

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 20th July, 2006

The House met at 2.30 p.m.

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

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Energy, Communications and Public Works on the study visit to the Arab Republic of Egypt and the United Arab Emirates.

(By Mr. Angwenyi)

NOTICE OF MOTION

ADOPTION OF REPORT ON STUDY VISIT TO EGYPT AND UNITED ARAB EMIRATES

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, I beg to give notice of the following Motion---

Dr. Ali: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member a Minister to speak from the Dispatch Box? He should go back!

The Temporary Deputy Speaker (Mr. Khamasi): Order! He is Chairman of the Committee or representing the Chair. Therefore, he is allowed to give notice of the Motion from the Dispatch Box.

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the House adopts the Report of the Departmental Committee on Energy, Communications and Public Works on the study visit to the Arab Republic of Egypt and the United Arab Emirates laid on the Table on Thursday 20th July, 2006.

The Temporary Deputy Speaker (Mr. Khamasi): Order, hon. Members! We will now move on to Questions and we will take only one hour!

QUESTIONS BY PRIVATE NOTICE

REPAIR OF CHEBOROWA-TENDEN -KAPCHEROP ROAD

Mr. Sudi: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Minister for Roads and

Public Works the following Question by Private Notice.

(a) Is the Minister aware that Road C48 which passes through Cheborowa, Tenden and Kapcherop centres is impassable owing to the current rainy season and failure to gravel the road for a long time?

(b) What immediate steps is he taking to repair the road and make it passable?

The Assistant Minister for Roads and Public Works (Eng. Toro): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that Road C48 which passes through Cheborowa, Tenden and Kapcherop centres is impassable. However, I am aware that most of the gravel [**The Assistant Minister for Roads and Public Works**]

on the road has been worn out and the road requires re-gravelling.

(b) In May/June, this year, the District Works Officer, Marakwet, bush-cleared and graded the 22-kilometre road section. A total of Kshs1 million will be used to repair the worst sections of the road. The District Works Officer is in the process of doing the works.

Mr. Sudi: Mr. Temporary Deputy Speaker, Sir, now that the Assistant Minister has been made aware that some sections of that road are impassable, when will he send the Kshs1 million in the form of Authority to Incur Expenditure (AIE) for its repair?

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, at the end of the last financial year, May/June, a total of Kshs1.4 million was sent to Marakwet District. Only Kshs400,000 was used. The balance of Kshs1 million is still with the District Works Officer, Marakwet. That money will be used to spot-patch the various sections of the road while awaiting this financial year's allocation. Another Kshs1 million, which was also sent to the district in the last financial year, will be used to improve the road.

Capt. Nakitare: Ahsante, Bw. Naibu Spika wa Muda. Wakenya wamechoka na viraka ambavyo vinabandikwa kwenye barabara. Wilaya za Trans Nzoia na Marakwet hazikufaidika kutokana na Bajeti ya mwaka huu. Ni lini barabara zetu zitatengenezwa vizuri badala ya kuzibandika viraka?

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, we will improve our roads as more funds become available. We cannot stop spot-patching simply because we do not have enough money. We will continue with that exercise. Many of the roads, through the annual spot-patching, are passable these days as compared to about four years ago.

Mr. Poghiso: Mr. Temporary Deputy Speaker, Sir, I want to know from the Assistant Minister whether the money from the last financial year is retained at the district if it is not used or it is normally returned to the Treasury. This is exactly what is happening in my constituency. All the money for the repair of those roads is being returned to the Treasury, but the Assistant Minister has said that the money will be used. I thought that the money will be returned to the Treasury. I want to know whether the money is retained at the district or returned to the Treasury.

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, depending on the capacity of the District Works Officer to do his work, if an AIE was sent to the district in the last financial year and received in the Treasury, it is up to the officer to ensure that, that money is allocated and not returned to the Treasury. The best way to do the allocation is to identify the works that need to be done, award the tender to a contractor, if it is contractible works, and commit the money to the contractor. In the case of supplies, the District Works Officer should award the tender to the supplier and commit the money to the supplier by the end of the financial year. No money would be returned to the Treasury if that was done.

Mr. Sudi: Mr. Temporary Deputy Speaker, Sir, now that the Assistant Minister is aware that, that road is impassable--- Some sections of Road C48 are tarmacked. Twenty seven kilometres of that road, that is from Kitale to Gachibora, are tarmacked, and 37 kilometres of the same road which passes through Marakwet District are not tarmacked. That road is the lifeline of

Marakwet District. The farmers rely on that road when they transport their crops to Eldoret. When will the Ministry provide enough funds to tarmack the road?

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, I cannot say when the funds will be available. However, as I said before, that road was gravelled over five years ago. It is only that it has deteriorated. The Ministry will improve it through gravel-patching. By doing that, we will restore, every year, the original gravel that has deteriorated while awaiting a programme to tarmack it.

Mr. Sudi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Some sections of Road C48 are tarmacked. Some people in Trans Nzoia District are enjoying the tarmacked section while the people of Marakwet District are not. When will the Ministry tarmack that road? Is the Assistant Minister in order to mislead this House by saying that money is not available?

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, I do not see the reason why the hon. Member should say that I am misleading the House when I have stated the correct position. There is no money to upgrade that section of the road to bitumen standard. His Question was not about the sections which have already been tarmacked. The hon. Member is worried about the impassable section of the road.

NON-RELEASE OF BODY FOR BURIAL BY KNH

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

(a) Is the Minister aware that the body of a 17-year-old patient, Mr. John Kibaru (IP/No.1099688), who was admitted on 11.6.2006 has been lying at Kenyatta National Hospital Mortuary since 4.7.2006 to date?

(b) If the answer is in the affirmative and considering the parents of the deceased are unable to raise a sum of Kshs224,150 demanded by Kenyatta National Hospital, could the Minister intervene to have the body released to the family for burial?

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

(a) I am aware.

(b) The parents of the deceased have not requested Kenyatta National Hospital (KNH) management to release their son's body on credit if they are unable to pay now.

Mr. Muiruri: Thank you, Mr. Temporary Deputy Speaker, Sir. That is a very interesting answer. Foremost, that was a 17-year-old boy who was killed in a road accident. He was admitted to the KNH for only 22 days and the hospital bill is close to Kshs250,000. If it were Nairobi Hospital, the bill could probably have been even less. I have personally been to the KNH with the parents of the young man. We are requesting for that bill to be waived. It is only about a week ago when the Speaker said that hospitals are trading with bodies. This is one such case. Since KNH is a Government hospital, could the Assistant Minister be kind enough to waive the entire bill and have the body released to the poor parents because they cannot afford to pay?

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, I am very much aware of the circumstances in which that patient was admitted in the hospital. The patient remained in the intensive care unit for all the days, incurring a cost of Kshs224,150. Kenyatta National Hospital is a parastatal. For the last two years, the hospital has actually incurred losses amounting to Kshs488 million, because of those kinds of arrangements. I have not refused to release that body to the relatives. But they will have to come and request for a waiver. We have to prove that they are unable to pay for the hospital to grant a waiver and take over the debt. Anyway, since the hon. Member has really pleaded, I am ordering the hospital, on the Floor of this House, to waive the bill for hospital charges! But the relatives have to pay for mortuary charges because it is their mistake

that made that body stay in the mortuary for that length of time.

(Mr. Muiruri stood up in his place)

The Temporary Deputy Speaker (Mr. Khamasi): In my view, that is a very satisfactory answer!

Mr. Angwenyi!

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, KNH does a very good job by waiving such kinds of bills. Could the Assistant Minister undertake to seek adequate funds for KNH and other hospitals, so that they could give more assistance in such type of cases?

Dr. Machage: Mr. Temporary Deputy Speaker, Sir, In deed, I request this House to allocate more funds to that hospital.

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, it is not a question! I would like to thank the Assistant Minister very much and tell him that the parents of that young man will be very grateful. They will be writing a letter to him. They will collect the body as soon as possible.

ORAL ANSWERS TO QUESTIONS

The Temporary Deputy Speaker (Mr. Khamasi): We will now move on to ordinary Questions.

The hon. Member for Wajir North!

Questions No.473

MEASURES TO COPE WITH INCREASED SECONDARY SCHOOL ENROLMENT

Dr. Ali asked the Minister for Education:-

(a) whether he could confirm that free primary education has increased primary school enrolment by about two million children; and,

(b) given that the current transition rate from primary to secondary school stands at 57 per cent, and which the Government intends to increase to 70 per cent, how the Ministry intends to cope with the increased secondary school enrolment without employing new teachers.

The Assistant Minister for Education (Dr. Mwiria): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I would like to confirm that, since the introduction of free primary education, there has been an increase in enrolment nearing two million. Before 2002, the enrolment in public primary schools stood at 5.9 million. However, by July 2006, the enrolment stood at 7.5 million. That is an increment of 1.6 million pupils. There is a further increase of about 500,000 pupils in public schools. We also have about 300,000 children who enrolled in non-formal institutions.

(b) In terms of coping with the transition rate from primary schools to secondary schools, we have realised that we need to employ more teachers for secondary schools because they are expanding. But, unfortunately, as of now, we are still replacing only those who have been lost through natural attrition. I hope that we shall be able to recruit more teachers after negotiating with Treasury to allow us to do so. It is a problem but, for the time being, we are just recruiting to replace those we lose through natural deaths. We also hope to do a balancing act to ensure that schools that have more teachers surrender them to teach in the new schools that we are starting.

Dr. Ali: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has not read the full

answer that he gave to me. He gave me an answer covering three pages! He has just picked some of the points. The Question sought to know what the Ministry is doing because we are building more primary and secondary schools and no teachers are being employed. The only teachers that are being employed are meant to replace those who die through natural attrition or retirement. What will happen to the other schools? There are schools with students in Standard I up to Standard VIII and they have only four teachers!

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, this Question has been recurring in Parliament for quite some time now. Unfortunately, we have not been able to recruit as many teachers as we would like! But we have requested hon. Members to bear with us. In some cases, we are requesting parents to employ the additional teachers. If they can do that, that would be very much appreciated until the situation improves to the extent that we are able to recruit enough teachers for both primary and secondary schools. However, there are some schools that have more teachers than they need. We are trying to remove teachers from such schools and taking them to those that have fewer teachers. But, unfortunately, it is a national problem! It is not just in Wajir.

Mr. Bifwoli: Mr. Temporary Deputy Speaker, Sir, you have heard the Assistant Minister admit that, that is a national problem. The Ministry is urging Members of Parliament to use the Constituencies Development Fund (CDF) money to expand the existing secondary schools and build new ones, so that they can cope with the high enrolment as a result of free primary education. My question is: Now that we have expanded classrooms using the CDF, what plans does the Government have to employ more teachers and make free primary education meaningful? If we employ more teachers, we will also have a good secondary education.

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, we are still negotiating with the Treasury to get some more money. In fact, that money will be allocated by this Parliament as well. So, I would just like to ask hon. Members to bear with us. Even in my constituency, I have the same problems just like other hon. Members. But it is not possible to employ all the teachers that we need for the time being. So, I call upon hon. Members and communities to assist us alleviate the problem as we prepare to finally do away with it.

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, it is ridiculous for the Government to ask citizens to employ more teachers and yet, we give them billions in the Budget which we do not participate in preparing. Nonetheless, could the Assistant Minister allow the so-called provincial schools to open day streams, so that children from nearby areas could attend school as day scholars and pay Kshs9,000 instead of Kshs25,000 imposed by boarding schools?

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, that is one of the recommendations that I have made. It is in the long answer that Dr. Ali referred to. We are encouraging schools to start day streams as a way of making it possible for those who cannot afford boarding expenses to enrol.

Mr. Karaba: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister is trying to tell us that they are expanding secondary schools to cope with the increase in enrolment in primary schools. What plans does he have to expand the capacity in the universities? Instead of expanding the capacity, you are raising the entry points. Now, the entry point to the university is mean grade B+ - 69 points - which is too high! What plans do you have to expand university facilities?

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, again the issue of universities is a major one! We are thinking more in terms of long-term solutions to expand the capacity in our universities. We have considered the possibility of having more institutions and day-time universities, so that we could enrol more university students. We do not want a situation where we enrol university students on the basis of how many spaces we have for accommodation. We want to take universities closer to the people. We are very much concerned as a Ministry. We have come up with several strategies that we hope to implement to expand university education.

The Temporary Deputy Speaker (Mr. Khamasi): Last question, Dr. Ali!

Mr. Poghiso: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for

the Assistant Minister to actually confirm that he did not read the whole answer to the House? By doing that, he has not enabled hon. Members to ask logical supplementary questions. He actually accepted that he did not read the whole answer. How do we benefit from that, so that we could ask supplementary questions?

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, I realised that there were many Questions on the Order Paper. I read the section that was directly related to the Question that Dr. Ali asked. The rest of the answer contains related information. But if you want me to read and spend a little bit more time, it is not a big problem. It is written!

The Temporary Deputy Speaker (Mr. Khamasi): Order, hon. Members! Ministers are normally asked to be brief and to the point. So, if the answer was long and you made it brief, that is allowed.

Next Question!

Dr. Ali: Mr. Temporary Deputy Speaker, Sir, you have heard the Assistant Minister say that the Government is unable to employ more teachers. Yet the same Government has politicised everything by saying that there is free primary education and that two million children have gone to school, whereas the result is zero. The Assistant Minister has talked about regularisation of in-service training of teachers to equip them with skills in multi-stage, multi-shift and teen teaching. What does he mean by these terms?

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, given that we cannot employ teachers, we have decided to make more efficient the use of the teachers that we have got. One way of doing this is to have them teach double shifts as opposed to teaching only in the morning. So, you have a group that teaches in the morning and another one in the afternoon. Multi-stage is whereby a teacher can teach different groups at the same time to ensure that there is maximum utilisation of the teachers that we have got. It is not just politicisation. The hon. Member knows that even in his home area, there are more students in primary schools and much has changed. In fact, he is the one who is politicising this matter!

Question No.450

INSUFFICIENT SCHOOL INSPECTIONS
IN MACHAKOS DISTRICT

Mr. Mwanzia asked the Minister for Education:-

- (a) whether he is aware that school inspections in both primary and secondary schools within Machakos District are lagging behind in schedule; and,
- (b) why the inspections are lagging behind schedule and how big the backlog is.

The Assistant Minister for Education (Dr. Mwiria): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that both primary and secondary schools inspection programmes in Machakos District have lagged behind. However, I am aware that not as many inspections as we would like have taken place.

(b) School inspection in Machakos District is continuous and functions normally. There are formal and informal visits by Quality and Standards Officers, Education Officers, TAC Tutors and other education officials, to enhance the provision of quality education. Moreover, schools can be visited as many times as possible if there is an emergency request in that regard. If we are requested to send inspectors to schools, that is usually done.

Mr. Mwanzia: Mr. Temporary Deputy Speaker, Sir, I have a lot of respect for the Assistant Minister. I thought he was one of those Assistant Ministers who give very frank answers, but this is the most ridiculous answer I have ever heard.

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Mwanzia! We do not allow that sort of offensive language in this House.

Mr. Mwanzia: Mr. Temporary Deputy Speaker, Sir, I apologise and withdraw. I am a gentleman.

What is contained in this answer is untrue and the Assistant Minister knows it. The quality of education in Machakos District in general has gone down because of lack of inspection. There are over 950 primary schools and over 200 secondary schools in Machakos District. Could the Assistant Minister tell us how many schools were inspected in 2005 and 2006, the recommendations made and the names of inspectors who visited those schools?

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, I want to make it clear that we have a problem with inspectors and Quality Assurance Officers in the whole country. This Question that seeks to know when we will get more of these inspectors, so that we can inspect our schools more often than is the case has come up in this House before. We are improving their terms and conditions of service so that we can recruit many more of them. Nevertheless, some work has been taking place in Machakos.

In 2005, 795 schools were inspected. In 2006, 834 schools were inspected. In secondary schools, 186 were inspected and in 2006, 217. There were also inspections for ECDs and tertiary institutions. I must reiterate that it was not possible to do as much as we would like. In addition to the Quality Assurance Officers who are there, and Machakos District has shortage of 24, we are also training headteachers of schools to be able to do some curriculum implementation, to inspect the schools and support whatever is available from the Ministry.

What accounts for poor quality education is not just lack of inspection. There are many other factors, including the types of managers that you have got, the involvement of parents in the schools, the role of sponsors, leadership and so on. We have to look at all these factors to really pin down the problem with inspection, although inspection can tell us a lot more. We would like to do better but for the time being, we have not recruited as many inspectors as we would like. When we do, we will give answers that are less ridiculous.

Mr. Munya: Mr. Temporary Deputy Speaker, Sir, part of the problem why the level of inspection in primary schools is very low is because the Quality Assurance Officers and the inspectors are not enough. They are also very poorly paid in relation to the headmasters whom they are supposed to supervise. They are demoralised and are not able to work properly. We have raised this matter with this Ministry in this House many times. Why is the Ministry still reluctant to improve the remuneration of inspectors and Quality Assurance Officers so that they can be able to do their job?

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, I do appreciate the point made by the hon. Member which has been made many times. At the outset, I indicated that we are addressing this problem by improving the terms and conditions of service of Quality Assurance Officers so that they can enter employment in Job Group "M" as a way of attracting many more of them. We have already started the process and we have advertised some positions. In the near future, we will have a lot of interest. So, we will have more Quality Assurance Officers because they will be paid well. We will also be able to attract teachers to join.

The Temporary Deputy Speaker (Mr. Khamasi): You have not addressed the hon. Member's concern. This problem has been here for a long time. When will it come to an end?

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, we have already started and we will do it in phases. We will not be able to employ all of them at the same time. In the next one or two years, we should have adequate inspectors because we have done enough in terms of ensuring that the terms and conditions of service are improved.

Mr. Arungah: Mr. Temporary Deputy Speaker, Sir, in an earlier answer, the Assistant Minister said that the Ministry does not have the money to employ enough teachers. Now he is

saying that the Ministry does not have money to employ Quality Assurance Officers. What measures is the Ministry taking to empower the headteachers to be the first people to do the inspection where necessary?

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, it seems there was a bit of misunderstanding. I did not say we have no money to employ inspectors. I said we are trying to employ inspectors and we have improved their terms and conditions of service. I also did say that we are trying to train headteachers so that they can do some management and inspection because we do not have enough inspectors. We have training programmes to improve the standards of headteachers so they can do some of the work. Essentially, I think I responded. This is what I said earlier on.

Mr. Mwanzia: Mr. Temporary Deputy Speaker, Sir, I am surprised by the answer the Assistant Minister has given. He said that, last year, they inspected 795 primary schools. This is not true because the actual number of public schools in Machakos District is 795 and yet he has also admitted that he has not visited some of the schools. Could the Assistant Minister consider deploying or posting some Quality Assurance Officers to Machakos District? Currently, we have only 17 inspectors who perform the work of 41 officers and they are also carrying out the duties of Education Officers in the divisions. Could he consider posting Quality Assurance Officers, as a matter of urgency, from other districts which are overstaffed?

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, Machakos District has a shortage of 17 school inspectors. It looks bad because Mr. Mwanzia is very concerned about his constituency, but it is not any worse than in a lot of other places and that is why Mr. Munya and others are coming up with this issue. Unfortunately, we cannot get them from other districts to post them to Machakos. We have to solve the problem nationally so that, as we recruit them, we can send them to all the districts and not just Machakos alone. I would not promise that we would be able to remove them from districts that are already understaffed to take them to districts which have a problem. But we will consider this if there are any districts that have excess Quality Assurance Officers.

Question No.433

DISBURSEMENT OF GLOBAL FUND
MONEY TO MAKINI SCHOOLS

Mr. Owino asked the Minister of State for Special Programmes:-

(a) what was the rationale of disbursing to Makini Schools Limited Kshs22,379,838, in 2004, under the Global Fund; and,

(b) how this amount was spent.

Mr. Temporary Deputy Speaker, Sir, I have not got a written answer yet.

The Temporary Deputy Speaker (Mr. Khamasi): Is there anyone here from the Office of the President?

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Temporary Deputy Speaker, Sir, I have been looking for the Minister but I cannot get a reply from his office. May I ask your indulgence that this Question be answered on Tuesday next week?

The Temporary Deputy Speaker (Mr. Khamasi): For the time being, we will give it a second call so that if he comes he can answer it. If he does not come then we will defer it.

Question No.442

MEASURES TO DECONGEST

MARIAKANI WEIGHBRIDGE

Dr. Ojiambo asked the Minister for Roads and Public Works:-

- (a) whether he is aware that the road between Maji ya Chumvi and Mombasa is a danger to motorists travelling to and from Mombasa City;
- (b) if he could consider decentralizing the Mariakani weighbridge in order to decongest the road and avert the looming traffic accidents; and,
- (c) who the contractor assigned to work on the Maji ya Chumvi-Mombasa Road is and how much the job is costing the Government.

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

(a) I am aware that the road between Maji ya Chumvi and Mombasa is a danger to motorists travelling to and from Mombasa City. However, repairs are already being done under the ongoing contract for rehabilitation of the road so as to maintain the safe passage of traffic, pending completion of the permanent works. Under the ongoing contract for rehabilitation of Maji ya Chumvi-Miritini Road, the Ministry intends to construct an additional fixed weighbridge for the Mombasa bound traffic, as well as reconstructing the existing weighbridge on the Mombasa bound side. This will help reduce congestion and enhance traffic safety.

(b) Apart from the fixed weighbridges, my Ministry will also install weigh-in-motion facilities to minimize queuing of trucks at the Mariakani weighbridge. Due to the above measures, my Ministry does not have plans to decentralize the weighbridge since the improvement plans outlined will help alleviate traffic accidents.

(c) My Ministry has engaged M/s China Road and Bridge Construction Company to rehabilitate and improve the Maji ya Chumvi-Miritini Road at a contract sum of Kshs2.3 billion.

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister is aware that this road is bad. However, I think he has never had a first-hand experience on this road. I also think Members of Parliament from Coast Province normally fly between Nairobi and Mombasa. So, they do not know the reality on the ground. This place is a menace. The Assistant Minister should take it as an emergency and institute emergency measures to repair this part of the road. The current programme has failed to meet the needs on the ground. This road is a gateway to Kenya. Could the Minister institute emergency measures to repair that part of the road or move the weighbridge away from that area to a safer part of the road, so that traffic along that area moves fast enough?

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, in my answer, I mentioned the measures we are taking. Since work is in progress, and those safety measures are being incorporated in the construction document, we can only wait for the contractor to finish what he is doing and also improve on the weighbridge. We cannot move the weighbridge at Mariakani until we have another one operational. This is because during the intervening period when we are installing the weigh-in-motion and the additional weighbridge, overloaded vehicles will not pass on the newly-constructed road.

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister knows that they need to decentralise and also move the weighbridges from where they are. If you are familiar with places where they are located; whether in Athi River, Mariakani or Naivasha, they actually cause a traffic problem. That being the situation, he also knows that almost 70 per cent of the vehicles that pass through there, do not go through the actual inspection, but they pay bribes to those officers. That is why one of the officers were found with Kshs200,000 on one evening. What measures is he taking to improve the services of the weighbridges in light of the congestion and corruption that is going on?

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, under the Northern Corridor Improvement Programme, we will relocate the weighbridges. Also, to ensure that corruption at

weighbridges is done away with, we intend to privatise them, so that we do not have two Ministries handling them as it is now. We have officers from the Ministry of Roads and Public Works on the one hand, and the police who fall under the Office of the President, on the other hand. The police are the ones who control the traffic. Therefore, the Office of the President has no total control of the weighbridges and neither do we in the Ministry of Roads and Public Works have it.

The Temporary Deputy Speaker (Mr. Khamasi): Last question by Dr. Ojiambo!

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister tell us whether the plan to construct the Cape Town to Cairo Road is still on? Is he consulting with the other nations that are involved in this programme to ensure that the Mombasa to Busia Road is rehabilitated effectively, so that some of these complaints can be dealt with once and for all?

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, I am sorry, I did not get the exact question.

The Temporary Deputy Speaker (Mr. Khamasi): Could you repeat your question, Dr. Ojiambo?

Dr. Ojiambo: Mr. Temporary Deputy Speaker, Sir, for many years, there has been talk about the Cape Town to Cairo Road. That includes the Mombasa-Nairobi-Busia Road. Is the Assistant Minister aware of this programme? When will it be effected so that the nations involved in that project can help us also rehabilitate the road from Mombasa to Uganda?

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, I think the hon. Member is confusing two roads. The Great North Road that she is talking about passes through Isiolo and Moyale. The other one is the Northern Corridor Road that we have the programme on now. It also involves the road going to Busia. So, the Northern Corridor Programme is still on and the road will go on to Busia.

The Temporary Deputy Speaker (Mr. Khamasi): Next Question by the Member of Parliament for Ugenya Constituency!

Question No.359

AMBULANCE FOR UKWALA/AMBIRA
HEALTH FACILITIES

Archbishop Ondiek asked the Minister for Health:-

(a) whether she could inform the House what happened to the ambulances that she promised to deliver to Ukwala Health Centre and Ambira Sub-district Hospital during the last Session; and,

(b) whether she could explain why the ambulance lying at Ukwala Health Centre for the last five years has not been repaired despite her assurance to the House that it would be repaired and that money had been set aside for the purpose.

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

(a) Ukwala Health Centre is in the priority list to be allocated an ambulance before 31st August, 2006. However, Ambira Sub-district Hospital will be considered when the next lot of ambulance would be available.

(b) The Ministry of Roads and Public Works has recommended that the vehicle is uneconomical to repair.

Archbishop Ondiek: Mr. Temporary Deputy Speaker, Sir, while I thank the Assistant Minister for giving a promise, the same promise was given here last year. The Minister promised that the vehicle that has now been declared unroadworthy would be repaired. Could he be more honest with his promise and implement what he is telling this House?

Dr. Kibunguchy: Mr. Temporary Deputy Speaker, Sir, the information I have is that currently that ambulance is grounded at Ukwala Health Centre. It is a Nissan Urvan, registration No.GK Q933. It has not been repaired. The Ministry of Roads and Public Works indicates that it requires Kshs278,890 to repair it. We consider this uneconomical. The vehicle has to be recommended for bonding and eventually disposed of.

Mr. Manoti: Mr. Temporary Deputy Speaker, Sir, when hon. Members ask about ambulances for their respective health facilities, they are doing the management work which should be done by the Ministry. Could the Assistant Minister tell us how many health facilities, especially district and sub-district hospitals, he has supplied with ambulances and how many are remaining?

Dr. Kibunguchy: Mr. Temporary Deputy Speaker, Sir, I do not have the information as to how many district and sub-district health facilities do not have ambulances. However, I would like to tell the House that, between now and 31st August, 2006, the Ministry will acquire 110 ambulances and we will make sure that every district hospital in this country gets, at least, one of them. The lucky ones might get two ambulances.

The Temporary Deputy Speaker (Mr. Khamasi): Last question, Archbishop Ondiek!

Archbishop Ondiek: Mr. Temporary Deputy Speaker, Sir, I would like the Assistant Minister to commit himself before this House that Ukwala Health Centre will get a new ambulance. The Ministry has been giving the same promise for the last five years.

The Temporary Deputy Speaker (Mr. Khamasi): Order, Archbishop Ondiek! What else do you want the Assistant Minister to say? If I heard him correctly, he said that he was going to provide the ambulance by 31st August, 2006. What else would you like him to tell you?

Archbishop Ondiek: Mr. Temporary Deputy Speaker, Sir, this is the promise that they have been giving---

The Temporary Deputy Speaker (Mr. Khamasi): Order! Let us save time! The Assistant Minister has made a commitment. You will ask the question when he has not delivered!

Next Question by Member of Parliament for Mosop Constituency!

Question No.369

ISSUANCE OF TITLE DEEDS TO
NANDI NORTH RESIDENTS

Mr. Sambu asked the Minister for Lands:-

- (a) whether he is aware that the residents of Kamungei, Kaptich and Kamwenga areas in Nandi North District have not been issued with their title deeds;
- (b) what the cause of the delay is; and,
- (c) when the title deeds will be issued.

The Minister for Environment and Natural Resources (Prof. Kibwana): Mr. Temporary Deputy Speaker, Sir, on behalf of the Ministry of Lands, I beg to reply.

(a) I am aware that the residents of Kamungei and Kamwenga areas have not been issued with their title deeds. However, Kaptich area is already registered.

(b) The delay in the finalization of adjudication work in Kamungei and Kamwega areas has been occasioned by a boundary dispute relating to the North Nandi Forest, which is currently being addressed.

(c) It is hoped that Kamungei and Kamwega areas will be registered as soon as the dispute is resolved and adjudication process finalized within the 2006/2007 Financial Year.

Thank you.

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, I agree that the residents of Kaptich

already have their titles. Kamwega area was declared an adjudication section on 2nd August, 1988. The date of adjudication register was 14th August, 2000. The Minister says that there is a dispute over the forest boundary, but the maps are there and they are so clear. There has been no Gazette Notice or any Legal Notice altering the forest boundary. Could the Minister just go ahead, map all the forest boundaries and issue the title deeds to the residents of Kamwega?

Prof. Kibwana: Mr. Temporary Deputy Speaker, Sir, when the hon. Member asked this Question, because of the coincidence that I am also the Minister for Environment and Natural Resources, I asked the Forest Department to finalize this particular section because, as the hon. Member says, this matter has been pending for a long time. Therefore, that is why we indicated that we are going to conclude this matter within this financial year. The Director of Survey is in the process of establishing the boundary as per the declaration of the Kamwega Adjudication Section. I have also asked the Forest Department to sort out this matter so that we can finalize it because it has been pending since 14th August, 2000, as the hon. Member has said.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order! Hon. Members, you are consulting very loudly! Could you, please, consult quietly so that we can hear what is going on?

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, I asked the same Question last year and the Minister said then that it will be completed in the financial year 2005/2006. But now, 2005/2006 financial year has come and gone. There are people who are benefitting from cultivating in this forest. Whenever surveyors and officers from the Forest Department go there, they are attacked. Will the Minister undertake here and now to ask the District Commissioner for Nandi North to provide security to the surveyors from the Forest Department to go and establish a forest boundary and then issue titles to the other residents who are not involved in this matter?

Prof. Kibwana: Mr. Temporary Deputy Speaker, Sir, I undertake to ask the Minister of State for Administration and National Security to arrange for security so that the surveyors from the Forest Department are not hampered in their work so that this outstanding matter is finalized.

The Temporary Deputy Speaker (Mr. Khamasi): Next Question, Mr. Karaba!

Question No. 396

INACCURATE WEATHER FORECASTS BY
METEOROLOGICAL DEPARTMENT

Mr. Karaba asked the Minister for Transport:-

(a) whether he is aware that the Meteorological Department has continued to make misleading or inaccurate weather forecasts to the detriment of farmers countrywide; and,

(b) what measures he is taking to address the above problem.

The Minister for Transport (Mr. Mwakwere): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) It is not true that the Meteorological Department makes misleading or inaccurate weather forecasts for farmers countrywide.

Over and above the agricultural

[The Minister for Transport]

sector, weather forecasts by the department serve other sectors of the economy and we get satisfactory comments from them to show total satisfaction for the forecasts. Those other sectors

include the aviation sector, marine services, the military and other sectors such as the building and construction industry, recreation, sports, tourism, health, weather-related disaster management, water resources management and outdoor functions in general.

(b) As reiterated earlier, the department does not make misleading forecasts to farmers. Nonetheless, the global perspective on meteorological focus is always taken into consideration and we are updating our methods by ensuring that we keep abreast of global trends. To this end, we have a modernization and expansion programme which includes the extension of existing observation network from 35 to 70, an increase of rainfall stations from the current 700 to 10,000, installation of surveillance radars with polyfers and lightning detection systems, improvement of data communication links using satellite-based technology and improvement of data processing and archival systems, including human resource development, establishment of provincial meteorological offices, training of personnel, setting up of an automatic observation network for areas which are not manned and modernization of instruments and equipment.

Mr. Karaba: Mr. Temporary Deputy Speaker, Sir, thank you very much for that good and elaborate answer. Although he says that he is not aware, he will reckon that at the beginning of the current rains, the same department had forecast that the rains would not last be that long and the farmers were advised not to plant. Some of the farmers did not even plant and the rains continued raining. To the dismay of the farmers, there was no prolonged drought as a result of that forecast. So, it is true to state that sometimes the forecasts that we get from the department are false. Is the Minister aware that when that happens, the farmers end up losing a lot of money in the planting and the hunger also increases threefold?

Mr. Mwakwere: Mr. Temporary Deputy Speaker, Sir, it is important to note that weather forecasts issued by the department are of various validity durations. We have very short range durations, that is up to six hours; short range - 24 hours to three days, medium range - four to seven days, long range - 30 days and seasonal forecasts which cover up to 90 days.

The deviations referred to in weather forecasts are extremely important to farmers, particularly on decisions relating to planting and choice of crops. Farmers are, therefore, encouraged to appreciate the given deviations to aid their decision-making.

Mr. Arungah: Mr. Temporary Deputy Speaker, Sir, in view of what the Minister has just said, could he undertake to inform the country on a daily basis what the weather conditions are going to be, because wrong information can be drastic to the country in general?

Mr. Mwakwere: Mr. Temporary Deputy Speaker, Sir, the dissemination of the Kenyan seasonal forecasts is done through Press releases to the print and electronic media to ensure that the forecasts are not only authentic but also widely circulated. So, that is already being done.

The Temporary Deputy Speaker (Mr. Khamasi): Last question, Mr. Karaba!

Mr. Karaba: Mr. Temporary Deputy Speaker, Sir, what would happen if the forecasts given by the department do not tally with what is expected by farmers? Could the department undertake to pay the losses, if so incurred?

Mr. Mwakwere: Mr. Temporary Deputy Speaker, Sir, the department cannot agree to that undertaking. We make forecasts to aid decision-making and we cannot ascertain whether the decisions made by the farmers were related to the forecasts made or not.

The Temporary Deputy Speaker (Mr. Khamasi): Next Question, Mr. Wakoli!

Question No.402

GOVERNMENT ASSISTANCE TO MUKWA-
SIBOTI-KIBUKE WATER PROJECT

Mr. Bifwoli asked the Minister for Water and Irrigation:-

- (a) whether he is aware that Bumula CDF started Mukwa-Siboti-Kibuke Water Project but has not received any assistance from the Ministry; and,
- (b) what plans he has to assist this water project.

The Assistant Minister for Water and Irrigation (Mr. Wanjala): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am aware that my Ministry designed Mukwa-Siboti-Kibuke Water Project in 2004 and its implementation is being funded by Bumula Constituency Development Fund (CDF).

(b) Currently, my Ministry, through the Nile Basin Initiative, is implementing Angurai Water Supply, which is an expansion of Malaba/Kocholia Water Project. The expansion of this water project has been designed to link with Mukwa-Siboti-Kibuke Water Project.

I would like to assure the hon. Member that the project will be linked up and be completed by January, 2007.

Mr. Bifwoli: Mr. Temporary Deputy Speaker, Sir, you have heard the Assistant Minister say that the Nile Basin Initiative is going to expand Angurai Water Supply in Teso District, and that we shall only be linked to that project. How much money is the Ministry going to give to support Bumula CDF Water Project? We want to complete that project so that everybody in the constituency can get water.

Mr. Wanjala: Mr. Temporary Deputy Speaker, Sir, the hon. Member knows that when we, as a Ministry, prepared the design for that project, we used money. If the technical services that we offered can be quantified, he will realise that we used money on the project. The committee overseeing the implementation of that project has not out-sourced the services. We are equally spending money on the Nile Basin Initiative and have it linked to Mukwa-Siboti-Kibuke Water Project, so that his constituents can have enough water. Even the CDF money is from the same Ministry.

Mr. Ojaamong: Mr. Temporary Deputy Speaker, Sir, as the Assistant Minister has heard, Mr. Bifwoli is very bitter because, in the first phase of Angurai Water Project, the water line emanated from Malakisi and passed through Mr. Bifwoli's constituency to Teso District. We launched the second phase of the project recently at Angurai in Teso District, and Mr. Bifwoli is also not happy about it. Could the Assistant Minister assure the people of Bumula, and Mr. Bifwoli, that they will be given some money to complete the on-going project, so that they can also have water as soon as possible? It is very annoying to see water pipes pass through your constituency to another constituency, without benefiting your people.

Mr. Wanjala: Mr. Temporary Deputy Speaker, Sir, I have been very clear, that we want to link up the project in Bumula with the one in Angurai. The Ministry also plans to implement water supply projects in Bungoma District at a cost of Kshs30,933,000 once the European Union releases funds earmarked for them this financial year. So, we already have earmarked sufficient funds to implement water projects in that area.

Mr. Bifwoli: Mr. Temporary Deputy Speaker, Sir, you have heard the Assistant Minister say that the only assistance that this Ministry has given to Bumula is technical advice, which is being quantified into money. What is the policy of the Ministry with regard to water shortage alleviation in the country, and particularly in Bumula? What water project does the Ministry intend to initiate in Bumula? Water is a rare commodity in Bumula.

Mr. Wanjala: Mr. Temporary Deputy Speaker, Sir, I will repeat what I had said because the hon. Member does not seem to understand. We already have Kshs30,933,000 for water projects in Bungoma District, where Bumula belongs. Moreover, in the current financial year, under the Nile Basin Initiative, we have provided Kshs2 million for Khasoko Water Project and another Kshs2 million for another water project at Machwele. The Ministry will further spend

Kshs3 million on a borehole at Machwele and Kshs500,000 at Miluki in the financial year 2006/2007. All these projects are in Bumula Constituency.

The Temporary Deputy Speaker (Mr. Khamasi): Hon. Members, Question Time has just come to an end, although we still have one Question remaining. I will allocate it five minutes to be answered, so that we can complete today's listed Questions on the Order Paper.

Question No.425

FATE OF UNUSED FUNDS RETURNED
TO TREASURY IN 2003-2005

Eng. Muriuki asked the Minister for Finance:-

(a) whether he could table a list of all the money that was allocated in the annual Budget and not spent per each of the Votes in the two financial years 2003/2004 and 2004/2005;

(b) how much of the unused funds had Authority to Incur Expenditure (AIEs) been issued; and,

(c) what happened to the money after the end of the financial years.

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

(a) In the financial year 2003/2004, a total of Kshs12,000,278,240 and Kshs4,447,262 was not spent under the Recurrent and Development Votes respectively. In the financial year 2004/2005, a total of Kshs7,000,145,000 was not spent under Recurrent Vote and Kshs25,800,432,182 under Development Vote.

(b) Authority to Incur Expenditure is normally administered by the respective Accounting Officers. It is, therefore, difficult for the Treasury to establish whether the Accounting Officers had issued AIEs for funds returned as unspent balances.

(c) All the unspent balances were surrendered to the Exchequer at the end of each of these two financial years, in accordance with existing Government financial regulations.

Eng. Muriuki: Mr. Temporary Deputy Speaker, Sir, it is a shame that Ministries can return Kshs25.8 billion meant for development. Be it as it may, my substantive question is: What happened to the money at the end of the financial year? The Assistant Minister said that the money was returned to the Exchequer. Since the money had already been voted for, where did it go? It was not reflected in the Budgets of the subsequent financial years. Where is it?

Mr. Kenneth: Mr. Temporary Deputy Speaker, Sir, in the first place, since the money was unspent, it means it never left the Exchequer. The money that was voted for the Development Vote was not utilised. Probably, the Accounting Officers did not issue the necessary AIEs. As I said here two weeks ago, while answering a specific Question by Mr. Wario of Bura Constituency, one of the actions we have taken at the beginning of this financial year is to ensure that proper expenditure of money that has been voted for is spent in the course of a financial year. That is part of the performance contract of Accounting Officers, beginning 1st July, 2006.

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, a lot of money was returned to the Treasury at the end of the 2004/2005 Financial Year. It also appears as if more [**Mr. Sambu**] money was returned at the end of the 2005/2006 Financial Year.

(Loud consultations)

The Temporary Deputy Speaker Mr. Khamasi): Order, hon. Members. I need to hear

what is going on in this Chamber. Therefore, for the second time, I request you to, kindly, consult in low tones.

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, we had Kshs16 billion at the end of one financial year, being returned to the Treasury. We also had 25 billion and an additional Kshs7 billion being returned during the end of another financial year, which amounts to Kshs32 billion. We are asking for an increment in the CDF, from 2.5 per cent of our revenue to 7 per cent. However, the Government is resisting, yet it has been returning money to the Treasury. The Assistant Minister is now telling us that they do not know where the money is. This Government knows where the money is. We want the CDF allocation increased to 7 per cent. Could the Assistant Minister tell Kenyans whether the CDF allocation will be increased from 2.5 per cent to 7 per cent of our revenue? Let him answer by saying either "yes" or "no".

Mr. Kenneth: Mr. Temporary Deputy Speaker, Sir, the question that hon. Sambu is asking is totally different from what we are discussing. However, we also stand accused, as hon. Members, if we do not spend our CDF money. The point is, we have taken the necessary action to ensure that all the money that has been voted is spent within that financial year. Secondly, we have gone ahead and started a Budget Implementation Unit, at the Treasury, to ensure that we assess early enough, budgets for the respective Ministries.

Mr. Sambu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House? I have asked a question concerning the return of money to the Treasury. I wanted to know; since money is being returned to the Treasury, will the Government increase the CDF allocation from 2.5 per cent to 7 per cent?

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Sambu! The Minister rightfully said that your question was on a different issue, which I agreed with him. So, we will move on to the next question.

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, what happens to projects whose money has not been spent? Does the Ministry push the allocations to the next budget so as to ensure that the projects are done?

Mr. Kenneth: Mr. Temporary Deputy Speaker, Sir, that has been the practice. In a case where a Vote has not been utilised, it is reallocated to the next financial year. I want to stress that the only way we can move forward is to ensure that whatever has been voted during a financial year is spent within the same financial year, so that all the projects which are meant to be carried out are, indeed, undertaken.

Eng. Muriuki: Thank you, Mr. Temporary Deputy Speaker, Sir. Could the Assistant Minister table the list of Ministries that did not spend their money? I also want to say, as my colleague has said that CDF has been utilising all its money and *wananchi* are waiting for an increase, could the Assistant Minister consider putting the returned money into a fund like the CDF so that it can be utilised for development?

Mr. Kenneth: Mr. Temporary Deputy Speaker, Sir, to begin with, I want to lay on the Table a copy of the list that Eng. Muriuki has asked for.

*(Mr. Kenneth laid the document
on the Table)*

Secondly, I have said, and will repeat again, that we expect from this year that all the money voted will be spent as it has been put **[Mr. Kenneth]** in the performance contracts. So, there will be no money going back to the Treasury and, cannot guarantee what Eng. Muriuki is asking.

Eng. Muriuki: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon.

Assistant Minister is evading the question. Since the money is from taxes, the Government must have collected it. So, I am suggesting that it should be put somewhere where it can be utilised.

Mr. Kenneth: Mr. Temporary Deputy Speaker, Sir, I thought I answered that question. The money that was returned in the 2003/2004 Financial Year was reallocated in the next financial year. The process continued in the following financial year. Therefore, the money is not floating somewhere.

Mr. Owino: On a point of order, Mr. Temporary Deputy Speaker, Sir. There is a Question of mine that you did not give any direction.

The Temporary Deputy Speaker (Mr. Khamasi): That one is deferred until next Tuesday.

Mr. Owino: Mr. Temporary Deputy Speaker, Sir, could we defer it for the next two weeks because I will not be around?

The Temporary Deputy Speaker (Mr. Khamasi): Clerk-at-the-Table, please, note that Mr. Owino will not be around for the next two weeks.

Question No. 433

DISBURSEMENT OF GLOBAL FUND
MONEY TO MAKINI SCHOOL

(Question deferred)

The Temporary Deputy Speaker (Mr. Khamasi): I had agreed that Prof. Kibwana could present his Ministerial Statement.

Minister, could you do it as fast as possible so that we can move on?

MINISTERIAL STATEMENT

MEASURES TO CURB THE SPREAD OF
THE *PROSOPIS JULIFLORA*

The Minister for Environment and Natural Resources (Prof. Kibwana): Mr. Temporary Deputy Speaker, Sir, on 12th of this month, hon. Mwanicha asked for a Ministerial Statement on the *Prosopis Juliflora* tree and I wish to give the statement.

I wish to inform you that my Ministry introduced the *Prosopis Juliflora* tree, a native of southern America in the 1970s. The main reason for its introduction was to assist in the rehabilitation of the arid and semi-arid lands. In addition, it was meant to provide fodder, shade, firewood and building polls. It was also to assist in honey production and act as wind breakers in arid areas which include Turkana, Baringo, Tana River, Garissa, Isiolo, Mandera, Meru, and Taita Taveta districts among others. The tree has lately become a threat to the dry land ecosystem. It has invaded areas of indigenous vegetation and affected human and livestock health and also interfered with the infrastructure such as roads, foot paths and watering points, among others.

I wish to confirm that my Ministry is in the process of establishing the number of people and livestock negatively affected by the plant. My Ministry is also in the process of assessing the extent to which the tree has negatively affected the ecosystems of the dry land areas where it exists. My Ministry, together with other lead agencies and other stakeholders is determined to bring the menace of the *Prosopis Juliflora* tree to an end.

Currently, we are in the process of declaring it a national disaster which will solicit support from various sectors geared towards addressing the problem in Kenya.

My Ministry received technical support from Food and Agricultural Organisation (FAO) in 2004 to undertake a pilot study on integrated management and control of the plant in Baringo District involving local communities. The activities included the mechanical control through thinning, pruning, and killing of tree stumps and biological control.

It is envisaged that subject to the availability of adequate resources, the exercise will be undertaken on a large scale across the dry lands currently affected by the invasive tree. In addition, my Ministry is currently working on a comprehensive strategy on the proper control and sustainable management of the *Prosopis Juliflora* tree.

Thank you.

Mr. Poghisio: Mr. Temporary Deputy Speaker, Sir, I thought that, maybe, the Minister should have checked to see if Mr. Mwanicha was around, before issuing the Statement, since he was the one who had requested for it. However, since he has come, I am concerned that we have been trying to deal with the problem of water hyacinth, although it still exists.

The Nairobi dam is filled with it and is still a menace. We now have another problem which, very soon, we might forget about. I want to know from the Minister which districts are affected by the plant and how he is planning to get rid of it because it is a nuisance which needs to be got rid off. What specific scientific ways do you have in place to get rid of the plant from people? It is not only affecting people, but also livestock and people who live in the rural areas, where we rarely reach to compile statistics. How far is the Government determined to reach there?

Mr. Munya: Mr. Temporary Deputy Speaker, Sir, you can recall that there were demonstrations relating to that plant. Mechanical control has not helped in Baringo. The problem is still persisting. What other measures, other than mechanical, is the Minister going to institute to make sure that, that plant is eradicated? If the Government introduced a crop that has been affecting the people, what is it going to do to make sure that those who have been affected are compensated? It is not their fault. How much money will the Government need for that exercise?

The Temporary Deputy Speaker (Mr. Khamasi): Your first question had already been raised by Mr. Poghisio. Your second question is more relevant.

Prof. Kibwana, could you respond?

The Minister for Environment and Natural Resources (Prof. Kibwana): Mr. Temporary Deputy Speaker, Sir, I have already mentioned the districts that are affected. They are Turkana, Baringo, Tana River, Garissa, Isiolo, Mandera, Meru and Taita Taveta, among others. I have admitted that, that is a serious problem in the country. That is why we are in the process of declaring it a national disaster, so that the country can focus on proper measures to fight that invasive tree.

Mr. Temporary Deputy Speaker, Sir, at the Kenya Forestry Research Institute (KEFRI), we are studying how other biological factors to neutralise the tree can be introduced. That research is on-going. Indeed, that tree was introduced in good faith. It had worked in South America. That is why Food and Agricultural Organisation (FAO) had recommended it to the Government to be planted in Arid and Semi-Arid Lands (ASALs). It has now become a situation of nature gone wild.

We have been concentrating on research to deal with that tree. We will require close to Kshs3 billion to effectively work on that issue. We are also exploring ways to use that tree to produce charcoal!

Hon. Members: *Tosha! Tosha!*

The Minister for Environment and Natural Resources (Prof. Kibwana): I am happy that the Opposition Front Bench Members are saying "*tosha*".

The Temporary Deputy Speaker (Mr. Khamasi): Next Order!

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

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Sambu! If you want to refer to the same matter, it is closed! You see the Minister later and share with him privately.

Next Order!

BILL

First Reading

THE KENYA INSTITUTE FOR PUBLIC
POLICY RESEARCH AND ANALYSIS BILL

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

The Temporary Deputy Speaker (Mr. Khamasi): Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE STATISTICS BILL

The Temporary Deputy Chairman (Mr. Poghisio): Order, hon. Members! We are now in the Committee of the whole House.

(Clauses 2, 3 and 4 agreed to)

Clause 5

The Minister for Planning and National Development (Mr. Obwocha): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 be amended-

(a) in subclause (1)(d)-

(i) by deleting the word "four" and substituting therefor the word "five";

(ii) by deleting the word "and" appearing in subparagraph (iii);

(iii) by inserting a semi-colon and the word "and" at the end of subparagraph (iv);

and

(iv) by adding the following subparagraph-

- (v) the National Co-ordinating Agency for Population and Development.
- (b) in subclause (3)-
 - (i) by deleting the word "or" appearing in paragraph (c);
 - (ii) by inserting a semi-colon and the word "or" at the end of paragraph (d); and
 - (iii) by adding the following paragraph-
- (e) mathematics.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 5 as amended agreed to)

(Clauses 6 and 7 agreed to)

Clause 8

The Minister for Planning and National Development (Mr. Obwocha): Mr. Temporary Deputy Chairman, Sir, I beg to [**The Minister for Planning and National Development**] move:-

THAT, Clause 8 be amended in subclause 2 -

- (a) by inserting the words "as specified in section 5(3)" immediately after the words "relevant field";
- (b) by inserting the words "or private" immediately after the word "public".

(Question of amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 8 as amended agreed to)

(Clauses 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 agreed to)

Clause 23

The Minister for Planning and National Development (Mr. Obwocha): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23 be amended in subclause (1) by deleting the word "both".

(Question of the amendment proposed)

(Question, that the word to be left out be left out, put and agreed to)

(Clause 23 as amended agreed to)

The Temporary Deputy Chairman (Mr. Poghisio): Order, hon. Members! I can see that your participation is low. At least, you have an opinion and you are supposed to voice that opinion, whichever way it is, so that we know how to vote. I almost said that the "Ayes" have it because I can only hear one "Ayes".

(Clauses 24, 25, 26, 27, 28, 29, 30, 31 and 32 agreed to)

(First, Second and Third Schedules agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Planning and National Development (Mr. Obwocha): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Statistics Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE STATISTICS BILL

Mr. Poghisio: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Statistics Bill and approved the same with amendments.

The Minister for Planning and National Development (Mr. Obwocha): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Justice and Constitutional Affairs (Ms. Karua) seconded.

(Question proposed)

Mr. Kagwima: Mr. Temporary Deputy Speaker, Sir, I want to commend the Minister for

having taken note of what some of us suggested in our contributions. At this point, I would like to request the Minister and the officers who are charged with the responsibility of collecting information to be accurate, so that this country is given the collect data. We need this data for budgeting and ensuring that we plan well for this country.

I say this because the last time I looked at the figures of population for Tharaka, it was indicated that in 1999, we were about---

The Temporary Deputy Speaker (Mr. Khamasi): Do not open debate!

Mr. Kagwima: Mr. Temporary Deputy Speaker, Sir, I want to commend the Minister for a job well done.

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for the effort he has put in the Bill and for its passage. I would like to ask him to go and use the Statistics Office very well since it has become the centre of development. He should make sure that national data is accurate at all times.

(Question put and agreed to)

The Minister for Planning and National Development (Mr. Obwocha): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Statistics Bill be now read the Third Time.

The Minister for Justice and Constitutional Affairs (Ms. Karua) seconded.

(Question proposed)

(Question put and agreed to)

*(The Bill was accordingly read
the Third Time and passed)*

BILL

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Statute Law (Miscellaneous Amendments) Bill, be now read a Second Time.

I will crave the indulgence of the House to refer extensively to my notes in moving this Bill. This is an important Bill which touches on amendments to 30 different Statutes. My office receives proposed amendments from the Ministries which are implementing the various Acts. In the course of implementing the various Acts, they come across some provisions of the law which need amendments for the effective implementation of the Acts.

Therefore, as I go through this, it will still be the responsibility of my colleagues, during the Second Reading, to expound on some of the amendments which emanated from their Ministries. I may also say at the outset that on some proposals, I have received a number of interventions and petitions from the public and the civil society, and at times, even from the Ministries themselves, to the effect that their policy has changed and, therefore, they need to amend slightly what they had initially proposed. I must also say that I have received the report of the Parliamentary Committee dealing with this matter, and they have done a commendable job in trying to improve the various

proposals put here. But that, of course, will be the subject of debate.

Mr. Temporary Deputy Speaker, Sir, I will not go through every of the 30 different statutes to be amended, but I will touch on many as I go along. Some of them, although they appear small, have a lot of implications when implemented.

The first amendment is to Section 21 of the National Assembly and Presidential Elections Act. The purpose of the amendment is to remove the word "serve" That section provides that petitions under the Act should be presented and served within 28 days of the publication, in *The Kenya Gazette*, of the results of an election or a declaration that a Parliamentary seat has become vacant. This particular provision has proved very difficult because some of the successful candidates in any election, whenever they know there is a petition around the corner, go underground or make themselves invisible, and because of the mandatory requirement of 28 days, they then resurface after the 28 days when the petitioner cannot properly file it. So, the purpose of this amendment is to remove that requirement.

I am aware that the Parliamentary Committee has proposed that there should be some due diligence on the part of the petitioner that it is only when he fails to get the "invisible" respondent that he can apply to the court to serve by substituted service. This means that you are now serving by an advertisement in the local media. In this case, it is presumed that the invisible man knows how to read and write and also tries to read newspapers, and he will be served through that process.

The next amendment is the Judicature Act. This is a very important amendment which proposes to increase the number of High Court Judges from the current 50 to 70. It also proposes to increase the number of Judges of the Court of Appeal from 11 to 14. The need to increase the number of Judges is self-evident. At Independence, we only had seven High Court Judges. These have increased from time to time such that in 1997, this august Assembly increased the number of Judges to 50. I may explain here that there was a proposal that we just leave it to the Judiciary to increase the Judges as and when they feel the need to, rather than coming to this House. But the Constitution here is very clear that it is this Assembly which fixes the number of Judges. So, every time we need to increase the number of Judges, we must come to this House.

Mr. Temporary Deputy Speaker, Sir, we all know the saying that "justice delayed is justice denied" and also the saying that "the wheels of justice grind slowly but surely." If we have to go to the issue of ratio of Judges, currently, we have 50 High Court Judges to a population of approximately 33.8 million, which provides a ratio of one Judge per 676,000. Put it another way. In Kenya today there are approximately two Judges per one million of the population. Compare that with India which has 12 Judges for every one million of the population. Australia has 47 Judges, Britain has 50 Judges, Canada has 75 Judges and USA has 107 Judges per one million. Even in countries such as Malawi, which is closer home, if you take the ratio, you will find that whereas in Kenya today it is one Judge per 676,000, in Malawi it is one Judge per 576,000. This means that a Judge in Kenya serves 100,000 more people than that of Malawi. If this proposal is enacted, the ratio will reduce from 676,000 to 583,280 people. So, we will now be slightly better than Malawi.

Mr. Temporary Deputy Speaker, Sir, apart from that, we all know that we have had a backlog of cases. As at the end of 2004, there were 415,179 cases which were pending. That year, 8,258 cases were filed in the High Court, of which 6,258 were determined, leaving 2,000 pending. But this includes the figure which has accumulated over a number of years, of 415. At this rate, there will always be an average of over 2,000 cases which are not determined, which become pending and which add to an already high figure of pending cases.

Mr. Temporary Deputy Speaker, Sir, if you take into account the number of cases judges take in a year to clear, you will find there are over 400,000. This will mean it will take them 50 years to clear the cases at the rate they are deciding them. That is why we really urgently require more judges to start reducing the huge pending cases.

Mr. Temporary Deputy Speaker, Sir, the other thing that adds to this backlog is that normally immediately after an election, we have petitions which take priority and all other cases are put on the back-bench. In addition, at this point in time, because of the Government's effort to root out corruption within the Judiciary, a number of judges are facing the tribunal and the tribunal consists of very many judges hearing the cases which removes them from hearing the other types of cases. At the same time, you cannot fill those vacancies of those judges whose cases are being heard by the tribunal.

Mr. Temporary Deputy Speaker, Sir, as we amend the Statute Law to increase this number of judges, let me inform this august House that the hon. Chief Justice has also taken other steps to reduce the backlog of cases. He has set up an Expeditious Disposal of Cases Committee chaired by a Judge of the Court of Appeal, Mr. R.S.C. Omollo, and which consists of members of the Bench, the Law Society of Kenya (LSK) and a representative from the Office of the Attorney-General. I can also say that the Judiciary Service Commission (JSC) has moved and expanded the registries of the High Court to more upcountry stations.

At Independence, we had only three High Court stations in Kenya, namely Nairobi, Kisumu and Mombasa. Now, we have 18 High Court stations but in addition to that, the Judiciary has moved to establish more sub-registries of upcountry stations at Malindi, Embu, Eldoret, Kitale, Busia and Garissa. We also have new court buildings coming up and they are in the course of being constructed at Busia, Nyahururu and Kerugoya. Renovations are going on at the Income Tax building in Nairobi and also at the Central High Court building. Additional courts will be established at Naivasha, Nkubu, Nyeri, Vihiga, Kisumu and Homa-Bay.

Mr. Temporary Deputy Speaker, Sir, also as a further effort to reduce this backlog of cases is an effort to hear these cases quickly. As you know, the judges have to take evidence using their own hands and pen which is longhand and that of course unduly makes the whole process very slow. The Judiciary is now poised to experiment with automated recording of proceedings at pilot courts selected all over the country for that purpose. Therefore, as I seek the mandate of this House to increase the number of judges, I want to inform this House that, in fact, we are also taking other measures to reduce the backlog of cases.

Mr. Temporary Deputy Speaker, Sir, the next proposed amendments are to the Advocates Act. Section 10 of the Advocates Act specifies the categories of advocates who may practice without a practising certificate and those are officers in the Attorney-General's Chambers, Principal Registrar of Titles, other registrars of titles and also those persons holding office in a local authority. Therefore if you want to authorise somebody to practice without a practising certificate, you really have to come to Parliament to add the name of that body or person. The proposed amendment is to empower the Attorney-General to exempt advocates who are public officers from the provisions of the section where the organisation served by such an officer makes an appropriate application to that effect so that there will be no need for frequent coming to this House for amendments. You can rest assured that the Attorney-General will exercise his powers in this regard properly and judiciously.

Mr. Temporary Deputy Speaker, Sir, I am aware that the committee has made other proposals to amend the Advocates Act. For example, it is the Registrar of the High Court who issues annual practising licences to advocates and they would like that to be done by the Registrar, upon confirmation by the Chairman of the LSK that the applicant be given a practising certificate. I really have no objection to this amendment from the committee but we may need to discuss with them on whether it should be the chairman raising no objection or it should be the council of the LSK raising the objection so that it is not just left to one person to determine that "I do not like the nose of so-and-so and so I am not going to recommend that his annual licence should be renewed". So, the council, at least, with a few heads together, are more likely to get a more fair and objective

way of looking at things. The same proposal applies to applications from persons who have been out of practice as advocates for 12 months or more or whose period of suspension is over and for other reasons specified in the Act.

Mr. Temporary Deputy Speaker, Sir, I am aware that the committee has also recommended the requirement that your licence can only be renewed when you have undertaken continuing legal education, which applies to all advocates. The committee is recommending that the advocates who are Members of Parliament should be exempted from that requirement because as Members of Parliament they are actually carrying out legal work of a first class order. In fact, they are making the law and so there is no need for them to go to training courses, seminars and so on just to satisfy the requirement of continuing legal education. That is a recommendation from the committee and I think for the avoidance of doubt, maybe they should add that the Attorney-General does not require continuing legal education.

(Laughter)

I think they should take that into account. I think if they did that, then maybe we shall have to consider it together with the LSK.

Mr. Muite: On a point of information, Mr. Temporary Deputy Speaker, Sir. That was a serious oversight and for avoidance of doubt, this proviso shall be added to include the Attorney-General of the Republic of Kenya.

(Applause)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I am much obliged.

Mr. Temporary Deputy Speaker, Sir, there is also a proposal, particularly from the LSK, in addition to this, which states that we should agree to the establishment of regional disciplinary committees in at least five regions other than Nairobi. I agree with it because the cry of the public has been that disciplinary cases are taking too long. The poor litigants have to come all the way to Nairobi for their cases to be heard against the advocates. That is also time consuming. The fact that when this proposal was put here, the bar may have had only 300 advocates. However, now, they are over 4,000 or 5,000. They are spread all over Kenya, even in towns where we never used to have them. So, at the Committee Stage, I will also be introducing that amendment. I am just putting hon. Members on notice.

There are amendments which I do not have on Limitations of Actions Act, Charter of Transfer Act, which I would ask hon. Members to read for themselves.

Mr. Temporary Deputy Speaker, Sir, there are also some amendments to the Penal Code. The first amendments touch on Sections 99 to 102, 127 and 331 of the Penal Code. These are offences which we call abuse of office. Many cases that have emanated from the Criminal Investigation Department (CID) and the Kenya Anti-Corruption Commission (KACC) usually prefer charges of abuse of office. Whereas, the said charge under the Anti-Corruption and Economic Crimes Act, carries a penalty of up to Kshs1 million, or imprisonment of up to 10 years or both. Under the Penal Code, an abuse of office is a misdemeanour. It is not a felony. Consequently, if one is found guilty, the penalty is up to one year imprisonment. So, the proposed amendments to the Penal Code, in this particular regard, are to harmonise the punishment for the offence of abuse of office under the Penal Code with the same offence, under the Anti-Corruption and Economic Crimes Act.

Mr. Temporary Deputy Speaker, Sir, coming to the Criminal Procedure Code, the proposed

amendments are merely to do with getting rid of or abolishing trial with assessors, particularly in capital offences. It was found that it is a cumbersome procedure. We are now getting situations where a bit of corruption has gone into the trials via the route of assessors. We have cases where when somebody approaches an assessor, he will go and visit the man in custody and say: "If you look at me properly, you know I am an assessor, we may recommend an acquittal and so on." That is one aspect of it. However, it is really through a process of hearing of these cases. The major purpose of the amendments to the Criminal Procedure Code is really to do away with the requirement of having a trial with assessors.

Mr. Temporary Deputy Speaker, Sir, the other amendment, and I think it is important, is to obligate the court that when it finds somebody guilty and gives him, for example, a sentence of three, four or five years, the period in which that person has been in custody should be taken into account. Right now, of course, it is left to the entire discretion of the magistrate who may take that into account, but where a man has stayed there for one year, in his own calculations, he may do away with three months and so on. However, we want to make it mandatory that when somebody goes into custody he or she cannot get out, particularly in capital offences. If it has taken two, three or five years for the case to be heard, he or she has been found guilty, and if he or she is given a seven year sentence, the seven years should be deemed to have started from the time he was put in custody.

Mr. Temporary Deputy Speaker, Sir, the other amendment relates to the Evidence Act. As you know, this House, in the year 2000, passed an amendment to the Evidence Act which said that only confessions before a court would be admissible in a court of law. This has been found to be impracticable so much so that people who had actually confessed voluntarily, when the law was passed, do not end up having much investigations done because they had confessed. When the law was passed, they were told they have to prove the case. A number of them were acquitted and some faced very serious charges before the court. In any event, that law was passed because it was felt best that there was a motivation on the part of the investigators to torture people in order to obtain a confession. Therefore, the wide-spread torture that we witnessed, could have been prompted by the fact that the investigators were trying to get a confession. This, in turn, made the level of investigations to go down and not to be up to a mark that is required in order to produce an investigational file that can produce a conviction. That was a mischief. What we are proposing is a method which will address that mischief whilst, at the same time, permitting a proper confession made voluntarily to be admissible in court. We are now trying to expand the ambit of the institutions or persons before whom a confession can be made, and not just a court. We are saying such a confession can be made before a judge, magistrate or a police officer.

Taking into account what I have just said about the motivation of an investigator torturing to obtain a confession, we have made it clear in this law that the police officer must be an officer other than the investigating officer, and must be one not below the rank of a chief inspector. We are also further widening the ambit of persons before whom a confession can be made by including, in fact, any person of the choice of the suspect. If, for example, I am a suspect and I do not want to make a confession before a police officer or magistrate, I can decide that I have some confidence in my friends the senior counsel in this Chamber and opt to make a confession before my Shadow Attorney-General, Mr. M. Kilonzo, my colleague, the Chairman of the Departmental Committee on Administration of Justice and Legal Affairs, Mr. Muite or even before my neighbour Mr. Sambu. These are the people I have confidence in. I can make a confession before them.

Mr. Muturi: What about me?

The Attorney-General (Mr. Wako): Mr Temporary Deputy Speaker, Sir, I can also decide to make a confession before a former magistrate, an hon. Member, a colleague and Chairman of the Public Investments Committee (PIC) because I know he is the type of person who can protect my

rights when they are being violated!

Mr. Temporary Deputy Speaker, Sir, we have also tried to borrow a leaf from other countries because it will be necessary to make detailed rules which will govern the process of taking a confession. We are giving the authority to the Attorney-General - we shall not in this case act alone - in consultation with the Law Society of Kenya (LSK) and also in consultation with the Kenya National Commission on Human Rights (KNCHR) and other suitable bodies to make rules governing the making of a confession in all instances where a confession is not made in court. So, in addition to what is in the ambit, we are also saying that rules will be made available. Those are the rules which will have the confidence of, at least, the LSK and the KNCHR. I think through this process, we should be able to obtain confessions without reverting back to the mischief which we tried to clear before; torturing to obtain confessions.

Hon. Members will be reading amendments to the Housing Act. We will be reading amendments to the Public Trustee Act. The amendments to this Act is to increase the value of the estate which may be administered by the public trustee. At the moment the maximum is Kshs100,000. We are proposing to increase that to Kshs500,000. The reasons are self explanatory.

Mr. Temporary Deputy Speaker, Sir, there are amendments to The Service Commissions Act. There are also amendments to the Education Act which will empower the Minister to establish other institutes of higher education, for example, the Kenya Institute of Special Education. We are recommending amendments to the Kenya National Library Services Board. I am just going quickly through them because if I have to go through each of them and explain, I may be here until next week. I know that hon. Members have read this so I do not have to necessarily repeat the proposed amendments.

Mr. Temporary Deputy Speaker, Sir, we are proposing amendments to the Traffic Act. The amendment we are proposing is to empower the Minister to make rules, specifying the measures which may be applied, including the use of appropriate devices for that purpose. The purpose being to measure, for example, levels of intoxication. In other words, through this, if it is enacted by Parliament, then the Minister can make proper rules to accommodate the use of such devices as breathalysers. I think the proposal is so good that even the Committee has decided to add another proposal, which I accept. The proposal of the Committee is that there should be a new form of driving licences in the form of a plastic smart card containing a micro-processor based chip. So, if we can have these two proposals going, I think we would be on the right track in removing the road carnage on our roads today.

We have proposed amendments to the Transport Licensing Act; a minor one to the Constitutional Offices Remuneration Act, which really is to clarify the issue of entry point within the salary scale to a constitutional office holder. It does not necessarily have to start at the bottom. It can be determined depending on his age, experience and so on, to enter a level which is slightly higher than the bottom. There have been two interpretations on this; that as soon as you are appointed, you must start at the bottom. Other people say, no, there are powers to start at the middle or within the scale. It is just to clarify that issue that this proposed amendment has come.

Mr. Temporary Deputy Speaker, Sir, there are proposals to amend the State Corporations Act, to exempt State corporations with private sector participation from the provisions of the Act. We have some State corporations which have private sector participation. The Treasury has proposed that such corporations with private sector participation should be removed from the ambit of State Corporations Act so that we can encourage private sector participation. I have received some representations on this issue not only from within the Government, but also from outside the Government. We shall be re-discussing it before the Committee Stage; whether to keep it as it is or whether it should come in a modified version.

We belong to the East African Community (EAC). One of the most important institutions

which survived the collapse of the EAC was the East African Development Bank Limited. The boards have passed a resolution through the Council of Ministers to amend the Act in the three territories so as to protect the assets of the Bank from interference, seizure or expropriation. This is an amendment that other parliaments in Uganda and Tanzania will also be moving.

Mr. Temporary Deputy Speaker, Sir, we have amendments to the Trade Marks Act which are really intended to harmonise The Trade Marks Act with the Industrial Property Act, which are twin Acts, in terms of the appointments of the managing director, employees of the corporation, and so on.

We have amendments to The Hire Purchase Act which are really to increase the ambit of the Act. Currently, the hire purchase agreements captured by the Act, the value must be Kshs300,000 which at the time, the late Mr. J.M. Kariuki - this was a first Private Member's Bill, if my memory is correct, to go through this House. It was brought by the late Mr. J.M. Kariuki. At that time the figure of Kshs300,000 was a lot of money. However, now we know that it is just about half of the salary of we the people in this august House. We propose that we increase the agreements captured under this Act to Kshs2 million from Kshs300,000. The Committee has proposed that even Kshs2 million is low and it should be Kshs4 million. I agree with that and at the Committee Stage that amendment will be proposed.

Mr. Temporary Deputy Speaker, Sir, we are proposing to increase fines under this Act. At the time when the Act was enacted, the fine was Kshs20,000. It was a lot of money at that time. We have proposed Kshs100,000, and the Committee has proposed Kshs200,000. I agree with the Committee's proposal. There are also amendments to the Narcotic Drugs and Psychotropic Substances Act. These relate to the issue of analysing drugs with a view to destroying them. We have one requirement in this Act, that drugs must be destroyed in the presence of the person to be charged in respect of the offence. This particular provision has handicapped immediate destruction of seized drugs. This House, in 1997, passed an amendment to this Act to provide for a procedure for destroying seized drugs before trial is concluded. This was done because of the possibility of drugs disappearing, if they have to be kept until the trial is concluded. This House provided for the presence of the accused person. This law has created a handicap in the destruction of seized drugs. I have travelled to many countries and have seen that the requirement for the presence of the accused person is not necessary. But there are procedures which require that when drugs are seized, everything should be recorded by courts, and everything that is seized should be destroyed almost at once.

At times, you may seize drugs, but it may take years before you get hold of the suspect. He may have run out of the country, or may not be around at all. If you capture any suspect, he will be a small wheeler-dealer, or may be just a courier. It may be difficult to get hold of the real drug baron.

Therefore, if you have to hold to ransom destruction of drugs, because you cannot get the drug baron, the very purpose for which this amendment was passed will be defeated. That is why we are now proposing an internationally-accepted procedure of destroying seized drugs, without jeopardising the right of the accused person when he is ultimately found.

Mr. Temporary Deputy Speaker, there are also amendments to the Physical Planners Registration Act. There are also amendments to the Auctioneers Act. The Auctioneers Act was initially enacted as a result of a task force I set up to make recommendations to me on the law governing auctioneers. The task force came up with its recommendations. As at that time, there was only one body of auctioneers. This was the "National Association of Auctioneers and Court Brokers", which later changed its name to the "National Association of Kenya Auctioneers". We had an interest in the auctioneers themselves being represented on the board, and we tried to professionalise it. We provided for three or four representatives from the National Association of

Kenya Auctioneers. Since that time, we do not have just one body of auctioneers. We have another body of auctioneers called the "Kenya National Society of Professional Auctioneers". We have very many other bodies of auctioneers. They all need to be represented on the board dealing with their issues. A body that is left out feels excluded. So, they approached the Chief Justice, who is the appointing authority in this regard, for the board to be representative. That is why we proposed that we should not mention any of them. We can just provide for appointment by the Chief Justice of representatives to the board, in consultation with recognised and registered bodies or associations that deal with auctioneers. That is why we are proposing this amendment. I am saying this because there is a lot of writing going on among these bodies, some supporting this amendment and others saying that they must be the only ones to be on the board. The real reason is that they are not like the Law Society of Kenya, to which you must be a member if you are practising law. These are voluntary organisations, and you cannot tell everybody to join this or that association, except by law. So, because of that we have a number of national associations dealing with auctioneers.

Mr. Temporary Deputy Speaker, we have amendments to the Kenya Roads Board Act, which are on the Table. I know that a number of Members of Parliament are interested in these amendments. When you are reading these amendments, do so alongside the recommendations by the Committee. In this way, we can come to some understanding for the purposes of the Committee Stage.

We have amendments to the Industrial Property Act, which came in from the Ministry of Trade and Industry. I have received very many representations, particularly from the civil society and some Government departments. They all say that this is an issue that needs to be discussed again. This has something to do with anti-retroviral drugs for people living with HIV/AIDS. They feel that these amendments will draw us backwards. But I know we are engaged in discussions over this issue with the Ministry of Trade and Industry. When we come to the Committee Stage, I think we may have a solution on the appropriate amendments to this Act.

We also have amendments to the Copyright Act. We also have amendments to the Kenya National Commission on Human Rights (KNCHR) Act. When the KNCHR Act was enacted it stated that the Attorney-General is its responsible Minister. That was in 2002. But things changed in 2003 when the Ministry of Justice and Constitutional Affairs was created; I must say the Office of the Attorney-General had always recommended, even before 2003, that there must be such a Ministry. The Ministry of Justice and Constitutional Affairs was then given the human rights issues portfolio under the organisation of the Government. So, the amendment is to delete the AG and substitute thereof a phraseology, which will cater for any changes that may come. It will simply refer to the Minister responsible for human rights. We will refer to the Minister for Justice and Constitutional Affairs, but some countries have a specific Minister for human rights, or a Minister for governance issues in others. So, the phraseology that we have put here will cover all those types of situations.

We have many amendments to the Anti-Corruption and Economic Crimes Act, which have been well set out in the Memorandum of Objects and Reasons to this Bill on page 556. They are too long and I do not want to read them out. In any case, the Minister responsible for these matters will be talking about them as she seconds this Bill. I expect her to deal with the proposed amendments more in depth than I have done.

I also notice that the Committee also addressed, quite at length, recommendations on the two Bills, that is, the Anti-Economic Crimes Act and the Public Officers and Ethics Act. The last amendment is on the Public Audit Act and I believe that it is self explanatory.

In a nutshell, that is what this Bill is all about. I have not touched on all the Bills, but the amendments are self explanatory. I only touched on a few things here and there. With those remarks, I beg to move and ask the Minister for Justice and Constitutional Affairs, who is also the

Deputy Leader of Government Business, to second the Bill.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I rise to second this very important Bill. It is an omnibus Bill that carries amendments of various legislations numbering 30 as the Attorney-General has indicated. He has so expensively dealt with the amendments that I will not bother to go through.

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

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

Law is dynamic and it moves with society. It is, therefore, necessary, from time to time, to look at our laws and keep on updating them so that they are in touch with the modern trends. These amendments are, therefore, necessary. It is almost an annual ritual that there would be a Statute Law (Miscellaneous Amendments) Bill affecting various pieces of legislation that require updating to enable the Government to function and also continuation of an orderly society.

Looking at the amendments to the various statutes, as the Attorney-General has already stated, one would see the logic of the amendments being proposed. I would urge hon. Members of Parliament to look at each of those statutes and if there is anything else left out, they should point it out so that when we go to Committee Stage, we can come up with amendments that are going to help with the reform process that is taking place in this country. We shall also be harmonising our laws with the very many new statutes that have been enacted.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General has already mentioned the issue of enlarging our High Court from the establishment of 50 to 70 Judges. I support this amendment because our Judges are now catering for an added population. We started as a country of about 6 million people, but now we are 33 million people. Therefore, we need more officers to help in solving disputes in accordance with our laws. However, I would like to point out that adding the number of Judges may not, on its own, be the desired result of expediting court cases. We need, simultaneously with this, to address the issue of proper management of our courts by the presiding officers.

It is upon the presiding officer who controls the courts to ensure that cases are disposed of expeditiously and weigh the applications for adjournment coming from the litigant; whether from the prosecutor or the accused person's lawyers. I would urge members of our judiciary - I am glad that they are already addressing this issue - to take better control of their courts and to ensure that there is no unmerited delays in the cases so that the litigants, both civil and criminal, do not have to troop to the courts years on end.

Mr. Temporary Deputy Speaker, Sir, although members of the public complain about delays, I am aware that some of the delays are occasioned by the litigants who are members of the public and their lawyers. There is delay created sometimes by the judicial officers, but this is an area where we have to look at all the players and to urge them all to take up this issue seriously so that we ensure that there is no delay in the processing of cases. After all, the adage is: Justice delayed is justice denied.

While supporting the amendment that we increase the number of Judges in our High Court, we should also increase our vigilance and ensure that every person plays his or her part so that we can expedite the disposal of cases.

We know that lawyers working for public bodies other than those in the office of the Attorney-General are required to have practising certificates every year even though they are not

running private practice. It is, therefore, necessary that we support the proposed amendment to the Advocates Act in order to enable the Attorney-General to have discretion and grant exemption for the lawyers working in public bodies, and who need not take practising certificates, to carry out public duties.

I do not wish to address clause after clause because that will amount to duplication. However, with regard to the Constitutional Offices Remuneration Act, we need to pay some attention to this area. I am glad that these amendments are being brought. While we look at the salary structure, we must also ask ourselves this question: Who sets allowances for constitutional office holders? Sometimes there is no guidance and we leave it to the office holders to determine their allowances. This might not be the case in all the institutions, but it is certainly so in some of them. This is an area that we need to harmonise and ensure that even allowances are determined centrally or by a body other than the officers themselves to avoid the conflict of interest when looking at this issue.

Mr. Temporary Deputy Speaker, Sir, we also need to look at the issue of exempting State corporations which have private sector participation. How do we balance public good and free enterprise? We remember that when Kenya Power and Lighting Company (KPLC) was exempted from the State Corporations Act, everything ran amok. We need to tighten our rules so that we balance public interest with the need for private enterprise. Otherwise, we will not have done our duty. I know that hon. Members of this House, through the Departmental Committee on Administration of Justice and Legal Affairs has addressed itself to some of these issues. However, we too can participate and look at these issues. We support the move to amend this legislation, but we must look at the areas that we need to tighten. After all, our duty is to scrutinise each clause so that we are able to pass laws that will serve us well. That way, we will not rush back with another amendment on an area that we could have dealt with immediately.

I wish to applaud the fact that the Physical Planners Registration Act is being looked at. We hardly look at the Acts governing our professional bodies. It is high time we looked at them and brought fresh legislation for the professional bodies that have no self-regulating mechanisms so that we can have orderly and useful professional development.

I am looking at the National Commission of Human Rights Act where there are proposed amendments. As the Attorney-General said, the Kenya National Commission of Human Rights deals with matters related to human rights.

Mr. Temporary Deputy Speaker, Sir, it is up to the Government of the day to divide Ministries, lump them together and give them mandate that it deems fit. So, it is important that, where it is not necessary to specify which office, it is left to the Minister responsible, without naming the Ministry. That gives the Government of the day the leeway to lump its Ministries as it pleases because it is a matter of policy. It is not a matter of law. So, tomorrow, if we have a Minister who does nothing else but human rights, then the administration of that body goes to him or her. If we find that we do not need the Ministry of Justice and Constitutional Affairs but just the Attorney-General, then no further amendments would be necessary. So, this is leaving it flexible enough to be in line with the policies of the Government of the day, without changing the mandate or affecting the institution concerned.

When it comes to the Anti-Corruption and Economic Crimes Act, there has been an agreement that we need to expand the jurisdiction of special magistrates to enable them to deal with not only crimes under that Act, but also the Penal Code. That is because the Penal Code supplements what is in the Anti-Corruption and Economic Crimes Act. That is something that was not foreseen. The special magistrates under this Act are dealing with only one Act, and are not dealing with consequential offences arising from the Penal Code. That is very necessary at the time when Kenyans are calling for further action on the fight against graft. It is necessary to make these

amendments to enable courts that handle corruption cases, to handle any consequential offences that arise in the course of investigations related to anti-corruption issues and economic crimes.

Mr. Temporary Deputy Speaker, Sir, it is also necessary to give the Kenya Anti-Corruption Commission officers equal status that is enjoyed by police officers in a police station. That is necessary because they are dealing with investigations where they are required not only to summon the suspects, but also to record their statements. That is another issue that was not clearly seen at the time of the passing of the Bill. It is very necessary now. It is also necessary to empower the High Court to appoint a receiver of a property that has been obtained through corruption, so as to preserve it. Currently, when suspects are charged, they continue to utilise and waste the property so that, even at the time of judgement, there may be nothing for the people of Kenya to recover. That clause is very necessary to enable the people of Kenya, when they are successful in their litigation, to recover what they are seeking to recover from those who have engaged in economic crimes. We expect these amendments to get the support of the entire House. It is in the interest of this country that we recover monies and property that is not justly earned or was corruptly taken from the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, we all know that many people who have been charged with economic crimes have rushed to courts alleging that their constitutional rights have been breached. They have no intention of having those cases prosecuted. Once they get the stay, they go to sleep. Even those ones who woke up recently, woke up grumbling and, therefore, revealing their true intentions! They only meant to paralyse those cases. It is, therefore, important that while you ventilate about your constitutional rights, let the people of Kenya prove their case against each suspect. This, again, is a very good clause. It does not take away the right of a litigant to go to court and, very quickly, prosecute their case that will either prove or disapprove that their constitutional rights have been violated. After all, under the new rules that the Chief Justice promulgated in January this year, such a reference, if you file it now, should be heard within 45 days. Before those new rules were introduced, some litigants who had filed those references three years ago, had gone to sleep and started snoring loudly. They are now being woken up! That is to stop the abuse of the process of the court. It is wrong for a litigant or a litigant's lawyer to engage in that type of behaviour because, after all, the role of the advocates is to be officers of the courts. They are supposed to first of all, assist the courts and secondly, not to obstruct justice. It is not the duty of the advocate to obstruct the course of justice and be merely a mouth-piece for the client.

Mr. Temporary Deputy Speaker, Sir, it is also good that the proposed amendments will vest the authority to appoint special magistrates with the Chief Justice. That way, the process is shortened and whenever there is a need for additional magistrate, that is done. After all, the rest of the magistrates are appointed by the Chief Justice.

Mr. Temporary Deputy Speaker, Sir, it is quite clear that these amendments will also remove the ambiguities and also harmonise the offences of corruption and economic crimes under the Anti-Corruption and Economic Crimes Act and the Penal Code. Regarding the Public Officers' Ethics Act, it is clear that the public, and even Parliamentarians, have agreed that for the wealth declaration exercise to be meaningful, there have to be mechanisms of following them up. Therefore, there is need that we pass these amendments to ensure that this Act is of use to us. We should provide disciplinary action for public servants who flout the provisions of this Act. We know that today, there are people who do not comply with this Act, even inside this House. It is necessary that there are adequate sanctions to compel everybody to follow the law. We should also deter those who use public office for personal aggrandizement.

Mr. Temporary Deputy Speaker, Sir, all in all, all the amendments that are proposed here are very necessary. They are well intentioned. They are now before the House. They are the property of this House. Let us debate them with the interest of this country at heart, so that we can

move forward and create a better and orderly society where people live by the sweat of their brow, and not by things that are illegally obtained.

With those many remarks, I beg to second.

(Question proposed)

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to contribute to this proposed Bill.

I share the views expressed by the senior counsel, the Attorney-General and the Minister for Justice and Constitutional Affairs; that the law is dynamic. It ought to be looked at from time to time to ensure that it reflects the wishes of the community it is intended to serve, and to make sure that it assists the country in achieving its objectives as a whole.

However, it is my responsibility to say that whenever a law is being amended through---

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order! Hon. Members, please, consult in very low tones.

Proceed!

Mr. M. Kilonzo: Thank you, Mr. Temporary Deputy Speaker, Sir.

As I was saying, whenever we are amending a law through an adeno amendment like this, we are combining close to 30 statutes. A National Assembly like this must be extremely careful to make sure that we examine every particular amendment and understand whether it actually reflects that legal theory and combust in the original legislation. It is, therefore, with much regret that I say that many amendments in this legislation cannot be accepted, and should be rejected.

I will begin by pointing out the very first one; the one seeking to amend the National Assembly and Presidential Elections Act. We will remember the words "and served" that appears in that proposed amendment, were introduced in 1991. We will also remember that this Parliament, in inserting those words, carefully understood that the law---

(A mobile phone rang)

The Temporary Deputy Speaker (Mr. Poghisio): Order! I can hear a telephone ringing! Where is that coming from?

An hon. Member: G.G.

(Laughter)

The Temporary Deputy Speaker (Mr. Poghisio): Anyone with a mobile phone should switch it off!

Proceed, Mr. M. Kilonzo!

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, the fact of the matter is that these words were inserted out of a realization that the country was being subjected to an archaic system of service of election petitions. These two words have caused an enormous interpretation furore in the courts, so much so that it led to the second seven-judge bench of the Court of Appeal. The first one was in relation to Mr. Tony Gachoka's case. Even when you read the judgement, you will realise that even the Judiciary itself, is facing enormous difficulties in coming to terms with the fact that our electoral law, with regard to resolution of disputes arising from elections, is extremely

archaic. I would have been happier if the Attorney-General were, in fact, to bring the entire Act here, so that we amend it seriously.

First of all, once we remove these words, we will be surprised that some people will even attempt to serve this petition by pinning it on someone's door even if he or she is in India. Some of them may attempt to serve this petition on you by merely leaving it at your gate and saying that the bodyguards could not allow them to get into your house. This is an extremely dangerous provision which we must not insert. It is far better if the Act were brought here first.

Mr. Temporary Deputy Speaker, Sir, I am surprised that there are election petitions still pending in courts three-and-a-half years after the current Government came into power. The dispute resolution mechanism of this country with regard to election petitions is so dilapidated that time has come for us to look at this law, to make a provision that election petitions must be resolved within a reasonable time. We also notice that after the recent elections in Uganda, the election petition challenging President Museveni's election to presidency has already been disposed of. We are looking for an opportunity to make sure that we can have an electoral law that ensures respect as to the nature of election petitions is maintained.

What do I mean? Like a divorce petition, an election petition is a personal thing. It is not a community thing. The judges have interpreted this time and again to say that once a Member of Parliament is elected, his challenge of that petition must be respected. Therefore, if we are challenging his petition, we should use only a mechanism for serving him, that ensures that he is aware from the word "go" that an election petition has been filed against him.

That brings me to the second issue which is the number of judges. The time when we should merely be increasing the number of judges has come and gone. The time to dictate that each district in this country should have a High Court station, is now. That would eliminate the problem that my learned friend, Senior Counsel, the Attorney-General is having; having to work out the arithmetic. If I were to ask him what formula he has used to arrive at 50 High Court Judges and 14 Court of Appeal Judges, he will be hardly able to tell us. We are talking about administration of justice. My position remains, that once this Parliament determines that a particular area of the country is entitled to have a district, then a station for a judge should be opened and he should be appointed forthwith.

(Applause)

Therefore, for purposes of this debate, I will merely suggest to the Attorney-General that because the population of this country has grown to 33 million and we have 75 districts, we should have 100 judges in the country. Seventy five Judges can serve the independent districts that have already been established and the other 25 can serve Nairobi. I say this because the Attorney-General will agree with me, having been a former chairman of the Law Society of Kenya and Secretary-General of the African International Bar Association and so on. I will go further and say that the time for splitting Nairobi into several judicial districts has also come. We should have, at least, three districts for judicial purposes, so that a person who has a case which starts in Westlands, for example, is not forced through traffic to come to the Central Business District. We should have, at least, three judicial districts for Nairobi. Each district in this country should be entitled, as of right, to have a judicial office in the form of a Judge.

I was surprised that the Attorney-General, in moving this amendment, he did not tell us what became of the radical surgery that the NARC Government came with, with regard to the judiciary. If we all remember, 23 Judges of the High Court were sent away and tribunals appointed. This is the only surgery I know of in which both the doctor and patient died.

Mr. Moi: On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to

inform the hon. Member that the honourable doctor of the surgery is right here with us.

(Laughter)

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I thank the hon. Member for pointing out the doctor. But from legal parlance, the fact of the matter, as far as I know, is that the former Minister for Justice and Constitutional Affairs went away with the storm that he created in the Judiciary, and I think it was good riddance.

Mr. Temporary Deputy Speaker, Sir, the fact of the matter is this: We have 22 Judges awaiting resolution of cases pending before tribunals. I may not be right about the number because I did one successfully, but I do know that these tribunals are still pending. The Attorney-General has an obligation to tell us what is going to become of these tribunals. I was amazed to see the Chief Justice swearing an affidavit, saying that whenever a Judge is accused of corruption, he is not obligated to refer that question to the Judge before he refers it to the President for the appointment of a tribunal. No wonder we have the mess that we have!

Moreover, the appointment of these Judges is not addressing the issue of continued corruption in the Judiciary. Recently, we were treated to a public situation where a magistrate was actually caught receiving not much, but Kshs10,000. Therefore, I think the Attorney-General should tell us more about these matters.

With regard to the Court of Appeal, the Attorney-General, obviously, being lost for a formula, is suggesting 14 Judges. But we all know what is going on in the Court of Appeal. Our Court of Appeal has not become a circuit court. They take three Judges to Nyeri and leave the others in Nairobi. Three go to Mombasa and leave the others in Nairobi. The same applies to Nakuru. That is an archaic method of the management of administration of justice, and the Attorney-General will agree with me. The Rift Valley and Eastern Province, for example, should have their own two Courts of Appeal and three Judges, because of their size. The other remaining provinces should have, at least, a bench of three Judges, so that they will not have to be travelling from Nairobi to different places. We have even ended up with issues of their imprests, some of them being accused of not surrendering them. Therefore, I will be suggesting in the Committee of the Whole House that we should go further and have, at least, 30 judges. If you look at the possibility of having 30 judges at the Court of Appeal, you will see that I have used a formula which is better than that of the Attorney-General, which is having three judges per province, except for Eastern and Rift Valley provinces where we can have at least six judges whose function is to go and hear cases emanating from those districts. Justice is not a favour. It is a constitutional right! As long as you have to travel long distances in order to go and see a judge, that justice is compromised. Therefore, the time to bring the administration of justice closer to our people is now.

Mr. Temporary Deputy Speaker, Sir, let me leave that area and go to another very important one. Recently, Parliament passed an amendment to the Evidence Act saying that the police are abusing their power to receive confessions. I do not know what became of the NARC Government, because barely three years after coming to power, they are saying: "Sorry, we cannot handle that. We want to go back to policemen receiving confessions". I want to tell this House without fear of contradiction that a confession is a legal term and the only person who can understand whether you are really confessing in the right circumstances is a person who is trained in law. That is the reason why Parliament amended the Evidence Act and removed the power of policemen to receive confessions. It does not matter whether he was the investigating officer or not because they have their network. He will say: "My suspect is coming to you, make sure you get a confession because I want to improve my record". We have to ensure that confessions remain with the people who know best how to deal with confessions.

Indeed, Mr. Temporary Deputy Speaker, Sir, I accept that we must have rules. During the making of those rules, I intend to propose to the Law Society of Kenya and to the Attorney-General that a confession in Kenya should never be accepted unless it is recorded on video or tape so that the magistrate or judge who receives the confession can see for himself/herself whether the man was being put in a cell with two inches of water or he was naked and exposed to the vagaries of weather. In this day and age of the internet, video, radio and tapes, the time has come for us to make sure that if we really are tabling a confession, then the magistrate should not be left in doubt as to whether the man has bruises or not. Therefore, I will also be opposed to that amendment to the extent that it includes a police officer to be managing confessions.

I want to join my learned friend, the Minister for Justice and Constitutional Affairs, on this issue of constitutional offices. If you look at the language used, and I am sure that she will agree with me, this is a window being created for influencing constitutional office holders in the performance of their duties. The words are:-

"Provided that where a salary scale is specified, the holder of the office shall be paid such salary within the scale as the Office of the President may determine---"

Remember, it says: "Office of the President may determine". You know who the Ministers referred to here are? They are hon. Michuki and the others. It continues to say:-

"---having regard to the differences in skills, workload, accountability attached to each office---"

You are opening a window and you are creating a discretion for the Minister sitting in the Office of the President to tell a judge: "Beat it!", or even the Attorney-General when he retires: "Look here, you are not pulling your weight now, therefore, we are not going to give you an increase". I am totally opposed to this window of opportunity being created. They will start telling even the Attorney-General himself: "Look here, you did not advise us correctly", because they are talking about accountability, skills and work load. This is a window that is going to bite you, whether you like it or not. When we create a constitutional office, we want the Office of the President to keep as far away as possible in order to ensure that the people holding those offices are not tainted with politics and other sectarian, regional or even tribal inclinations.

(Applause)

Mr. Temporary Deputy Speaker, Sir, allow me to go to the issue of drugs. I welcome this amendment because for the first time now, this country is now a destination for drugs. I welcome that amendment and I hope that this House will pass it.

However, I want to discuss the issue of the Architectural Association of Kenya (AAK) under the Physical Planners Registration Act, 1996. This amendment is unwarranted. We should not allow it because they are sneaking in something for personal benefit and for issues that have nothing to do with the AAK. The Act refers to the AAK and we are being asked to amend that to be the Kenya Institute of Planners, something which has no legislative mechanism. Therefore, we should not allow that amendment to go through.

Mr. Temporary Deputy Speaker, Sir, with regard to the Auctioneers Act, a similar attempt is being made to sneak in amendments, which we cannot accept. The Attorney-General has not explained to us why he is reducing the number of nominees of the body from nine to four. To make matters worse, my information has it that in 2003, the Chief Justice even declined to nominate the ones who were there. Perhaps, that is the reason why this amendment is being brought. We want the number of nominees of the registered associations to the board to remain nine.

Mr. Temporary Deputy Speaker, Sir, on the issue of patent, you will see that the Attorney-General is proposing that as long as a patent has been brought by the owner of the patent or with

his express consent, then it should be accepted. But in Kenya, you would never know whether that consent has been given or not. We are being shown the Artur brothers and their shenanigans in Kenya. They can even sneak into the Attorney-General's office and get a registration of a company using forged certificates. What would be easier for the Artur brothers than to come here and say that they have the consent of a manufacturer, therefore, the item should be marketed in Kenya? Therefore, I would like the House to look at this issue and reject the amendment.

The other issue I would like to address is Section 83 on utilities. This country will never have innovations as long as you protect the interest of the manufacturers to the extent that the Attorney-General is proposing. He is saying that a registration certificate for a utility model shall expire at the end of the tenth year. Why ten years? Other countries use seven years. When models are accepted in the country, after seven years, we should allow the transfer of technology so that other people in Kenya who think that they can copy the model can do so.

Mr. Temporary Deputy Speaker, Sir, the Kenya Anti-Corruption Commission (KACC) worries me a great deal. The reason it worries me is because it has become an elephant in a China shop. This is an institution that was established with a lot of goodwill from this country's donors and development partners. Its purpose was to eliminate corruption. But all that it keeps on asking for is an enlargement of its mandate. Why has it not taken anybody to court for the first time through the Attorney-General and got a conviction? The reason is that KACC itself has become a captive of the corruption that it was intended to eliminate.

(Applause)

Therefore, when the Attorney-General comes here and tells us that when a Kenyan citizen makes an application for stay of proceedings involving corruption, that stay will never be given, he is violating Section 72 of the Constitution which clearly requires that a person in Kenya should be entitled to a fair hearing.

Mr. Temporary Deputy Speaker, Sir, if the only method of obtaining a fair hearing is through a stay of the proceedings, who are we to say otherwise? Not unless we amend the Constitution to say that an application for stay should not be allowed. I know he just wants to take a short cut and we should not allow it. We should continue to respect Section 72 in order to give discretion to magistrate, so that if the magistrate or judge is satisfied that a reason for stay is there, then the order is granted.

Moreover, the Chief Justice, in a way I cannot even understand, came and found the Chunga rules inadequate and amended them. The Chunga rules had provided that the moment a citizen of this country invokes the Constitution with regard to a pending case, the case in the magistrate's court be stayed. The Chief Justice, as recently as two months or so ago, amended those rules to say: "No, no! The two cases will go on simultaneously." This only happens in Kenya because nobody cares about constitutional provisions for fair hearing.

Mr. Temporary Deputy Speaker, Sir, once you invoke the Constitution before court, that question is superior to any question before the magistrate. To give a simple example, supposing a person in Kenya were to accuse a girl, under the Sexual Offences Act, that she has committed rape and then she goes to the Chief Justice and says: "Your honour, I am unable to commit rape because of the state of my physical features. Therefore, I want you to determine the constitutionality of the charge before the presiding magistrate." Obviously, the Chief Justice must order that the question of the sex of this woman and her ability to commit rape be determined first. The Constitution is superior to an order before a magistrate's court.

Therefore, the time to educate the Judiciary is now. Stop playing politics. If you want to fight corruption---

The Minister for Justice and Constitutional Affairs (Ms. Karua): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Shadow Attorney-General to mislead the House and the nation that the right to a fair hearing includes the right to go to sleep forever and to delay or obstruct hearing of a case?

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I do not intend to get involved in an argument with my learned friend. The fact of the matter is that sleeping is also constitutional. So, if you decide to go to sleep, you wake up at your own good time. Let us not play around with the Constitution.

Mr. Temporary Deputy Speaker, Sir, another thing is retro-activity. I have a lot of respect for the Chief Justice. It is fair that you know that. The Chief Justice said that this rule will play backwards. So, whatever constitutional reference was filed earlier is now overtaken by events. He just continues moving the goal posts. We cannot allow a system of Government to interfere with the constitutional rights of citizens. When a law is in application, it must be respected. You cannot come and amend it in the middle of the way and tell me that I am now subject to a law that was not in force at the time the particular circumstances arose.

Therefore, I am waiting for Senior Counsel Amos Wako, who has an enormous amount of experience in the field of law; I want him to confirm, when he stands to reply, that a law cannot be enforced retrospectively. Even if he does not, the Constitution says so. The Minister will tell us whether that is not the case. These are the risks you take when you try to amend the law through some sort of a track.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General is giving to a moribund institution called the Kenya Anti-Corruption Commission (KACC), the power to appoint receivers. Already, the principles and law of receivers in Kenya has been abused. Everybody knows that. When you appoint receivers, their work is to come and eat away as much as was left by those who had already run down the institution. The Attorney-General will also confirm that what I am saying is true.

The law of receivers in the country is due for review to make sure that receivership has got some certain limits. The Minister for Livestock and Fisheries re-opened the Kenya Meat Commission recently after it had been eroded by receivers. He knows that and he will confirm it. Now, all of a sudden, you want to give a corrupt institution called KACC, the power to appoint receivers on property. Surely, the hon. Attorney-General, there must be another method of doing this. I object to this arrangement.

The Minister for Justice and Constitutional Affairs (Ms. Karua): On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear the hon. Member refer to the Kenya Anti-Corruption Commission as a corrupt commission? Could he substantiate?

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, am I supposed to substantiate the obvious? Mr. Hussein Were, the third ranking officer to Mr. Ringera, has gone public saying that he has been sidelined in his efforts not to protect those people who were involved in the Anglo Leasing scandal. This is a matter of public knowledge, and if the hon. Minister does not know Mr. Were, I am willing to introduce her to him so that she can get the information upfront. Mr. Were has been denied the right to cross-examine, to investigate and---

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, the hon. Member on the Floor has not substantiated his remark. Talking about Mr. Were is not substantiating anything. It is clear that people have acquired some interest in particular officers, especially the suspects. Could we have substantiation, in accordance with the Standing Orders of this House, otherwise we will turn it into a place where we erode the integrity of institutions that we have created?

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, as I speak to you this afternoon, Mr.

Hussein Were has already been fired. Although he was given a certificate showing that he scored 91 per cent performance in March, vide a letter dated 31st March, on 19th June, three months later, without a warning letter or anything else, he has been told to go home. He has been terminated without any reason being cited, and it is a matter that the hon. Minister knows. If she does not know about it, I will introduce him to her.

The Temporary Deputy Speaker (Mr. Poghio): Please, do not turn this discussion into a Mr. Were issue. We are discussing a very important Bill. I think you should just concentrate on it.

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, there are terms and conditions of service of the KACC. Is the money that its officers earn unwarranted, and what the institution is given of no value to this country? The time to look at this issue is now. Coming with these piecemeal amendments to the Act, will not solve the problem of corruption in this country. My recommendation is that this Act be brought to this House and looked at again, so that we remove the retroactivity that was put to it. We should also look at the repeal that we made of the Prevention of Corruption Act, because I can understand what the Government is facing. Government officers are required to prosecute their own friends and operatives, when those people who were in the previous regimes have been left to go. This is because of the repeal of the Prevention of Corruption Act. The time to look at this law is now, and I believe that I am entitled to raise these issues for consideration because the law is being amended in a very summarised manner, without giving the House an opportunity to look into the legal theory of the Act, itself.

The Attorney-General is suggesting that the wealth declaration forms be published every two years. That means that when we form a Government, we will only be required to file them twice. During the first year, we can acquire wealth illegally, and during the second year, we dispose of it. When it is time to file the forms, we can claim to be still as bankrupt as we were when we formed the Government, when we know very well that we have sold our properties. We cannot allow that kind of thing. We must be consistent. If we want the public to have access to the wealth declaration forms, then it should be done each year.

I do not know what has happened to the Government since it came to power. The Government said that it would have zero tolerance on corruption. It now seems as if the "zero" was misplaced and there is now 100 per cent tolerance on corruption.

I would like to talk about amendments to the Penal Code. The Attorney-General is suggesting to this House that offences under the Corruption Act are not in tandem with the crimes described in the Penal Code. A country which is committed to fighting corruption would do this; they would repeal sections that appear in the Penal Code and put in sufficient mechanisms under the Anti-Corruption and Economic Crimes Act. They would not subject the anti-corruption law, which is recent, to an old law that was passed in the 1940s. I think that the proposals under the Penal Code are ill-advised. They are not intended to help this country to realise the objectives that it wants. We want an anti-corruption law that is not subjected to any other law. We want it to be a complete regime, so that we can refer to it with confidence. We want a law that is not answerable to other legislations. We do not want a magistrate to offer excuses when he or she cannot convict.

Mr. Temporary Deputy Speaker, Sir, will you allow me now to talk about some of the limitations of this Act? I agree with the amendments that the Attorney-General is proposing. If you damage public property, steal public property, undermine or compromise public property, you should not turn around and say that the case is time-barred. That is because the public is perpetual and eternal. Therefore, for that purpose, I support that particular proposed amendment. I also support the Public Trustee amendment to increase the levels and financial threshold. However, may I say that the most abused institution in the Attorney-General's Office, apart from the Companies Office - thanks to the Artur brothers - is the Public Trustee Department. They never worry about widows or orphans. It takes up to three years, if not longer, for them to pay. By the time the widows

and orphans find access to the wealth that the parent left behind, the whole thing is completely wasted. That is because of the bureaucracy. May I plead with the Attorney-General that it is not enough to increase the threshold, unless you bring to this House mechanisms and modalities for ensuring that the administration of estates under the Public Trustee Act is done in a speedy manner, in order to save the widows and orphans as the Bible commands us to do.

Mr. Temporary Deputy Speaker, Sir, may I conclude by referring to the Constitutional Officers Remuneration Act, with regard to the Finance Bill. You remember that, in addition to the section that I have just read to you, the Minister for Finance has, yet again, proposed to start taxing constitutional officers. I want to say again, without fear of contradiction, that the constitutional officers, excluding judges, are less than eight. In fact, I think they are only about five. We have the Attorney-General, the Controller and Auditor-General and so on. The amount of taxes they are going to derive from those people is negligible, and yet that proposal destroys the principle of independence. I want to reserve the right to differ with the Attorney-General! But I also want him to know that I will not use the Government mechanism to start undermining his allowances, so that I can twist his hand, threaten and intimidate him to take my line of thinking. We have been told by the Minister for Finance that he is also thinking of reining in other institutions like the Electoral Commission of Kenya (ECK) and so on. Perish the thought! We cannot afford to take back the train of liberalisation and, particularly, democratisation in this country. The only way to do so is for the President, by the time he appoints constitutional officers like the Attorney-General and Chief Justice, to know that after he appoints them, he must take a step back. He will not use his Minister to intimidate those people.

Therefore, Mr. Temporary Deputy Speaker, Sir, for that reason, until I know that the amendments I have proposed will be included in the Bill, I beg to oppose.

(Applause)

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, the Departmental Committee on the Administration of Justice and Legal Affairs tabled its Report in this House on 19th June, 2006. Copies have been made available in Room No.8, and I trust that hon. Members have had the opportunity to go through the Report, including the rationale for the various amendments proposed by the Committee. I agree with hon. M. Kilonzo that this is a very important Bill because it is seeking to effect amendments to very many Acts of Parliament.

Mr. Temporary Deputy Speaker, Sir, therefore, there is an increased duty of care on the part of the hon. Members to peruse very carefully each proposed amendment, their implications and effects. That is why the Committee made this report available in very good time to enable the hon. Members to do that. If any example is wanted about the importance and the mischief that can be done, one does not need to look any further than go back to 1992 when the National Assembly and Presidential Elections Act required political parties to nominate candidates within a period of not less than 21 days.

In other words, political parties were given the responsibility of giving adequate time; not less than 21 days to nominate their candidates and take their names to the Electoral Commission. The Senior Counsel, who is the Attorney-General, sneaked in an amendment that said that political parties must do their nominations within not more than 21 days. This meant that all the Opposition parties were left with no time to complete the nominations. He changed the words "not less" to read "not more" than 21 days.

The effect of this was that political parties were required to nominate their candidates within 21 days. This brought chaos to us. Thanks to hon. Justice Mbaluto who struck out that amendment and described it as a very mischievous amendment and saved the day. We need to go

through all these proposed amendments, and I am sure the hon. Members will do that.

The Committee consulted with the Law Society of Kenya, the Kenya National Society of Professional Auctioneers, the National Association of Kenya Auctioneers, the Kenya National Commission on Human Rights, the Judicial Service Commission and the Registrar of the High Court. We also received a memorandum. Therefore, when we made our report and our recommendations, we took all those in account.

By and large, I concur with the amendments proposed by the Attorney-General, except in some instances; for example, the National Assembly and Presidential Elections Act on service of a petition. There is need to strike a balance between the petitioner and the respondent. As hon. Members know, there has been a problem with personal service, particularly with regard to a sitting President. How does one now wishing to challenge the election of a sitting President go about personally serving a sitting President? That difficulty has been there. However, at the same time, we must not lose sight of the fact that it is necessary for a respondent; somebody who has been elected by the people to know that a petition has been served.

Therefore, this issue of wholly substituted service, we think perhaps, the Attorney-General is going a little overboard there. Therefore, we are suggesting that a balance be struck, so that in the first instance, personal service will be necessary. But where it is demonstrated by the petitioner that it is not practical to effect personal service, or the respondent is avoiding service, then substituted service can be effected. This means it can be gazetted in the Kenya Gazette or in both an English and a Kiswahili newspaper which have the widest circulation in the country. That way, one will be able to strike a balance between the interest of the petitioner and the respondent.

Mr. Temporary Deputy Speaker, Sir, after going through and analysing the data in terms of judges to the ratio of the population and the work load, and also listening to the Judicial Service Commission, we thought that the more appropriate figure for the High Court Judges is 75 rather than 70, and 15 for the Court of Appeal rather than 14. This does not mean that they must all be appointed. But instead of coming here every two years to effect the amendment, perhaps we should fix the upper limit at 75 so that the Attorney-General does not have to come here in two years' time seeking to amend.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General has talked about the Advocates Act and I agree entirely. During the Committee Stage, we shall certainly include the amendment that, for the avoidance of doubt, this particular provision shall apply to the Attorney-General. I think that is a very reasonable provision.

Mr. Temporary Deputy Speaker, Sir, I listened very carefully to Senior Counsel hon. M. Kilonzo with regard to confessions. I can see that he is also listening carefully, and being a rational person, I know he can be persuaded through reason. He listens and if he is persuaded, he can change his mind. It is only fools who do not change their minds. There has been a practical problem with the law. First of all, this issue of requiring confessions to be made before magistrates was a result of a lot of pressure from NGOs. Granted, in the past, confessions have been extracted; there is no question about that. But now, after requiring confessions to be made before magistrates, the police and the CID have been going from one magistrate to another, and the reality is that very few magistrates are willing to accept confessions.

There is also a principle here. Once a magistrate takes a confession, that magistrate becomes a potential witness in case that confession is contested. So, the Committee deliberated at great length on this. We thought that as long as there is this proviso, that it is the right of the person wishing to make a confession to have a third party, for example, his or her lawyer or a member of the family, then the confession can be made before a police officer of not less than Chief Inspector in the presence of that third party. That will strike a balance, because there is a practical difficulty in getting magistrates to take confessions from even those wishing to make them.

Mr. Temporary Deputy Speaker, Sir, you are aware that our driving licences are the way they were since Independence. You know, that hard cover thing with your photograph--- It is out-dated. Tanzania and Uganda have gone electronic and it becomes much more difficult to forge theirs. The suggestion is that we should go electronic so that your driving licence can fit in your wallet. But I am sure the relevant Ministry will be attending to that.

On the State Corporations Act, we listened to the arguments of the Attorney-General about encouraging private investments. But we know that there is a loophole here. Where public money is in a public corporation, irrespective of whether that public money is less than 50 per cent or not, the Committee's view is that, that State corporation should continue to be audited by the Controller and Auditor-General in the public interest, in order to protect public money.

On the Hire Purchase Act, in fact, the upper limit to bring the goods subject to higher purchase under the Higher Purchase Act, we thought that given the value of money and the cost of goods, the more appropriate figure is Kshs4 million rather than the Kshs2 million provided. That will protect more people who are buying goods on hire purchase.

Mr. Temporary Deputy Speaker, Sir, we have recommended that the proposed amendment to the Physical Planners Registration Act be deleted and the rationale is given there. It is hon. Amos Kimunya, when he was the Minister for Lands, who illegally sought to appoint people to an examination board and is now seeking to ratify that particular mistake retrospectively, and we do not think that this House should permit him to do that. Let the Architectural Association of Kenya continue to nominate people as they are permitted under the Act.

(Applause)

Mr. Temporary Deputy Speaker, Sir, on the Auctioneers Act, we listened to both groups. We gave them audience. They came with their respective memorandum and we think it is in the interest of all of them and the public that they should continue to be under one body and be disciplined and administered by one body, rather than allowing so many splinter groups. What is going to happen is that today there are two splinter groups and they are going to splinter more. There should be an Act that brings all of them under one roof so that they can also be disciplined under one Act.

(Applause)

Mr. Temporary Deputy Speaker, Sir, on the Kenya Roads Board (KRB), we agree with the amendments that are being proposed. The amendments that require more clarification appear on page 536. Our understanding is that the intention here is to bring the money allocated to constituencies, that is the fuel levy money for roads, to the Constituency Development Fund (CDF) and be administered by the constituency committee for the purposes of the roads only. Now, one is not entirely certain whether these amendments have actually effected that, but we will be looking into it in order to bring out with clarity that, henceforth, money for roads will go directly to the constituency to be administered by the constituency committee in the same manner in which the CDF is being administered.

(Applause)

Mr. Temporary Deputy Speaker, Sir, the further proposal that the committee has suggested is that this 24 per cent--- You know at the moment, it is the 16 per cent that goes to the district but the difficulty we have had is that we are then tied on where to buy the murrum and quarry chips. In

Kiambu District, for example, we are being made to buy murram at Kshs1,800 when we can get the same seven tonne lorry of murram at Kshs600, but we are told that this is the person who won the tender and we must buy from him. We want to reverse all that so that in a particular constituency, the constituents are the ones who will know where to get the murram and the quarry chips and which road to repair. Let the cheque be paid and signed by the district accountant in the same manner, but the decision of what material to buy, from whom to buy and the tendering is that of the constituency in the same manner that we are doing with the rest of the CDF funds.

(Applause)

Mr. Temporary Deputy Speaker, Sir, you know the 16 per cent is what has been going to the constituency. The 24 per cent is supposed to go to districts or provinces. I have discussed with hon. Members asking whether they have ever seen a grader, for example, in Central Province going to their constituency, and nobody knows where this 24 per cent goes. That is the position everywhere. So, we are proposing that we reverse this trend. Let the districts get the 16 per cent and the 24 per cent should go directly to the CDF, so that we can at least improve the roads for our own people.

(Applause)

Mr. Temporary Deputy Speaker, Sir, there are certain sections in the Anti-Corruption and Economic Crimes Act that are clearly unconstitutional, as the hon. Mutula Kilonzo mentioned. The Constitution is a supreme law and it vests certain constitutional rights in an individual, including the presumption of innocence. We cannot have an Act of Parliament reversing that presumption of innocence, including the right to privacy of our property.

We went through some of these sections and we are recommending to the House that those that violate the Constitution should be deleted, so that the Act is in line with the Constitution. The Constitution is the supreme law.

Mr. Temporary Deputy Speaker, Sir, we agree with the issue of the Public Officer Ethics Act. However, the proposal that the depository for the wealth declaration forms should go to the Kenya Anti-Corruption Commission (KACC) is a bit problematic, at the moment. If it is the judges, their declarations go to the Judicial Service Commission (JSC). As you know, for hon. Members, the wealth declaration forms go to the Parliamentary Service Commission (PSC). Any investigatory agency, including KACC, has access to those forms. Where they have reason to believe that the hon. Member for Kabete, for example, should be investigated, they will access my declaration forms there. If it is the Public Service Commission (PSC), they take it there. The Committee felt that position should continue to apply rather than getting everybody to deposit their forms where one is not even sure about confidentiality. Therefore, during the Committee Stage, we will be moving those amendments formally. We hope hon. Members will support them.

Mr. Temporary Deputy Speaker, Sir, there are one or two general points I would like to make. I agree with Mr. M. Kilonzo. With due respect, we are hearing very scaring voices and sentiments coming from Mr. Kimunya. First of all, the Electoral Commission of Kenya (ECK) does not fall under the docket of the Ministry of Finance.

Secondly, it is true that there may be room for improvement; for example, this House, sooner or later, will need to address whether what Kenya needs is a professional ECK or a representative one. That is an issue we need to resolve. Personally, I would go for a professional ECK. The current chairman has done a very good job. There is no question about it. However, who knows who will be the chairman tomorrow? I would like to see a situation where we have an ECK

of not more than five members recruited on the basis of their experience, credentials, ability and professionalism and vetted by this House; not anyone else. Let this House vet the ECK commissioners, so that they will be concerned with policy. The 22 ECK commissioners have each two vehicles, a house and security guards. They are costing us a fortune. They are doing secretarial work. I went to the DRC, they have got three commissioners, one former respected judge and two other commissioners. They have a big secretariat manned by very able young men and women, and they do the secretarial work. So, we need to rethink of the design of the ECK. The time to do that is now because this matter of the ECK is urgent.

When we agreed on the commissioners being appointed by various political parties, we did not put it into the law. So, now we have a situation where one person, the President, without consulting anybody can actually appoint all commissioners. This is not in the interest of this nation. We must have an ECK that enjoys the support and confidence of the Kenya public, and whose integrity is beyond reproach. So, there is need to rethink about the entire ECK. The rethinking should be towards enhancing their independence and autonomy, not the other way round, or making them subjective to the President, a particular Minister or Ministry. Therefore, I join Mr. M. Kilonzo in saying that Mr. Kimunya, in suggesting that he will subdue the ECK, is putting himself on a collision course with this House. I hope that when time comes, this House will stand up for the independence and autonomy of the ECK.

(Applause)

We may not like individuals manning other institutions. Let us remove those individuals. However, those institutions must remain independent and autonomous, including the Kenya National Commission on Human Rights (KNCHR). There is one proposal talking about the independence of this institution. You will remember this House has had a long standing stalemate. We approved the names of the director and four deputy directors to the Kenya Anti-Corruption Commission. I thought we did so on the Floor of this House. The rationale of the statute is that once Parliament has approved, the role of the President is formal and ceremonial. It is just like in the USA. If the Senate rejects a name that has been taken by the President, the President cannot go round behind the Senate and appoint that individual. The rationale is that once a name comes here and Parliament has approved it, the role of the President is purely formal. It is to gazette and appoint. That is what the law says! However, in the case of Dr. Rotich, this House vetted and approved yet up to now, the KACC is operating without a Deputy Commissioner in charge of finance because the President refused to gazette it. So, the Committee thought that time has come for this House to assert its independence and authority by proposing an amendment here that in respect of an appointment that this House has approved, if the President does not within 14 days carry out his formal function of gazetting that person, then that person will automatically stand appointed on expiration of the 14 days. That will resolve this stalemate.

(Applause)

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

Mr. Wamunyinyi: Muite for President!

(Laughter)

Mr. Ochilo-Ayacko: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to contribute to this very important Bill.

There is a saying that goes that the devil is in the details. This Bill proposes to make several amendments to existing statutes and legislations. I would like to say that there are tiny devils in the details that hon. Members are going to deliberate on. In fact, it would have been my wish that many hon. Members were seated and active in debating this Bill, because, the passage of this Bill, if hon. Members are not aware, may catch them unawares and may occasion injury and suffering to the people we purport to represent.

Mr. Temporary Deputy Speaker, Sir, the first one that is sought to be amended is the National Assembly and Presidential Elections Act. As correctly captured by Senior Counsel, Mr. M. Kilonzo, it must be quite clear what is meant by service. It must not be left discretionary to any other entity; otherwise, this can be a fertile area for abuse. So, it is important to define what due diligence is. It is also important to capture, in very clear terms, what concerted effort at serving a person is; otherwise, this will be a fertile ground for abuse. I know that the general mischief that is intended for cure is the fact that certain persons make it impossible to serve them by imposing barriers which could make the police use force, and other forms of barriers like taking cover under the Protected and Restricted Areas Act, so that you cannot serve them. But this should not be used to make things spurious, so that a person can claim that he has served another by doing an act that is demeaning.

I also want to talk about the Judicature Act. The Judicature Act is proposed to be amended to increase the number of judges, the puisne judges and judges of appeal. That is a noble idea. My intention this evening is not to talk about statistics. My intention is this; when we were under the KANU administration we complained time and again that most judges were hand-picked from cronies of politicians. We complained time and again that there was ethnic imbalance in picking judges. We complained time and again that there was incompetence in terms of want in merit and the choices of persons who were being appointed as judges. It is good that the Attorney-General has proposed these amendments. But in the proposed amendments, nothing is being said about how professionalism will be protected, how gender parity will be achieved, and how cultural and social diversity will be taken on board. It is important to note that this country belongs to everybody who has nowhere else to go. It is important to note that every person of that description, and who has the qualification to be a judge, has a right to be appointed a judge. So, it is, first, important to enjoin, pursuant to Section 61(2) of the Constitution---

Mr. Keter: On a point of order, Mr. Temporary Deputy Speaker, Sir. Having listened to the Chairman of the House Committee on Administration of Justice and Legal Affairs, who said that he has made wide consultations concerning this Bill, would I be in order to move that the Mover be now called upon to reply?

(Applause)

Mr. Ochilo-Ayacko: Mr. Temporary Deputy Speaker, Sir, let me continue. I wanted to say that, pursuant to---

The Temporary Deputy Speaker (Mr. Poghishio): Order! The hon. Member has raised an issue for us to decide whether we should call upon the Mover to Reply.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, since it is only five minutes to go and my reply may take sometime; and I know that the hon. Member on the Floor is a learned colleague of mine, whom, sometime back, I was training to be the Deputy Attorney-General; he can complete his contribution. I could reply afterwards.

Mr. Ochilo-Ayacko: Mr. Temporary Deputy Speaker, Sir, I hope I have your permission to continue.

The Temporary Deputy Speaker (Mr. Poghishio): Order! I have not done my part. I said

the House can decide if we should terminate this debate and allow the Mover to reply. So, let me put the Question.

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

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, in view of the limited time, which will cause me to go into next week, and since I will be out of the country next week on official duties, I am giving the opportunity to the Minister for Justice and Constitutional Affairs to start replying on my behalf and to continue doing so next week.

The Temporary Deputy Speaker (Mr. Poghio): Mr. Attorney-General, I think you are complicating the situation because you are here and you were the Mover. You can actually reply because you are here.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I am very anxious to touch on each and every point that has been raised properly and effectively. In fact, in my reply, I would want to touch on what my learned friends, hon. Mutula Kilonzo, hon. Paul Muite and hon. Ochilo-Ayacko have said. It will definitely not take five minutes. I like being honest and straightforward.

The Temporary Deputy Speaker (Mr. Poghio): Order, Mr. Wako! Do you know that you have the right to reply until you finish doing so? There is no interruption in your reply!

The Minister for Justice and Constitutional Affairs (Ms. Karua): On a point of order, Mr. Temporary Deputy Speaker, Sir. We need your directions here. The Attorney-General has asked me, as his colleague, to reply. There is collective responsibility on this side of the House. He has already moved the Bill on behalf of the Government and has now asked me to reply. There is no Standing Order that I know of that bars him from asking a colleague Minister to reply. I am ready to reply, subject to your directions, because there is no procedure or Standing Order barring me from replying.

The Temporary Deputy Speaker (Mr. Poghio): Well, that is your right as the Government side. My worry was that the Attorney-General was beginning to debate. Once you make the move and proceed to talk about it, then you are actually taking the time allocated for replying. We cannot have the two of you replying at the same time.

The only thing you can do is to appoint somebody to make a reply and then continue to add on whatever you are saying. In your case, because you have been requested to reply, you can continue until you finish. That is absolutely your right. So, you may begin to reply!

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

Anybody sincerely looking at the amendments being sought will see that they are actually well intentioned and they are intended to cover the lapse between the law and other developments in the country. The Bill before the House now is the property of the House. Therefore, each one of us is entitled to scrutinise and propose whatever amendments one intends to introduce for consideration by hon. Members of this House. Let us be guided by national interest and not personal interest. We should not propose amendments because, perhaps, we have friends, clients or ourselves under any form of investigation.

Mr. Temporary Deputy Speaker, Sir, I must congratulate the Departmental Committee on Administration of Justice and Legal Affairs for having done thorough work. We agree with most of the amendments that they have proposed. We shall be seeking to discuss with them further, one or two amendments that they have proposed. However, basically, I would say that they have done a well considered job in almost all the amendments. We shall be willing to listen and see proposals

by any other hon. Member of this House because it is their entitlement to consider adequately the Bill before the House.

It is not correct to say that all confessions should be before a magistrate. Just as the Chairman of the Departmental Committee on Administration of Justice and Legal Affairs has said, if we do that, we will be making our judges and magistrates potential witnesses. There is absolutely nothing wrong, after proper rules have been drawn, to have confessions before a responsible officer, say, a police officer of the rank of Inspector. After all, lawyers are being employed in the police force now. So, it is a question of saying that only persons who are legally trained should hear confessions. We should be saying that the police force needs to employ more lawyers to enable this to happen. Again, we are trying to persuade our colleagues in this House to let this very vital amendment go on so that we do not complicate the justice system by asking the presiding officer to become an investigator.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghisio): Hon. Members, it is now time for the interruption of business. This House, therefore, stands adjourned until Tuesday, 25th July, 2006, at 2.30 p.m.

The House rose at 6.30 p.m.