

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 17th May, 2007

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the Constituencies Fund Committee on nomination of Members of the National Management Committee of the Constituencies Development Fund pursuant to Section 27(4)(b) of the Constituencies Development Fund Act 2003.

(By Mr. C. Kilonzo)

NOTICE OF MOTION

ADOPTION OF REPORT ON APPOINTMENT
OF CDF NATIONAL MANAGEMENT
COMMITTEE MEMBERS

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, this House adopts the Report of the Constituencies Fund Committee on the appointment of members of the National Management Committee of the Constituencies Development Fund pursuant to Section 27(4)(b) of the Constituencies Development Fund Act, 2003 laid on the table of the House today, Thursday, 17th May, 2007.

QUESTIONS BY PRIVATE NOTICE

OUTBREAK OF DIARRHOEA
IN TULWET DIVISION

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

(a) Is the Minister aware that over 40 people from Umoja in Tulwet Location were hospitalized on 30th April, 2007 suffering from diarrhoea and vomiting?

(b) What was the cause of the ailment?

(c) What measures is the Minister taking to avert such occurrence?

The Assistant Minister for Health (Dr. Kibunguchy): Mr. Deputy Speaker, Sir, this Question was answered substantially on Tuesday, but there was only one issue where I was asked to table the report from the Government Chemist. I would like to table the report now. The report shows that the analysis of any toxic substances was negative.

(Dr. Kibunguchy laid the document on the Table)

Mr. Cheboi: Mr. Deputy Speaker, Sir, I have not had the opportunity to look at the report. What is the incubation period for dysentery because that is what the Assistant Minister had alluded to previously? What are the symptoms?

Mr. Deputy Speaker: Mr. Clerk, could you pass on the document laid on the Table to Mr. Cheboi while the Assistant Minister answers that question?

(The document was passed on to Mr. Cheboi)

Dr. Kibunguchy: Mr. Deputy Speaker, Sir, the hon. Member asked about the incubation period for dysentery. That is a very difficult question to answer because dysentery is actually a disease. So, a disease cannot have an incubation period.

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

Mr. Deputy Speaker: What is it? The doctor has already given an answer.

Mr. Sambu: Mr. Deputy Speaker, Sir, it does not matter that the doctor is here. We are equal when we are in this House. When a mosquito bites you it takes a few days before the symptoms become visible. People drink this water and they start to diarrhoea immediately. This is the basis of the Question.

Mr. Deputy Speaker: I think the gist of the Question is this: After the intake of the water, how long will it normally take before dysentery starts attacking?

Dr. Kibunguchy: Mr. Deputy Speaker, Sir, it depends on the severity of the pathogen involved. In this case, it takes a few hours to a few days.

Mr. Deputy Speaker: I want to say that this Question was answered. The document has been laid, therefore, we will not waste more time on it.

Next Question.

CLOSURE OF SCHOOLS IN MT. ELGON DISTRICT

Mr. Ojaamong: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Administration and National Security the following Question by Private Notice.

(a) Is the Minister aware that 30 primary and five secondary schools in Kopsiro Division of Mt. Elgon District have not re-opened for learning due to insecurity?

(b) Is he further aware that despite the amnesty given by the Minister, no gun has been surrendered?

(c) What is the Minister doing to ensure that security is guaranteed to facilitate re-opening of the affected schools?

(d) What further steps is the Minister taking to ensure that all suspected criminals are apprehended and all guns surrendered?

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

beg to reply.

(a) I am not aware that 30 primary and five secondary schools in Kopsiro Division, of Mt. Elgon District have not re-opened for normal learning. However, I am aware that five primary schools and one secondary school in Chebyuk Settlement Scheme and three primary schools in Enea Location have not re-opened because the students have been re-admitted in neighbouring schools, because the settlement scheme has been vacated.

(b) I am aware that no guns have been surrendered despite the amnesty given.

(c) The following steps have been taken by the Government to maintain law and order in Kopsiro Division of Mt. Elgon District:-

1. Additional Security personnel have been deployed in the affected areas for effective day and night patrols.

2. The Government has provided six additional motor vehicles to facilitate quick response for the officers.

3. To resolve the land dispute at Kopsiro Division, the allocation of land at Chebyuk Settlement Scheme has been nullified.

(d) In order to ensure that all suspected criminals are apprehended and all guns surrendered, the Government has taken the following steps:-

1. Lists and photographs of wanted criminals have been circulated to the members of the public to assist in identifying and tracking them in order to have them arrested and charged in a court of law.

2. A cash reward of Kshs50,000 has been offered to anyone volunteering information leading to the recovery of any firearms.

3. Peace initiatives have already been put in place between the warring groups.

4. Close co-operation with neighbouring districts, and Uganda, to arrest and hand over known criminals who might have committed crimes and fled the country has also been undertaken.

5. Community policing has been enhanced to sensitize the members of the public on the end results of harbouring criminals.

6. A total of 99 suspects have so far been arrested and charged with various offences including murder and robbery with violence among others.

Mr. Ojaamong: Mr. Deputy Speaker, Sir, in part "a" of the reply the Assistant Minister says he is not aware. This is because the Government has run away from Mt. Elgon and left the people to govern themselves. First of all, the District Education Officer has fled. The District Commissioner does not stay there. The heads of departments have run to Bungoma where they are staying. All the teachers have fled. So, the Assistant Minister cannot be aware of what is happening there. Since the Provincial Commissioner is the Chairman of the Provincial Education Board, is the Assistant Minister aware that he has never convened a Provincial Education Board meeting or ordered his DC to call a District Education Board (DEB) meeting to discuss the issue of education in Mt. Elgon? Are you aware he has not done so?

Mr. Munya: Mr. Deputy Speaker, Sir, I did not get his last comment.

Mr. Deputy Speaker: Just to paraphrase, he is asking you whether you are aware that no DEB meetings take place and that the PC has not called DEB meetings to address the issue of the schools. Mr. Ojaamong, have I put it correctly?

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

Mr. Munya: Mr. Deputy Speaker, Sir, I do not have any information as to the convening of a DEB meeting because that falls under a different Ministry. I was explaining that nine schools have closed and most of them are in the settlement scheme which has been nullified and people moved out so that the land problem that has been causing the insecurity can be resolved. The other schools are running, but the progress is slow. The attendance is not normal because there are

students who have been unable to go back to those schools. The schools are running, but with very low attendance. We are encouraging the parents to send them back because there is enough security now to take care of the situation. These other schools will be opened as soon as the issue of ownership of land is resolved. Right now, a committee of chiefs and the Provincial Administration is sitting to sort out the legitimate land owners so that they can go back to the settlement. I am told that the exercise could come to an end next week.

Mr. Deputy Speaker: I will give a chance to the Shadow Minister for Security to ask his question.

Maj-Gen. Nkaiserry: Mr. Deputy Speaker, Sir, you heard the Questioner say that 30 primary schools, five secondary schools and two colleges were closed because of insecurity. The Assistant Minister has said that he is not aware of this. We have the District Security Committee which is supposed to inform the Office of the President about the security situation in the area. We are aware that the DEO has run away. We are aware that over 10,000 students of primary schools are not in school. We are aware that 600 secondary school students are not in school because of insecurity. We are also aware that the Minister gave a directive, when he visited Mt. Elgon, that five Administration Police officers will be attached to an assistant chief and that ten Administration Police officers should be attached to a chief to maintain security, but this has not taken place. This Assistant Minister is telling this House that he is not aware. I want to ask a question for the sake of the security of our people. This is very important. This Government is not aware of anything. If it is not aware that 10,000 students are not in school, what is it aware of?

Mr. Munya: Mr. Deputy Speaker, Sir, I said that I am not aware about 30 primary schools. What we are aware of is that nine schools are closed. It is misleading to say that 30 schools are closed. The actual number is nine schools; that is eight primary schools and one secondary school. I am not happy about this. These schools are in the settlement scheme which has disputes. People have been vacated from the settlement scheme for purposes of resolving the land dispute in that particular area. The students from these schools have been re-admitted in the neighbouring schools. What we have is a situation of low turn-out in those other schools because of that fear. We are encouraging them to go back because the situation has been resolved.

Mr. Deputy Speaker, Sir, all the chiefs in the area have been assigned ten Administration Police officers. We have also opened five new Administration Police (AP) camps and one General Service Unit (GSU) camp in the area. The situation is under control. We are telling the parents not to fear. They should take their children back to school.

Mr. Sambu: That is a lie!

The Assistant Minister for Planning and National Development (Mr. Serut): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, Mr. Serut! There is nothing like a point of information during Question Time!

Mr. Sambu, I heard you tell the Assistant Minister that it was "a lie." That is unparliamentary language! Although you were not on the Floor, could you withdraw that remark?

Mr. Sambu: Mr. Deputy Speaker, Sir, I withdraw and apologise.

Mr. Mwandawiro: Bw. Naibu Spika, hali ambayo tunaisikia kutoka kwa Serikali inasikitisha sana. Shule zinafungwa, watu wanalazimika kuhama makao yao na huku Waziri Msaidizi anasema kwamba wanahakikisha kwamba kuna usalama katika Mlima Elgon. Je, hii Serikali imeshindwa kuwahakikishia watu wa Mlima Elgon usalama au inakataa kuwapatia usalama?

Hon. Members: Shame! Shame!

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

Mr. Deputy Speaker: Order, hon. Members! Let the Assistant Minister answer the

question!

Mr. Munya: Mr. Deputy Speaker, Sir, it is the same question being asked differently. I have already given the measures that the Government has taken in order to restore security in that place. I have given elaborate measures that we have taken, including opening up five new AP camps and a GSU camp. That is why peace has been restored. I have already said that 99 suspected criminals are now facing various charges in court. Those charges range from robbery with violence, murder, incitement--- I have a long list! I do not need to take the time of the House to read it out. We have taken action and that is why the situation is normalising. We urge the parents not to fear and take their children back to schools.

The issue of the settlement scheme is being sorted out. Within a week, we will know who are the genuine land owners. They will be given security to go back to their pieces of land, as the Government thinks of what to do with the other people who may not have land.

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

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

Mr. Deputy Speaker: Order, hon. Members! Mr. Angwenyi, take it easy! Let us first hear Capt. Nakitare's point of order.

Capt. Nakitare: Mr. Deputy Speaker, Sir, the Assistant Minister is misleading the House! Is he aware that the exchange of fire has been transferred from Mt. Elgon District to Trans Nzoia District? Right now, people are fighting between Suam and Koisogos! Is he in order to tell this House that the situation has improved?

Mr. Deputy Speaker: Order, Capt. Nakitare! That is not a point of order! That is a question!

Last question, Mr. Ojaamong!

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

Mr. Deputy Speaker: Mr. Angwenyi, what is it?

Mr. Angwenyi: Mr. Deputy Speaker, Sir, is the Assistant Minister in order to keep on repeating an answer that he gave us six months ago, when the problem in Mt. Elgon District started? Many people have lost their lives since he gave an answer claiming that they were in control! Is he in order!

Mr. Munya: Mr. Deputy Speaker, Sir, I am not giving the same answer. But if a Question similar to the one I have answered is asked, facts do not change! On this particular Question, I am explaining about primary schools and the issue of security in Mt. Elgon District. I was asked about the issue of security in Mt. Elgon District. I do not know whether Mr. Angwenyi expects me to manufacture a different answer, so that I can satisfy him!

Mr. K. Kilonzo: Jambo la nidhamu, Bw. Naibu Spika.

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

Mr. M. Maitha: Mr. Deputy Speaker, Sir, mine is a question! When the Assistant Minister said that pupils have enrolled in the neighbouring schools---

Mr. Deputy Speaker: Are you on a point of order?

Mr. M. Maitha: Mr. Deputy Speaker, Sir, I said I am asking a question!

Mr. Deputy Speaker: Lakini ulikuwa umesema: "Jambo la nidhamu!"

Mr. M. Maitha: Mr. Deputy Speaker, Sir, it is Mr. K. Kilonzo who stood up on a point of order!

Mr. K. Kilonzo: Bw. Naibu Spika, niruhusu nieleze jambo langu la nidhamu!

Mr. Deputy Speaker: Order, Mr. K. Kilonzo! Will you sit down?

Proceed, Mr. M. Maitha!

Mr. M. Maitha: Mr. Deputy Speaker, Sir, the Assistant Minister has said that pupils have

been enrolled in neighbouring schools. We have been told that the District Education Officer (DEO) has run away from his station! What is the state of the teachers? Who is in charge of education in that district?

Mr. Deputy Speaker: That is a good question!

Mr. Munya: Mr. Deputy Speaker, Sir, it is important to clarify that the students who have been enrolled in neighbouring schools are those from Chebyuk Settlement Scheme. It is the only one in Mt. Elgon District. It is only in the settlement scheme where schools have been closed because people have been vacated to verify ownership of land. It is a settlement scheme. So, the situation does not affect the entire district.

It is alarming to say that the DEO has run away from his station. All the education officers are there. In fact, teachers in other schools are there. It is only the eight schools that are situated in the settlement scheme that have been vacated. The DC is in his station. I talked to him this morning before I came to answer this Question.

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

Mr. Ojaamong: Mr. Deputy Speaker, Sir, I would like to give an indicator to show that the Government is not in Mt. Elgon District. Last Monday, the Orange Democratic Movement (ODM) defeated NARC(K) and FORD(K) hands down in Chebyuk Ward---

Mr. Deputy Speaker: Order, Mr. Ojaamong! How does that--- What are you talking about?

Mr. Ojaamong: Mr. Deputy Speaker, Sir, I am coming to the question!

Mr. Deputy Speaker: Mr. Ojaamong, what are you talking about? Surely, that is irrelevant! Will you stick to the Question?

Mr. Ojaamong: Mr. Deputy Speaker, Sir, around 140 students in Kopsiro Division have not registered for the Kenya Certificate of Primary Education (KCPE), and many others in other primary schools. What is the Government doing to ensure that all pupils who have not registered for the national examinations are gathered together, so that they can register for this year's final examinations?

Mr. Deputy Speaker: That is a legitimate question!

Mr. Munya: Mr. Deputy Speaker, Sir, I will convey that information to the Minister for Education to ensure that all the students who might not be registered for the national examinations are registered.

Mr. Deputy Speaker: Hon. Members, you will realise that the Chair has given a lot of time to this Question for obvious reasons. Yesterday, the Chair emphasised the importance of taking security issues seriously. That is why the Chair has allowed this Question to run that long.

Next Question, Mr. Omingo!

DETERIORATION OF SECURITY IN SOUTH MUGIRANGO CONSTITUENCY

Mr. Omingo: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Administration and National Security the following Question by Private Notice.

(a) Is the Minister aware that on the night of 4th May, 2007, armed thugs invaded the home of Mr. Naftali O. Obiri at Riosiri Market and shot him dead?

(b) Is he further aware that two weeks earlier, the same gang had invaded Tabaka Market and robbed a supermarket, injuring several residents?

(c) What steps is the Minister taking to address the deteriorating insecurity in South Mugirango and Kisii generally?

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

(a) I am aware that on the night of 4th May, 2007, a gang of about eight people, one armed with an AK-47 rifle, and others with crude weapons, attacked the homestead of Mr. Naftali Onderi Obiri, robbed him of household goods worth approximately Kshs100,000 and shot him dead. On receipt of the report, the police acted promptly and arrested one suspect, a Mr. James Omari Thomas, who is in police custody. A file was opened at Ogembo Police Station and investigations are continuing.

(b) I am also aware that on 26th April, 2007, at about 7.30 p.m., a gang of three people, one armed with an AK-47 rifle, attacked a supermarket owned by Mr. Bernard Kaunda at Tabaka Market, robbed him of Kshs30,000 and two mobile phones.

(c) The Government has taken the following steps to address insecurity in South Mugirango Constituency and Kisii District in general:-

(i) The establishment of an Administration Police post with five officers at Tabaka Centre to beef up security.

(ii) Increased patrols by police officers from Ogembo Police Station.

(iii) Patrols have been intensified in South Mugirango Constituency and other areas of Kisii District to prevent further attacks.

(iv) Sensitization of members of the public to embrace community policing in fighting crime.

Mr. Deputy Speaker, Sir, I am also calling upon any member of the public who may have information that will help the police in arresting the members of this gang to come forward.

Thank you.

Mr. Omingo: Mr. Deputy Speaker, Sir, the Assistant Minister has confirmed for sure that the gang armed with AK-47 rifles are the same people terrorising the village and rendering people homeless. People do not sleep in their homes!

Mr. Deputy Speaker, Sir, he also confirmed the person who was killed was the chairman of the security committee of Riosiri Market. He was instrumental in bringing the Administration Police officers who were supposed to patronise the area. An hour after the incident, those officers who were 100 metres away, did not respond. What is he doing to ensure that those officers' role is not to bring insecurity in the area? Some of them are in the system of terrorising the people. They have failed to curb insecurity in the said area.

Mr. Munya: Mr. Deputy Speaker, Sir, we will investigate the allegation by the hon. Member. That is a serious issue. If those officers did not respond promptly, as they are supposed to, then disciplinary action will be taken against them or whoever was in-charge. We will investigate and take the necessary action.

Prof. Oniang'o: Mr. Deputy Speaker, Sir, insecurity is on the increase countrywide. The Assistant Minister, however, keeps on referring to community policing. Could he tell this House when this community policing was last evaluated and whether it is working or not?

Mr. Munya: Mr. Deputy Speaker, Sir, our evaluation is continuous. We are encouraged by the way the community policing is working even though there are teething problems in many areas. Many members of the public still do not trust the police. We are encouraging them to realise that the police have undergone training to change their attitude. The law enforcement officers are friends of the community, not their enemies. This is what we are trying to deal with. We want to restore the confidence of members of the public in the police, so that the system can work well.

Mr. Manoti: Mr. Deputy Speaker, Sir, insecurity situation in Gucha and other districts of Gusii is so bad. In some places when it gets to around 6.00 p.m. our people, especially those who have small businesses in rural areas, prepare where to hide themselves. This indicates that the

Government is not taking care of its own people. Given the fact that most criminals have moved from towns to rural areas, could the Assistant Minister arm all chiefs, assistant chiefs and the Administration Police officers, with sophisticated weapons, to enable them deal firmly with those criminals? They are killing innocent people in the rural areas.

Mr. Munya: Mr. Deputy Speaker, Sir, we are endeavouring to do what the hon. Member is saying. In fact, for the information of the hon. Member, the number of police recruits in the last recruitment was doubled. This is because we want to continue increasing the numbers of our security forces, so that they can cope with the increasing cases of insecurity. Our target is to make sure that every chief has at least five police officers under him. This is in addition to the regular police in the area. So, this is something we are working on. In many areas of Nairobi, the chiefs already have five Administration Police officers under them. We are spreading to the rest of the country as we recruit more police officers.

Mr. Omingo: Mr. Deputy Speaker, Sir, proximity to available security in this region is very far. For the information of the Assistant Minister, a district was created politically and it is somewhere in the bush. From Riosiri Market to Ogembo, you must go through Kisii Town. Could he undertake to establish a police station at Nyamarambe? Could he also remove the Administration Police officers who do not do any work and encourage that districts be created near where people are?

Mr. Munya: Mr. Deputy Speaker, Sir, I am prepared to sit down with the hon. Member to discuss the measures he is proposing, so that we can see how to implement them, if they will help curb insecurity.

Mr. Deputy Speaker: Fair enough! Next Question by the hon. Member for Rongo Constituency, Mr. Ochilo-Ayacko!

DELAY IN HARVESTING OF MATURE
CANE BY SONY

Mr. Ochilo-Ayacko: Mr Deputy Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Could the Minister confirm that he issued a directive at a farmers' meeting in Kilgoris on 6th May, 2007, to South Nyanza Sugar Company to complete mature cane harvesting from Trans Mara District within two weeks, failure to which, the management of the company would be fired?

(b) Is the Minister aware that the effect of the directive is that cane from Rongo, Homa Bay, Migori, Gucha and Kuria districts which produce 90 per cent of cane deliveries to the factory will not be harvested yet they are facing an acute problem of over-mature cane?

(c) What is the status of over-mature cane in the districts listed in "b" and what steps will the Minister take to address the problem?

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

(a) I directed that the management of SONY Sugar Company does expedite the harvesting of over-mature cane in its entire belt.

(b) In view of "a" above, part "b", therefore, does not arise in so far as giving a directive is concerned. However, I do concur with the hon. Member that in that region there is a lot of over-mature cane that needs to be harvested.

(c) The problem of over-mature cane is experienced in all the districts in SONY Sugar Belt. My Ministry, through the Kenya Sugar Board (KSB), is taking the following steps to address the problem.

(i) Funding of SONY Sugar Company to purchase additional cane transport units.

(ii) Funding the rehabilitation of feeder roads in SONY Sugar Belt to the tune of Kshs200 million.

(iii) Sensitising and facilitating the farmers and contractors who want to engage in cane transport business to take advantage of KSB-AFC loan facility.

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, I am a very sad hon. Member of Parliament. My sadness epitomises the sadness of farmers from that region. There are over one million metric tonnes of over-mature cane in Rongo, Homa Bay, Migori, Gucha and Kuria districts. The Minister went to Trans Mara District and issued this order. Why can he not come and issue the same order right in SONY where the cane is delivered and most of the farmers are? The Minister knows that the capacity of the factory is inhibited. Is this order going to be complied with?

Mr. Kirwa: Mr. Deputy Speaker, Sir, the Minister is always a Minister regardless of the place he or she issues an order. Nonetheless, I appreciate that the capacity of SONY Sugar Company is limited by many other factors, including the question of transportation. It is for that reason that we thought transportation was the first issue to be tackled, because the issue of expansion would take slightly more time and a lot more resources.

Mr. Omingo: Mr. Deputy Speaker, Sir, the Minister has been to that region a couple of times. I am sure he has seen over-mature cane. When His Excellency the President of the Republic of Kenya, the Hon. Emilio Mwai Kibaki, visited Gucha, he directed that another sugar factory be established at Nyangweta Forest. The issue of directive would, really, not have had to be if the Minister acted on the directive of His Excellency the President. What is the Minister doing to ensure that the issue of capacity is addressed by creating another sugar-processing plant at Nyangweta Forest, where there is plenty of land?

Mr. Kirwa: Mr. Deputy Speaker, Sir, the hon. Member knows that he has seen me on several occasions with the proposal of providing an alternative investor, and we have concurred with him. I am waiting for him to give us an investor. We are willing and able to issue a licence any time that an investor shows up.

Mr. Deputy Speaker: Mr. Ochilo-Ayacko, finally!

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, in 1995, the Minister accompanied His Excellency the President to Migori District, where the President pronounced that our good Government would expand the cane-crushing capacity of SONY Sugar Company two-fold. You heard the Minister say that expansion of the factory at SONY Sugar Company will take a long time. If the pronouncement was made by the President in 1995, and in 2007 the Minister is still saying that it will take too long, what is happening? Who is deceiving who?

Mr. Kirwa: Mr. Deputy Speaker, Sir, first of all, I was not a Minister in 1995. However, the subject of matter SONY Sugar Company is very clear. We are dealing with the issue of expansion. My colleague knows that we have already put in place all the required measures to allow SONY Sugar Company clean its balance sheet. So, we will fast-track the issue of expansion of the factory at SONY Sugar Company as soon as all the issues are dealt with.

Mr. Maore: On a point of order, Mr. Deputy Speaker, Sir. I think by practice, we might continue, slowly, amending the Standing Orders when they are still there. I understand from Standing Order No.72 that it is only Ministers of Government who are supposed to quote the President as the source of authority for what they are saying, and not other hon. Members. This arises from what Messrs. Ochilo-Ayacko and Omingo have said.

Mr. Deputy Speaker: Mr. Maore, the Standing Order you are referring to is about the authority of the President. It says that nobody can issue a statement on the authority of the President unless he is a Minister. In this case, the hon. Member was reporting what was said at a public meeting in Kisii. Therefore, he is quite in order.

Next Question by Mr. Osundwa, the Member of Parliament for Mumias! Mr. Osundwa, you confuse the Chair. Sometimes I see you seated over there. You are now seated there. I was looking for you there. I was about to drop your Question.

Mr. Osundwa: Mr. Deputy Speaker, Sir, one can sit anywhere in this House.

ORAL ANSWERS TO QUESTIONS

Question No.232

CANCELLATION OF JUDGES' SWEARING-IN CEREMONY

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

(a) what led to the cancellation of the swearing-in ceremony at State House, Nairobi, on 6th December, 2006 of Mr. Aggrey Muchelule, Ms. Florence Muchemi and Ms. Abida Ali-Aroni as judges; and,

(b) whether she could confirm the names of the judges-designate had been entered into the Register of Judges, in keeping with the tradition established by the High Court since Independence.

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

Under the Constitution, and the doctrine of separation of powers, the Judiciary is not obliged to answer the Question. Until, and unless, our constitutional dispensation is changed, a judicial appointment, or promotion, must not be subjected to political pressure or, in any way, politicised.

Mr. Osundwa: Mr. Deputy Speaker, Sir, I find that answer a bit arrogant and contemptuous of this House. This Question was approved by the hon. Kaparo, who is a lawyer of long-standing, and not like this Assistant Minister. Indeed, we have asked Questions touching on the Judiciary in this House, and they have been answered. I do not understand now when the Assistant Minister stands up and says that they cannot answer a Question touching on the Judiciary. May I seek your guidance, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Last time, this same Assistant Minister approached the Chair and told the House that they were not able to answer the Question because the Minister was collecting some information from the Hon. Chief Justice. So, it was the Assistant Minister's request then that the Question be deferred as the Minister was consulting with the Chief Justice to get more information. That is on record, Mr. Assistant Minister. Now, why the change of mind? What is the position? That is what you said last time. It was you, Mr. Mungatana, who said exactly what I have said. Are you the same person saying what you are saying now?

Mr. Mungatana: Mr. Deputy Speaker, Sir, I thank you. I also thank Mr. Osundwa for his comment about the Speaker being an advocate of long-standing. Indeed, that is why I need to draw the hon. Member's attention to the Constitution. The whole function involving appointments of judges to the Judiciary is that of the President, who acts on the advice of the Judicial Service Commission. Section 68(2) of the Constitution provides as follows:-

"In the exercise of its functions under this Constitution, the Commission - which is the Judicial Service Commission - shall not be subject to the direction or control of any other person or authority."

Clearly, the interpretation here, as the hon. Member seeks to have, in terms of cancellation of the swearing-in ceremony or appointments, and whether the names of these judicial officers

names were entered into the Register of Judges as per the traditions of the High Court, is that it all interferes with the due process of the Judicial Service Commission. We think that we are going further than we should under the Constitution.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Kosgey: On a point of order, Mr. Deputy Speaker, Sir. This Question is properly before the House. The Assistant Minister is trying to dodge it and refuse to give an answer. The Question is not asking the Judicial Service Commission to do certain things. It is only seeking information. So, would I be in order to request that the Assistant Minister be ordered to give an answer to the Question to this House? If he is not able to do so, could the Minister herself come and give an answer to this House?

(Applause)

Mr. Deputy Speaker: Order! Order! Hon. Members, I would like to defer this Question and do further consultations, because the Question was duly approved by Mr. Speaker. Therefore, the Question is properly before the House. It is the property of the House, as a matter of fact. Therefore, I will defer the matter and a ruling will be forthcoming.

(Question deferred)

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

Mr. Deputy Speaker: Order! Mr. Sungu, you have been in this House for a very long time, and you know that when the Chair disposes of a matter, you cannot raise any more issues on it. Now, am I the one who is out of order? Who is out of order? I cannot understand you!

Mr. Osundwa: On a point of order, Mr. Deputy Speaker, Sir. What is the fate of the Question?

Mr. Deputy Speaker: We have deferred the Question, but I have not said until when.

Mr. Osundwa: To which date, Mr. Deputy Speaker, Sir?

Mr. Deputy Speaker: We will give a ruling on it next Tuesday.

Mr. Osundwa: Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Next Question by the Member for Kangundo!

Question No.270

REFUND OF KANGUNDO COFFEE
FARMERS' MONEY

Mr. M. Maitha asked the Minister for Co-operative Development and Marketing:-

(a) whether he is aware that coffee farmers in Kangundo District were members of the Machakos District Co-operative Union;

(b) whether he is further aware that the said union was closed down under mysterious circumstances; and,

(c) how much money was contributed by the coffee farmers in Kangundo and when their money will be refunded to them, including interest accrued over the years.

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje):

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

(a) I am not aware. However, most of the coffee farmers in Kangundo are members of the coffee co-operative societies affiliated to the Machakos District Co-operative Union.

(b) I am not aware that the Machakos District Co-operative Union has closed down. It is quite active and it is giving various services to its affiliated societies in the district. However, the Union Banking Section (UBS) branch in Kangundo closed down in February, 1993 due to liquidity problems.

(c) At the time the UBS in Kangundo closed down, total deposits of Kshs35,100,095 had been accumulated, while outstanding loans amounted to Kshs28,507,000. However, farmers in Kangundo owe the Union Kshs98,251,063.

Mr. M. Maitha: Mr. Deputy Speaker, Sir, the Assistant Minister says that before the UBS branch closed in February 1993, there were deposits amounting to Kshs35 million, belonging to individual farmers who had accounts in the UBS. I know of a person who had Kshs12 million in that UBS. When will the individual farmers, who had their money in that bank, be paid their deposits?

Mr. Mwenje: Mr. Deputy Speaker, Sir, it is good to inform my good neighbour - he also happens to be my neighbour in the constituency - that the money was deposited by a number of people. I know that some had large amounts while the others had little. But the amount in the UBS was held by a number of people. Because the total amount owed is more than what they are owing the District Co-operative Society, the matter will have to be solved. However, the issue is being negotiated, because part of the money was also owed to the Co-operative Bank of Kenya. The negotiations are still going on and they have reached a stage where some money is being waived to the tune of Kshs50 million. So, the amount is not held by individuals, but by a number of them. But I agree that the same amount is actually owed by particular individuals who are members of the Machakos District Co-operative Union.

Mr. Karaba: Mr. Deputy Speaker, Sir, the co-operative unions, not only in Kangundo, but countrywide, have very crooked officials who embezzle farmers' money. But it takes a long time before they are arraigned in court. For how long will we have these people stay in offices, even after they have abused their offices?

Mr. Mwenje: Mr. Deputy Speaker, Sir, whenever we suspect any co-operative officer or elected official of any co-operative to have been involved in any misappropriation, we immediately institute an investigation. If some officers are found guilty of the offence, they are immediately sacked and taken to court by our officers. The only problem is that the procedure in our legal system takes a little bit too long. So, sometimes it takes long before they are found guilty. But we do not allow them to continue working or even leading people as officials of the co-operative unions, immediately they are found guilty.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, the hon. Assistant Minister evaded a very important question. There are farmers who had not taken loans, but had accounts in this UBS branch in Kangundo. What action will the Assistant Minister take to ensure that those farmers are refunded their money? We are not interested in those who had taken loans. Let the law take its own course.

Mr. Mwenje: Mr. Deputy Speaker, Sir, there is always a procedure that is followed. The UBS is the banking section of the same co-operative. So, if there are any farmers who had not taken loans, they can follow the District Co-operative Union. Unfortunately, the UBS owes the District Co-operative Union more than what it is holding. So, we need to tally and agree with them. But if there are any individuals who have any problems, I urge them to see our District Co-operatives Officer on the ground, or visit us in our offices, and we will be able to assist them.

Mr. Deputy Speaker: Last question, Mr. M. Maitha!

Mr. M. Maitha: Mr. Deputy Speaker, Sir, the Assistant Minister is not clear on this issue. There are some farmers who may have gotten loans from the UBS. But there are those who had no loans, and they had put all their savings into those accounts. It is 14 years now since their accounts were closed. I know that the Ministry of Finance was the guarantor to the Machakos District Co-operative Union. Could the Assistant Minister do what he normally does when a bank is in liquidity problems, where the depositors' money is safeguarded, by constituting a commission and then the members are paid from the interest in that bank?

Mr. Deputy Speaker: Mr. Assistant Minister, I think that question has been asked severally. Individuals have money and they have loans. Why can they not be paid back their money? That is the issue.

Mr. Mwenje: Mr. Deputy Speaker, Sir, the UBS closed down. So, we cannot pay them, because there is no money. However, no claim has ever been raised. The UBS is still affiliated to the District Co-operative Union. Unlike the banks which are under the Deposit Protection Fund (DPF), these ones are not under DPF. So, they could not claim a refund from the DPF. They can only proceed to the District Co-operative Unions, which they are only affiliated to. If we have any such cases, where we have individuals who are still owed deposits in that account - which we are not aware of, because there have never been such claims at all - we will be willing to listen to them and see how we can sort out their problems individually.

Mr. Deputy Speaker: Next Question!

Question No.253

ESTABLISHMENT OF MARINE POLICE UNIT

Mr. Odoyo, on behalf of **Mr. Syongo,** asked the Minister of State for Administration and National Security when he will establish a marine police unit to patrol and control crime on Lake Victoria and its islands.

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

A Marine Police Patrol Unit has been in existence to control crime on Lake Victoria and its islands. The Unit has also been patrolling the coastal waters. The Government has recently upgraded the Marine Police Patrol Unit to be the Maritime Police Unit, with its headquarters at Kilindini Port and headed by an Assistant Commissioner of Police.

Mr. Odoyo: Mr. Deputy Speaker, Sir, let me put it in the proper perspective for the hon. Assistant Minister. The part of Lake Victoria that is in Kenya is equivalent to the size of Central Province. Equally, Kshs5 billion worth of fish is exported every year from Lake Victoria. When is the Assistant Minister going to avail more policemen to patrol Lake Victoria apart from the six policemen who are now on location; four constables, one sergeant and one police inspector? Six people to police the size of central Kenya---

Mr. Deputy Speaker: That is enough!

Proceed, Mr. Assistant Minister!

Mr. Munya: (Inaudible) ---go to our Maritime Police Unit and directly run by an Assistant Commissioner of Police. So, it is not that we have not done anything. We have done something, but I want to agree with the hon. Member that there is need to increase the police numbers there and once we get officers available, we will do accordingly.

Mr. Sungu: Thank you, Mr. Deputy Speaker, Sir. In addition to the manpower, I know for sure that we used to have patrol boats on the lake, but these have since gone dead completely because of lack of repair. Could the Assistant Minister undertake to provide additional patrol

boats? The lake is large and needs several boats, not just one.

Mr. Munya: Mr. Deputy Speaker, Sir, I have undertaken that we will increase them when we are able to get them. We provide police according to the needs and, so far, there has not been a major problem in the lake. But we certainly undertake to improve the equipment for the Marine Police Unit to make it more effective.

Mr. Deputy Speaker: Can I have the last question, Mr. Odoyo? We are running out of time!

Proceed, Mr. Odoyo! Mr. Odoyo! He has no question?

Next Question---

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

Mr. Deputy Speaker: Order, Mr. Odoyo! I called you many times and you just looked at me and I thought I saw you telling Mr. Lesrima to ask a question. I want you to know that I am in charge!

Would you now ask your last question?

Mr. Odoyo: Mr. Deputy Speaker, Sir, thank you for granting me your indulgence.

Mr. Deputy Speaker, Sir, there are pirates who are robbing people with impunity in Lake Victoria. The continued arrest of Kenyans by neighbouring states; the continued increase of smuggling of pirated and illegal goods into Kenya through the lake--- When will the Assistant Minister establish a headquarters in Lake Victoria for the Maritime Police Unit, instead of putting the Headquarters 1,000 kilometres away in Kilindini?

(Applause)

Mr. Munya: Mr. Deputy Speaker, Sir, I have said earlier that the Maritime Police Unit in Lake Victoria operates from Kisumu and not from Kilindini and they have been very effective in dealing with crime in the lake. As I said from the beginning, the lake has been very safe and we would like to thank the residents who operate, do fishing and other businesses using the lake for that very good behaviour. But I have undertaken to improve or increase the number of policemen and also give them more equipment to make the unit more effective.

But, Mr. Deputy Speaker, Sir, it is important to understand that the lake is shared and, sometimes, even our own people also cross over the border and whenever a problem arises, our forces and the Ugandan authorities have always resolved those matters.

Mr. Deputy Speaker: Thank you, Mr. Assistant Minister!

Hon. Members, you will realize that it is already 3.30 p.m. and we still have two Questions. I think it is because of the security Questions we had. So, I think I will allow ten minutes very quickly to go to the next Question by the hon. Member for Saboti, Capt. Nakitare.

Question No.262

NON-ISSUANCE OF TITLE DEEDS
TO SHAREHOLDERS BY
INVESTMENT COMPANY

Capt. Nakitare asked the Minister for Lands:-

- (a) whether he is aware that Trans Nzoia Investment Company Limited has not had an annual general meeting since 1994;
- (b) whether he is further aware that the company has not given titles to its shareholders in the following farms:- LR2048, 6486/5, 3035, 2116/V/1, 2116/29/V;

and,

(c) what urgent measures he is taking to assist the shareholders get titles.

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

(a) I am not aware.

(b) I am aware that no titles have been given to individual shareholders in the farms mentioned.

(c) Once Trans Nzoia Investment Company Limited applies for sub-division formally and complies with the requirements of the Land Control Board, their titles shall be processed.

Thank you, Mr. Deputy Speaker, Sir.

Capt. Nakitare: Thank you, Mr. Deputy Speaker, Sir. You heard the Assistant Minister say that he is not aware. The Trans Nzoia Investment Company Limited was formed immediately after Independence for the purpose of buying land from the white settlers. He has said that he is not aware and that there are no title deeds that have been issued to these shareholders on those farms. Is he aware that part of the investments, which included Kitale Hotel, have title deeds and have changed hands several times? Who has been issuing those title deeds and could he revoke those title deeds so that those properties go back to Trans Nzoia Investment Company Limited?

Mr. Kamama: Mr. Deputy Speaker, Sir, it is true that I am not aware whether the company had its annual general meetings, because that is the work of the Commissioner of Co-operatives. But on the issue of land, I want to confirm to the House and to hon. Members that we have formed an Inter-Ministerial Task Force to look into this matter because we know that there are many issues concerning co-operative societies in Trans Nzoia, and members have come to our offices to complain. So, we have formed that Committee and we are working very closely with the Ministry of Co-operative Development and Marketing to make sure that these co-operative societies are given their title deeds, but subject to, of course, the Land Control Board procedures; they have to apply for sub-division and follow the necessary requirements.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Last question, Capt. Nakitare! I am sorry, I have to move.

Capt. Nakitare: Thank you, Mr. Deputy Speaker, Sir. Could the Assistant Minister assure this House that he is going to take issue with a fictitious land company that has fraudulently defrauded money from innocent shareholders for the purposes of buying land which never existed and also ensure that these companies are brought to book?

Mr. Kamama: Mr. Deputy Speaker, Sir, we will comply.

Thank you.

Mr. Deputy Speaker: Thank you.

Next Question by the hon. Member for Kerugoya-Kutus, Mr. Karaba!

Question No.202

SUPPLY OF EXPIRED DRUGS
TO DISPENSARIES

Mr. Karaba asked the Minister for Health:-

(a) whether she is aware that kits supplied to dispensaries occasionally contain expired drugs; and,

(b) how soon drugs are replenished once exhausted in these dispensaries.

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

(a) No drugs, whether in kits or loose, are supplied to any public facility with less than six months shelf life. Expired drugs in kits could only occur within the public health facility if they are stored for too long without use within the facility.

(b) Drugs are supplied to rural health facilities once every three months. However, additional drugs are replenished based on the demand from the facility concerned.

Mr. Karaba: Mr. Deputy Speaker, Sir, I thank the Assistant Minister for that very good answer. I am most perplexed that at times Ministers do not understand that we belong to some areas where such things happen. In my constituency, another time, we had to destroy some drugs that had expired. They had not expired in the facility but at the Kenya Medical Supplies Agency (KEMSA) itself. When something like that happens, what steps do you take? It is true that they were expired drugs!

Dr. Kibunguchy: Mr. Deputy Speaker, Sir, we have said that with regard to any drugs that we send outside to our facilities, we make sure that they have, at least, a six-month shelf life. However, it is true that, occasionally, some drugs expire even in KEMSA itself. A number of times we have had to destroy them. That is true! However, for any drugs that we dispatch outside, we make sure that they have a six-month shelf life.

Mr. Arungah: Mr. Deputy Speaker, Sir, could the Assistant Minister give a list of the drugs that they supply to these dispensaries so that *wananchi* can know what has been supplied?

(Mr. Raila stood up in his place)

Mr. Deputy Speaker: What is it?

Mr. Raila: On a point of order, Mr. Deputy Speaker, Sir. Why is Mr. Arungah at the Dispatch Box?

Mr. Deputy Speaker: He is not at the Dispatch Box!

Mr. Raila: Mr. Deputy Speaker, Sir, why is he speaking from there? Could he move near the microphone? We cannot hear what he is talking about. The HANSARD is not picking it!

Mr. Deputy Speaker: Mr. Raila, how do you know that, yet the HANSARD has not complained?

(Laughter)

Order! Mr. Arungah, please ask a question!

Mr. Arungah: Mr. Deputy Speaker, Sir, my question was: Is it possible for the Ministry to display the list of the drugs supplied to those dispensaries so that *wananchi* can know what has been supplied? Very often, when they go to those dispensaries, they are given chits to go and buy medicine elsewhere.

Dr. Kibunguchy: Mr. Deputy Speaker, Sir, as for the drugs that we supply to our dispensaries and health facilities, we have a list. If you like, I can table it; it is here with me.

Mr. Deputy Speaker: Dr. Kibunguchy, the hon. Member wants the information to be available at the dispensaries.

Dr. Kibunguchy: Mr. Deputy Speaker, Sir, it is available at the dispensaries. I think, with the reforms that we have introduced in the health sector, I would like to be told one person who has been given a chit to go and buy drugs from the private chemists. In terms of supplying drugs, I think that is one area that we are extremely proud of; that the days of writing chits for people to go and buy drugs from private chemists are behind us.

Mr. Karaba: Mr. Deputy Speaker, Sir, given the fact that in those dispensaries patients pay

Kshs10 to procure drugs from the same facility while in district hospitals charge the same rate as they pay Kshs30; what is the relevance of the two payments? Could they reduce them or make sure that even the district hospitals charge the same rate as the dispensaries? After all, the drugs are almost the same!

Dr. Kibunguchy: Mr. Deputy Speaker, Sir, I think the Kshs10 and Kshs20 that is paid at the districts and health centres is not really for drugs. It is for the whole service package. Again, that is one of the reforms that we have instituted in our health sector; that patients going to dispensaries should pay only Kshs10. Regardless of how many drugs are given, patients going to health centres should pay only Kshs20. However, with hospitals, we still have the cost-sharing programme which, gradually, we will review. That is still in operation in hospitals. That is why you find that hospital charges are slightly higher. For health centres, it is Kshs20 while in dispensaries it is Kshs10.

Mr. Deputy Speaker: Thank you, Mr. Assistant Minister! Hon. Members, that is the end of Question Time!

COMMUNICATION FROM THE CHAIR

MEMBER'S WORKSHOP TO CONSIDER DRAFT STANDING ORDERS

Mr. Deputy Speaker: I wish to give the following Communication from the Chair. Hon. Members, as you may be aware, it has been the practice of the National Assembly to review its Standing Orders at the end of every Parliament. As such, by the end of this final Session, Parliament is expected to examine its Standing Orders with a view to reviewing areas that it may deem fit for the benefit of the successive Parliament.

Hon. Members are aware that the Eighth Parliament did not review the Standing Orders, as the country was expecting comprehensive review of the Constitution, which would, invariably, have had direct implications on the Standing Orders.

The above notwithstanding, in the Eighth Parliament and even in this Ninth Parliament, we have relentlessly raised legitimate concerns on shortfalls in our rules of procedure. For the information of hon. Members, our Standing Orders were last reviewed comprehensively in 1997. It is on this backdrop that the Standing Orders Committee invited, received and considered memoranda from Committees of this House, individual hon. Members, the civil society and organised groups and other interested parties on areas that need to be addressed in our Standing Orders.

Towards this end, a sub-Committee under the Chairmanship of the Deputy Speaker has since compiled a draft amendments to the Standing Orders in the form of Seventh Draft. The draft incorporates the various views received by the sub-Committee and incorporates applications and practices in other Parliaments, particularly those in the Commonwealth. This draft will be ready for distribution to hon. Members as from Wednesday, next week.

The Standing Orders being the basic rules of procedure are of vital significance to every House as they govern the way Parliament executes its legislative, representative oversight and the deliberative roles. It is, therefore, imperative that every hon. Member participates in their formulation or review. In this regard, all hon. Members are kindly invited to a workshop to consider the Draft Standing Orders. The one-day workshop shall be held on Friday, 25th May, 2007, at the Safari Park Hotel, beginning at 8.30 a.m. Hon. Members are requested to, please, attend this workshop and be punctual.

Thank you, hon. Members!

Next Order!

BILLS

First Readings

THE TOBACCO CONTROL BILL

(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Departmental Committee)

THE FREEDOM OF INFORMATION BILL

(Mr. Moi moved to the Dispatch Box)

Mr. Deputy Speaker: Mr. Moi, are you doing that on behalf of Prof. Anyang'-Nyong'o?

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

Mr. Deputy Speaker: Go ahead!

Mr. Moi: Mr. Deputy Speaker, Sir, in accordance with Standing Order No.101 A(1), this House orders that the Freedom of Information Bill be referred to the Departmental Committee on Energy, Communications and Public Works.

Mr. Deputy Speaker: It is so ordered!

The Minister for Information and Communications (Mr. Kagwe): On a point of order, Mr. Deputy Speaker, Sir. I just wanted some guidance on this matter because we had actually discussed it with the Mover. The Government intends and, indeed, has published The Freedom of Information Bill, which is currently in the Attorney-General's Chambers incorporating---

Mr. Deputy Speaker: Sorry, Mr. Minister!

The Minister for Information and Communications (Mr. Kagwe): I was seeking your guidance, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Okay, I will guide you.

The Minister for Information and Communications (Mr. Kagwe): Mr. Deputy Speaker, Sir, what I wanted to find out is this: At what point, whether it is at the Committee Stage, could we try to merge these things so that we can do the same thing?

Mr. Deputy Speaker: The process of this Bill has been very long. You know that it went through a Private Members' Motion and the House gave the hon. Member leave to prepare the Bill. The Bill was prepared and it is now before the House. Indeed, the House Business Committee did allocate time for it. My advice is that the Bill is here, and if the Ministry has any views, you have to liaise with the Committee, which we are now committing this Bill to, in order to see what areas can be incorporated in that Bill. You cannot have two Bills on the same subject.

Hon. Members, therefore, it is ordered that the Freedom of Information Bill (Bill No.17) be committed to the relevant Departmental Committee as proposed.

(Order for First Reading read - Read the First Time and ordered to be referred to relevant Departmental Committee)

Next Order!

Second Reading

THE LABOUR INSTITUTIONS BILL

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, I beg to move that the Labour Institutions Bill be read a Second Time.

Mr. Deputy Speaker, Sir, this Bill establishes labour institutions, their functions, powers and duties. The Memorandum of Objects and Reasons for The Labour Institutions Bill are as follows:

The principal object of this Bill is to establish institutions involved in the administration and management of labour relations. These are the National Labour Board, the National Labour Court, the Subordinate Labour Court, the Committee of Inquiry, the Wages Council, the Labour Department, the Employment Department and the Employment Agency.

Mr. Deputy Speaker, Sir, Part I contains preliminary matters which include the general interpretation and application clauses. Under Clause 4, it is proposed that the Act shall not apply to the Armed Forces, the Kenya Police, the Kenya Prisons Service, the Administration Police and the National Youth Service.

Mr. Deputy Speaker, Sir, Part II establishes the National Labour Board which will be appointed by the Minister and will have representatives of trade unions, employers' organisations and the Government. The Board will advise the Minister on all policy issues relating to labour and employment.

Mr. Deputy Speaker, Sir, Part III establishes the National Labour Court which will replace the Industrial Court. The National Labour Court will be established at the same level as the High Court, but not as a division of the High Court, due to the specialised nature of the disputes it will handle.

Part IV establishes the Subordinate Labour Courts. Some magistrate courts will be designated Subordinate Labour Courts.

Part V establishes a Committee of Inquiry which may be appointed by the Minister to inquire into any matters which appear to the Minister to be connected to a trade dispute.

Part VI establishes the offices of the Labour Commission and the Director of Employment. It empowers the Labour Commissioner to conduct inspections under the Act.

Part VII provides for the establishment of the Wages Council to advise the Minister on the fixing of minimum wages and terms and conditions of service for various sectors of the economy.

Part VIII regulates the operations of the Employment Agency. The operations of employment agencies or placement agencies are currently conducted without formal control. The Bill requires all employment agencies to be registered by the Director of Employment.

Mr. Deputy Speaker, Sir, Part IX contains miscellaneous provisions which include a provision to repeal the regulations of the Wages and Conditions of Employment Act, Cap.229.

Mr. Deputy Speaker, Sir, the following are the benefits of The Labour Institutions Bill:

The Labour Institutions Bill establishes a new and single Act; the Labour Institutions Bill, to deal with administrative issues in labour relations. This leaves the rest of the labour statutes to concentrate on the rights and obligations of the social partners as procedural and operation aspects of labour management.

Secondly, the Labour Institutions Bill establishes and strengthens institutions involved in the administration and management of labour relations. These are, the National Labour Board; the National Labour Court; the Subordinate Labour Courts; the Rules Board for the National Labour Court and the Subordinate Labour Courts; Committee of Inquiry; Wages Council; Labour

Department; Employment Department and Employment Agency.

Mr. Deputy Speaker, Sir, the new provision on employment agencies will regulate their operations and protect Kenyans who seek employment locally and abroad from exploitation. The technical department of labour will be strengthened and empowered to ensure efficient service delivery in terms of enforcement, gathering and dissemination of labour market information.

Mr. Deputy Speaker, Sir, under the Labour Institutions Bill, the Judges of the National Labour Court, which replaces the current Industrial Court, will have Puisne Judges. The establishment of Subordinate Labour Courts will facilitate quick settlement of the many trade union disputes that often delay in the Ministry and the Industrial Court otherwise now named the National Labour Court.

Mr. Deputy Speaker, Sir, with those remarks, I beg to move the Labour Institutions Bill of 2007, and request the Assistant Minister for Justice and Constitutional Affairs, hon. Mungatana to second it.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Mungatana): Mr. Deputy Speaker, Sir, I want to congratulate the Minister for Labour and Human Resource Development for moving this Bill at such a time. The relevance of labour institutions and the Labour Institutions Bill, which we are moving today, can only be understood, if we understand clearly labour economics. Labour economics basically deals with the question and management of supply of labour on one side and the demand for labour on the other side. The supply of labour is brought by the workers into the market and the demand for labour is taken by the employers in the labour market. The normal micro-economics theory lets supply and demand determine what happens in the labour market. Those are neo-classical theories of economics. But, in the Third World, it is necessary to bring in institutions of labour to govern the pure theory of economics of supply and demand for labour. If we leave it to the theory of the market, then our people are going to suffer. That is the big reasoning behind setting up relevant labour institutions that are good for purposes of creating an intervening mechanism between labour, which is being supplied, and employers who are demanding for that labour. The big reason is that, in our situation in this country, the labour is much more than the demand. If we left it to the forces of the market, then that labour is going to face exploitation and it is our duty to pass this Labour Institutions Bill. That is why I am seconding, supporting and commending the Minister for bringing this Bill.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, the first institution that has been created here, as he has said while moving, is the National Labour Board. For a very long time, labour and the employer have been set theoretically to be different people and sides that are antagonistic. That used to be the situation in the Marxist Theory. Labour and employers have been set like antagonistic forces. But in the 21st century, labour and the employer organizations are supposed to be working together. The National Labour Board, very clearly, has attempted to bring the labour representatives; union people, to sit in the same Board with people who are from reputable employer organizations. This is commendable. The formation of this Board was a good brain wave and we should support it, as a House.

Apart from advising the Minister, one of the beautiful provisions that has been made as one of the duties of this National Labour Board, under Clause 7(P), it is supposed to deal with any matters that are related to the functions of the Board. That means that they can advise the Minister

on literally everything. They have provided for some of those issues that they may advise the Minister on, but also on matters that are alien. That means that anything that we have not thought about, the Board which comprises of both representatives of labour unions and employers representatives who are the employers, would be able to properly advise the Minister. Therefore, this is a wonderful provision which is commendable.

Mr. Deputy Speaker, Sir, if you look at Clause 7, Subclause (6), there is a clear provision that, this Board is not going to be idle. It is a Board where the Secretary is supposed to file a report on the state of labour and the market for labour or employment in this country. The Secretary is also supposed to give a report on strikes and lock-outs and, the number of complaints and disputes. All these are what we can call a normal management of the economy of labour. That is the supply and demand for labour. Therefore, it will be able to anticipate what might happen. That is very important because, then, we create stability in the two major factors of production. These are the employers and the employees. What will happen then is that the country, through the Minister, will be able to anticipate any form of industrial disputes that may be coming, knowing the history. They will also be able to know how to tackle them, borrowing from the experience of the representatives of the workers and the employers. That is a commendable provision.

Mr. Deputy Speaker, Sir, the second institution which has been created and which I wish to strongly support is the National Labour Court. The court will have powers to sort out most of the disputes that will arise. It will have equal power like the High Court. It will sort out most of the problems that workers have been experiencing. One of the problems that workers experience in the normal courts, is that in the normal court systems, there is a magistrate or a High Court judge who is trained in the normal civil or criminal law of the country. They do not have specialization on labour or environmental matters. This is a good move because we are talking about specialised courts. There will be people and magistrates both in the subordinate and in the higher levels who will be looking at labour and workers' issues.

Mr. Deputy Speaker, Sir, in my years of practice in the field of law, many times when you file a suit seeking compensation for workers who have been dismissed, wrongfully sent home or claiming compensation, you sit there with a magistrate or a judge and start going through labour laws and what it is all about because they may not have even taken it as an elective at the university. Therefore, you have a problem persuading that judge that there is, indeed, reason for that person who has been dismissed to be re-instated or there is, indeed, reason for that person who has been denied his benefits to be given or there is, indeed, reason for the wrongful dismissal to be commuted to a normal termination so that the person can get his benefits. Therefore, what happens is that in the normal civil courts, the magistrate or the judge will look at the case and if he sees that it is a labour matter and it is something that he has to look into the law books to study again, that matter is given another date and many other dates. You will find many matters or cases pending before the High Court and the subordinate courts because the magistrates are not specialised or are not well versed with this law.

The creation of labour courts needs to be supported by this House. I am very happy because it means that many of those cases that are now pending in the normal civil courts, because of people who want to push them to other dates, will be transferred to these specialised courts, and there will be quick determination. For the economy of this country, it means issues relating to one important factor of production, labour, will be resolved quickly and, therefore, labour will go back to what it is supposed to do, which is engage in production in this economy. This is a wonderful provision.

The only thing that we need to look at a little more is the provision that has been made under Clause 16. If you look at Clause 16, there is a provision there that the judge who is listening to a trade dispute, or any form of industrial matter that has been placed before him, if he so wishes,

will call upon assessors. It says that such an assessor, when he is appointed, will have power even to help the judge in determining these matters. The reality of the facts, and coming from experience of the courts, assessors have been appointed in the High Court to help judges in normal criminal cases to determine matters of criminal nature. Whenever there is a case before a judge that has to do with capital offences, especially the offence of murder, assessors have been called to sit with the judge. But we, lawyers who have been practising and, indeed, even the receivers of justice, our clients, have cried and complained many times about assessors. Assessors have been one of the biggest causes of delays in completion of matters. We are so happy that in this Ninth Parliament, there is a provision which we are now considering, under the Statute Law (Miscellaneous Amendments) Bill that the Attorney-General has placed before this House, that will abolish the necessity for assessors to sit in the High Court and determine criminal cases together with a judge. If that is being done in criminal cases--- We are running away from assessors because of the problems that we have experienced with them. We will need to look at this provision again. Putting this provision on assessors under Clause 16 will not have the desired effect when it comes to the practical level. These assessors are people who are not normally trained. They are people whom the judge, or the registrar of the court, will look through a list and then somebody whom he thinks is of good character to help him determine a matter. What happens, because there are not qualified people, sometimes payment delays, or because of other administrative issues, these people are not available. Normally, you will find a matter dragging over a period of time unnecessarily when it could have been determined. So, I would ask the Minister to re-look at this provision in that clause. Otherwise, I think this is a brilliant piece of legislation that we need to support as a House. It will move us from the old kind of administration of labour matters to a new era in the administration of labour matters, and I would urge the House to give it unqualified support, of course benefitting from any other amendments that might be necessary.

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

(Question proposed)

Mr. Muturi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to say a few words about this very crucial Bill. As I can see, my good friend, the Minister, appears apprehensive. I want to tell him that today I will take a very short time. I will be brief. I know I am entitled to speak until---

The Assistant Minister for Education (Mrs. Mugo): Until the cows come home!

Mr. Muturi: Yes, the hon. Beth Mugo says "cows come home". I do not intend to even see goats.

Mr. Temporary Deputy Speaker, Sir, I begin by stating that I support this Bill. Indeed, if you recall last week, I did indicate that actually this is the Bill that, perhaps, ought to have come before the others, because a lot of reference to it was made in the other two, the Employment Bill and the Labour Relations Bill, which we debated last week. But be that as it may, because we believe that there are good intentions in bringing these Bills, we would want to expeditiously, as requested by the Minister, point out what we think may be necessary.

Mr. Temporary Deputy Speaker, Sir, if you look at the Memorandum of Objects and Reasons, the objective is very clear. The principal object of the Bill is to establish institutions involved in the administration and management of labour relations. These are the National Labour Board, the National Labour Courts, the Subordinate Labour Courts, the Committees of Inquiry, the Wages Council, the Labour Department, the Employment Department and Employment Agency. That, I think, principally explains the objects of the Bill and should, therefore, make it easy for everyone to appreciate.

However, I have a few areas where I would want to propose some consideration by the Minister. I will go straight to page 328, the definition section. I have no complaint with the definition about what the Labour Committee of Inquiry is, or the Labour Commissioner. But there is a Deputy Principal Judge. It says: "The Deputy Principal Judge means the Deputy Principal Judge of the National Labour Court appointed under Section 13". I would want to propose that for the avoidance of doubt, where the word "judge" is used, if you look at the Judicature Act, a judge means a puisne judge or judge of the Court of Appeal, or even the Chief Justice. The definition is one, so that we do not need to give a different definition of who a Deputy Principal Judge is. Looking at Section 13 on the appointment method, there is not such a big contradiction.

Mr. Temporary Deputy Speaker, Sir, at page 330, there is something which I find a bit strange. It defines something called "Labour Act" and says: "Labour Act includes this Act, the Employment Act, the Labour Relations Act, the Occupational Safety and Health Act, the Work Injury Benefits Act and any other Act administered by the Minister for the time being in charge of labour matters". This Act already has its own title; it is called the "Labour Institutions Bill". It will obviously transform into an Act. Which is this other Labour Act? I think there is something that is not clear. I know it envisages, and that is why it is not conclusive, that in future, should the Ministry or even this House, come up with another law that deals with labour matters, it can also be called a Labour Act. That is not a good law because the practitioners will be referring to specific Acts. When this Bill becomes an Act, people going to court or making complaints, for example, will refer to the specific Act. There is really no need of defining five Acts as Labour Acts and yet, they have been defined by their own establishing pieces of legislation. I would invite my good friend, the Minister, to consider that, when we get to Committee Stage.

Mr. Temporary Deputy Speaker, Sir, just below that, there is something defined as "sub-ordinate national labour court". They say it means:-

"A magistrate's court designated to be international under Section 29---

This does not even make any sense! In the first instance, if you go through this Bill, there is no institution which is referred to as sub-ordinate national labour court. In certain sections though, there is reference to something like "national". But the National Labour Court (NLB) is distinct from the sub-ordinate national labour courts. I think the intention is, which is also in the other Bills that we have already discussed, to create sub-ordinate labour courts. I will be pointing out the mistakes that have been made, just for corrections. It is not something that is contentious.

Mr. Temporary Deputy Speaker, Sir, I talked about the definition of the "Deputy Principal Judge" as stated on page 328. Just below that, there is definition of a "Principal Judge". The two of them can be merged. That definition can also encompass the "Deputy Principal Judge." That is the way it is done.

Mr. Temporary Deputy Speaker, Sir, at page 331, of course, Section 4 of Part I of the Bill says:-

"This Act shall not apply to-

- (a) the armed forces or the reserve as respectively defined in the Armed Forces Act;
- (b) the Kenya Police, the Kenya Prisons Service or the Administration Police Force;
- and
- (c) the National Youth Service, but subject to the foregoing, the Act shall bind the Government."

I would like to remind the Minister what I said last week. We want to see where the position of the staff of the Parliamentary Service Commission (PSC) falls. Is the PSC bound like the Government is bound? Even the staff here, and I envision a situation where they will be many at some point, they may also require to form themselves into a union. They should enjoy either the same privileges as enjoyed by public servants, mainstream Civil Service and teachers. They should

enjoy such benefits as enjoyed by other workers elsewhere. I want some thoughts to go to those people.

Mr. Temporary Deputy Speaker, Sir, Part II is on the National Labour Board (NLB). That is a welcome move. But I do not think there has been provided a process by which the Minister will be appointing the chairperson and the deputy chairperson. We need to be told how that will be done. Clause 6(1)(a) says:-

"The Board shall consist the following members appointed by the Minister, who shall be Kenyan citizens of good moral and intellectual standing-

(a) a chairperson and a deputy chairperson, both of whom have experience in labour relations matters;"

Nobody advises the Minister! He just walks around the streets of Nairobi, Mombasa and Kisumu and meets somebody who makes a lot of noise over labour matters and says:"You can be the chairperson". Maybe, we should in-build some process that the Minister should consult whatever body, either the employers' organisations or employees' organisations when he is making the appointment. He can consult. How he goes about it is a matter that he will tell us.

Mr. Temporary Deputy Speaker, Sir, at page 333, the last bit before we get to Clause 6(2), there is something that needs to be corrected there. Among the people who will comprise the NLB as stated in Clause 6(1)(f) is:-

"not more than two other independent members."

Independent of what? Are we saying that they are not employers or employees? Are we saying that we want churchmen, kadhis or farmers? If they are farmers, for example, they will not be independent if they have workers. So, independent of what? That needs to be made clearer than it is now.

Mr. Temporary Deputy Speaker, Sir, Clause 6(4) says:-

"The Minister may, on the advice of the Board, amend the Schedule."

I just want to point out the following because Clause 6(3) says:-

"The provisions of the Schedule shall apply with respect to the Board."

I have gone through the Schedule and I have seen what they are saying it will apply to. It is good. But to the extent that the Minister may, on the advice of the Board, amend the Schedule, which is part of the main law, may mean that, that amendment may have the effect of actually even amending the law itself. We need to synchronize that to say which will be the better thing.

Mr. Temporary Deputy Speaker, Sir, Clause 7(1)(g) says:-

"The functions of the Board are to advise the Minister on-
(g) systems of labour inspections and the administration of Labour Acts;"

That should be considered.

Mr. Temporary Deputy Speaker, Sir, as reflected on page 336, I am happy with the functions of NLB and what the Secretary to the Board is expected to do. But where we talk about labour inspection services, where the Secretary is required by statute to do something, it would be important for him or her to publish those inspection reports. That way, the employers, employees or their organisations will know that, indeed, that was carried out as expected in the law.

Mr. Temporary Deputy Speaker, Sir, I think there is a contradiction in Part III of the Bill. What the Minister is trying to do here is to go by what is in our current Constitution. The qualification for somebody to be appointed an Appeal Judge is only seven years. Over the years, we have said that, that requirement is a bit too low. It may have made a lot of sense soon after Independence because we did not have a lot of indigenous people who were qualified and had experience of more than seven years. But, today, the right thinking--- Even when we were at Bomas, we said that we should raise that threshold to, at least, 15 years. We want mature people to be appointed to NLB. We do not want people of seven years experience. Some of those youths may

find it very difficult. Just like Mr. Mungatana said when he was seconding the Bill, part of the reason why one may think people are not experienced in a particular way or do not know any particular aspect of the law is because of inexperience.

If you look at what is provided for in Clauses 11 and 12--- What is in Clause 12 is a reproduction of what is in Clause 11. They need to be synchronized. Clause 11(4) says:-

"The National Labour Court shall be constituted by a judge sitting with two members."

If you move on further, Clause 11(5) says:-

"The principal judge and the deputy principal judge of the National Labour Court shall-

(a) be puisne judges; and

(b) have knowledge, experience and expertise in labour laws and industrial relations."

Clause 11(6) further says:-

"The deputy principal judge shall act as principal judge, whenever the principal judge is unable to do so."

I welcome the fact that even the Chief Justice will seek the concurrence and advice of members of NLC. It is not fair to leave the Chief Justice to appoint any judge to sit in the National Labour Courts.

Mr. Temporary Deputy Speaker, Sir, I was referring to clauses 12 and 13. They need to be synchronised because one reproduces the other, almost verbatim, especially with regard to experience and qualification.

Mr. Temporary Deputy Speaker, Sir, the Minister, when replying, should explain Clause 15(1). It says:-

"The Minister, shall on the advice of the Board, appoint 16 members of the National Labour Court or such other additional members as may be advised by the Board for a term of not more than three years".

Why is the figure 16? We want to understand the rationale of the figure. Is it because they are two from every province? Are we not imagining that we could have more provinces than the eight we have today? What is the rationale? We need to understand that.

(Dr. Kulundu stood up in his place)

Mr. Minister, you will explain---

The Temporary Deputy Speaker (Mr. Poghio): Mr. Kulundu, is it a point of order!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, it is a point of information.

Mr. Temporary Deputy Speaker, Sir, the figure is 16 because we intend to appoint more judges. As I said in my preliminary comments, we need to devolve the industrial courts. We could have one in Kisumu, another in Mombasa and Nyeri. We are, therefore, just preparing ourselves for that devolution.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, it is good to hear that. I appreciate the information by the Minister.

Mr. Temporary Deputy Speaker, Sir, on Clause 20(1) on page 349, I think the draftsman did not understand what he or she was providing for. It says:-

"There is established the Rules Board for the National Labour Court and the subordinate National Labour Courts."

I think these are not subordinate National Labour Courts. They are just sub-ordinate Labour Courts.

So, we should delete the word "national".

Clause 28(1) on page 356 says:-

"Any party to any proceeding before the National Labour Court may appeal to the Court of Appeal against any final judgement, award or order of the Nairobi Labour Court".

I believe you intended to say "National" and not "Nairobi". So, that should be noted by your officers.

Mr. Temporary Deputy Speaker, Sir, Clause 29(2), page 357 says:-

"A sub-ordinate labour court shall be constituted---"

Mr. Temporary Deputy Speaker, Sir, I am very glad that this is provided for. Last week, when I belaboured the point, had we debated this Bill, I would not have taken so much time trying to explain the points I explained. Even the Minister was not prepared for this, but the Employment Bill. However, I just want to advise as a person who once served there.

"A subordinate labour court shall be constituted when presided over by a chief magistrate, a senior principal resident magistrate, a principal resident magistrate, or a senior resident magistrate"

Mr. Temporary Deputy Speaker, Sir, we should remove the word "resident". I think I do not have to come to propose the amendments because they do not exist this way. I am, therefore, just advising so that you can remove them so that it moves smoothly. These people are referred to as "senior principal magistrates" not "principal resident magistrate" and "senior resident magistrate."

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

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

Mr. Temporary Deputy Speaker, Sir, at page 358, subsection (2) of Clause 30 says:

"Without prejudice to sub-section 1(b) a subordinate National has jurisdiction to determine suits disputes---"

I believe what it should read is: "A subordinate Labour Court has jurisdiction---"

So, you should remove the word "national".

Mr. Temporary Deputy Speaker, Sir, I am taking this time because this Bill is straight forward and when we come to the Committee Stage, we should not waste a lot of time. Even if it is next week, we should be able to pass it.

Paragraph (e) of the same clause talks about jurisdiction between employers and employees says:-

"Breach of a statutory duty imposed by any Labour Act"

When you say, "any Labour Act"--- I had talked about this earlier on; let us not talk about "Labour Act." There will be duties imposed on employers or employees by the Employment Act; the Bill we debated last week, when it becomes law and any other law. Period! Surely, the jurisdiction of these courts is with respect to labour-related matters and nothing else. That is why it is being created as a special jurisdiction. It goes on to say at subsection (4):

"Any matter which is referred to the Minister for conciliation in terms of the Labour Relations Act as a trade dispute shall not be referred to a subordinate National Labour Court"

The word "national" should be deleted because we do not have a sub-ordinate National Labour Courts. Indeed, even at subsection (v), the reference to "subordinate national labour court across

second line should be struck off.

Mr. Temporary Deputy Speaker, Sir, I found something very interesting at Clause 35. It has to do with the dignity of the people who appear before labour courts, whether national or subordinate. It says:-

"No person against whom a complaint is made under this Act, who is not immediately before the hearing of the complaint in actual custody, shall be compelled to enter the dock or place usually assigned for prisoners under trial in the court or shall be otherwise treated as under arrest during the hearing of the complaint".

I think this is very progressive. If I happen to have an employee who complains against me; now that I am required to keep records, he should not treat me like a criminal or a common thug. For you to feel that I am the person against whom a complaint is launched, you put me in the dock. I think this is very good and I congratulate the Minister. Even for employees, it is not a crime. If you have not been arrested and you came in obedience--- I know this because I have dealt with matters of this nature brought to me at that time. It is sometimes very demeaning when the employers just comes there because a complaint has been launched and you throw him into the dock. It is not a very good experience.

Mr. Temporary Deputy Speaker, Sir, another very good invention that I congratulate the Minister for, welcome and support is the creation of a separate office of Director of Employment, distinct from the Commissioner of Labour. That is a very welcome move.

Overall, because I did not have occasion to get through all the details, I want to say that I support this Bill. It is a Bill in the right direction. It abets our law relating to the institutions that deal with labour matters, or labour disputes.

With those few remarks, I beg to support.

Mr. Weya: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for allowing me to contribute to this Bill. I remember the time when I was much younger, when I had just come out of school. I was employed by the Kenya Power and Lighting Company Limited. Those were the days when labour laws were, really, followed more strictly than today. I remember that even within the institution I was in, you would find boards that defined to you the labour laws that regulated matters within the country. It is about time that as a nation and Parliament, we considered issues that are pertinent to what is happening in the modern times. One of those issues is affirmative action, and the other one is that of people with disabilities. We come to Parliament just because of the fact that we are able to live a normal life. We do not, really, go back to the grassroots and realise that about three million people are living with disabilities. Whatever decisions we make in this country are critical, because we can use some of those people when it comes to employment and labour, because they are citizens of this country. They are human beings. Therefore, we need to have complete respect for each individual who lives in our society.

Mr. Temporary Deputy Speaker, Sir, the issue of women is also critical in our modern day society. If we do not have women, people with disabilities and the youth represented on this Board, they will be left out when the time comes. I heard the previous speaker talk about experience in terms of what happens about experience when you appoint someone to the Board. I would like to inform the previous speaker that in today's modern times, if you go to the private sector, you will find that youthful people are the ones who are running institutions, and that those institutions are making huge profits. Those institutions are the ones which are turning round the economy of this country.

So, the issue of saying that because one has not lived until he is 50 years old, or whatever age, one has no experience, does not hold water. We are living in modern times. When we were in

school during our times, we never used computers in school. However, today, a child starts using a computer as early as in a nursery school. By the time he completes Form IV, he has more exposure than some of us who went through the old times. So, we must, really, look into what is happening in modern times. Saying that seven years' experience is not enough is misleading.

Mr. Temporary Deputy Speaker, Sir, today, we have what we call the "lower-end-workers". We have to look critically into ways of ensuring that employers, including those who employ house-helpers, look into their conditions. You find employers bring people who have no capacity from the rural areas to the city and mistreat them. One is given a mat to sleep on the floor.

If you look at the way they live, it is, really, haphazard. We need to look at them as members of our society. Even if he is your employee, the fact that he is disadvantaged, and he has no other alternative, does not warrant you to misuse that person by paying him little money at the end of the month simply because you accommodate and give him food, knowing he will not get anywhere else. If he cannot live that way, he goes back to the village where he was suffering.

Mr. Temporary Deputy Speaker, Sir, there was a time when people used to employ workers. By the time the worker comes into your house, he is given bedding of his own and clothes, so that he becomes a decent person in your house. Today, one is forced to wear his own clothes as he works for his employer. When you employ people to work for you, it is your responsibility, or that of an institution, to provide them with protective clothing and uniforms, which they are supposed to put on while on duty. Today, some of these things are being overlooked by our society. We just assume that it is the norm and yet it is not.

The issue of employing somebody on temporary basis for even ten years is critical. One is employed and, after three months, he is sacked. He stays for one month and then he is told to apply for employment as a temporary worker again, because they are trying to by-pass the regulations. So, one remains a temporary worker for even ten years. Multinational corporations are now going into what they call "handing over the responsibility of employing workers to a contractor".

They are doing this in a bid to beat what we call laws and regulations of our country. They say: "We are sub-contracting this work, because we have found that with the regulations and laws that are in place, and what we are supposed to pay, it is easier for us to give this burden to somebody else". When you look at the way the contractors handle workers, because the guy realises that he is going to pay somebody Kshs100 per day, and he wants to beat the system, he looks for a sub-contractor and tells him: "Let me pay you Kshs150. You pay the workers Kshs100". That way, he gets away with these things illegally.

So, we should go further, apart from looking at the employer, and look at the person he is contracting work to and look at the way he handles the workers at that level, so that they do not beat the system. Some of the employers even lock up their workers in factory premises and run away, and claim they do night-shifts. No one monitors them. You do not find the labour officers going round.

We do not want to pass laws in this House just for the sake of it. There are many laws we pass here. Once they are assented to by the President, they are just put on the shelves. No one follows up to ensure that they are implemented. No one is even interested in them. I know that we are now under pressure to pass these laws, because we want to go and show off somewhere that we have passed five laws in Kenya, which are in place, and that we are compliant. I mean, the compliance here is because---

The Temporary Deputy Speaker (Mr. Sungu): Order, Mr. Weya. The National Assembly of Kenya makes laws in the interests of this country and nobody else. Please, take note of that fact. Proceed.

Mr. Weya: Mr. Temporary Deputy Speaker, Sir, I agree with you. However, the way these Bills are being rushed through, one after the other, there must be something that we are not being

told. I have never seen a situation where five Bills have been put on the Order Paper at the same time. There must be some speed somebody is looking at and trying to follow. So, we do not want to hide, or pretend, hide under something else, and yet there is something somebody is targeting ahead. We must be very clear and speak the truth. We have been voted to Parliament to speak the truth. When you identify something that is---

The Minister of State for National Heritage (Mr. Shakombo): On a point of order, Mr. Temporary Deputy Speaker, Sir. My colleague knows very well that our business here is to pass laws. We have remained behind because of the last long recess. Now, we have limited time to dispose of all these Bills. We are not answerable to anybody else except Kenyans. That should be known.

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

The Minister of State for National Heritage (Mr. Shakombo): Mr. Temporary Deputy Speaker, Sir, is the hon. Member in order to insinuate that Parliament is working because it wants to please somebody somewhere else?

The Temporary Deputy Speaker (Mr. Sungu): Mr. Minister, as you know, the Chair has already taken issue with that statement. He has been corrected, and he should proceed.

Mr. Weya: Mr. Temporary Deputy Speaker, Sir, I know that there is an International Labour Organization (ILO) Conference which will be held very soon. So, let us not hide under the blanket.

An hon. Member: It is an annual thing!

Mr. Weya: It is annual thing, but why are we putting---

The Temporary Deputy Speaker (Mr. Sungu): Please, address the Chair!

Mr. Weya: Mr. Temporary Deputy Speaker, Sir, one of the people who are really affected in this country, when it comes to labour laws, are farmers or who work in the agricultural sector. I am talking about sugar-cane cutters, coffee and tea pickers. These people go through some hazardous conditions. The same applies to the people who work in tobacco plantations. You will find them spraying the crops with dangerous chemicals, yet, he or she has no protective clothing, whatsoever. But, we look at them; we really do not care. This is a critical issue. One of the reasons why we are trying to create these institutions, is because, once created and they become functional, they will get rid of some of these anomalies.

Mr. Temporary Deputy Speaker, Sir, I have travelled around the world and seen what is happening in foreign countries. Kenya should imitate what the First World countries, because of the experiences that they have had over the years. In South Africa, I think the minimum wage paid to domestic servants is Kshs10,000 per month. In Kenya, you will find someone paying his or her worker Kshs1,500. This money cannot do much for anybody in this country, given the inflation that we are having. In Finland, even when the Government is making decisions for institutions, they all work together. They have a vote called Research and Development. Before they embark on anything, they involve the businessmen, politicians and trade unions. They call all the stakeholders and tell them: "This is our vision." They do not want to see people, for example, the labour union officials, complaining as they move forward. They agree to progress in a particular direction and everybody benefits. So, people work together.

But in our country we claim that we have Vision 2030, for example, when the Members of Parliament, trade unionists and labour officers have no clue, yet, the Government is supposed to be implementing a vision. It is typically going to fail, because we are supposed to have the political goodwill. We are supposed to have the workers and labour organizations supporting it, so that we move in one direction. That is the only way a country like ours will be able to grow to the level where other countries are.

Mr. Temporary Deputy Speaker, Sir, we should be following what is happening in the First

World countries. What we are doing is looking at what other developing countries are doing and trying to follow their footsteps. We should be looking at what developed countries have done and follow their footsteps, in order to achieve what they have achieved. In the 21st Century, we do not expect somebody to be starving or not affording transport to get to his work place and, therefore, trekking for two hours to the work place. You will never find that happening in the First World countries. We need to have systems that will assist workers. Even companies should be working towards finding solutions to these problems.

Mr. Temporary Deputy Speaker, Sir, there was a time when companies used to take care of their workers. They had buses which used to pick workers at different points and take them to work. In the evening, they used to be taken back to their homes. In most multinational companies it has now become critical that the managing director and the sweeper eat the same food in the same dining room. They do not have separate boardrooms for directors, managers and sweepers. We need some cohesiveness. People in the First World are working together in order to achieve a goal. That is the modern way of thinking. On Fridays, to make everybody feel that they are all working for the same interest, you will find the managing director and sweepers wearing the same T-shirts. You may not tell who is the manager, managing director or sweeper, because they all work---

The Temporary Deputy Speaker (Mr. Sungu): Order, Mr. Weya! The Chair would advise that you look at the Labour Institutions Bill, 2007, which is what we are debating. Relate your arguments to that Bill, and enrich it, so that the Minister can improve it in whatever direction. Just look at the Bill and confine your contribution to it, please!

Mr. Weya: Mr. Temporary Deputy Speaker, Sir, this is some of the background history that we need to put in place, so that we are able to understand what we are trying to achieve. These are some of the things that we are trying to achieve, in the modern way of achieving things, and not in the outdated way of doing things. We are putting laws in place, which are supposed to achieve certain things. When we say that we have created a law to cater for disability, we should ensure that it states that workers with disabilities should be able to access a building on a wheel chair. However, some buildings do not have a provision for people on wheel chairs to access them. In such cases, we are disadvantaging people with disabilities. Therefore, when we creating a board in an institution, we should ensure that people with disability, women and youth are represented. These are some of the things that we are trying to put into perspective. Otherwise, we will have what we call an elitist situation, where we shall only be hand-picking the elites and forgetting the other people down the line. We should create boards which can interlink with one another.

Mr. Temporary Deputy Speaker, Sir, I think I have gone through all that I wanted to talk about. With those few remarks, I beg to support.

Prof. Maathai: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make a contribution. I will only say a few words about this Bill.

First of all, I would like to congratulate the Minister for bringing to the House all these different Bills on labour. As he has already indicated, they are, indeed, very inter-related. It would, probably, have been easier for all of us if they were brought as one Bill. But I hope that in the course of time, they will find ways of merging them together, so that we can deal with one document.

Mr. Temporary Deputy Speaker, Sir, I would like to introduce one issue that I think is very important. That is the issue of the culture of hard work. It is very nice to have institutions. We often think of institutions that can protect workers and employers. They should also ensure that there is harmony in our labour industry. But I would like to say that in this country, probably because we come from a situation--- Sometimes to I try to understand and go back to the times when our people used to go to look for work, in order to be employed. If you go back to that time, you find that we used to have some phrases like "*kuandikwa kazi*." It must have been quite a new

phenomenon in our country to have people going to have their names just put on a register, to indicate that now they were employed; *au wameandikwa kazi*.

There is some culture that has evolved in our country, which has a relationship with that concept of "*kuandikwa kazi*." It does not carry with it a responsibility to that person who has employed you, *au ambaye amekuandika kazi*. In our culture of work, we need, through this Ministry--- I hope that the Minister will introduce a way of entrenching a culture of hard work in our people; a culture of feeling responsible to those who have employed you. You have no other responsibilities, you just wait for the salary. This is a very big problem in this country, and I think that, as a people, a society, a Government and leaders, we need to address it. That is partly why we have developed a stereotype in this country of "African workers", where we are perceived and stereotyped as people who are lazy; people who are not honest; people who are willing to cut corners as soon as the boss is out of sight.

Mr. Temporary Deputy Speaker, Sir, I remember that the President said, for example, that we ought to be a working nation. Now, you cannot be a working nation if you do not have a culture of hard work and honesty. We talk about responsibility and accountability; this is where it starts. You have to have a culture where you feel responsible to the person who is going to give you money or a reward for what you have done. In many countries which have developed, and I would like to look at South East Asian countries, because if there are a people who present a challenge to us, it is the people of South East Asia. Those people were colonised just like us, and often by the same colonial powers like us. But, somehow, they have developed within the period of--- May be, it was there before. May be, it is post-colonial, but those people have developed a culture of hard work where they actually feel responsible to the person who is going to give a reward. They feel that they should not be paid for doing nothing; because they will be paid at the end of the month, they have to provide work. If we did that, we would not only be a working nation, but we would also be a people who have a value for hard work; people who can be respected for doing what is expected of us. Not people who have been stereotyped. Even as senior people who are willing to put a jacket; a very beautiful coat on a chair, literally walk out and go and do your business. But because your chair is there, you assume that people will psychologically think that you cannot be very far because your jacket is there. But, sometimes, you are miles away from where you are expected to be by your employer.

So, Mr. Temporary Deputy Speaker, Sir, this is, to me, a very serious issue which the Ministry should address. I do not know how exactly the Minister will do it, but I really think that if we are serious about moving forward and pre-empting a lot of the disputes that we encounter, then we need to develop values about hard work, honesty--- I know that, Mr. Minister, you want me to finish. We should have values about being responsible to the person who has employed us.

With those few remarks, I beg to support.

The Assistant Minister for Planning and National Development (Mr. Ethuro): Thank you, Mr. Temporary Deputy Speaker, Sir. I also wish to contribute to this Motion and thank the Minister for doing a job that this House has been asking for a long time.

Mr. Temporary Deputy Speaker, Sir, I wish to state from the outset that I used to be an Assistant Minister in the Ministry of Labour and Human Resource Development in the Eighth Parliament for the entire duration of the parliamentary term. While there, I noted the number of Questions that were coming to this House asking the Minister for a review of the labour laws. We set up a task force--- I am extremely excited that the job that we could not finish during our time, the hon. Minister for Labour and Human Resource Development, Dr. Kulundu, has been able to accomplish. That is why it does not shock me that we have about three Bills pertaining to this Ministry in a row! I think that this is pending work which should have been expedited ten years ago. This is work that is required in terms of meeting our commitments to the International Labour

Organization (ILO). There is nothing fishy about these Bills and we are not answering to anybody; we are just committing ourselves to the obligations that we have entered into as members of the international community.

Mr. Temporary Deputy Speaker, Sir, I will concentrate my comments on the National Labour Board and the part of the Minimum Wages Council. I will start with the Minimum Wages Council. These provisions are retrogressive in this day and age. When we are dealing with liberalisation and free market economy, we should also liberalise the employment market because when we are talking about increasing employment opportunities and we keep determining the wage levels--- This should be left to the forces of demand and supply! We are going to discourage employers from hiring people if we continue to set and fix wages. And you know the kind of wages that the Minister announces on every 1st of May. They are really minimal! They do not serve any purpose apart from public relations. I really urge the Minister to reconsider this issue. I know it makes political sense sometimes to try to imagine that we are helping the lowest worker. But we are deluding ourselves as a country. The state is greater than the Government, and this should be made absolutely clear. We want our people to be in a position to gain employment! When the terms of our productivity improve--- I know that the Productivity Centre is already operational; and when the Productivity Centre will have an impact, in fact, fixing of minimum wages will be completely irrelevant.

Mr. Temporary Deputy Speaker, Sir, my other contributions will be on the National Labour Office. This Bill has made great provisions in terms of ensuring that organised labour or employment is appreciated. I will start with Part I, the Preliminary, and look at the meaning of "Contract of service"; it says:-

"contract of service" means an agreement, whether oral or in writing---

If you are going to an industrial court to argue your case, how do you argue based on an oral agreement? I think that all agreements should be in writing, whether for one month, two months or three months. That should be the case because anything oral cannot be used against or for the promotion of the labour case.

Mr. Temporary Deputy Speaker, Sir, I also wanted to agree with hon. Muturi on where we are defining the Labour Act in terms of this Act, the Employment Act, Labour Relations Act and the Occupational Safety and Health Act. I think it is important for the Minister to appreciate that all the Acts that relate to this Bill can be referred to at any particular time by the particular agency that is being employed.

Mr. Temporary Deputy Speaker, Sir, when you look at Article 6 on the composition of the Labour Board, particularly Articles 6(b) and 6(c), it talks about the "most representative federation" of trade unions as well as of employers. Clause 6(b) says:

"the general secretary of the most representative federation of trade unions"

while Clause 6(c) says:-

"the chief executive of the most representative federation of employers organization".

When you go to Clause 6(2), it says:-

"Subject to the provisions of this section, if there are two or more significantly representative federations---

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

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

Mr. Temporary Deputy Speaker, Sir, I think that my reading of this situation and the interest of this country is for labour to be organised and to create a Labour Board that is independent of influences of labour, employers and, indeed, even influences by the Minister. When this board is supposed to advise both the Chief Justice and even the Minister himself, we are making provisions that I believe have been detrimental to organised labour and trade unions in this country.

Mr. Temporary Deputy Speaker, Sir, I think we all know and it is in our charters, that the Central Organisation of Trade Unions (COTU) is the most representative organisation of trade unions. The Federation of Kenya Employers (FKE) is the most representative organisation for employers. Why do we seem to be shying away from identifying them? This same House, when approving the membership to the Kenya Advisory Anti-Corruption Board (KAACB made specific references to these particular organisations to make nominations.

Mr. Mwandawiro: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not wish to interrupt my good friend. However, is it in order for the hon. Member to insinuate that COTU is a very representative body of Kenyan workers while the reality says it is the most oppressive body in this country?

The Assistant Minister for Planning and National Development (Mr. Ethuro): Mr. Temporary Deputy Speaker, Sir, you will agree with me that, that was just one of those opinions shared by non-Governmental organisations (NGOs) that are not recognisable in our industrial relations. It is COTU that is recognisable. I am making reference according to the law and practice. So, my colleague should be informed!

The appointment of the secretary to the board should, at least, be equivalent to that of the Deputy Commissioner for Labour. This, to me, is a very pertinent point. If we are really going to make this board that independent---

The Temporary Deputy Speaker (Mr. Poghiso): Mr. Ethuro, I thought you would be interested to know that, that was Mr. Mwandawiro's opinion. It will not amount to a point of order but it is his opinion.

So, proceed!

The Assistant Minister for Planning and National Development (Mr. Ethuro): Mr. Temporary Deputy Speaker, Sir, I said as much.

When you appoint the secretary to the board at the equivalence of the Deputy Commissioner for Labour, I think, the Minister needs to reconsider it seriously. I expect a board that is managed by a very competent person; a person who is very knowledgeable in labour matters. He should be a person who is supposed to be briefing the board every two months on the economic state of the nation. This particular person will need to be properly remunerated so that he should really be, at the very minimum, in my view, almost at the level of the Permanent Secretary. However, the service may be at the level of the Labour Commissioner himself. You basically need an equivalent. You need somebody strong enough.

As I conclude because I want to agree with the mood of the House, this is a straightforward matter that we need to conclude in good time, I do not see the provision in this, of a very important committee, even within the Department of Industrial Relations. This is the Manpower Development Committee of Labour. I am, as part of my duties in the Ministry of Planning and National Development, looking into how you can get a committee that is fully representative from the universities and labour relations. This is a regional project! Kenya has had an opportunity to have a vibrant committee, led by a very competent officer who makes us proud in international meetings. However, this committee has died a natural death. We have been trying to revive it across the Ministries so that, that committee, under the Ministry of Labour and Human Resource

Development, can play the role that it is supposed to play. I urge the Minister, in his quest to make sure that the labour relations are--- That committee needs to be reflected in this particular board as an institution of labour.

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

The Temporary Deputy Speaker (Mr. Poghiso): Mr. Mwandawiro, now you can give us your opinion!

Mr. Mwandawiro: Asante sana, Bw. Naibu Spika wa Muda, kwa kunipatia hii fursa nami nichangie kidogo kuhusu Mswada huu wa Taasisi za wafanyakazi. Kutoka mwanzo, nataka kusema ingawa Wizara ya Leba imechelewa sana katika kuleta Miswada hii Bungeni, ni heri kuchelewa kuliko kutofika. Kwa hivyo, tunasema, haidhuru Waziri, tunakushukuru! Bora tu huu Mswada wa Taasisi ya Wafanyakazi ni kukumbuka kwamba sheria zote za leba ambazo tunazifanya hapa, si sheria ambazo zitawaokoa wafanyakazi. Tusiwadanganye wafanyakazi wa Kenya kwamba hizi sheria tunazowatengenezea ndizo sheria zitawakomboa. Hizi sheria ni za kutengeneza uwanja wa harakati za kitabaka za wafanyakazi, ili kuwe na fursa nzuri ya wafanyakazi kupambana kujiokoa. Kwa hivyo, tukiwa na sheria bora na nzuri zaidi za kuleta huo uwanja, na kuufanya uwe wazi - tuna wahusika wawili; mwajiri na mwajiriwa. Hao ndio wahusika wawili. Na hata tukiangalia hizi taasisi ambazo zimezungumziwa na huu Mswada, tukumbuke kwamba taasisi hizi ambazo tunazungumzia, kwa jumla, ni taasisi ambazo zinasaidia waajiri hapa kuwanyanyasa wafanyakazi. Ndio maana nataka kusisitiza kwamba taasisi ya muhimu zaidi ambayo ndio ngao ya wafanyakazi ni chama cha wafanyakazi. Chama cha wafanyakazi ndio taasisi ambayo ni muhimu zaidi na itakayowaongoza wafanyakazi waingie katika hizi harakati za kupambana kuhakikisha sheria hata zikiwa bora zaidi, kwamba zinatekelezwa kwa manufaa yao. Hii ni kwa sababu tunajua kila wakati mwajiri atakuwa anatafsiri sheria ili kulinda maslahi yake. Wafanyakazi nao watakuwa wanapambana kutafsiri sheria ili kulinda maslahi yao. kwa hivyo mawazo yote ambayo yako hapo ambayo yanalenga kujaribu kutoa picha kwamba tunaweza kutengeza sheria ile ambayo inamfanya mwajiri awe na huruma kwa wafanyakazi au tuseme Waziri wa Leba awahurumie wafanyakazi--- Historia ya nchi hii imeonyesha kwamba Wizara ya Leba, Waziri wa Leba na mwajiri ni kitu kimoja katika kulinda maslahi ya mwajiri dhidi ya wafanyakazi. Mpaka sasa nataka kuona tukiwa na waziri - naomba kwa hii miezi michache ambayo imebaki, Waziri huyu ambaye ametuletea hizi sheria nzuri sana Bungeni, aonyeshe mfano kwamba kwa mara ya kwanza katika historia ya Kenya, kumekuwa na Waziri ambaye amesimama upande wa wafanyakazi. Ni rahisi sana kujaribu kufanya hivyo.

Bw. Naibu Spika wa Muda, Waziri anaweza kurudi huko Taita Sisal Estate, Mwatate ama Salt Lick Lodge ambayo nilimuuliza Swali hapa akaenda, aende aone kwamba wale watu tangu aende, hawajatekeleza chochote na awaamuru watekeleze amri ambazo alitoa, kulingana hata na sheria za leba ambazo ziko sasa. Ndio kwa maana tukiangalia historia halisi ya nchi yetu, maanake sheria hazitoki hewani, lazima tukumbuke kwamba hii sheria ambayo inaletwa na huu Mswada inampa Waziri wa Leba nguvu nyingi kupita kiasi. Tukiitegemea, ni kama inajaribu kusema kwamba eti Waziri wa Leba atakuwa mzuri ambaye atatengeza sheria ambazo zitasaidia kila mtu; mfanyakazi na mwajiri. Nataka kusema kwamba Waziri wa Leba, tukimpatia hizi nguvu ambazo ako nazo katika hii sheria, tutakuwa tumekosea wafanyakazi na wataendelea na hiyo taabu milele.

Ningetaka kuona kwamba Waziri wa Leba kama anateuwa taasisi yoyote nyingine katika sheria hii, ateu lakini iidhinishwe na taasisi zingine, hasa Bunge. Tukisema kwamba tumpe, kama tukiangalia, tunataka kusema kuwa Waziri wa Leba ndiye ana mamlaka kabisa hata ya kutengeneza halmashauri ya kitaifa ya nguvu kazi ambayo ni muhimu sana; ambayo ina uwezo wa kutengeza taasisi zingine za wafanyakazi. Mimi ningetaka kupendekeza kwamba hata kama anateuwa, ateu lakini kuwe na taasisi ya kuidhinisha kwa Bunge ili wawe watu ambao kwa kweli watakuja kusimama katika halmashauri, wale ni watu ambao wanaonekana wamepanda kwa kiwango cha

juu. Hasa, wawe ni watu ambao ni wasomi. Mimi ningependa kama wangukuwa ni wasomi wa mrenge wa kushoto. Lakini, haidhuru, wawe ni wasomi ambao wanaweza kutegemewa kwamba wataatengeneza sheria ambazo zitasaidia kila mfanyikazi. Mfanyikazi ni mtu amenyanaswa katika hii nchi mbele na nyuma kwa kila hali, tangu ukoloni mpaka sasa.

Bw. Naibu Spika wa Muda, ukiangalia Mswada huu vizuri, katika kifungu 43(1), utaona kwamba ni Waziri wa Leba na Ustawi wa Wafanyakazi ambaye ana uwezo wa kumteua Msajili wa Vyama vya Wafanyakazi. Msajili wa Vyama vya Wafanyakazi ni mtu muhimu sana hasa tukitilia maanani hoja kwamba taasisi ya vyama vya wafanyakazi ndiyo taasisi pekee yake ambayo, katika mswada huu, inamtetea mfanyakazi halisi. Hizi taasisi nyingine tunaziunda tu tukidhani kuwa zitawasaidia wafanyakazi. Lakini kwa kweli, katika mfumo wa kibepari kama huu wetu, linalofanyika ni mabepari kuwasaidia waajiriwa tu. Ile taasisi ambayo inaweza kumkomboa mfanyakazi na kupigania kwa ukweli haki za wafanyakazi ni taasisi ya chama cha wafanyakazi.

Bw. Naibu Spika wa Muda, kwa hivyo, Msajili wa Vyama vya Wafanyakazi sharti awe ni mtu ambaye ana heshima na taadhima ya hali ya juu. Aidha, sharti awe mtu ambaye hawezi kutumiwa na waajiri mabepari. Hafai kuwa mtu ambaye atakataa kuandikisha vyama vya wafanyakazi ambavyo vinaonekana kuwa vikali katika kutetea maslahi ya wafanyakazi.

Bw. Naibu Spika wa Muda, hali halisi ilivyo sasa, wafanyakazi wengi wa Kenya - mimi nimeshirikiana sana na wafanyakazi wengi wa Kenya - wanalia kwamba kile Chama Kikuu cha Wafanyakazi nchini (COTU) kinawanyanyasa na kuwagandamiza wafanyakazi mbele na nyuma. Aidha, vyama vingine vya wafanyakazi haviwapatii haki wafanyakazi ambao ni wanachama wavyo. Kwa hivyo, kumekuwa na mwamuko na lazima tuende na nyakati. Wakati tunapozungumzia mfumo wa vyama vingi vya kisiasa, vile vile ni muhimu tutilie maanani kuwepo na mfumo wa vyama vingi vya wafanyakazi kama ilivyo katika nchi nyingine duniani. Haifai wafanyakazi walazimike kuwa chini ya COTU ama chama kingine ambacho kinadai kuwatetea maslahi yao ilihali viongozi wa vyama hivyo wamenunuliwa. Tunafahamu kwamba kila wakati wafanyakazi wanalalamikia haki zao, kuna baadhi ya viongozi wanaopewa chai. Katiba za vyama vya wafanyakazi hazijulikani na wafanya kazi wenyewe. Kwa hivyo lazima tuufanye uwanja huu uwe huru. Wafanyakazi sharti wawe na haki ya kutengeneza taasisi ya vyama vya wafanyakazi ambayo inaaminika. Sharti chama chochote kile cha wafanyakazi kiweze kuaminika na wafanyakazi wakisadiki na pesa zao. Chama hicho lazima kiweze kutetea maslahi yao. Kwa hivyo, yule ambaye atakuwa anaongoza taasisi hiyo ya Msajili wa Vyama vya Wafanyakazi lazima awe mtu ambaye ameidhinishwa na watu wengi, kwa mfano, Wabunge. Sharti watosheke kwamba huyo mtu ana taadhima ya kutosha na kuaminika kwamba anaweza kuandikisha vyama vya wafanya kazi kama ilivyo, kwa mfano, katika tume ya wapigaji kura. Taasisi hiyo ndiyo itakuwa inaandikisha vyama vya wafanya kazi. Tusipokuwa na watu kama hivyo nilivyosema---

Bw. Naibu Spika wa Muda, nimesema mswada huu una mambo mengi sana. Kwa mfano, unapendekeza kwamba ni Waziri ambaye atachagua kila mtu na kutengeneza kila taasisi. Hii hali itatengeneza mtu ambaye atakuwa ni imla kwa wafanyakazi. Kwa hivyo, kwa mujibu wa kujaribu kuzifanya hizi taasisi zifanye kazi kwa maslahi ya wafanya kazi, lazima tuhakikishe kwamba wakati Waziri anateua watu, kuwe na taasisi nyingine ya kuidhinisha uchaguzi wake. Isiwe tu ni jukumu la mtu mmoja, yaani Waziri kuteua watu. Tunajua kwamba kwa kawaida mtu mmoja hawezi kuaminiwa na uwezo mkubwa. Mkimpa mtu mmoja uwezo mkubwa kama huo, kuna uwezekano kwamba huyo mtu atautumia vibaya.

Katika historia ya harakati za wafanyakazi humu nchini, tunajua kwamba Wizara ya Leba na Ustawi wa Wafanyakazi, Waziri Wa Leba na Ustawi wa Wafanyakazi na taasisi nyingine zote zimekuwa zikitetea tu maslahi ya waajiri.

Kwa hivyo Bw. Naibu Spika wa Muda, ni muhimu tuupitishie huu mswada. Lakini tuupitishie tukihakikisha kwamba wakati utarudishwa tuukamilishe kabisa. Tuurekebishe

tukihakikisha kwamba taasisi ile muhimu ya wafanya kazi sharti ipatikane katika sheria zote nyingine. Katika hizo sheria tunazotengeneza tuhakikishe kwamba chama cha wafanyakazi, tunakipa uwezo mkubwa na vile vile hatutengenezi chama cha wafanyakazi ambacho kitawapa watu binafsi wanaojiri mamlaka makubwa ama kupendwa na Serikali iliyoko. Tusiwape nafasi ya wao kulazimisha wafanyakazi wengine kuwa chini yao ili hali wanawasaliti. Hakuna kitu watakachofanya. Vile vile, kuwe na uwezekano wa wafanyakazi kuhakikisha kwamba taasisi ya wafanyakazi ni ile itakayokuwa ya mfumo wa vyama vingi ili iweze kutetea kila upande wa wafanyakazi.

Bw. Naibu Spika wa Muda, mwisho, Waziri wakati wote anapoteua watu, waweze kuidhinishwa na taasisi nyingine. Kwa maneno hayo, naomba kuunga mkono mswada huu.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to speak just after my young communist friend there.

Mr. Deputy Speaker, Sir, again, this House has been unable to benefit from the industry of the Departmental Committee that should have guided debate. We want to urge the Chair to assist this House in leading to informed debate by Committees doing their work. We do not want to repeat this over and over again. We want the Chair to assist the House.

The Temporary Deputy Speaker (Mr. Poghiso): Mr. Wetangula, Committees are well facilitated and if they are not doing their job, then I think that is something that needs to be looked into. I know that they are all well facilitated to work. They should be working.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): That is exactly the issue, Mr. Temporary Deputy Speaker, Sir. We vote money for Committees and so they must work. We are only left with Muite's Committee that works in this Parliament.

Mr. Bahari: What about PIC?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): The PIC is not a Departmental Committee. We are talking of Departmental Committees that have to inform debate in the House.

Mr. Ahenda: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am disturbed that the hon. Assistant Minister referred to hon. Mwandawiro as a communist friend. Is he a devout communist?

Mr. Mwandawiro: Yes, I am a communist!

(Laughter)

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, hon. Ahenda should care to know that my young communist friend has been my client for the last many years and I know him.

Mr. Temporary Deputy Speaker, Sir, I want to contribute to this Bill and I will start where hon. Ethuro left. In a liberalised economy and labour market, Parliament cannot, today, pass a Bill to deal with wage guidelines. I want to urge the Minister and I have mentioned that to him as we were seated here to delete from this Bill the whole of Part VII. It has no relevance whatsoever. The market forces of demand and supply will determine what wages are payable to employees in this country.

Mr. Temporary Deputy Speaker, Sir, when you have wage guidelines, sometimes, you make the workers to suffer because even where employers want to pay more, they go by the guidelines and underpay the workers. We should leave the workers, through the trade unions to bargain for their wages. Equally, we should leave employers to pay and scout for talent. If I have three or four people on the same scale, I have a duty and a right as an employer to pay one more

than the other, depending on his level of production instead of being tied to issues of wage guidelines.

Mr. Temporary Deputy Speaker, Sir, one simple thing, if you look at page 409, the Bill says: "The enactment of the Bill will not occasion additional expenditure of public funds." That is not true. In this Bill, we can see that there will be a Board and many other organs whose officers will be paid salaries and operational costs. I hope the Minister will delete that statement. I do not agree with him that the passing of the Bill will not occasion expenditure. It will occasion quite a substantial expenditure of public funds because to run the Board, we will need a budget.

The Temporary Deputy Speaker (Mr. Poghio): That is true once you pass the Bill.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Point of information, Mr. Temporary Deputy Speaker, Sir. That part of the provision comes at the end of every Bill. However, it is there by mistake. By the time we come to the Third Reading, I assure the House that it will not be there.

The Temporary Deputy Speaker (Mr. Poghio): That the statement will not be there?

The Minister for Labour and Human Resource Development (Dr. Kulundu): The statement that there will be no expenditure of public funds is incorrect.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Thank you, Mr. Minister, for clarifying that position. We just want to have the record straight.

Mr. Temporary Deputy Speaker, Sir, before I move on to Clause 6 of the Bill, I want also to join my colleagues who have said that the series of Bills being brought from the Ministry of Labour and Human Resource Development are long overdue. They are Bills that we welcome and are likely to make the working life of workers in this country better.

Clause 6(1)(b) is on the composition of the Board. We all know that there is the Central Organization of Trade Unions (COTU) and the Federation of Kenyan Employers (FKE). When we say the Board shall consist of the General Secretary of the most representative federation of trade unions, we are leaving room for mischief. When we say it shall consist of the Chief Executive Officer (CEO) of the most representative federation of employers in this organization, we are also leaving room for mischief. The Minister can decide to by-pass COTU and FKE and pick some innocuous representatives of organization. He can say they are the most representative federation of trade unions. I would like specifically we say "COTU" and "FKE", so that we do not leave room for discretion to be possibly abused. We have seen it happen in many places where those appointing people in positions of authority simply use the law to by-pass the most representative organization. They pick some small organization that nobody knows and say that it is also a workers organization and move on with it. I urge the Minister to change that.

Mr. Temporary Deputy Speaker Sir, it is good that the Board will be able to advise the Minister. I would also want to see the Bill providing for the value that the Minister puts to that advice. We are saying that the Board will have a duty to advise the Minister. However, there is no provision in the Bill that tells us what the Minister will do with that advice. He can be advised, ignore it and move on. I would want to see the law clear on that.

Mr. Temporary Deputy Speaker, Sir, we are in an era of democracy and when we set up institutions, we have a duty to give them democratic space to operate. We cannot set up a Board that will perform such fundamental functions in the labour arena and then not give it a simple authority even to hire their own Board secretary. I would like Clause 10 to be changed, so that the secretary to this Board is appointed by the Board. We can set the criteria and the qualification, so that they can advertise competitively and hire persons of competence to give services to the Board. When we say that the Minister shall appoint a secretary to the Board who shall be an officer in the department of labour with experience in labour administration and who holds a post of or at least equivalent to that of the Deputy Commission for Labour, we are just making this Board become a

small tool for manipulation by the Minister. We want this Board to have effective authority, so that when they give the Minister advice, it is a reasoned advice that would make things better for the workers of this country. I urge the Minister that he should not be the one to appoint the secretary to the Board. Let the Board hire and fire their officers. Equally, this Board appears to have more or less full-time functions. It should have the capacity to hire their own staff and have their own terms of service, so that they can effectively support the Minister in the discharge of his duties.

Mr. Temporary Deputy Speaker, Sir, I welcome the establishment of the labour court. I think that is a wonderful idea. We will now have the labour court operating at the national level like a High Court and subordinate courts to it and with the national court having appellate jurisdiction. I would like to see that after the passage of the Bill, we have at least a minimum of a labour court in every district or every cluster of districts depending on how the jurisdiction will be crafted. Issues of labour dispute do not have to be centralised in Nairobi alone. I would also want to see that the national labour court has some circuit arrangement like the way the Court of Appeal does, so that they can hear cases at least, in every provincial centre. They should not just stick in Nairobi and people have to pay money to come all the way to them. They should be able to go to the people and dispense justice. I would also want to see that the courts are run professionally with a registry and professional staff, so that they can develop labour laws. Labour law in this country is very under-developed. This is because we have always looked at the Industrial Court as a small outfit that settles industrial disputes. We want it to develop, so that even students studying labour law at the University of Nairobi or any other university, that want to do research on labour matters access materials, library and everything from the National Labour Court. We want to develop the labour law in this country.

Mr. Temporary Deputy Speaker, Sir, I would like to see in Clause 15, the members of the National Labour Court, those who are not the judge or the judges, their qualifications be defined. If we do not do so, the Minister may just wake up and fill up the courts with persons without qualification because the Act does not say who should sit in that court. It is important that Clause 15(1, 2, 3 and 4) be looked at, so that we have qualifications of persons to be appointed. More importantly, Clause 15(3) is dangerous. That the Minister can, after consultation with the board, and for good cause, revoke the appointment of a member. What is "good cause?" This is dangerous because if you put somebody in a labour court, they will discharge quasi-judicial functions. They need protection of the law. We cannot have a situation where, for example, when the courts want to make an unpleasant decision, then the Minister says, "it is for a good cause to revoke the appointment of this fellow." By so doing, he will throw everything in disarray. I think it is important that this be changed. We want to see whoever is appointed to sit in that court enjoys protection of the law. We should also set out a criteria on how the appointment should be revoked. For example bankruptcy, lunacy, gross misconduct, unethical behaviour and so on, but not "good cause" which is subjective to the Minister and not somebody else. That is dangerous and will not be good law. There is a provision for appointment of assessors under Clause 16, which is good. In certain cases, you need assessors to assist in guiding the court. But I would want to urge the Minister that he broadens this Clause, so that if you have a dispute and you say that of the assessors to be appointed, one will be acceptable to the complainant and one will be acceptable to the defendant, then you are just causing a stalemate. If I bring my assessor and Muturi brings his, each one will be supporting our points of view. I think, if you want to have assessors, I would want to urge the Minister to leave it to the court itself, and simply set the criteria on who qualifies to be an assessor, so that when they are appointed, they discharge a function that is judicial, impartial and just. But if the parties are the ones to bring the assessors, it is just a furtherance of their views; it is just a protection of their interests, and it will not be able to discharge the function properly. I hope my good friend, the Minister, will see the need to adjust Clause 16.

Mr. Temporary Deputy Speaker, Sir, Clause 17 deals with the Registrar of the National Labour Court. When you say a Registrar of the National Labour Court shall be a person of experience in labour law and administration of labour, this, again, is not good. A Registrar of a court that is a High Court should be a person qualified in law. We should be looking for a serious person whom either the Court can hire, or since there are some services that the High Court is going to give to this court, they can ask the High Court to second a magistrate at the Principal Magistrate's level, or at the Deputy Registrar's level, to function as a Registrar, so that records are well kept, procedures are well guided, decisions are reached properly, judgements and rulings are written well, and when they are written, they are able to be kept together and compiled into reports, so that we do not have a court which today says this and tomorrow says that. If these records are properly kept by a qualified person, then they will build precedent that can guide the court in making decisions in the future. I hope the Minister will look at Clause 17.

Mr. Temporary Deputy Speaker, Sir, Clause 19, I think this is not a critique, but the Minister should look at the flow of the Clause and see that there is definitely something wrong. This is because we always say that in law, you must say what you mean and mean what you say. When you read that Clause 19, it does not flow. It says:

"The National Labour Court, in both its original and appellate jurisdiction, has all the powers of a Subordinate National Labour Court under this Act and in addition to those powers may---

This means that all the other listed issues flow from what is set out in Clause 19 (1). It continues to state thus:

"(a) may make any appropriate order---

(b) may---

Then you see, "the Registrar of the National Labour Court is---". It does not flow, because that "may" must relate to the following clauses. I hope that those who drafted this Bill will look at that.

Mr. Temporary Deputy Speaker, Sir, when you move on to (c), it states that:

"The Office of the Registrar of the National Labour Court is vacant".

It neither follows nor flows.

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Wetangula, as you can see, from 19(1)(a) it should be a subclause. I think that is the way to do it.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Yes, Mr. Temporary Deputy Speaker, Sir. If you look at (c) after the word "may" you will see (c) which does not fall in place at all. It states:

"The Office of the Registrar of the National Labour Court is vacant."

Then within that (c) you have (i) which states, "the grant of urgent interim relief". What does that mean? It does not follow at all. If you move on to (b) it talks of "a prohibition" and it goes on and on. I think that there is some problem in the draft, and I hope that the Minister and his staff will look at that, so that they can make the law flow. This is because when eventually you go to litigate on this---

The Temporary Deputy Speaker (Mr. Poghisio): Minister for Labour and Human Resources Development, do you really follow this?

The Minister for Labour and Human Resources Development (Dr. Kulundu): Yes, I am following what my friend, hon. Wetangula is saying. However, it is not a mistake of the Drafting Committee. Some of these mistakes have been traced to the Attorney-General's Chambers. We will have them in order in the next stage.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! We really must get the final draft. At least, we must get something out of the final draft, if we are going to bring it to the House. You do not bring it to the House when it is so unpolished.

An hon. Member: You were in a hurry!

The Minister for Labour and Human Resources Development (Dr. Kulundu): We were in a hurry. That is a good one.

The Temporary Deputy Speaker (Mr. Poghisio): Proceed, Mr. Wetangula!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, I am happy that the Minister appreciates these kind of errors in a Bill that is going to be law. It will be very difficult to deal with it in this state.

Clause 19(h) on page 347 is just something that is not legally neat. It states:

"Subject to the provisions of any written law condone the late filing."

You do not condone; you allow or permit the late filing of documents. It is not a condonation. A condonation means that you are condoning something that is illegal. So, I suggest that, that be changed to say that you can allow the late filing of documents.

Mr. Temporary Deputy Speaker, Sir, there is established a Rules Board for the National Labour Court under Clause 20. Again, this, in many jurisdictions and even at the High Court, is normally *ad hoc*. When rules are to be made, the Chief Justice, or in this case the head judge, sets up an *ad hoc* committee that formulates rules and their work is finished. It cannot be a permanent institution like this Bill is appearing to establish. This is because in an institution such as the court, you do not make rules everyday. Once you make rules, you go on with them for a period of, say, five years. Then when you need to review them, you set up another *ad hoc* committee that can formulate, evaluate and make the rules better for functioning. I hope the Minister will look into that matter too.

Mr. Temporary Deputy Speaker, Sir, Clause 21(3) is an infringement on the freedom of information that we are talking about. This is a court with quasi, if not judicial powers. You cannot state:

"No comment shall be published in respect of the proceedings or the evidence before an award, judgement or order has been delivered on a matter at issue".

You know very well that in this country, when you go to court, the moment you file your pleadings, the Press picks them. When you go to present your case, the Press is there. When there is judgement, the Press is also there. It is not possible to say that the Press cannot cover proceedings before this Court. It is simply against the grain of events in this country.

Mr. Temporary Deputy Speaker, Sir, this is when you create room for speculation and so on and so forth. I would like to urge the Minister to delete Clause 21(3), so that freedom of information can flow. If I have a dispute and I go to the National Labour Court, it is not a secret that I have a dispute. Let everybody know, so that either those who have similar disputes can benefit from it and also go and seek redress, or whatever the case, the public can get to know. So, if the Minister can take that, I will be very happy.

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Wetangula, are you also proceeding to Clause 21(4)?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, in fact, I was coming to that. Once Clause 21(3) is deleted, Clause 21(4), which creates an offence that will be challenged even constitutionally--- Because people have the right to hold opinions or write what they want to, as long as they do not offend the libel law. So, if we delete Clause 21(3), Clause 21(4) must also go. That is because the offence it seeks to create will have gone out of the statute. I want to urge the Minister to take that into account, because we are

trying to help him create a good law in this country.

Mr. Temporary Deputy Speaker, Sir, Part IV of the Bill is very grey on the relationship between the subordinate labour courts and the National Labour Court (NLC). I know that Clause 39 says:-

"An Appeal shall lie from any decision of a subordinate labour court to the National Labour Court."

That is fine. But, throughout the Bill, we are not told what disputes will go to the subordinate labour courts and which disputes will go to the NLB. If one is appellate, then we must define that. In the High Court we say: "Magistrate courts have jurisdictions. If you have a dispute of Kshs500,000 or Kshs1 million, you can go to this court. Beyond this, you can only go to the High Court." So, the Minister needs to refine and define the relationship between the two courts, so that those with disputes may know which court to go to first. If you want to go to the subordinate labour courts or the NLC, you know where to start. That will make things better and neater. We do not need to have, for example, a dispute between a maid and an employer going to the NLC, and an industrial dispute going to the subordinate court and vice-versa. It is good to have a good flow on how those disputes could access courts.

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of information, Mr. Temporary Deputy Speaker, Sir. All labour complaints will be handled at their points of origin. It is only when a dispute arises, be it in Kajiado, Kakamega, Bungoma district or wherever, that it will be referred to the NLC. But the subordinate labour courts will have the jurisdiction to hear all the cases, except those that generate disputes that may be referred to the NLC.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, all that I have pointed out is that the Bill does not establish the relationship between the two courts. It should be clear on where to start when there is a dispute. It should be clear whether one should start at the subordinate labour courts or the NLC. We need to know the nature of dispute and where it should be directed. If the Minister can do that, it will be wonderful.

Mr. Temporary Deputy Speaker, Sir, I can see my time is running out. There is a provision for the Registrar of Trade Unions. That is highlighted in Clause 43. That, again, is the same point we argued here when we were dealing with the Political Parties Bill. When you have a Registrar dealing with emotive issues concerning trade unions, I will be more comfortable if, whoever will be the Registrar, his or her qualifications, authority, appointment and removal from office are defined. The Registrar of Trade Unions must enjoy some reasonable degree of autonomy so that he or she can be able to function properly. If we leave the Registrar of Trade Unions just to be appointed by the Minister, and there is no qualification or description of how he or she will run the office, it will be vulnerable to abuse. I want to urge the Minister to change that.

Mr. Temporary Deputy Speaker, Sir, I can see my time has run out. I have many more points that I will bring at the Committee Stage.

With those few remarks, I beg to support.

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

The Temporary Deputy Speaker (Mr. Poghisio): Yes, Capt. Nakitare!

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, the Bill has been discussed at length. It is among the tabulated Bills that have been discussed under the same Ministry. Would I be in order to request the Mover to reply?

The Temporary Deputy Speaker (Mr. Poghisio): Capt. Nakitare, you could have easily interrupted the last hon. Member who was contributing. Right now, there is nothing for you to interrupt!

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, there was an argument in between

and I did not have to wait.

The Temporary Deputy Speaker (Mr. Poghisio): Now, I have to give an opportunity to Mr. Sungu to make his contribution.

Mr. Sungu, please, proceed!

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, I will be very brief. I want to underscore the fact that Bills brought to the Floor of this House must respect the procedures of the National Assembly because when we pass them, they become part of our laws. I believe we should not pass defective Bills. As has been pointed out by my colleagues; Mr. Wetangula and Mr. Muturi, ordinarily we could have thrown out this Bill if we did not like the Minister. He is a good friend of ours!

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Sungu! That should not be a good reason to pass a law!

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, I have taken cognisance of your comment. However, I want to say that these Bills are very necessary, particularly this one. Kenyan workers have suffered for a long time and we need to support them. They have been exploited, under-paid and mistreated. As my colleagues said, some are even locked inside factories at night. The owner goes away. We have had cases of workers getting burnt in these factories. This has happened several times in Nairobi. It is inhuman.

Mr. Temporary Deputy Speaker, Sir, labour officers who protect the workers do not exist in Kenya. It is merely an excuse for them to make money from the employer where there is a dispute. Hon. Members of Parliament have turned into trade unionists. Workers come to us with problems and keep asking us to help them here and there.

Mr. Temporary Deputy Speaker, Sir, I will limit my contribution to very few issues. I want to talk about the issue of employment agencies. Only the other day, we heard of an employment agency which was getting people to go work in the Middle East. People lost countless amounts of money. The agency did not refund the money. They could, therefore, not recover it. I am glad that this Bill addresses that issue. Some Kenyans who go to work abroad work under slave-like conditions. We ought to protect Kenyans.

Mr. Temporary Deputy Speaker, Sir, we all know the Armed Forces is an essential organ of our institutions. I must urge the institutions excluded to exercise due care in view of our laws. There must be some fairness.

Mr. Temporary Deputy Speaker, Sir, Clause 4(2) says:

"The Minister may after consultation with the Board and after taking account of all conventions and other international instruments ratified by Kenya, by order, exclude from the application of all or part of this Act limited categories of employed persons in respect of whom special problems of a substantial nature arise."

When making law, we have to make them very clear. We cannot leave it very vaguely worded. I will leave it at that. I know we will have a very big job at the Committee Stage to ensure that this Bill is proper. There will be many amendments.

Mr. Temporary Deputy Speaker, Sir, I am very happy with the creation of the Board. This Board has been given the role of advising the Government on the question of, amongst others, work permits for foreigners. I come from a background of the private sector. I know that there are many con men who are not qualified. They do not even hold degrees. They hold only diplomas, but they hold senior positions in foreign-owned companies when there are better qualified Kenyans. This should never happen. You will never get any work in the United States of America (USA), or in the United Kingdom (UK), if you are not properly qualified. This is the only country where we glorify the colour of somebody's skin and forget his qualifications. No wonder---

The Temporary Deputy Speaker (Mr. Poghisio): How did you get there?

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, I used to work with expatriates.

The Temporary Deputy Speaker (Mr. Poghisio): You cannot go that far!

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, let me re-word it. You may find somebody all the way from the UK---

Capt. Nakitare: On a point of order, Mr. Temporary Deputy Speaker, Sir. This Bill has been properly interrogated. There is a lot of repetition on this debate from all the speakers. Could you give a ruling so that the Mover is given chance to respond?

The Temporary Deputy Speaker (Mr. Poghisio): Ordinarily, I would attempt to act on that request. However, from what I am hearing, this Bill needs a thorough examination. As you can hear, there are so many things being pointed out, which are good for the Bill.

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, I was actually at the point of concluding. I said many good things have been said and I want to support this Bill.

I want to add that we must protect our own people. Kenya has got a very good human resource base comprising of well-educated people. In fact, there is a brain drain. Many of our people are leaving the country in search of employment elsewhere because they cannot find employment in Kenya. So, it is wrong for us to issue work permits to foreigners when there are better qualified Kenyans.

I represent Kisumu. You find that particular members of a certain racial group would rather import unqualified labour - people who are not even able to speak Kiswahili or English - to work in Kenya at the expense of other residents of my constituency, who are qualified. The foreigners get paid better salaries. When you complain and send labour officers to investigate, nothing happens. So, I recommend that we go through this Bill properly, support it and make any necessary amendments to it at the Committee Stage.

With those few remarks, I beg to support.

Mr. Bahari: Thank you, Mr. Temporary Deputy Speaker, Sir. From the outset, I want to thank the Minister for bringing to the House quite a number of labour laws. They are long overdue. I want to thank him very sincerely for a job well done. I know that a number of hon. Members have contributed to this Bill, and I want to be very brief, and just point out some of the main issues that I think should be addressed.

Mr. Temporary Deputy Speaker, Sir, in the preliminary part, Clause 3, on collective agreement, page 327, it reads as follows:-

"Collective agreement means an agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of employers or organisation of employers."

I find that a bit deficient in that, normally, collective agreements become binding when they are registered with the Industrial Court. This is essentially because the Industrial **[Mr. Bahari]** Court will go through the agreement and ensure that it is consistent, among other things, with the law, also taking into account the economic considerations, and seeing whether that agreement will bring down that firm, or whether it works to the disadvantage of the employees. That kind of input from the Industrial Court is very crucial, and I think that definition needs to be looked at. Also, Clause 43(1) reads as follows:-

"The Minister shall appoint a Registrar of Trade Unions, who shall be responsible for the registration and regulation of trade unions, employer organisations and federations registered under the Labour Relations Act."

Currently, trade unions are registered with the Attorney-General's Chamber by the Registrar-General. If now it is going to come under the Minister, other than, of course, the other issues of independence that hon. Wetungula raised, so what happens to the Registrar of Societies who has been registering the trade unions? If I register with the Registrar-General and I have not

registered with the Ministry after this law is put into effect, then there will be a conflict. This issue needs to be sorted out once and for all. For purposes of independence, perhaps, it may be right if the issue of registration is handled by a different Ministry, so that there is that independence of the Registrar.

Mr. Temporary Deputy Speaker, Sir, there is also the issue of the National Labour Board and its representation. I am aware that hon. Wetangula said that the organization that is going to constitute that Board must be representative, but that is not enough. We have seen instances where Ministers have gone out of their way to choose, even from those organizations, whom they are going to deal with. There was a classic example of the National Hospital Insurance Fund (NHIF), where the Minister chose the person who was not proposed by the organization. He decided to pick a person of his choice from that organization. This must be the person proposed, appointed or recommended by the organization. The Minister should not pick any other person of his choice, to just ensure some compliance, which is not necessarily for the good of the State, but some individual good.

Mr. Temporary Deputy Speaker, Sir, I am aware that one of the hon. Members raised the issue of expatriates and the likes. Some of us are wondering what the relevance of that is. But I would like to say that the Ministry of Labour sits on that committee that approves work permits at the Immigrations Department. When you are given an under-study - some of us have been there and we know what happens - after sometime that under-study is not there, and nobody tries to enforce it and, therefore, that particular fellow's work permit is renewed over and over. It is true that some of them have got some minor diplomats from some minor organizations in their own countries. Those kinds of experts are found in this country. As much as, perhaps, the expatriates may be allowed to come into this country, this Ministry must play its rightful role, the way it should.

Mr. Temporary Deputy Speaker, Sir, perhaps, we need more clarification as to why the Ministry wants to regulate employment agencies. I am aware that there are instances, perhaps, where some crooks have come into play and they have misbehaved. We can see it happening in financial institutions and employment. Every now and then, they are there. But I do not know whether we should allow the Ministry to come in so strongly to try and regulate this. But we will leave it open at the Committee Stage, for hon. Members to discuss and make proper recommendations.

Mr. Temporary Deputy Speaker, Sir, the issue of labour laws is a very sensitive matter, because it is about employment. It is a tricky issue, which can affect everybody in terms of productivity in this country. I am not quite sure, from my experiences, whether all lawyers or magistrates, for that matter, are well-versed and properly skilled when it comes to the issue of labour laws. Some special training and consideration needs to be put in place, before we let any magistrate to handle the issue. Otherwise, then we have to go to the issue of curriculum, to make sure that labour issues--- I must confess that I participated in industrial court matters for a long time, before I was elected to Parliament. Not any lawyer can handle labour issues; some of them are quiet at seas! So, this issue must be handled with a lot of care.

Mr. Temporary Deputy Speaker, Sir, I want to add that, certainly--- I do not want to be very controversial, but I must make my point on this issue. When we say that this Bill will not occasion additional costs or expenditure, the courts are already overburdened and we are going to add more at that lower level. I am not quite sure that, in terms of time, there will not be an additional cost. I would rather go the way of, perhaps, expanding the National Labour Court so that it will be able to handle more cases so that we do not have cases, delaying at the lower level.

Mr. Temporary Deputy Speaker, Sir, of late, we have noted with a lot of concern that, perhaps, a lot of issues have been referred to the Industrial Court in a hurry; at midnight and the

like by the Minister. It is very, very important that the Minister and his team take the initiative and negotiate. Negotiations are difficult matters and we should not take ease in referring matters to the Industrial Court, because it creates resentment among workers in this country. Therefore, the Minister and his team should be able to do more and take a lot of preventive measures by way of training or encouraging employers to train their employees on matters of industrial relations.

With those few remarks, I beg to support.

Mr. Angwenyi: Thank you, Mr. Temporary Deputy Speaker, Sir, for allowing me to add my voice to this important Bill. First, I want to commend the Minister for, at least, waking up to the needs of the employees of this country.

Mr. Temporary Deputy Speaker, Sir, as we all know, if we were to visit the Export Processing Zones (EPZs), we would see the conditions under which Kenyans are working; they are worse than the cotton slavery conditions in the USA in the 17th and 18th centuries.

(Applause)

Mr. Temporary Deputy Speaker, Sir, if we were to travel through the tea estates in the highlands, you will see your brother and sister picking tea when it is raining and in storms and what they are paid are peanuts! The conditions in which they live are abominable.

So, Mr. Temporary Deputy Speaker, Sir, it is good that the Minister has come up with these Bills and I hope that, once we pass them, we will implement them immediately. We can take the case of the Sexual Offences Bill, which we passed here, and it took more than a year to be implemented. I am not even sure whether it has been implemented!

But, Mr. Temporary Deputy Speaker, Sir, there are certain clauses in this Bill that, I believe and think that the Minister should look into. For example, take Clause 7 where we have the functions of the Board. These are enumerated in Clause 7(1) and then in Clause 7(2), you repeat the same functions. The Board may advise the Minister--- I do not know whether you are repeating those roles for emphasis, so that you can stress the issue, or what do you want to achieve?

Mr. Temporary Deputy Speaker, Sir, on appointment of judges, the Bill says that judges will be appointed by the President on the advice of the Board and the Judicial Service Commission. There is nowhere in that appointment where the people's representative; that is the Minister, who is answerable to this Parliament, plays any part! I wonder why the Minister wants to relinquish the power to advise the President, along with the Board and the Judicial Service Commission, in the appointment of judges. That is in Clause 13(1). Clause 14(2), on the period of appointment is indefinite; it will be decided by the President. This means that the President can appoint one judge for Kisumu for six months and another judge for Mombasa for 20 years. That shows disparity! Why can we not have a specific period during which a judge could be appointed? It should be a uniform period. If he is appointed for three or five years, renewable, for life or for up to some age, the same way we do with the Judicial Service Commission (JSC), that will give some uniformity and equity to the people who are applying for these jobs.

Mr. Temporary Deputy Speaker, Sir, if one were to apply for a job for which he or she does not know how long she or he will hold that position, that creates uncertainty. So, I would suggest that the Minister revisits that Clause on the appointment of judges so that they have a specific period that they can be appointed and it is uniform throughout the country.

You can see that in Clause 51, offences have been cited. However, there are no sanctions to these offences. I do not know who is going to make the sanctions. I thought that if we are making a law and we are specifically saying which offences could probably be committed or which transgressions might be committed, then we must have relevant sanctions to go with these offences. That way, this law will have some teeth. Otherwise, it will be the same situation we are in

today where I have a case where somebody was employed in the sisal estates in Taveta. He was presumably sacked, he went to court and for eight years his case was not determined. When it was eventually determined, that person was supposed to be paid some compensation by the employer. However, it has never been effected for three years now

because the labour officers and the Industrial Court have no power to effect---

Mr. Osundwa: On a point of order, Mr. Temporary Deputy Speaker, Sir. With great respect to the hon. Member on the Floor, I too, feel like Capt. Nakitare, that this Bill has received enough interrogation. Could I be in order now to call upon the Mover to reply?

An hon. Member: No, you are not!

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

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

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, as I continue, I---

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Angwenyi! What is your understanding of that Motion that we have passed?

QUORUM

Prof. Oniang'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. We do not have quorum in the House!

The Temporary Deputy Speaker (Mr. Poghisio): Order! That is true, Prof. Oniang'o . We have just called upon the Mover to reply and yet, there is hardly - I do not even need to check - any quorum. Please, ring the Division Bell!

(The Division Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! There is no quorum in the House. This House is therefore, adjourned until Tuesday, 22nd May, 2007, at 2.30 p.m.

The House rose at 6.20 p.m.