaker, Sir, I was saying that the Attorney-General should be able to bring a comprehensive data protection Act so that we are able to amend the other relevant Acts besides the Companies Act.

Mr. Temporary Deputy Speaker, Sir, admissibility of evidence is a very important aspect of execution of a contract. If you enter into a contract, and that contract cannot be enforced on a mere technicality, it is very critical that there will be very few investors coming into this country because of lacuna in the law. Therefore, it is incumbent upon the Attorney-General to bring the relevant comprehensive Bill that relates to data protection.

Mr. Temporary Deputy Speaker, Sir, I agree with Mr. Obwocha on the question of the Registrar of Companies. Some of the scandals; corruption-related cases or investigations, for example, the Goldenberg scandal, would not have taken place if we had the registration of members of a company done in electronic form.

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

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

It is very important for the people behind that company to be listed and known publicly, because the contract involved a substantial amount of public funds. The people behind that company should be known. Last night, I met with some people who told me that the Government has not been able to---

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Eric Sungu!

Mr. Sungu: Thank you, Mr. Temporary Deputy Speaker, Sir. Although my name is Eric Sungu, I prefer to be called Gor Sungu for purposes of Parliament.

The Temporary Deputy Speaker (Mr. Khamasi): Order! Do not challenge the Chair!

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, I wish to congratulate the Mover of this Motion, Mr. Obwocha, because it is timely. I remember, when I was a young man back in 1974, just before I went to the University of Nairobi, I was a computer programmer. Those days, they used to tell us that computers were things of the future. Right now, as we are talking, computers are still things of the future. The enormous developments that have occurred within that industry, to the extent that our daily lives have changed, are tremendous. Our laws must take cognisance of those changes, so that they come in line with the modern world.

Mr. Temporary Deputy Speaker, Sir, may I just mention that day in, day out, we hear of

various companies that have been used to steal money from the public. Even in this House, we have often wondered who owns which company. If you go to the Office of the Registrar of Companies, you will never find those records, particularly if those companies were, or are being owned by the big cats. That anomaly could only be addressed if the Companies Act is changed. The world is becoming a global village. There is no way we, as a country, can survive in that global village if we do not modernise our laws to go in line with modern developments such as computerisation.

Mr. Temporary Deputy Speaker, Sir, a while ago, I mentioned some companies which have been used to siphon monies from our coffers. For example, recently, it was mentioned that a company known as Anglo-Leasing Company of the United Kingdom was used as a conduit for siphoning approximately Kshs91 million from our Treasury for non-existent purposes, and for a contract that had not been properly signed. The money was being found through single sourcing and that kind of thing. That kind of thing could be avoided if we change the Companies Act to bring it in line with modern developments, so that we know for certain that that company belongs to so-and-so. Many overseas registered companies are being used in Kenya to siphon monies from our Treasury. The aim should be to catch the individuals behind those companies. The current laws, as they are, allow individuals to hide behind companies, so that they could say, for example: "Yaya Centre is a limited liability company! I do not have control over it", when, actually, he is the one who owns it! Therefore, if any money goes to Yaya Centre, then it obviously belongs to the person because he controls that company. You will find that various individuals would use that kind of thing to siphon out monies which belong to the public.

Mr. Temporary Deputy Speaker, Sir, some of my colleagues have mentioned companies that have been involved in the Goldenberg scandal. Banks like Trust Bank, Pan African Bank and so on-- The individuals behind those banks went scotfree and the monies that belong to the public went down with the banks! It is time we changed the Companies Act to bring it in line with modern business practices, so that we could catch those criminals before they disappear with our monies.

I remember, for example, Kamlesh Pattni had a string of companies! Over 100 companies have been mentioned. How were those companies registered? Is it so easy to register many companies under one individual? For purposes of what? If one was to involve himself in honest trading, one holding company is enough. That holding company can be traced to an individual. But a string of companies can only be formed with ulterior motives! It is to use those companies to acquire monies illegally. I believe that the Mover of this Motion wanted the Companies Act changed so that that authority will allow him to bring in amendments to this Act, to bring it to line so that these loopholes are sealed, and so that those who are behind some of the looting that has gone on in this country can be forced to take personal responsibility for their actions; and that these companies are not used as smoke screens by these criminals to siphon out money from the public coffers.

Mr. Temporary Deputy Speaker, Sir, some of these companies are actually open today and once they do one transaction, they are closed the following day. In the business world when I was an insurance investigator, we used to call them "fly-by-night companies." They are opened today and tomorrow, they are closed after one big transaction. Once the file is closed, it is often quite difficult to trace the owners of these companies. I believe that when the authority of this House is obtained by the way of passing this Motion, this loophole again will be sealed.

There are even some companies called "shell companies", which are operated by individuals for the purpose of carrying out criminal acts. The rest of the world has woken up to these facts, and yet in Kenya, we are still sleeping.

Mr. Temporary Deputy Speaker, Sir, 1948 is approximately four years before I was born. That is when the Companies Act operating in Kenya, as of now, was passed and I am a Member of

Parliament who is now approximately 50 years old. I think it is time now that we must change these laws. A lot of water has passed under the bridge since 1948, and we must know that a lot of changes have occurred. Tremendous improvements and progress have been made by humankind. We know, for example, that human beings have even gone into space. Computers are now used everywhere; it is the modern technology that is available. A law made in 1948 could not have foreseen what is going on in the modern business world to have taken into consideration those new developments. Therefore, it is necessary for this law to be brought up to date.

Mr. Temporary Deputy Speaker, Sir, even if you go to a bank now, you can get an instant transfer of cash from here to New York, which was not possible in 1948, or even in the 1960s or early 1970s. It would take you some weeks to transfer money then. I remember, when I was still a young man and if you had an account in Kisumu and you were in Nairobi and you needed money, you would go and queue at the mother bank here for a long time. Sometimes it would even take you days to access your cash. Today, I have an account in Kisumu and I can access that account in Nairobi using a small smart card which you just insert into a wall and money comes out; that is, if you have the money. That is a wonderful development. But we must be able to control that kind of development using our laws. These things can be misused.

Therefore, it does not matter what has been going on. If the Governments that have been ruling this country for all these decades have not woken up, Members of Parliament have woken up. In that respect, I want again to congratulate hon. Obwocha for bringing this Motion to the Floor of the House, because our laws must be modernised to take cognisance of the developments that are right before our eyes, and we are seeing. We are using these things daily and yet we forget that we do not have laws to control them, to make them effective and to prevent any person with bad intentions from taking advantage of the same.

Mr. Temporary Deputy Speaker, Sir, e-commerce is now the order of the day; it is a reality. We must now update our laws to catch up with the times because we live in the present and not in the past. I want to say here that when this Motion is approved, I hope that the Mover will provide clauses

that will bring instant access to information with regard to registration of companies. More often than not, you find that files are missing at the Registrar's office and this is because modern technology has not been utilised to ensure that we can have access to information. You may be aware that the right to access information is now a human right. That is a right that can also help us unearth all acts of corruption and the people behind them. Only the other day, if you wanted to trace a company which belonged to a fat cat and which had been involved in some shady deal, you would not trace those files in the Registrar of Companies' office. They were kept in a special cupboard, which was only accessible to the Registrar. These are some of the ills that the Minister must address.

With those few remarks, I beg to support the Motion wholeheartedly.

The Temporary Deputy Speaker (Mr. Khamasi): We seem to be running out of contributors. The Minister said that he had wanted to respond. I will give you the opportunity to do so.

The Minister for Finance (Mr. Mwiraria): Thank you, Mr. Temporary Deputy Speaker, Sir. I want to state quite clearly that the Companies Act, Cap. 486, is the responsibility of the Attorney-General. As part of our collective responsibility, I will accept the challenge since I have been put down here as the Responding Minister, to respond to this Motion.

I want to state clearly that the Government of Kenya is fully aware that the present Companies Act is an old law dating back to 1948, and that we need to amend it to make it more up-to-date. Indeed, a lot of work was done about four years ago. There was a team, and I think Mr.

Obwocha will remember this. There was a time when we appointed, through this Parliament, at the suggestion of the Attorney-General, very many working parties on legal reforms. One of the working parties dealt specifically with the review of the Companies Act. The proposed new Act exists and it is in the Attorney-General's Chambers. I propose that after today's meeting, we discuss the implementation, or at least the revisiting, of that law with the Attorney-General.

Having said that, let me also add that a good Companies Act is crucial for the future development of this country. Kenya is aspiring to be one of the rapidly developing countries on the African Continent. We are already laying down the foundation for that, and once it is properly established, rapid development will take place in Kenya.

Mr. Temporary Deputy Speaker, Sir, under the NARC Government, we have decided to target poverty for eradication as our first priority. To achieve that, under the Economy Recovery Strategy for Wealth Creation and Employment (ERSWCE) policy, we have established a two-pronged approach to development. First and foremost, we are targeting the agricultural sector, because that is what the majority of Kenyans depend on. In the agricultural sector, the area that is doing best is that of horticulture and floriculture. This area is dominated by small-scale and large-scale companies, which need an enabling law to be able to operate effectively. So, we need to add value to other cash crops such as coffee, tea, pyrethrum and tobacco.

For that reason, we shall need other companies to undertake value addition to these commodities, to make sure that we no longer buy English tea from our supermarkets, which is made of Kenyan tea that is blended with tea from China, Colombo and other places. So, we really need to have Kenyan brands that we will all be proud of, and which will be known the world over as Kenyan, whether in tea or coffee or whatever commodity. For this reason, we need to make a law that will make it easy for people to establish companies and get justice in courts of law when they are wronged. It is a pity that after a working party finished its work, this law was shelved. I want to assure this House that we are keen in getting the old 1948 law re-visited, and a new law made as soon as possible.

Mr. Temporary Deputy Speaker, Sir, in the industrial sector, a few years ago, when I was a young statistician, Kenya, Ghana, Korea and Portugal were almost at par in terms of *per capita* income, the Gross Domestic Product (GDP). Today, we have been left far behind because we have lost the development momentum. The NARC Government wants to create the right enabling environment. That will include many things, such as a one-stop centre for registering and starting business in Kenya. More importantly, it requires a very effective law. A company law will assist all investors to establish companies and operate smoothly within the country. So, we feel the Companies Act, which is part of the business environment in the country, needs to be changed and amended as soon as possible.

Mr. Temporary Deputy Speaker, Sir, I am very happy today. I have just come from a ceremony where I signed, with a group of five donors, a grant agreement for Kshs1.5 billion. This amount of money is being offered by Sweden, Denmark, Norway, Germany and the Netherlands, to support the governance, justice, law and order sectors in our country. With this kind of support from outside the country, we should be able to spend Kenya's own resources to review most of our laws. In fact, we expect that following the review of the Constitution, many of our Kenyan laws will need to be reviewed. So, as we review the others, we are giving priority to the laws that establish an enabling environment for the running, operation and establishment of businesses in this country.

Mr. Temporary Deputy Speaker, Sir, Kenya cannot be an island in a global village; it has to join the rest of the world. It is for this reason that I really support Mr. Obwocha's Motion, which is talking about e-commerce world. People around the world are shopping through e-commerce and e-mail, and Kenya needs to join the rest of the world. We can only do it if we have the right laws;

laws which will enable us do business that way. I am happy to say that we have already made a start in the use of e-commerce. This House, three years ago, approved a law which governs the operations of the Nairobi Stock Exchange (NSE), which helps people to buy and sell shares without necessarily having to carry share certificates. Today, all this is being done through a computer. It is a clear indication that Kenya is ready for e-commerce and information technology. So, we, as a Government, will ensure that we change the Companies Act to make sure that the business operations in Kenya are made modern and up-to-date.

Mr. Temporary Deputy Speaker, Sir, one of the problems that we, as a nation, face is the use of our courts to enter injunctions to stop proper business operations. What do I mean by this? It is very common for someone to borrow and give collateral, in whatever form, and for that same person to fail to pay the debt accrued. When they fail to pay the debts and they are taken to court, the first thing they do is to run to court to enter an injunction and say that their property cannot be sold. They ask the court to stop the sale of those items. What follows thereafter is that the matter is held in abeyance; the persons do not repay their debts; interest rates continue accumulating; penalty charges also accumulate, and at the end, the persons who entered injunctions in court so that they cannot be forced to pay the debts end up, perhaps, paying three, four or five times what they borrowed. I get such cases almost on a daily basis. There is one person who borrowed Kshs900,000 from a financial institution and the institution is demanding to be paid Kshs55 million.

Mr. Temporary Deputy Speaker, Sir, we really need a law which will protect people who lend out money from misuse of court injunctions. I rose up to say that I support the Motion and the Government will, in fact, do its best to make sure that a new law is enacted as soon as possible.

With those few remarks, I beg to support the Motion.

Mr. Obwocha: Thank you very much, Mr. Temporary Deputy Speaker, Sir. I would like to thank my colleagues who have contributed to this Motion. They are Mr. M. Kariuki, who ably seconded it; Prof. Oniang'o; Mr. Katoo; Mr. Wetangula; Mr. M. Mutiso, Mr. Sungu and finally, the Minister for Finance, Mr. Mwiraria. What has come out clearly is that there is need to amend and repeal the Companies Act, Cap.486. We made contributions to the formation of companies, and they must be genuine. In amending this Act, the Government must make sure that it comes up with provisions to make sure that when companies are being formed, they are genuine. Let us computerise our record-keeping system in this era of files missing

Because of business, let us get alternative methods of solving disputes, where litigation often takes a long time and is expensive. Consideration ought to be given to other means of dispute resolution, such as arbitration and mediation. If we do this, the long processes of dispute resolution will end. The courts in this country have frustrated businesses. Many cases which were filed in court in the early 1990s have never been resolved.

On the list of the National Bank of Kenya (NBK) debtors, which was laid on the Table by the Minister for Finance, those people have not repaid their loans because there are court injunctions. So, the NBK is facing liquidity problems because people have refused to repay the loans and have filed court injunctions, and yet, the judges are not passing judgement. So, arbitration should be one of the issues to be incorporated in this Act; if it is there, it is not working.

I would like to agree with my colleagues that we need to separate the board and the shareholders because there is a conflict of interest. The same shareholders are the same people in the board who manage or receive the report for the management. This should be addressed.

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

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

I cannot agree more on the role of auditors, leave alone Enron in the United States of America (USA) and Parmalat in Italy. In our country, one of the leading auditors one could access was an hon. Member of Parliament, and yet people lost money through him.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of information, Mr. Temporary Deputy Speaker, Sir. May I inform the hon. Member that one leading scholar described auditors as conveyor-belts for fraud.

(Applause)

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, there should be a law to make sure that they are not conveyor-belts for fraud. I do not agree with him, but I think a law should be there to make sure that, that does not happen.

Mr. Temporary Deputy Speaker, Sir, on receiverships, I totally agree with my colleagues. Which single company have receivers turned around? We need to be told. There is not any! So, there should be a law on the qualifications of the receivers. Do not just put anybody there, just because he or she happens to be from Central Bank of Kenya or a close relative. We need qualified managers and people who know economics and business to turn the business around, and then hand it over to the shareholders. I cannot agree more with the disclosure of the companies directors. I want to agree with Mr. J.M. Mutiso that the Attorney-General needs to bring a data protection Act, to make sure that all that is put together. If that information is kept in an electronic form in the Attorney-General's Chambers--- Maybe, the courts will not agree to take it as evidence. So, we also need that to be harmonised.

Mr. Temporary Deputy Speaker, Sir, the individuals hiding behind the companies, we should know---

An hon. Member: Lifting the veil!

Mr. Obwocha: Yes, lifting the veil. That needs to be addressed in this Act. We even need to address the issue of how many companies can one own! How can a person own 100 or 200 companies, honestly? Is that genuine? I know you want to do business, but I believe 20 or 30 companies could do. A total of 100 companies to one man is unbelievable! It is true that such cases are there.

Mr. Temporary Deputy Speaker, Sir, in the Companies Act, the process of registration, filing of returns, operations and winding up needs to be transparent and simplified. We need companies that are accountable to the shareholders and the people of this country. We need to address cases where files are missing and companies are being formed to defraud Kenyans. That is the bottom line of this Motion.

I want to thank everybody who has contributed to this Motion. I want to thank the Government for supporting this Motion, and I hope, as the Minister for Finance has said, the responsibility is under the Attorney-General. But, through collective responsibility, he should move with speed and let the Attorney-General amend this Act. In any case, there is a task force headed by Mr. J.N. King'arui, which has brought up recommendations. So, I do not see what the Government will be waiting for.

With those few remarks, I beg to move.

(Question put and agreed to)

Mr. Speaker: Next Order!

ESTABLISHMENT OF MECHANISM FOR
RECRUITMENT INTO PUBLIC SERVICE

Mr. Wambora: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion for the attention of the Ministry of State, Office of the President:-

THAT, taking into consideration that all constituencies/districts/regions have many school-leavers and unemployed youth; aware that in the past, some Kenyan communities were left out or were under-represented in recruitment of their youth into the public sector; this House urges the Government to put up a mechanism to ensure that recruitment into the Civil Service, Armed Forces, Police Force, Prisons Department, National Youth Service and other public institutions are not only based on qualifications, merit, competence, *et cetera*, but also on equitable constituency/district/regional distribution in relation to their respective population densities.

Mr. Temporary Deputy Speaker, Sir, the reason why I was motivated to move this Motion was mainly because of what has happened over the years, since 1963. What happened at that time was that the people in power, like Ministers, were the ones who were having all the major recruitments done in their constituencies, and we are saying, enough is enough.

(Applause)

That must stop because Kenya belongs to all of us. Whether you are Minister or a Back-bencher, we should have equitable distribution in terms of recruitment and employment.

Mr. Temporary Deputy Speaker, Sir, in fact, this Motion comprises of two major aspects. One is the recruitment into the various institutions, especially public ones like the Kenya Police College, Prisons College, Administration Police Training College (APTC), various medical colleges, armed forces training institutions, teacher training colleges and national polytechnics. We are saying that the significance of suitability to recruitment is the fact that it has become the gateway to middle-level Government employment. We know that when you are recruited to a police college or to the APTC, you will be employed thereafter. Most of these institutions employ the people they recruit after they finish college. So, when you deny certain regions, districts or constituencies equitable chances to these colleges, you are denying those kids middle-level Government employment.

Mr. Temporary Deputy Speaker, Sir, number two is that a major consequence for failure to get access to these institutions is lack of access to critical skills. You miss critical skills which are critical for our youth to get employment. The other consequence is that there is no access, as I have said, to skills and public jobs in the various Government sectors. Then we are talking about the other aspect of the Motion, which is addressing itself to employment in all levels of Government. We are talking of the unskilled cadre, the skilled cadre, the middle-level cadre and the top cadre in the Civil Service.

Mr. Temporary Deputy Speaker, Sir, now, there are two various types of inequities in employment. We have some which are based on pure nepotism, not even regionalism. A managing director wants to recruit people from his home; that is, his relatives. We see inequity being

applied through sheer tribalism and ethnicity, where people from his or her place are going to "eat", and not from the other areas. We find inequity in form of policies of those in power. People in power would like to tilt the power balance in the armed forces or in the police force. So they concentrate the recruitment in their regions so as to tilt the balance of power. We see terrible inequity in employment based on favouritism for the powerful, the influential Ministers and public officers. This is the kind of discrimination in employment and recruitment in the public sector which we are discouraging. We are saying that it should stop because it has serious consequences.

One of the consequences for failure to employ equitably include: It would lead to political instability. Those who feel discriminated are likely not to support the Government of the day. So, through equitable recruitment, we shall be able to bring about more political stability in the country. Secondly, there will be failure to utilise all Kenyan talents. When you do not recruit across the country, you are failing to tap all the talent. This is why we find countries like Japan, USA, Germany and other G7 countries beating us to the game, because they even recruit from other nationalities overseas. Thirdly, there is the problem of the vicious circle whereby if today you are in power and tomorrow I will be in power, I would also like to remedy the inequity which had been exercised over the years. The vicious circle of unfairness continues for a long time.

Mr. Temporary Deputy Speaker, Sir, since time is short, I would like to address myself to the way forward. I do not know whether I will have enough time to address this issue so that next Wednesday, I will just call upon the Seconder of the Motion to contribute. The objective criteria for maximization and optimization of human resources which is merit, experience and suitability must not be used as an excuse to discriminate on the basis of regions, constituencies---

The Temporary Deputy Speaker (Mr. Poghio): Mr. Wambora, you started moving the Motion today, so do not try and speed yourself. Continue at your normal pace.

Mr. Wambora: Thank you very much, Mr. Temporary Deputy Speaker, Sir. We are talking about equitability which is desirable and necessary for ensuring all qualified suitable Kenyans have access to critical skills. We are advocating for equitability as a way forward, so as to ensure that there is access to

influential public institutions which are operated with taxpayers' resources. We are advocating for equitability in recruitment to the Public Service so that our unemployed youth can access all levels of the Government required standards. We are advocating for this equitability in order to ensure that there is national, political and social stability, which is a necessary prerequisite for economic development of the country. We are advocating for equitability---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghio): Order! Mr. Wambora, you will have ten more minutes next Wednesday, when we shall continue debating the Motion.

It is now time for the interruption of business. The House, is therefore, adjourned to this afternoon, at 2.30 p.m.

The House rose at 12.30 p.m.