

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 16th April, 2003

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

NOTICES OF MOTIONS

SELECT COMMITTEE TO PROBE ATROCITIES IN LAIKIPIA

Mr. G.G. Kariuki: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:- THAT, in view of the perpetual unabated killing, maiming of innocent people and the continued rape and the molesting of women and their daughters in Laikipia District and its environs over the years; and considering that despite hue and cry over the atrocities by the community to the Government to stamp out the menace, the problem has not only persisted but has also intensified to an alarming level; this House resolves to appoint a Parliamentary Select Committee to probe causes of the said atrocities with a view to recommending lasting solutions to the menace, and that the following Members be appointed to the said Committee:-

Hon. A.A. Kamama, MP; Hon. S.S. Lesrima, MP; Hon. M. Kariuki, MP; Hon. William ole Ntimama, MP; Hon. G.G. Kariuki, MP; Hon. G.G.

Muchiri, MP; Hon. Noah Wekesa, MP; Hon. Ahamed Sugow, MP; Hon. Oburu Odinga, MP; Hon. Jimmy Angwenyi, MP; Hon. John Sambu, MP; Hon. M. Mwandawiro, MP; Hon. Peter Munya, MP; Hon. Ekwe Ethuro, MP, and Hon. Dr. Abdi Kuti, MP, and that the Committee shall submit its Report, findings and recommendations within six months upon establishment, and that the Committee be conferred powers under Sections 14 and 15 of the National Assembly Powers and Privileges Act, Cap.6, Laws of Kenya.

Mr. Sasura: Mr. Deputy Speaker, Sir, I beg to give notices of the following Motions:-

REMUNERATION OF COUNCILLORS BY CENTRAL GOVERNMENT

THAT, considering the significance of local authorities in the development of our country; aware of the rampant misuse of revenue collected by the authorities under the pretext of remuneration for councillors; this House urges the Government to pay the salaries of councillors from the Vote of the Ministry of Local Government, and that 10 per cent of all local authorities' revenue collected in the country be submitted to the Central Government.

TARMACKING OF ISIOLO-MARSABIT
SECTION OF TRANS-AFRICA HIGHWAY

THAT, in view of the fact that Road A2 from Cairo to Cape Town is an international road, and noting with concern that the only section of this road which is not tarmacked is the section between Isiolo and Marsabit, and considering that failure to tarmack this section has had an adverse economic and security impact; this House urges the Government to tarmack the remaining section of the road.

DECENTRALISATION OF ISSUANCE
OF PASSPORTS

THAT, in view of the fact that all Kenyans are entitled to equal rights; aware of the difficulties encountered by Kenyans in their bid to acquire passports owing to the fact that passports are issued only in Nairobi and Mombasa; this House urges the Government to decentralise the issuance of passports by creating offices of District Immigration Officers in all districts in Kenya in order to enable Kenyans to easily access this important document.

AMENDMENT OF THE EDUCATION ACT

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

THAT, this House do grant leave to introduce a Bill for an Act of Parliament to amend the Education Act, Cap.211, Laws of Kenya, to provide for funds allocated for bursaries to assist poor families to be apportioned per constituency on a yearly basis, and to establish Constituency Education Bursary Allocation Committees and for matters incidental thereto and incidental therewith.

SELECT COMMITTEE TO INVESTIGATE DEATH OF HON. NDILINGE

Mr. J.M. Mutiso: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, following the sudden disappearance and murder of the late Hon. Tonny Ndilinge, MP, on 2nd August, 2001, and the subsequent ruling by the High Court hearing the murder trial that the case is a mistrial; this House resolves that a Select Committee of Parliament be set up to investigate the circumstances leading to the murder and report its findings and recommendations to Parliament within six months, and that the Committee be composed of the following Members:-

Hon. John Mutiso, MP; Hon. Benson Mbai, MP; Hon. Kalembe Ndile, MP;
Hon. Moffat Maitha, MP;
Hon. Kiema Kilonzo, MP; Hon. Mwangu Ivuti, MP; Hon. Kivutha Kibwana, MP; Hon. George Khaniri, MP; Hon. Otieno Kajwang, MP; Hon. Jimmy Angweny, MP; Dr. Hon. Abdulahi Ali, MP; Hon. Kahindi Kingi, MP; Hon. Daudi Mwanzia, MP, and Hon. James Mutiso, MP.

ORAL ANSWERS TO QUESTIONS

Question No.266

REVIVAL OF IKOLOMANI GOLD MINES

Dr. Khalwale asked the Minister of State, Office of the President:-

(a) whether he is aware that many people in Ikolomani continue to die in the gold mines while prospecting for gold; and,

(b) what urgent plans there are to revive gold mining which was abandoned by the Government in the early 1960s.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, this Question was erroneously directed to the Office of the President instead of the Ministry of Environment, Natural Resources and Wildlife. So, we have directed the Question to that particular Ministry.

Mr. Deputy Speaker: Indeed, the Question is about gold prospecting, which falls under the Ministry of Environment, Natural Resources and Wildlife. So, Dr. Khalwale, since your Question has been re-directed to the relevant Ministry, you will have to be patient until it comes back to the House.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. When will the Question be brought to the House?

Mr. Deputy Speaker: It is difficult for me to say when the Question will come back to the House. Since it has been re-directed to another Ministry, it will have to take time to come back. Certainly, it will not come up tomorrow. So, let us hope that the Question will appear on the Order Paper as soon as Parliament resumes, assuming that it will go on recess.

Let us proceed to the next Question.

Question No.286

TRANSPARENCY IN PARASTATALS PRIVATISATION

Mr. Deputy Speaker: Is Mr. M'Mukindia not here? We will leave his Question until the end. Let us move on to the next Question by Mr. Mwenje.

Question No.038

PAYMENT OF CONTRACTORS IN LATE 2002

Mr. Deputy Speaker: Hon. Members, I am informed that there was a request from Mr. Mwenje that this Question should be deferred. I can see the Minister for Finance is here. Mr. Minister, do you have anything to say? Are you agreeable that the Question by Mr. Mwenje should be deferred?

The Minister for Finance (Mr. Mwiraria): Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Very well! The Question is deferred.

(Question deferred)

Let us move on to the next Question by Mr. Mwancha.

*Question No.192*AMBULANCES FOR KITUTU MASABA
HEALTH FACILITIES

Mr. Mwancha asked the Minister for Health, in view of the fact that Gucha, Manga and Nyangena Health Centres are situated in areas that are totally inaccessible during the heavy rains, when the Minister is planning to send 4WD ambulances to the named health centres.

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

There are no immediate plans to provide ambulances to Manga and Nyangena health centres. However, Gucha District Hospital has an ambulance. Both Gucha and Nyamira district hospitals have been provided with 4WD Land Rover ambulances which serve the peripheral and rural health centres, which include Manga and Nyangena. Since the centres are both on telephone coverage, they are always able to call for and receive ambulance services in case they require to refer patients to the district hospitals.

Mr. Mwancha: Mr. Deputy Speaker, Sir, those health centres are located in areas which are inaccessible when it rains. I would like to ask the Assistant Minister when he plans to supply those centres with 4WD Land Rover ambulances. That is because the situation can be very bad, especially with meningitis which is on the increase in the area and pregnant women who sometimes have problems to deliver at night and other urgent cases!

Mr. Konchella: Mr. Deputy Speaker, Sir, since the two health centres are within 25-kilometre radius from the district hospital, the district hospital can attend to emergency cases using the Land Rover at the Gucha District Hospital. But if funds are availed in the next financial year, we will provide ambulances to those centres. But we cannot do that now because of lack of funds.

Mr. Billow: Mr. Deputy Speaker, Sir, we are dealing with the health situation of Kenyans and health centres are very important. In most of the constituencies that we represent, we only have health centres. Could the Ministry come up with a policy to provide ambulances to all health centres in this country?

Mr. Konchella: Mr. Deputy Speaker, Sir, I agree with the sentiments expressed by the hon. Member. But I will still say that, when funds are available, we will be able to look at the needs of all hospitals and health centres in the whole country.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, last year, the National Hospital Insurance Fund (NHIF) provided ambulances to various health facilities which were in areas of well-connected politicians.

Mr. Deputy Speaker, Sir, why can the Ministry not use the funds that are piling up at the NHIF to buy ambulances for all health centres in the country, instead of putting that money in some not-well-to-do banks like Euro Bank?

Mr. Konchella: Mr. Deputy Speaker, Sir, I do not know the reason why the NHIF bought ambulances, but the funds at the NHIF belong to members. The purpose for the NHIF funds is to pay for in-patient charges of all contributing members if they are hospitalised.

Mr. Leshore: Mr. Deputy Speaker, Sir, the problem of lack of ambulances is to be found all over the country. Could the Assistant Minister tell us how many ambulances have been budgeted for in the June Budget, and for which districts?

Mr. Konchella: Mr. Deputy Speaker, Sir, I would be prepared to answer that question at some other time. I do not know whether there are any ambulances budgeted for in the current Budget.

Mr. Gitau: Mr. Deputy Speaker, Sir, the issue of ambulances has been coming to this House almost every other week. It was just last week when Ms. Mbarire brought up the issue and took the Minister to task, to tell Kenyans when ambulances will be made available to hospitals. So, when is he going to provide ambulances to hospitals? He confirmed that he was going to do that. When?

Mr. Konchella: Mr. Deputy Speaker, Sir, we understand the feeling of all the Members because ambulances touch on the lives of all Kenyans. We will put a request to the Treasury to give us money in our budget to buy the ambulances. If this House approves the budget increment to take care of the ambulances, we shall be able to provide them. But it will depend on the Treasury; on whether the money will be available or not.

Mr. Mwanicha: Mr. Deputy Speaker, Sir, those health centres are not connected by telephone. How can they share even one ambulance that they have?

Mr. Konchella: Mr. Deputy Speaker, Sir, I have just said that they are connected by telephone, unless the Member wants to say otherwise. My information is---

Mr. Mwanicha: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is misleading this House! I know that area very well and the centres are not connected by telephone! For your information, Mr. Assistant Minister, there is no telephone connection in any of the health centres in Kitutu Masaba. That is totally misleading!

Mr. Konchella: Mr. Deputy Speaker, Sir, two mobile stations are working in the whole of the Kisii area.

Question No.122

COMPENSATION TO ENDOROIS COMMUNITY

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

- (a) if he could explain whether an environment impact assessment was carried out before a mineral prospecting company namely, Corby Limited, was granted a licence to prospect for minerals in Endorois;
- (b) whether he could further state why the Ministry ignored the objections raised by the local community regarding Gazette Notice No.10669 of 22nd February, 2002, contrary to the Environmental Management Act, 1999; and,
- (c) what compensation has been granted to members of the Endorois community who occupy the designated land.

The Minister for Environment, Natural Resources and Wildlife (Dr. Kulundu): Mr. Deputy Speaker, Sir, I beg to reply.

(a) In accordance with the Second Schedule of the Environmental Management and Coordination Act No.8 of 1999, an environmental impact assessment is not required for prospecting activities. An environmental impact assessment is only required if mining is to be undertaken. In such a case, the environmental impact assessment is carried out first and mining only commences after an environmental impact assessment licence has been issued. M/S Corby Limited have only been issued with a licence to prospect for minerals and not to mine. According to the section, therefore, it was not necessary for the company to carry out an environmental impact assessment before the granting of the licence.

(b) My Ministry called for objections, through Gazette Notice No.10669 of 22nd February, 2002, in accordance with the provisions laid out in the Mining Act, Chapter 306 of the Laws of Kenya.

Accordingly, the eight objections raised were addressed under the same Act and that was not contrary to the Environmental Management and Coordination Act.

(c) Compensation is payable only where land has to be taken from the owners, so that mining can take place. In that case, however, the land remains the property of the owners, as only prospecting is to be carried out.

However, any damage and nuisance caused by the prospecting would be compensated in accordance with Section 26 of the Mining Act.

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, members of the local community complain that they were never heard. They wrote their objections, but were never invited to make submissions on the ground that they had put forward their objections. Prospecting cannot take place on private land without the consent of the owner.

Is the consent of the owner not necessary? This is a pre-condition for a prospector to move into somebody else's land.

Dr. Kulundu: Mr. Deputy Speaker, Sir, Section 4 of the Mining Act vests in the Government all unextracted minerals under or upon any land. The eight objections that we received came from Kaplemoi Mining Group, community elders, Chebenyinyi Location, Endorois community, Lobo Location, J. Kandie and Karato and Wadot, Kwirentoi Mining Corporation, Endorois Welfare Management Committee, Chebenyinyi Location Youth Group and Ngusero Valley Environment Conservation. The objections were mainly about issues such as that the local community should have been involved in the issuance of the licence.

Secondly, they said that the interests of the local community should have been taken care of before the issuance of the licence. Thirdly, they stated that the local community should be licensed over the area instead M/s Corby Limited. The concerns were addressed, and were not major concerns as far as the Ministry is concerned.

Mr. Leshore: Mr. Deputy Speaker, Sir, when will the Minister bring the Mining Act to the House for amendments? In our areas, we only see people coming with licences for exploration and exploitation, yet they do not ask for the consent of the local communities. I remember that, in 1994/95, we were promised that the Mining Act would be brought to the House for amendment, so that the local communities can benefit.

Dr. Kulundu: Mr. Deputy Speaker, Sir, the Minerals and Mining Bill is one of the Bills slated for debate in this House this year.

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, one of the people who have been mentioned by the Minister is a former councillor of that area. The position of the members of the local community is that they have never granted their consent for mining. The other thing is that the said company is owned by the hon. Member of Parliament for that area. He has used a few people to try and get the licence to prospect for minerals. I do not know whether the Minister is aware of that fact.

Dr. Kulundu: Mr. Deputy Speaker, Sir, I am not aware that this company belongs to the current hon. Member of Parliament. The directors of the Company are as follows:-

Mr. Netechandra	
Narodham Hemrash -	Kenyan
Mr. Samuel Kipchumba	
Kipkaputo	- Kenyan
Mr. Alexander Selecas	Greek
Mr. Chesirchandra	
Narodham Himraji -	British
Mr. John Kipruto	- Kenyan
Mr. Reuben Chirchir-	Kenyan

Question No.170

SEWERAGE SYSTEM FOR MOLO TOWN

Mr. Mukiri asked the Minister for Water Resources Management and Development what plans he has to provide Molo Town with a sewerage system.

Mr. Deputy Speaker: The Minister for Water Resources Management and Development is not here? We will leave the Question until the end.

Question No.267

WATER SUPPLY FOR MACHAKOS TOWN

Mr. Mwanzia asked the Minister for Water Resources Management and Development what plans she has put in place to ensure that Machakos Town and its environs are provided with adequate water supply throughout the year, and that the NoIturesh Water (Kilimanjaro) is used for the original purposes for which it was intended.

Mr. Deputy Speaker: These are Questions that we deferred yesterday. The Minister for Water Resources Management and Development is not here! We will also leave this Question until the end.

Question No.246

INVASION OF KILIFI AIRSTRIP BY SQUATTERS

Mr. Khamisi asked the Minister for Lands and Settlement whether he is aware that Kilifi Airstrip has been invaded by squatters and if so, whether he can explain what measures he intends to take to resettle the people, now occupying the airstrip, to safer grounds elsewhere.

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

I am not aware that Kilifi Airstrip has been invaded by squatters. Therefore, I cannot take any action against them. If there are genuine squatters, they will be considered for resettlement along with others under the ongoing squatter regularisation programme within the districts.

Mr. Khamisi: Mr. Deputy Speaker, Sir, I am very disturbed at the casual manner in which the Government is handling the issue of squatters. I want to inform the Assistant Minister that this is a very important issue, and he should take it seriously.

The Assistant Minister has said that he is not aware that there are squatters at Kilifi Airstrip. I want to inform him that there are 82 genuine squatters and over 300 other squatters. Could he tell us what he will do with the non-genuine squatters at the airstrip?

Mr. Ojode: Mr. Deputy Speaker, Sir, now that the hon. Member has informed me that there are some genuine squatters at Kilifi Airstrip, I will take immediate action and resettle the genuine squatters in order for them to leave the airstrip land.

Eng. Muriuki: Mr. Deputy Speaker, Sir, Kilifi Airstrip has not been available for civil aviation services for over two years now because of squatters. When the issue was raised, the Assistant Minister should have visited the airstrip or sent his officers to verify the allegation that the airstrip is not available for use. There are houses there, and it is dangerous for air operators and also for the squatters on the ground. Mr. Deputy Speaker, Sir, could the Assistant Minister now undertake to visit the airstrip to establish the position on the ground?

Mr. Ojode: Mr. Deputy Speaker, Sir, I undertake to visit Kilifi Airstrip, in

the company of hon. Khamisi, to ascertain whether we have squatters on the airstrip land.

Mr. M. Maitha: Mr. Deputy Speaker, Sir, the Assistant Minister has said that a squatter regularisation programme is going on in the district. I am glad to learn that. Could he tell us precisely how many squatters so far have been settled under this programme?

Mr. Ojode: Mr. Deputy Speaker, Sir, I have already set up an investigative team within my Ministry to identify genuine squatters. When I travel to the Coast Province, I will come back and give an elaborate report on the issue of squatters in the Coast Province.

Mr. Mganga: Mr. Deputy Speaker, Sir, the Assistant Minister began by saying that he is not aware that there are any squatters at the Kilifi Airstrip. He went further and said that, if there are genuine squatters, he will take action. After Mr. Khamisi informed him that there are 82 genuine squatters, he said that, now that he has been informed, he would take action.

What process does the Government use to determine genuine squatters? Is it supposed to be informed by anybody or is it supposed to use its officers on the ground?

Mr. Deputy Speaker: Mr. Mganga, you asked a question, so why should you continue answering it?

Mr. Ojode: Mr. Deputy Speaker, Sir, first of all, I will determine whether the 82 squatters are genuine or not. I cannot just give a wholesale promise that I will resettle all the squatters. I am saying this because the problem of squatters is the biggest one the Ministry is facing at the Coast Province. People in the Coast Province do not want to see any vacant land.

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

Mr. Deputy Speaker: Order, Mr. Mganga! Let him finish what he is saying.

Mr. Ojode: Mr. Deputy Speaker, Sir, first of all, I will establish whether the 82 squatters, who are considered to be genuine, are genuine or not. When I go to the Coast Province to identify the problems of the coastal people, I will even invite hon. Members from the Coast Province to be with me.

Mr. Rotino: Mr. Deputy Speaker, Sir, it is not only in Coast Province where we have squatters. What is the Government or the Ministry's policy on resettling these squatters everywhere?

Mr. Ojode: Mr. Deputy Speaker, Sir, as I have said, we will get the report and act on it. The task force which the Minister appointed will investigate each case on its merit. I am saying this because there are some people who were given land in settlement schemes and later on sold it and eventually they became squatters. These people then go and settle on Mr. Rotino's land. That is why we want to establish the genuineness of the squatters. Once the problem has been identified, we will correct it immediately.

Mr. M'Mukindia: Mr. Deputy Speaker, Sir, first of all, I apologise for arriving late.

Question No.286

TRANSPARENCY IN PARASTATALS PRIVATIZATION

Mr. M'Mukindia asked the Minister for Finance since privatization of parastatals has in the past been carried out in a haphazard manner, what plans he has to ensure that in future privatization is carried out in a transparent way.

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

To ensure that privatization is carried out in an orderly and transparent manner, the Government of Kenya has drafted a Privatization Bill, which I intend to table before this House in the next few weeks.

Through the Bill, the Government intends to act as follows:-

- (i) Put in place a clearly defined process for the privatization of the approved parastatals; and,
- (ii) Entrench the necessary institutional framework in the law.

Among other things, the Bill also provides for the objectives to be achieved through privatization, the scope, funding for the programme and utilization of the privatization proceeds. These measures are expected to streamline the privatization process and enhance its transparency.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Consult quietly so that we can hear the question!

Mr. M'Mukindia: Mr. Deputy Speaker, Sir, I would like to thank the Minister for that detailed and positive reply. But since he has accepted that past privatization of parastatals has not been carried out in a transparent and proper manner, could he now institute a recovery process and ensure that Kenyans own, at least, 40 per cent of the shares in these parastatals?

Mr. Mwiraria: Mr. Deputy Speaker, Sir, the Questioner knows that privatization was done by the previous Government which sold the parastatals. I have a list of the parastatals which were sold and the amount of money each one of them fetched on the basis of a "willing-buyer", and the Government being the "willing-seller". Since the Government entered into an agreement with the buyer, how can I institute the recovery process? Would that not be a breach of contract?

Mr. Billow: Mr. Deputy Speaker, Sir, in the past, the policies on privatization did not target non-performing corporations, which were a drain on the country's economy. On the other hand, the privatization actually targeted the "cash cows" of the country. Those corporations which made high profits were the ones which were targeted for privatization. Could the Minister assure this House that, in the Bill to be brought before this House, they will address this issue by making sure that all corporations can only be sold through a public offer so that wealth can be distributed in our society?

Mr. Mwiraria: Mr. Deputy Speaker, Sir, I would like to assure the House that we shall not privatise parastatals for the sake of it. We privatise parastatals, basically, for several reasons. The first reason is that we do not want to keep the Government straining and losing money so that the taxpayer has to keep on paying for the running of these corporations. Secondly, in difficult times when the Government has no cash, we get rid of some parastatals to make some money for it. Thirdly, in some cases, we believe that the services being offered by a parastatal would be improved if we privatise it. I will give the example of the Kenya Airways where we privatised properly in the sense that we sold minority shares and the Government retained some shares as well. All the other shares were bought by Kenyans in the Nairobi Stock Exchange (NSE). That is the kind of privatization we would like to carry out in future. This is because the NARC Government will not turn Kenya into a country of workers which sells all its good assets to foreigners and keeps Kenyans working. We want Kenyans to benefit from their "cash cows", as the hon. Member has called them.

Mr. Muriithi: Thank you, Mr. Deputy Speaker, Sir. I am quite happy with the explanation given by the Minister for Finance on what he is doing about the parastatals which are now collapsing. I would like to draw his attention to the Kenya National Assurance Corporation (KNAC) whose property was sold at a throw-away price. Recently, the KNAC was sold to some private companies and we would like the Minister, if he cares for Kenyans, to let us know what happened to the property. Some of them are used by hon. Members---

Mr. Deputy Speaker: Order, Mr. Muriithi! You have asked the Minister a question; to let you know what happened to the property of the KNAC! Stop there and let the Minister answer!

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

Mr. Mwiraria: Mr. Deputy Speaker, Sir, I am afraid I differ with the hon. Member in the sense that attempts to sell the property of the KNAC, earlier on, were rejected by this Parliament

through its Departmental Committee on Planning and Trade. In fact, we have now appointed a new management of Kenyans who are trying to put together whatever is left of the KNAC with a view to advising the Government on how to sell it.

Mr. M'Mukindia: Thank you, Mr. Deputy Speaker, Sir. Members have noted that we transfer wealth from developing countries to the developed world during the privatization exercise. Could the Minister now assure this House that, in the Bill to come, at least, 40 per cent of the shares of all the parastatals will be set aside for Kenyans to buy, and that he will not privatise economic "drivers" such as the Kenya Industrial Estate (KIE), the Industrial Commercial and Development Corporation (ICDC), the Industrial Development Bank (IDB), the Agricultural Finance Corporation (AFC) and so on?

Mr. Mwiraria: Mr. Deputy Speaker, Sir, I would like to assure the House that we will make sure that, in privatising some of these parastatals, we retain the highest percentage of the shares for purchase by Kenyans.

Question No. 170

SEWERAGE SYSTEM FOR MOLO TOWN

Mr. Mukiri asked the Minister for Water Resources Management and Development what plans she has to provide Molo Town with a sewerage system.

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

Mr. Deputy Speaker, Sir, I first apologise for coming late. Nevertheless, I would like to answer the Question asked.

Molo Town is presently served by an old sewerage system which was constructed in 1960. The system is operated and maintained by Molo Town Council but due to increased population over the years, the existing sewerage system cannot meet the requirements of Molo Town at present.

Mr. Deputy Speaker, Sir, my Ministry is in the process of taking over the management of the sewerage and development services in all urban towns as part of the Ministry's new mandate. After taking over, the Ministry intends to carry out an appraisal of all existing sewerage systems, including Molo Town sewerage works, with a view to ascertaining the cost of rehabilitation and expansion to cater for the present and future population. The rehabilitation work will be budgeted for, for three financial years: 2003/2004, 2004/2005 and 2005/2006, alongside other urban centres that do not have sewerage facilities.

Mr. Mukiri: Mr. Deputy Speaker Sir, it is only two months to the Budget and the Assistant Minister said that he will consider this sewerage system within the Budget of 2003/2004. Could he tell us when he will carry out the appraisal work, because we are running short of time?

Mr. Munyes: Mr. Deputy Speaker, Sir, the new mandate for sewerage systems has just been brought to our Ministry under the new Act. Until we have funds, we cannot ascertain when we will carry out the appraisal work. For now, we shall have to wait until the funds are available.

Mr. Mukiri: Mr. Deputy Speaker, Sir, I think the Minister is not serious. When he was answering the Question, he said that he will consider the rehabilitation work in the next financial year. Now, he says that he does not know when the funds will be available. Could he tell us when he will carry out the appraisal work?

Mr. Munyes: Mr. Deputy Speaker, Sir, I said that in the next financial year we shall, at least, do something.

Question No. 267

WATER SUPPLY FOR MACHAKOS TOWN

Mr. Mwanzia asked the Minister for Water Resources Management and Development what plans she has put in place to ensure that Machakos Town and its environs are provided with adequate water supply throughout the year and that the Nol Turesh Water (Kilimanjaro) is used for the original purpose for which it was intended.

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

Nol Turesh Water Supply was designed to provide water to Machakos Town, Sultan Hamud, Kajiado and Athi River. Machakos Town was to get an allocation of 5,800 cubic metres per day. However, the amount of water that reaches Machakos is 3,000 cubic metres per day. The reduced amount reaching Machakos is caused by vandalism of the main pipeline and the increased water demand upstream of Sultan Hamud.

Mr. Deputy Speaker, Sir, my Ministry has taken the following measures to address the issue:

(i) Close liaison with Provincial Administration to curb vandalism and illegal obstructions upstream of Sultan Hamud.

(ii) Rehabilitating the old railway line pipeline with a view to transferring consumers along the main Nol Turesh pipeline to the railway line pipeline. The rehabilitation of the railway line has commenced and a 39-kilometre stretch of the pipeline will be completed by June this year.

(iii) My Ministry is in the process of expanding Maruba Water Supply by constructing two additional composite filtration units which will provide an additional 1,200 cubic metres per day of water to Machakos Town by June this year.

(iv) Rehabilitation of three disused boreholes in Machakos Town which will provide additional 520 cubic metres per day to the town by the end of May.

Mr. Mwanzia: Mr. Deputy Speaker, Sir, I want to thank the Minister for her comprehensive reply to the Question. Also, I hope that Machakos will not experience any water shortages any more when they undertake the work. However, I think the Minister missed a point from what I asked. This particular water project was supposed to supply Machakos, Kajiado and Sultan Hamud with clean water for domestic use only. Is the Minister aware that the water has been diverted for irrigation purposes and that there is a cartel within Machakos Town, which actually closes the flow of water so that they can sell the water to the residents of the town?

Ms. Karua: Mr. Deputy Speaker, Sir, if the hon. Member listened to my answer, I talked of illegal obstructions. That would cover those who close the water for vending use and those who illegally divert it for irrigation. The Ministry has given express instructions to the people in the field to ensure that the illegal obstructions stop. The main priority of the Ministry is water for domestic consumption. That is in preference to any other use. We are going to ensure that we enforce the law.

Mr. J. K. Kilonzo: Mr. Deputy Speaker, Sir, the Minister did mention that the water was diverted from the original purpose, which is for domestic use. We are aware that this water is used for irrigation [**Mr. J.K. Kilonzo**] in privately owned farms. Could this water be reverted for domestic use by people of Machakos Town?

(Applause)

Ms. Karua: Mr. Deputy Speaker, Sir, irrigation is also one of the uses for which we provide water. However, I have said clearly that the water for domestic consumption is the main priority. We shall ensure that we investigate the serious allegations thoroughly. Irrigation water will only be allowed

after we ensure that water for domestic consumption is available.

Mr. Poghiso: Mr. Deputy Speaker, Sir, ten years ago, when I started teaching at Daystar University, this is the water I used to drink. It is very good water. Every time we ran out of water we would be told that pastoralists living along the pipeline used to spear the pipes to get water for their cows. I used to wonder what the pipes were made of if the pastoralists could spear the pipes easily. Has the situation of vandalism by cattle keepers, who need water, been taken care of by the Ministry? Have they been provided with water so that they leave alone the main pipes?

Ms. Karua: Mr. Deputy Speaker, Sir, I wish the hon. Member was paying attention to the answer. It did not talk of vandalism by cattle keepers. It merely talked of vandalism. The hon. Member has added a new dimension, which we shall investigate. But it is the duty of my Ministry to provide water even for use by livestock.

Mr. J. M. Mutiso: Mr. Deputy Speaker, Sir, the Minister has mentioned that the railway line upstream from Sultan Hamud is being rehabilitated and a stretch of about 39 kilometres will be--

Mr. Deputy Speaker: She did not say "railway line."

Mr. J. M. Mutiso: She mentioned that! Railway pipeline! Could the Minister confirm whether the railway pipeline will include Sultan Hamud, Kiu, Kyulu and Konza?

Ms. Karua: Mr. Deputy Speaker, Sir, I can only confirm that it will include the areas that are supposed to be supplied by the Nol Turesh Pipeline including Sultan Hamud, Kajiado, Athi River and Machakos. If the other areas he has mentioned are covered by that line, they will be included.

QUESTIONS BY PRIVATE NOTICE

PRESENCE OF FOREIGN ARMIES IN LOKICHOGGIO

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

(a) Is the Minister aware that the integrity and security of Kenya is compromised by the presence of foreign armies in Lokichoggio?

(b) What urgent measures is he taking to secure our borders?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I have considered the Question, but the answer that I have does not seem to address the issues appropriately. I want to seek the indulgence of the House that this Question be deferred to enable me gather more information.

Mr. Deputy Speaker: I have not yet asked Mr. Ethuro what his reaction is, but this is a security matter. For how long is it going to wait? Mr. Ethuro, what do you have to say?

Mr. Ethuro: Mr. Deputy Speaker, Sir, you correctly read my mind. This is a security matter. How much longer are we prepared to wait? But the Assistant Minister having discussed with me, and since he wants to get the appropriate answer, I am willing to give him up to next week. But we might not be here next week. I do not know what to do.

Mr. Deputy Speaker: Mr. Assistant Minister, are you able to answer this Question tomorrow afternoon? Yes, because you have got all means of communication. So, we defer it until tomorrow afternoon.

(Question deferred)

Next Question, Mr. Khaniri!

SHOOTING OF PASTOR IHAJI

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

(a) Under what circumstances did a police reservist shoot Pastor Harun Isaho Ihaji on 18th March, 2003, in South B Estate?

(b) What action has the Minister taken against the police reservist?

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

(a) Pastor Harun Isaho Ihaji was hit by a stray bullet during a shoot-out between robbers on the one hand and two police reservists, and a carjacker victim on the other hand. Investigations are going on to establish who fired the fatal shot. An inquiry file has been opened on the matter.

(b) No action has been taken against the police reservist yet due to lack of direct ballistic evidence against them.

Mr. Khaniri: Mr. Deputy Speaker, Sir, it is very shocking that, one month after this incident happened, the Assistant Minister is telling us that they are still investigating the matter. It is, obvious, and eye-witnesses have attested to the fact that the bullet which killed the pastor was fired by the police reservist. How much more time does the Government need to tell us the truth about this matter?

Mr. Tarus: Mr. Deputy Speaker, Sir, honestly, the issue is still under investigation and I do not think the Ministry is dragging its feet. We are taking it seriously.

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, it is quite normal for the police to cover each other in situations like this. It happens all the time and people have almost lost faith in the police. Could the Assistant Minister confirm to us that this is not one of those situations where the police would be covering the police reservist because he is their colleague?

Mr. Tarus: Mr. Deputy Speaker, Sir, I confirm that the police are not covering up this matter.

Mr. Sasura: Mr. Deputy Speaker, Sir, there are so many police reservists in this country that you cannot tell the difference between a regular policeman, who is in plain clothes, and a police reservist. Over the years, police reservists have killed many people because of the simple fact that they are not well-trained. They just obtain guns because they are either rich or they want to protect their property under the cover of police reservist article. We have got enough personnel in the Police Force and the Administration Police.

Could the Assistant Minister consider phasing out police reservists because they are very much misused?

Mr. Tarus: Mr. Deputy Speaker, Sir, police reservists used to be misused during the last Government. But we shall consider his sentiments.

Mr. Khaniri: Mr. Deputy Speaker, Sir, Pastor Ihaji was the sole bread winner of his family. Even when they held funeral arrangements, the family was unable to raise money to cater for funeral expenses. Could the Government consider assisting that poor family in meeting funeral expenses?

Mr. Tarus: Mr. Deputy Speaker, Sir, the concern raised by the hon. Member is good, but we have to make the necessary consultations. When the investigations are complete, we shall know the role of the Government in this matter.

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

MEASURES TO EASE CONGESTION AT
KISII DISTRICT HOSPITAL

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

What urgent action is the Minister taking to save patients in Kisii District Hospital from cross-infections as a result of congestion at the hospital?

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

The Ministry of Health has put in place a number of measures to avoid cross-infections at the hospital. These include isolation wards for tuberculosis patients. Patients with similar ailments are put in the same ward. There is also procurement of adequate disinfectants for decontamination and the provision of adequate water supply to enhance the cleanliness of the hospital.

Mr. Mwanicha: Mr. Deputy Speaker, Sir, expansion of Kisii District Hospital was done by the colonial Government. As I speak now, four patients share a bed and others sleep under the bed. It is a pathetic situation. What is the Assistant Minister going to do to expand that hospital to rid those patients of that very pathetic situation? It looks like a refugee camp.

Mr. Konchella: Mr. Deputy Speaker, Sir, the bed occupancy is 150 per cent. So, they are congested. The Ministry has, in the course of time, upgraded health centres into sub-district hospitals in an effort to decongest that hospital. These are Keumbu, Marani and Gesusu sub-district hospitals. But the Government has also planned, in the future, to discuss with its partners to see how that hospital can be expanded.

Mr. Omingo: Mr. Deputy Speaker, Sir, Kisii District General Hospital has been a model hospital both in good and bad times. During the Eighth Parliament, the former Minister for Public Health, Prof. Sam Ogeri, had the patients discharged from hospital to give the then President an impression that all was well. Does the Ministry have any plans to improve the pathetic state of that hospital?

Mr. Konchella: Mr. Deputy Speaker, Sir, I cannot confirm whether there are plans, but I know that we will need to expand the casualty and out-patient departments rather than increasing the ability of the hospital to cater for more patients.

Dr. Manduku: Mr. Deputy Speaker, Sir, Kisii District Hospital was put up by the colonial Government in 1936 for a population of 100,000 from the entire Kisii District and South Nyanza. At that time, we were called "South Kavirondo". Since that time, they have put up four pavilions; long buildings. What the Government only does is to paint it. They do not care to change the planning of that hospital. When the beds are supposed to be---

Mr. Deputy Speaker: Order, Dr. Manduku! Ask your question, or I will ask you to sit down!

Dr. Manduku: What is the Government doing to see that, that hospital is upgraded to serve a population of over 3 million Kisii people who are neighbouring South Nyanza?

Mr. Konchella: Mr. Deputy Speaker, Sir, since the previous Government did not care to do something about it, we will look into it in the course of the next financial year.

Mr. Mwanicha: Mr. Deputy Speaker, Sir, for the benefit of the Chair, my names are Mwanicha Okioma, Member of Parliament for Kitutu Masaba Constituency.

As I speak, first, I want to register my disappointment because I have not received a written answer to this Question. This is rather disappointing especially when hon. Members had a sumptuous lunch with the President recently who I believe must have told them to be serious with their work.

Having said that, I would like to say that---

Mr. Deputy Speaker: Ask your question, Mr. Mwanicha!

Mr. Mwanicha: Mr. Deputy Speaker, Sir, when the Assistant Minister tells us that there are

other hospitals which have been put up to ease congestion in Kisii Hospital, how many doctors are in those hospitals? This is because patients do not go to hospital to see buildings, they go there for specialised treatment. How many doctors are in those hospitals he has mentioned?

Mr. Konchella: Mr. Deputy Speaker, Sir, indeed, the hospitals that are surrounding the Greater Kisii, include those in Rachuonyo, Suba, Migori, Gucha and Trans Mara districts. These hospitals do not have the specialists who are available in Kisii. These specialist doctors in Kisii Hospital include physicians, obstetricians, gynaecologists, surgeons, *et cetera*.

Mr. Deputy Speaker: Order, Mr. Assistant Minister! I will not sit here and listen to what you are saying! The Question was about the doctors in the hospitals you mentioned, not the doctors in other hospitals. The doctors who are in the hospitals you mentioned are there to relieve Kisii Hospital. That is the Question, is it not?

Mr. Konchella: Mr. Deputy Speaker, Sir, these doctors are not available in other hospitals because of facilities which are not adequate to make them want to work there.

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister said that congestion in Kisii Hospital has been reduced because of hospitals in Marani, which is my home town, Keumbu in hon. Nyachae's home town, and at Gesusu, Prof. Onger's home town. The question is: How many doctors have been posted to these facilities that are supposed to relieve--

Mr. Deputy Speaker: Mr. Angwenyi, you said the "Question is---" and you had stood on a point order!

Mr. Angwenyi: Is the Assistant Minister in order to mislead this House that these hospitals have been built and they are easing congestion at Kisii Hospital when, in fact, there are no doctors in these hospitals?

Mr. Konchella: Mr. Deputy Speaker, Sir, I will not be able to conclusively confirm the number of doctors in those hospitals, but I can find out why they are not there.

CANCELLATION OF KCSE RESULTS FOR GATUNDU SCHOOLS

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

(a) What circumstances led to the cancellation of the 2002 KCSE results of five secondary schools in Gatundu North?

(b) Could the Minister give a detailed list of the schools and the number of students affected?

(c) What action is the Minister taking to ensure that such cancellations are minimized?

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

(a) Collusion by students during the examination time led to cancellation of results of the 2002 KCSE for only two secondary schools and not five.

(b) The two schools involved were: Nyamathumbi Secondary School, with 46 students, and Gikindu Secondary School, where 21 candidates were registered.

(c) The Ministry has sensitized candidates, examination officials and school administration on zero tolerance to examination irregularities.

Mr. Muiruri: Mr. Deputy Speaker, Sir, the parents of these students are very angry because the affected students are at home and they have no place to go; they can neither join university college nor repeat. In answering my Question, the Assistant Minister used the word "collusion". When he says that there was "collusion" by students, he does not tell me anything. When students go to sit for examinations they sit in a room, and in that room there are invigilators and inspectors. How could this collusion have happened in the presence of invigilators, inspectors, school teachers and all other

officials of the Ministry of Education, Science and Technology?

Dr. Mwiria: Mr. Deputy Speaker, Sir, the reason why there are supervisors and invigilators is to cut down on these kinds of irregularities. So, it is not unusual and this has been the case wherever there have been irregularities; that it is the invigilators who have caught students either sharing notes or going to the toilet to pick up notes from their colleagues.

Mr. Sasura: Mr. Deputy Speaker, Sir, in most cases of examination cheating, it is the students or the candidates who are victims. Considering the fact that there are invigilators and supervisors there, as the Assistant Minister has alluded to, could he tell us how many invigilators or supervisors have been taken to court for that act because they have also been considered as taking part in cheating?

Dr. Mwiria: I agree with the hon. Member that when this happens, invigilators, teachers and others are to blame. However, I cannot tell the exact number of invigilators and other examination officials who have been taken to court. But we will be happy to check those figures and report appropriately.

Mr. Wanjala: Mr. Deputy Speaker, this is a very serious matter which concerns the future of our students. The Assistant Minister told us that there were two schools; one school with 46 students and another one with 21 students. The Assistant Minister must be aware of the number of supervisors and invigilators who were involved in this collusion. The Questioner wanted to know how many of those officials have been punished to date.

Dr. Mwiria: Mr. Deputy Speaker, Sir, there has been no punishment meted out on the invigilators. I agree that it may not be fair, but this is not to say that the process of instituting legal proceedings was not going to take place.

Mr. Muiruri: Mr. Deputy Speaker, Sir, the Assistant Minister must be joking because we are talking about 67 students who are still at home because they can neither join universities nor repeat the same class. According to the answer given by the Assistant Minister, he says there was collusion. Now he says that it was the fault of the invigilators.

Mr. Deputy Speaker, Sir, could he table the names of the invigilators and all the officials involved? What action does he intend to take against the Assistant Education Officer who recruited these invigilators? For the information of the Assistant Minister, this was a double class, but that cancellation affected only one class.

Dr. Mwiria: Mr. Deputy Speaker, Sir, if the hon. Member heard me correctly, I said we cannot rule out the possibility of even blaming the invigilators. But, so far, the evidence only points to the students. As soon as there is any evidence that invigilators and teachers were involved, we will be happy to pursue them as well.

Mr. Muiruri: On a point of order, Mr. Deputy Speaker, Sir. I have no doubt that the Assistant Minister is evading my question. The Assistant Minister is misleading the House by saying that the evidence points to the students and not the invigilators. Could he table the names of those invigilators because we would like to know them?

Dr. Mwiria: Mr. Deputy Speaker, Sir, allow me to repeat what I said. As of now, even though we may blame the invigilators, there is no evidence that they were the ones to blame. As of now, the evidence points to the students who colluded.

Mr. Deputy Speaker: Next Question, Mr. O.K. Mwangi.

PAYMENT OF KCPE FEES

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

(a) Is the Minister aware that Standard Eight pupils are being charged Kshs300 each being

KCPE examination fees?

(b) Is he further aware that some pupils from Gikondi Primary School, and other schools in Kigumo Constituency have been sent home for non-payment of the fees?

(c) What arrangements has the Minister made to re-admit the expelled students and refund the fees collected?

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

(a) I am aware that all Standard Eight pupils in the country including those in Gikondi Primary School pay Kshs300 to register for examinations.

(b) No pupil from Gikondi Primary School and any other school in the constituency, has been sent home for non-payment of registration fees.

(c) No arrangement can be made, therefore, as no pupils were expelled from the school. No refund will be made as these fees are paid for registration, facilitation and management of K.C.P.E. by those who would like to sit for the examination.

Mr. O.K. Mwangi: Mr. Deputy Speaker, Sir, part of the answer given by the Assistant Minister is not correct. The reason is that many students, and I have got two names here with me, were sent away from school for non-payment of the examination fee and they were only readmitted on payment. So, it is not true to say that nobody has been sent away. In any case---

(Loud consultations)

Mr. Deputy Speaker: Order! Hon. Members, may we hear, Mr. O.K. Mwangi? Please, consult in low tones.

Mr. O.K. Mwangi: Mr. Deputy Speaker, Sir, thank you very much.

Primary education in this country has been declared free by the NARC Government. I want to thank the Government very much for that. However, the country is at loss to understand to what extent the education is free if Standard Eight pupils are subjected to the examination fee. They are being sent away from school for non-payment of examination fee and only readmitted when they pay. Why is the examination fee not included in the package of free education?

Dr. Mwiria: Mr. Deputy Speaker, Sir, Mr. O.K. Mwangi has asked two different questions. He changed his mind after he sat down. First of all, he said there were two students who were expelled for non-registration, but there are no such records at the KNEC. So, it is clear that he is the one who is not telling the truth. Secondly, the Kshs300 charged for examination fees is far from adequate for what is required to administer the examination. So, that is only a token contribution from parents.

Mr. O.K. Mwangi: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. O.K. Mwangi, I thought the Assistant Minister was very clear in his answer. What is it?

Mr. O.K. Mwangi: Mr. Deputy Speaker, Sir, my point of order is in respect of the students who were sent away. The Assistant Minister alleged that I said they were only two. What I said is that I have got two names here with me of students who were sent away, but there are many others.

Mr. Deputy Speaker: But Mr. O.K. Mwangi, the point you have been trying to pursue is that Kshs300 which is the examination fee is payable to the KNEC. That is what the Assistant Minister said. It is not free. I think that ends the matter. Is that not so?

Mr. O.K. Mwangi: Mr. Deputy Speaker, Sir, while I understand that, I was asking why this Kshs300 is not included in the package of free education.

Dr. Mwiria: Mr. Deputy Speaker, Sir, that is a little amount of money being asked for. As I said, it is not enough to cover all the expenses that are related to the administration of the examination.

Mr. Deputy Speaker: That is the end of Question Time. There is a Statement by the Acting Minister for Labour and Human Resource Development.

The Assistant Minister for Labour and Human Resource Development (Mr. Odoyo): Mr. Deputy Speaker, Sir, we wanted to issue a Statement regarding an honour which has been granted to Kenya by the ILO, but the acting Minister, Mr. Balala, will issue a substantive Statement tomorrow. I seek the indulgence of the Chair to kindly postpone it by a day.

Mr. Deputy Speaker: Well, fair enough; do it tomorrow then.

POINTS OF ORDER

WHEREABOUTS OF MR. MUSOMI

Mr. Mwancha: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State, Office of the President in charge of Provincial Administration and internal security regarding the disappearance of my constituent, a Mr. Peter Omwasa Musomi, who disappeared on 6th February, 2003. Since then, nothing has been heard of him. The people he was with that evening and who escorted him to his residence, are known. However, to date, no arrests have been made despite the fact that the family has travelled all the way from Kisii.

Mr. Deputy Speaker: Where is the Minister of State, Office of the President in charge of internal security? He is there and I hope he has heard.

The Minister of State, Office of the President (Dr. Murungaru): Mr. Deputy Speaker, Sir, I could even have whispered it to him, but I will issue a Statement.

Mr. Deputy Speaker: A statement will be issued. Very well.

KENYA'S STATUS OF DROUGHT PREPAREDNESS

Mr. Billow: Mr. Deputy Speaker, Sir, this country is experiencing a crisis, given that the Meteorological Department has issued an alert on impending severe drought in the country. Already, the reports we are getting from some districts, like Mandera District and other northern parts of Kenya, are alarming. I stand to seek a Ministerial Statement from the Minister of State, Office of the President, on the status of our drought disaster preparedness and measures being taken to provide emergency relief in the circumstances. Drought in North Eastern Province is exacerbated by the actual poverty that is there. So, I want a Ministerial Statement on the drought preparedness and emergency relief in the circumstances.

Thank you very much.

Mr. Deputy Speaker: Dr. Murungaru is there and he has heard.

EVICION OF TRADERS FROM KENYA RAILWAYS GODOWNS

Mr. Omingo: Mr. Deputy Speaker, Sir, I stand to seek a Ministerial Statement from the Ministry of Transport and Communications regarding the imminent eviction of traders from the railways godowns. There are 90 railway godowns which employ close to 8,000 Kenyans and these create job opportunities and provide livelihood for Kenyans. They are threatened by eviction as from 1st of May, 2003. This is a serious matter and against the policy of the NARC Government of creating up to 500,000 jobs per annum. This is now happening when Parliament is going for recess. I will seek, through the Chair, to have the Minister respond to this perhaps by tomorrow.

Mr. Deputy Speaker: Which Minister?

Mr. Omingo: The Minister for Transport and Communications.

Mr. Deputy Speaker: Is there any one here from the Ministry of Transport and Communications?

(Mr. Ligale stood up in his place)

Mr. Ligale is here. He has consented and he will give you a Statement tomorrow.

Next Order!

PROCEDURAL MOTION

EXTENSION OF HOUSE SITTINGS

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order No.17(1) and (2); this House orders that the sittings of the House be extended from thirty minutes past six O'clock to thirty minutes past eight o'clock both on Wednesday 16th and Thursday 17th April, 2003.

Mr. Deputy Speaker, Sir, I am bringing this Motion in order to allow the sittings of Parliament to be extended today and tomorrow up to 8.30 p.m. This is to enable us to address and complete the business which does appear on the Order Paper. Specifically, we intend to address the Anti-Corruption and Economic Crimes Bill and also the following Bills in the Committee Stage: The Public Officer Ethics Bill, The Criminal Law (Amendment) Bill and The Pensions (Amendment) Bill.

Hon. Members are already aware that there are plans to hold a workshop for all the hon. Members in Mombasa, next week, in order to brainstorm on the constitutional review. This is something which is thought to be very fitting because we will be able to discuss the various issues in the draft Bill before we are able to attend the conference. I think this is absolutely important. Therefore, in the light of the fact that it is necessary for us to attend that very important workshop, prior to the constitutional conference, it is important that this House should go on recess with effect from tomorrow. Here, I am mentioning matters which have already been deliberated by the House Business Committee regarding the calendar of Parliament.

A Motion for the Adjournment will be brought here tomorrow, requesting the House to adjourn from tomorrow up to 12th June so that hon. Members can be involved in the deliberations of the constitutional conference. It is also well known that when we do come back on 12th June, the Budget will be read almost immediately and then we shall get into the Budget circuit which shall go on up to sometime in October. That is the only time that it will be possible to introduce some other Bills. The Anti-Corruption and Economic Crimes Bill and the Public Officer Ethics Bill are extremely important because they have implications for the Budget. There are resources that we expect to obtain from the external sources. As hon. Members do already know, those resources are contingent upon these Bills being passed. I do not think we can wait up to the end of October for the resources to be disbursed.

Mr. Deputy Speaker, Sir, I, therefore, beg to move this Motion.

The Minister for Home Affairs (Mr. Awori) seconded.

(Question proposed)

Dr. Godana: Thank you, Mr. Deputy Speaker, Sir. As the Official Opposition, we support what we find as good sense behind it. Therefore, I stand to support the Motion before the House.

The Motion has been necessitated by two pressing facts. One, is the rules of the House which dictate that the sitting hours of the House, unless changed by a resolution of the House, shall be from 2.30 p.m. to 6.30 p.m. and to 7.00 p.m. on Thursdays, if need be. We cannot go beyond those hours unless we resolve, as a House, to go beyond those hours on specific dates.

The second pressing matter which has occasioned the Motion, as the Minister for Education, Science and Technology explained, is the urgent need to start the constitutional review conference on the 28th of April and not later than that date. Obviously, we have only one week between now and the 28th of April and we understand that one week has been assigned to a seminar for all Members of Parliament on the Draft Constitution. We do know there is some pressing business before the House which we will have to get through. We have also had a tradition in this House, in the past, even in the last Session of the last Parliament, where we had to extend the sitting hours a few times in order to get through some important business before the House. I think we do not have to go beyond today and tomorrow.

In view of these facts, I support the Motion.

(Question put and agreed to)

COMMUNICATION FROM THE CHAIR

HOSTING OF NATIONAL
PRAYER BREAKFAST

Mr. Deputy Speaker: Hon. Members, the Kenya National Assembly Prayer Fellowship Group shall host a national prayer breakfast on Saturday 31st May, 2003, at Hotel Intercontinental in Nairobi. It is expected that over 500 guests, from the Civil Service including the Judiciary and the Military, shall be in attendance. This prayer breakfast shall be an interdenominational prayer meeting solely sponsored by Members of Parliament. All Members of Parliament shall soon be receiving invitations to this event and are requested to confirm attendance in order to facilitate seating arrangements as only those Members who will have confirmed attendance shall be allocated seats.

Hon. Members are, therefore, requested to confirm attendance with the office of the Speaker at least by Friday 16th, May, 2003.

Hon. Members, before we proceed to the next Order, I would like to draw your attention to the Supplementary Order Paper, which contains the Criminal Law (Amendment) Bill and notices by some hon. Members to move amendments to it at the Committee Stage.

Let us now proceed to the next Order.

BILL

Second Reading

THE ANTI-CORRUPTION AND
ECONOMIC CRIMES BILL

*(The Minister for Justice and
Constitutional Affairs on 10.4.2003)
(Resumption of Debate interrupted
on 15.4.2003)*

Mr. Deputy Speaker: Prof. Anyang'-Nyong'o, you were on the Floor when debate on this Bill was interrupted yesterday. Could you proceed?

The Minister for Planning and National Development (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, when the House rose yesterday, I was beginning to pay my compliments to the Minister for Justice and Constitutional Affairs for having completed a process that we started many years ago, when some of us were in the Select Committee on Anti-Corruption and Economic Crimes.

Mr. Deputy Speaker, Sir, this Bill marks a historic point in the history of this House. As Mr. M. Kilonzo said yesterday, for the first time, Kenya will have in its law books a viable instrument for dealing with corruption, and ensuring that the management of public affairs in this nation is undertaken in the interest of prosperity, the rule of law and social justice. I must commend Mr. M. Kilonzo for the amendments to this Bill that he proposed yesterday, which I believe are constructive and will lead us to a much more thorough legal instrument in our law books. I would like to particularly commend Mr. M. Kilonzo for the proposal that special magistrates' courts be created, which is a proposal we had made in the Report of the Select Committee on Anti-Corruption and Economic Crimes. So, I believe that the proposals made by Mr. M. Kilonzo will be welcome by the Minister for Justice and Constitutional Affairs. I am sure that they will be incorporated in the spirit of making the law much stronger.

Secondly, I would like to appeal to all hon. Members of this House to support the speedy enactment of good governance laws, because they are good for the nation and not just for the National Rainbow Coalition (NARC) Government. In that regard, the resolution of this House to sit for longer hours to ensure that the laws relating to good governance are enacted will, indeed, go a long way to show the people of Kenya that the National Assembly is here to look after the general good and social justice of this nation, and should not be bashed, as happened recently, as a House in which people only look after their interests. I believe that this is a very good show, and that it is something which will go a long way to show the seriousness of this House to the Republic of Kenya.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I would now like to address much more specific issues related to the objectives of the Bill. This Bill relates to one important agenda that is before this House; namely, the reform of the State to make it more democratic and enable it to deliver services to its people. When these laws come into effect, hon. Members of this House will realise that with good governance, they will make much better use of their money and get much better services from the State than when these laws did not exist.

As the Minister for Justice and Constitutional Affairs said while initiating debate on this Bill, one of the major aims of this Bill is to reduce the cost of doing business in this country, and make doing business more friendly to the investor, both domestic and foreign. The passage of this Bill will make the Government more predictable and more service-oriented. Governmental institutions will have the ability to respond to public demand for delivery of services rather than perpetuate rent

seeking attitudes or desires of those who run them.

I would like to refer the House to the background of this Bill and, perhaps, refer to the Fifth and Sixth Reports of the Public Investments Committee (PIC) of 1994 and 1995, respectively, which did demonstrate to the nation as a whole that without a proper law on corruption and economic crimes, we shall every year be losing Kshs68 billion from our national Budget as we, indeed, have done over the last ten years. That means that every time this House votes money for use by the Government, close to one third of it or exactly one quarter of it, will go down the drain. However, if this law comes into effect, the Government will be able to plug the hole through which money seeps due to corruption or mismanagement.

Mr. Temporary Deputy Speaker, Sir, recently, an Assistant Minister for Labour and Human Resource Development related to this House how the National Social Security Fund (NSSF) used hard-earned money from workers to buy land from individuals - land which had been previously allocated to those individuals by the Government - thereby losing a lot of money. New hon. Members in this House thought that, that was a cooked up story. But this story goes back to the period between 1992 and 1995. During that period, because there were people in the Government who wanted to use the State for personal aggrandizement and enrichment, they decided to raid the only viable institution for public savings in this nation, namely, the NSSF and enrich themselves. They also did so by robbing the Government further. They decided to use the Commissioner of Lands and the Presidency to allocate themselves land and then sell it to the State, which is a double crime. This is the kind of thing that this law intends to stop.

I remember, for example, that during that period, in South B Estate, a development project was undertaken, which robbed the State of close to Kshs960 million. If you compound the interest on that amount to this very day, it is close to Kshs2 billion. That is the kind of money that we have been losing every year and which has made it impossible for this nation to develop from a poor third world country to a first world nation. Indeed, if we did not have these holes through which public monies used to go down the drain, in terms of economic development performance, and assuming we maintained the momentum that we had built during the first ten years of our Independence, this nation would be very far by now.

I want to give two other examples, again from the Sixth Report of the PIC. Indeed, recently an Assistant Minister for Labour and Human Resource Development reminded the House of what I am about to illustrate. Just imagine how much money was lost then, and how much more in respect of the accrued interest we have lost since then. In that year, the NSSF bought land from individuals worth so much money. A piece of land in Upper Hill area of Nairobi, whose market value was Kshs17.5 million was sold to the NSSF for Kshs35 million. Another land parcel in the same area, whose value was Kshs7 million, was sold to the NSSF for Kshs30 million. Another piece of land on Lenana Road, whose value was Kshs7 million, was sold to the NSSF for Kshs13 million.

Here now comes a case which is extremely astronomical. A piece of land on Lenana Road, whose market value was Kshs21 million, was sold to the NSSF for Kshs184 million. The plot thickened and other pieces of land on Bishops Road, whose value was only Kshs800 million, were sold to the NSSF for Kshs4 billion. Lastly, we have the same old story of somebody who sold a quarry near the Jomo Kenyatta International Airport to the NSSF for about Kshs125 million when the value of that land was hardly Kshs12 million. So, those malpractices have been there in the reports of the Public Investment Committee (PIC) and Public Accounts Committee (PAC) as early as the 90s. Here, I am referring you to a report made in 1995. It is precisely because we have not had a law dealing with economic crimes that, individuals mentioned in those reports and, indeed, their names are there - and those reports were passed and approved by this House - the Government did not have the ability nor the political will to prosecute those people. One of the excuses was that one of the laws that existed then, the Prevention of Corruption Act of 1965 was viewed in many ways, to be

inadequate. We did notice in the PIC report that, that particular law had many loopholes in it. So, the Government could get away by not enforcing the rule of law when it comes to economic crimes and corruption.

Mr. Temporary Deputy Speaker, Sir, as Mr. M. Kilonzo noted yesterday, we now have an instrument to ensure that we bring the people who have committed economic crimes to book, and ensure that there is restitution and restoration of what has been lost from the public domain back to the public ownership. The Bill raises one fundamental problem which the House should appreciate. That, indeed, those records do exist and, indeed, the House has passed those reports year after year and, indeed, this House has directed the Attorney-General to prosecute those people, but they have not so far been prosecuted. One question we must ask and answer in our minds is: Are we going to let those people go scot-free?

Mr. Temporary Deputy Speaker, Sir, what I understand about the Penal Code in this country is: A crime is a crime and there is never any statutory time limit to investigating a crime and hence prosecuting. I do understand from my legal friends that there are provisions in the Penal Code in this country to deal with people who have been proven to have committed criminal offences by stealing from the public. So, I do not think that there is a crisis here. Indeed, the law will be effective the day it is signed into law, but, indeed, we now have the political will in the Government to use the investigatory machinery in the Government and ensure that those who have committed crimes by stealing from the public are either brought to book through a new law, or are brought to book through the laws that exist in the Criminal Procedure Code of this country. So, it is for us in this House to provide the Government with the political will and support that is needed to clean this country of economic crimes and corruption.

Mr. Temporary Deputy Speaker, Sir, I would like to remind the Minister for Justice and Constitutional Affairs of certain issues that are very urgent, even before this law comes into operation.

I hope it is going to come into effect very quickly. It is on the steps that should be taken by the new, fresh and brilliant Ministry of Justice and Constitutional Affairs to help in reducing the cost of doing business in this country. One of them is the issue of licensing. It has been observed that in the port of Mombasa, the famous long room, which is a problem in almost every port, is, indeed, known to be long because of the length of the corrupt activities that go on there, and the length of the time that is wasted when one is trying to transact business there. Hence, the arm of the law should be long enough to invade the long room and ensure that, that length is aimed at enhancing business and not thwarting business through corruption. One of the issues that I want to raise about the long room is the number of licences that one has to collect when one is importing any commodity into this country. At the moment, there are about 25 licences or more, that somebody has to get when he or she is doing any importation into the country. It is my humble opinion that we do not need those 25 licences. Those 25 licences can be reduced to only five, and obtainable from one desk, to make business transactions more efficient, less time wasting and less costly to the person who is trying to import anything or bring investment to this country. I would like that, apart from simplifying the licensing procedures in this country, let those licences be user-friendly and be obtained in user-friendly institutions. For example, there is nothing stopping the Investment Promotion Centre from having offices not just in Nairobi, but also in Mombasa, Kisumu, Kitale, Malindi and Busia. That way, people who would like to do business with our country can visit investment promotion centres much more easily and closer to themselves than what we have at the moment. We have become too Nairobi-centric as if our economy is entirely based in Nairobi.

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

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

Mr. Temporary Deputy Speaker, Sir, as I speak now, the future growth of this economy will depend on our reaching out to our neighbours further to the West, meaning Uganda, Rwanda, Burundi and the Democratic Republic of Congo (DRC). Indeed, it is being said, as I speak, that, in the Eastern DRC, there is a land flowing with milk and honey, waiting for the Kenyan business person to venture therein. As I speak, Uchumi Supermarkets has already opened one of the biggest supermarket facilities in Africa in Kampala. Uchumi Supermarkets has been allocated a big piece of land in Kigali to open shops there. Uchumi Supermarkets should expand to Eastern DRC. But Uchumi Supermarkets will only expand into Kigali and Eastern DRC and be the leader of Kenyan business into our Western neighbours if, indeed, in those countries, doing business is easy and processes of licensing are also easy.

Mr. Temporary Deputy Speaker, Sir, we, as a country, are already spearheading the establishment of the East African Community Investment Code. We cannot spearhead the establishment of the East African Community Investment Code if we, ourselves, do not have an investment code that is the envy of all nations. We cannot promote and support our business persons going into new lands like Uganda, Rwanda, Burundi and DRC if, indeed, we do not know, and we are not convinced, that doing business in those countries is user-friendly and less costly than here. We must lead by example. That is why I am saying we must make it very easy and attractive for people to come and do business here. We are not going to do so, unless we lead by example and show that we are cleaning up our house, by passing a law like this and making this law become the envy of the whole of Africa, and something that we can stand up with, when we go to the peer-review mechanisms of the New Partnership for Africa's Development (NEPAD). That would prove we have an institution and a process of dealing with economic crimes and corruption that the whole of Africa should emulate and that we, in Kenya, should provide a service centre for this part of the world. That is why I am proposing that we support the Government and my proposal that we establish investment promotion centres in Mombasa, Busia and other towns in this country. That way, businessmen from all over the world and, indeed, from Africa, will be coming to look for opportunities in this country.

Mr. Temporary Deputy Speaker, Sir, the other issue which I wanted to raise is with regard to information. Unless we modernise our information network and communication technology, even with a good law like this, Kenyans will still find it difficult to have access to justice. It is a nightmare going to the Registrar of Societies where, quite often, when you are looking for a registration of a company, a file will have disappeared. In order to get access to that file, you are compelled to pay a service fee which is called *kitu kidogo*. Basically, it is those people who are working there, who are charging you for services by paying a bribe when, indeed, they are paid salaries in lieu of their services.

I am saying that, unless we modernise our information communication institutions, even when we have good laws, we are not going to have good access to them. I urge this House to support the Minister for Justice and Constitutional Affairs in ensuring that records at the law courts and at the office of the Registrar of Societies are computerised.

Mr. Temporary Deputy Speaker, Sir, in this day and age, you do not need a physical file containing information to lie somewhere. Files are these days available in our computers. They occupy less space, are much easily accessible and are accessible to everybody. There is no reason whatsoever, why information regarding the registration of a particular company should only be available in a physical setting in Nairobi. The information should be available in the internet. The Registrar of Societies should have a website, so that if somebody in Busia wants to find out whether the person who bought a bicycle from him the previous day, purporting to be an employee of Lugnatco Caldas Company Ltd, is, indeed, an employee of the company, by simply logging into a computer, and finding

out the details about the employees of the said company. He should not travel all the way aboard an Akamba Bus to Nairobi, go to River Road, and physically establish whether there is a company called Lugnatco Caldas Company Ltd there. The company might have moved to Westlands the previous day.

We should, indeed, realise that the making of laws must also go hand in hand with the modernisation of access to justice. The modernisation of access to justice depends very much on us becoming an electronic-governed nation. The e-governance, e-commerce and e-business are extremely important. The only thing that we cannot have in this day and age is e-sex, because sex must be personal. But all the other transactions must be done the e-way, for example, e-governance, e-commerce and e-business. This is, indeed, the only thing that can bring us to modern age. This technology is extremely important and we should embrace it.

In some of the amendments that Mr. M. Kilonzo proposed yesterday, he referred to the issue of trust that we must have in our institutions. The judicial system has broken down partly because of corruption, and partly because of erosion of trust, and breakdown in the legitimacy of institutions. I will give you one of the reasons why trust is so important. You can only be trusted if your behaviour is predictable from day to day. If you tell somebody that you will meet him at Norfolk Hotel at 10.00 a.m., and you turn up at 10.00 a.m., the next time you tell him that you will meet him at the Ambassador Hotel at 10.00 a.m., he will turn up. But if you tell somebody that you will meet him at the Norfolk Hotel at 10.00 a.m., and you turn up at 4.00 p.m., the next time you tell him that you will meet him at the Ambassador Hotel at 10.00 a.m., he will not turn up because your behaviour is not predictable.

The behaviour of people in the judicial system has led to the breakdown of trust in that system. I was reading today in the *Daily Nation* newspaper the story of a Somali man who migrated to Britain in 1946, and in 1952, or at the beginning of the state of emergency in Kenya, he was hanged for having committed murder. Almost half a century later, it was discovered that, that man was innocent. He never committed the offence for which he was hanged. Hanging is a very total decision. You cannot reverse it. It will only be reversed when our Lord comes back, but we do not know when that will be.

The judicial system must gain the trust of this nation by making decisions that can be defensible 50 years from today. The kind of judgements meted out in our courts leave a lot to be desired. For example, in my Ministry, through information from the Efficiency Monitoring Unit (EMU), I have come across information that the whole saga of pending bills is cooked up between rogue contractors, lawyers and the judiciary. Indeed, the Treasury can establish very clearly that these pending bills are nonsense. A contractor, before anything is done, even before arbitration - in a contract, if there is a disagreement, there is a way in which you can arbitrate and agree - rushes to court and receives a judgement that he should be paid money, not that which he is owed, but even more because of penalties. Then the Attorney-General turns round and says: "Do not enter any contest. Settle the issue out of court". Then the Government loses tremendous amounts of money.

In that way, the Government begins to lose confidence and trust in its own institutions. It is a sad story when the Treasury loses confidence and trust in the Judiciary. Then, we cannot have in this democracy, a balancing and checking system. The whole idea of dividing the Government between the Legislature, the Judiciary and the Executive is because one expects the three arms of the Government to trust each other; to know that when there is a disagreement over a certain transaction, the Judiciary will adjudicate impartially over that disagreement, and once the disagreement has been settled, the Executive will execute the decision made by the Judiciary. When trust has been lost, all things fall apart, and the centre cannot hold.

What we have witnessed over the last 20 years is that all things have fallen apart in our nation, and the centre has not been able to hold, hence there is bad governance everywhere. The Government has lost trust in its institutions. Citizens have lost trust in their own Government, and hence we cannot

win the confidence of investors who want to come and invest in our nation so that we can develop. I want to submit very humbly that the passing of this Bill will begin the process of restoring trust in our institutions, the trust of the citizens of this nation in our Government, and in the process by which we are governed. Finally, I would like to dwell on one thing. In the final analysis, the famous adage that every people get the Government they deserve, cannot be exceptional in the case of Kenya. We shall get the Government that we deserve as Kenyans if we have confidence in ourselves, and if we can continue being in a position to vote in and out governments, depending on whether we have faith in them. We expect those governments when they are voted in power, to maintain the trust of the people, rule in humility, execute judgement in honesty and ensure that justice is done for both the big and the small.

There is a certain issue about citizenship. The whole idea about citizenship is that every individual is entitled to a certain amount of equality as a human being, and as a bearer of rights and obligations. Unless in our laws this is seen in practice, that nobody is more equal before the law, we shall not be able to kindle that trust that is so important in our nation. We shall not be able, as Kenyans, to uphold the rule of law and good governance that we expect from our Government. We must instil, as citizens of this country, the sense of dignity, trust and confidence in each and every Kenyan, if we are to get the government that we deserve.

With those few remarks, I beg to support.

Mr. ole Ntimama: Thank you very much, Mr. Temporary Deputy Speaker, Sir. I want to record my support for this Bill which provides for the prevention, investigation and punishment of corruption. This is a very important Bill for this country because it aims at protecting the resources of this country from being looted and destroyed. I am very pleased that the Minister agreed to de-link the passing of this Bill from the constitutional review process. As most of the hon. Members on this side of the House know, our retreat in Mount Kenya; that is for the NARC Parliamentary Group, we agreed and resolved to support the passing of this Bill into law. This is because we know and believe that this Bill is important for the future economic development of this country.

During our campaigns which we successfully waged to remove KANU from power, we agreed that we were going to have zero-tolerance on corruption. Even His Excellency the President was very consistent and categorical in the fight against corruption. It was his commitment that he must fight corruption and start from the top. We have seen only a tip of the iceberg right now. We have seen the NARC Government really do its best to prosecute, bring to justice and reveal corrupt individuals in the system. As I know, this is just the beginning. Very soon, we shall go to the courts that will be dealing with corruption cases, and that will be a big issue, as far as the NARC Government is concerned. I do not want hon. Members to feel that the Minister is under pressure by the international community to get this Bill passed. I do not want hon. Members to believe that we are pleasing the donor community. This is our Bill. It will be enacted into the laws of this country. With donors or no donors, we need this Bill; we need an Act of Parliament to prevent, investigate and punish those people who are corrupt, as the Bill says. We should have passed this Bill 40 years ago. If we had passed this Bill 40 years ago, we would probably be in better shape today, as far as our economy is concerned.

This country is endowed with natural resources. The agricultural sector is our economic mainstay. We have other sectors like tourism. If we harness and develop this sector without corruption, this country will be an economic giant in a very short time to come. But what happened? A lot of time was spent in trying to recover and revive the economy of this country. We have also got human resources in this country which are very important. Human resources could develop a country, even without any other resources to make it an economic and industrial giant. But because of the authoritarian Government which had "sat" on our people for a long time; because of the aristocratic Government which had "sat" on the people and oppressed them, they were unable to

have initiative to develop. It was such a poor Government that even those human resources were put to nought.

For the 40 years we have been independent--- It is important to talk about other countries which were a little bit ahead of us in their independence. A country like India was only a decade and a few years ahead of us, but how can you compare that country with Kenya today? India is an economic, industrial and a political giant. That country is also a regional power, politically. I know, India has been fighting corruption. There was no time that the Indian Government and people of India had agreed to make corruption part of their system.

I can even talk about another country, like Israel, for example, which got its independence only 11 years or 12 years ahead of us. That country, despite all the problems on its borders and among its people, is an industrial, economic and a technological giant. What are we in the 40 years we have been independent?

If you look at the first 15 years of our Independence; during the late President Mzee Jomo Kenyatta's rule, indeed, you will realise that they were difficult years. They were years of reconstruction and political re-adjustments, but the economy of this country was growing modestly.

We must agree that there were certain mistakes committed during that period but the economy was still vibrant. During the last 24 years of the last regime, we saw corruption being institutionalised. It was part of the Government. It was the big issue because it was something to be supported. This is serious. Corruption was institutionalised and then we saw this country sinking into the abyss of abject poverty and social decay.

Mr. Temporary Deputy Speaker, Sir, 60 to 65 per cent of our people today live below the poverty line. There are no drugs in the hospitals. Until just a few days ago, the schools were not equipped. There were no textbooks. The infrastructure was non-existent. The roads, railways and communications were things of the past, just because half of all the revenue of this country - 50 per cent and it could be more - was going into the pockets of individuals. Until just 100 days ago, most of the revenue of this country was going to the pockets of a few individuals. That is the scene and it was happening. So, how do you develop the infrastructure? How do you avail drugs to the hospitals?

Mr. Temporary Deputy Speaker, Sir, what was going on was looting and destruction with arrogance and impunity. Everything got destroyed. All the service parastatals were looted and destroyed. All financial institutions were looted and destroyed. In fact, there were individuals who were moved from one parastatal to another with the purpose of telling them to go and ground, loot and steal and that is exactly what has happened. That is the situation we are in today and there is no doubt about that. It cannot definitely be denied at all. There was embezzlement of funds and all other crimes that are in the dictionary were committed.

Mr. Temporary Deputy Speaker, Sir, who were these people who were doing that? Who were they? This is a small clique of people. They are hardly between 12 and 20 in number - a dozen, a score -but those are the people who have looted this country dry. They are the ones who have "eaten" and even went on breaking the entire system of this country. This is why this country is now engulfed with poverty, disease and ignorance. These are the three enemies that we promised to fight at Independence but those people invited disease, poverty and everything to destroy our people and that is where we are today and nobody will definitely deny this. This is why we need this Act to enable us to prevent, investigate and punish those who have been directing these things against the people of this country.

Mr. Temporary Deputy Speaker, Sir, I keep asking myself: "Who are these corrupt moguls?" These corrupt moguls were all congregated on the hill; in the palace of the king. That is where all the deals were struck. You had to strike deals up there. In fact, the king himself was the main culprit.

(Applause)

Then you had the princes, princesses, cousins and half-brothers.

The Temporary Deputy Speaker (Mr. Poghisio): Order! Are you referring to this country or another country?

Mr. ole Ntimama: Mr. Temporary Deputy Speaker, Sir, well, I think you will be able to find out what I am talking about. However, I am talking about the king and the palace and there is no doubt that it is not very far from this country.

Mr. Temporary Deputy Speaker, Sir, then there were the cousins, half-brothers, nieces and there were those who were following them to be patronised, a horde of sycophants and all the hangers-on who were all feeding on the "crumbs" from the king's table. That is what it is all about. We were not going to survive because everything was sanctioned, agreed upon and supported by the palace and the king.

Mr. Temporary Deputy Speaker, Sir, this is why we must enact this Bill so that we are capable of preventing, investigating and punishing those who are corrupt because as I say--- I hope you will forgive me. Although my language is metaphoric, I hope everybody understands what I am talking about. The father and mother of corruption was up there and there was no way that the little man could definitely ran away from it. We had all to say "aye" but now the NARC Government is saying "nay". We are not going to agree to this type of corruption any more.

(Applause)

Mr. Temporary Deputy Speaker, Sir, the President has led the way by saying we are going to fight corruption from the top. I am very happy with the Ministers here on the Front-Bench because they have all said we are going to fight corruption. We have seen what is happening and I think we need to assist them because I think it is very important that we do so.

Mr. Temporary Deputy Speaker, Sir, I was in the campaign trail yesterday in Naivasha and we went to a place called Miti Mingi and the crowd came along and said: "Sasa, Vice-President, nyinyi watu wa NARC; could you please make sure that we have a school, dispensary, borehole and electricity?" They went on to say: "Here, in front of us, there is an electricity line from Nakuru which is 80 kilometres away into somebody's house." Along the 80 kilometres, they said that there were 15 schools, six dispensaries, several boreholes and small little centres, but no electric wire was dropped there. It came straight to that house and to make it worse, the person does not even live in that house. He just comes there once a month and looks around. Imagine the resources which have been used to try and support one individual while forgetting the rest of the community.

These are the sins that we must not allow to continue in this country and whether they are committed by princess or princesses, it does not really matter. What matters are the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, these people are walking here freely. You could even read the whole thing from their faces and bodies. They are symbols and statues of corruption. They are being recognised and we will keep identifying them. Even the kind of arrogance they exhibit today shows that they are not repentant at all of what they did to this country. A few people have made us all very poor and made it difficult for us to travel because the infrastructure is dead.

Mr. Temporary Deputy Speaker, Sir, I am supporting this Bill because I think, if it becomes an Act of Parliament, at least, we will be able to do something about these corrupt individuals. They are not so many. I know many people have been infected. Nobody stopped them for the last 25 years. But the time has come when we have to run away from this type of thing.

Mr. Temporary Deputy Speaker, Sir, I think it is also important to throw a spotlight on some Government departments. We have been told by the Transparency International (TI) that the Police Department in this country is the most corrupt. But within these 100 days, I have been told by

mwananchi - and I travel like an ordinary mwananchi on the road these days, and I meet the policemen themselves - that *Toa Kitu Kidogo* (TKK) is almost disappearing. It is now *Toa Kitu Nothing*. I think we should commend the Commissioner of Police. I think it is important if he continued to rid the police of corruption so that we can travel freely on our roads.

Mr. Temporary Deputy Speaker, Sir, if we really want to build a strong and viable democracy, then we have to strengthen local authorities. Without strengthening local authorities and empowering them, and without devolving power to local authorities, then we will not be building a viable and stable democracy in this country because they are the base. This is why the other day, against a little bit of heckling, I said Minister Maitha should be given a gold medal. At least, he has gone out and plucked all the corrupt senior officers of the councils. I am not saying they are out of the woods yet in the local authorities, but the Minister has tried to rid the local authorities of those embezzlers. Our local authorities have been rotten all through and, unless we try and get the right people in those local authorities, corruption will not stop. It will still continue. This is why I think we must support any endeavour by any Minister, or anybody else, to clean our local authorities.

Mr. Temporary Deputy Speaker, Sir, there is also the Department of Immigration. That is where we have been having problems. It is listed as the second most corrupt department in this country, and definitely, it is. That Department has been giving work permits and special passes to foreigners to come to this country and take the jobs of our people. Even the *dukawallas*, cooks and ordinary drivers have been smuggled into this country. Where are we going to get people to work for us? Right now, the Immigration Department has smuggled many Europeans to work in the Mara. Some of us are victims of that kind of thing and they do it with impunity. That Department must be scrutinised thoroughly.

Mr. Temporary Deputy Speaker, Sir, there is the Provincial Administration. I do not know what the Government is going to do with the Provincial Administration. But I hope that something is going to be done about the Provincial Administration. At least, it must be reformed. That is where we have misuse of power, misgovernance and corruption. That is why we must rid ourselves of those corrupt officers. There is no reason for transferring a problematic DC from Narok to Meru South. There is no reason of transferring a problematic PC from Kisumu to Eastern Province. Let the man go home. Otherwise, we are doing nothing at all.

(Applause)

Mr. Temporary Deputy Speaker, Sir, on the question of the courts, that is where the biggest problem is right now. My colleague, Mr. Murungi, has been talking about our courts and the corruption that is there. A dependent, weak, inefficient and corrupt Judiciary is an impediment to good governance and democracy. But that is still going on now. The Law Society of Kenya (LSK) must start probing lawyers. Some of them carry bags of money to go to the corridors of the courts to bribe the judges, all the other judicial officers and the police. One day, I will tell Mr. Murungi one of them, who I know has been manipulating and subverting the course of justice in our courts.

Mr. Temporary Deputy Speaker, Sir, I want to talk about Clause 5 of the Bill. I think all the commissioners must be vetted during the confirmation by Parliament. They should be brought before us, so that we investigate them. It is not only members of the Commission and those of the Advisory Board, but I think we should also summon the Chief Justice, and the Head of the Public Service and Secretary to the Cabinet to be probed so that criminals do not sneak into the administration of our country. We should also summon the Commissioner of Police to be probed, so that we know he is going to serve us and not his personal interests.

Mr. Temporary Deputy Speaker, Sir, the people who have been appointed should be made to go through vetting. We should also go to the public and out rightly establish post office boxes for

reports on corrupt individuals to the Government. We should also have an agency to go and collect letters so that we can have people in this country who are completely responsible in order to see what will happen.

With those remarks, I beg to support.

Mr. Kembi-Gitura: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute.

Mr. Temporary Deputy Speaker, Sir, corruption is what has destroyed the very fabric of our society in this country. In my view, I find it a miracle that so far, our country has managed to continue this far, considering all the "rape" that it has undergone in the last 40 years; particularly in the last 24 years. Corruption is endemic in our society, and it has transcended to all sectors of our economy.

Mr. Temporary Deputy Speaker, Sir, our hospitals have gone without drugs, medicines and other basic necessities when those people who have been entrusted with the management of our hospitals are busy investing surplus funds with projects that are not viable. As we stand here now, we know that substantial sums of money have been invested with unviable banks which have since collapsed and, therefore, we have lost a lot of money in the country.

When all those things were happening, all of us know that if we went to Kenyatta National Hospital, there were no drugs, beddings and other basic necessities. It beats all logic to see that money is said to have been invested when those necessities ought to have been provided, as a matter of commonsense, in the first place.

Mr. Temporary Deputy Speaker, Sir, in my view, the only conclusion one can draw from a situation like that one, is that the person who was making the investment must have had something to benefit from such actions. That is why this Bill is very important. I would like to congratulate the Minister for bringing this Bill to Parliament---

*(Mr. Munyes consulted with
Mrs. Kilimo over the Bench)*

The Temporary Deputy Speaker (Mr. Poghio): Order! Order, hon. Members! Mr. Munyes, you are not orderly!

Mr. Kembi-Gitura: Mr. Temporary Deputy Speaker, Sir, I would like to congratulate the Minister for bringing this Bill to Parliament. As the previous speaker said, one wonders why it took so long to have a Bill of this kind brought to Parliament to save us and the country from all what has been going on.

Mr. Temporary Deputy Speaker, Sir, for the first time in this country, we are seeing the office of a public officer put into public scrutiny, in that the director and the assistant directors to be appointed under the Act when it becomes law, will be grilled so that they can be put under public glare, so that the whole country would see what kind of person has been appointed to those very important positions.

Mr. Temporary Deputy Speaker, Sir, in my view, Clause 5 of the Bill sets a very important precedent in that, persons proposed to be appointed as Director of the Board will be vetted by the National Assembly. This, in my view, is an extremely important beginning. Indeed, I am happy that the previous speaker did mention that and I would recommend that all public officers of certain job groups, and particularly those who would be chief executive officers of any department of the Government, or public office, be brought here for vetting so that we all know what kind of person we are taking on board.

Mr. Temporary Deputy Speaker, Sir, we have instances of people like the Chief Justice, the Commissioner of Lands and officers of the Immigration Department, where corruption has been perpetuated for very many years. The reason is, that the persons who have been given those positions

seem to think they are above public scrutiny. But with the current statute coming into force, we now know that, that will be a matter of the past. As representatives of the people, I believe that people should have the knowledge that the persons who are supposed to oversee their affairs have been scrutinized by people they choose to represent them in Parliament, and they will be comforted by the knowledge that those are the kind of people we have in public office.

Mr. Temporary Deputy Speaker, Sir, Clause 23 of the Bill, is geared towards creation of zero tolerance on corruption in this country. In my view, when we provide for a fine not exceeding so much money for a person who fails to disclose, or a person is found to be guilty under the Act, this could be subject to abuse of office. What it means, when it says that somebody will be fined a sum not exceeding Kshs300,000 is that, the magistrate or the judge trying the matter will have the discretion of giving a fine of anything between zero and Kshs300,000. So, it will be a system which assumes steering by the maximum, as they call it in law. But I think this will be an avenue that can be used very easily to perpetuate corruption.

I would propose that in tandem with the Bill, or what it proposes to achieve, a minimum as against a maximum fine be set so that on conviction, on the court finding that somebody is guilty or has failed to disclose as required in this Clause, the magistrate or as the case may be, the judge will have no discretion, but has to mete out the fine that is prescribed by law. I do not think it is right that the magistrate or the judge be given the discretion of deciding how much money to fine the person because we are dealing with very serious matters of corruption, which has almost brought our country to its knees.

Mr. Temporary Deputy Speaker, Sir, on a more serious note, it is in fact, in my view, jail terms that would have served a bigger purpose, if they were made mandatory in certain instances; remembering always that a fine of Kshs300,000 for somebody who has stolen Kshs60 million, will be unreasonable and also that the fine will be paid with money corruptly obtained; so that the vicious circle of corruption will not come to an end, and that is what we are trying to end in this country. My proposal would have been that, when the fines are set to be maximum, that magistrate or the judge cannot make a fine of more such an amount of money, we should also have a maximum or even set a ceiling for the maximum, whereby for specific offences, a certain amount is set out.

Mr. Temporary Deputy Speaker, Sir, my view has always been that a lot of corrupt activities in this country have been legitimised by the courts of law. These courts of law are not just the High Court or the Court of Appeal like a lot of people tend to think. In my view, most of the corruption is actually perpetuated in the lower courts, the magistrates' courts and in the court registry. That is where you find a lot of injustices taking place. One would like to know how, for instance, a magistrate of whatever class, whether a chief magistrate, a resident magistrate, or principal magistrate, whose salary is well known. In fact, it is common knowledge how much every class of magistrate earns.

It will be very interesting for us to ask how that kind of person could afford to have blocks and blocks of flats all over the country, or in major towns of this country, and even houses in some of the posh areas of the city. That is why Clause 52 of the Bill is, in my opinion, very important, indeed. That is why those people have to explain in a lot of instances how they acquired their wealth. This, coupled with Clause 72, proposes to amend the Limitation of Actions Act Cap.22 of the Laws of Kenya, so that the perpetrators of corruption will be unable to plead limitation.

Mr. Temporary Deputy Speaker, Sir, it is common knowledge that in a lot of cases that have come to the High Court in the recent years, people have been charged in the Magistrates' Courts and made references to the High Court, or even to the Court of Appeal challenging the charges brought against them, saying that the alleged offences were committed so long ago that it would inequitable to reopen them or to bring them up again. That is what Clause 52 intends to remove so that a crime or an offence committed does not become too old. Because that will be so, it will be removed from the ambit of the High Court to fancifully interpret law because they have to stick with the law as legislated.

If one looks at Clause 44 of the Bill, I would state on my part that it is a very welcome piece of legislation. This is because what Clause 44 will now mean is that, that very long list that was tabled in Parliament about a week or two weeks ago on the scandal and corruption going on in NSSF and NHIF and, indeed, in many other Government institutions, on the passage of this Bill, will now be subject to investigation. What this means is that anyone who sold a plot or property to NSSF or NHIF for more than its market value, must now be surcharged and made to repay back any excess because such an excess will be an unexplainable asset. How does one explain that a quarter acre plot in Upper Hill or any other part of this city was going for Kshs60 or Kshs70 million. The person who sold that plot, on proper valuation of such an asset, must be made to pay back to this country the difference.

(Applause)

Once that becomes law, there will be no two-questions about it. We know that there were valuers who were said to have valued these properties. We know that they gave false valuations. We know that they supposedly are reputable valuers. That is why when this Bill provides that the Board shall have valuers to carry out valuation, even those people must be valuers of impeccable and unquestionable character professionally. This is because they are the same ones registered under the relevant Act of Parliament to be valuers. We will not create new valuers in this country for the purpose of this Bill. We know that they were manipulated and they valued a quarter acre plot at Kshs60 million, when we knew the market value could not have been more than Kshs10 million. What are we going to do with the difference of the Kshs50 million? For this Bill not to be another hoodwink or something to please certain aspects of our society or the international society, then it must have teeth and those people must be surcharged and made to pay back. What this Clause 44 means is that the assets of the directors of some of those banks that have since collapsed with a lot of depositors' money, including money of public institutions, can now be traced, be they within, or outside this country. They will be made subject to this Bill. Pending investigation of any such institutions, those assets of those kind of directors can be frozen.

Mr. Temporary Deputy Speaker, Sir, we know what happened in Upper Hill in the last seven to ten years. We know that the Commissioner of Lands was dishing out letters of allotment like confetti. Anybody who pleased the personality of the Commissioner of Lands got a letter of allotment of one acre in Upper Hill and paid Kshs150,000 in what was referred to as standing premium. Even before that letter of allotment became a title deed, it was transacted once again to a third party who then paid Kshs20 million. Are we saying that our Government did not need the difference between Kshs150,000 and Kshs20 million? Why were the Kenya Railways properties and other Government properties where Ministers used to live sometimes back, not sold by tender? If the Government wanted to sell those properties in Upper Hill, Kileleshwa and other parts of this country, why were they not sold by tender? Why were some people given handouts by the Government? Those were handouts! Somebody got a handout of Kshs19 million or Kshs20 million or Kshs25 million from the Government. Why did the Government not sell those properties directly to the people who subsequently purchased them? In my view, that was meant to perpetuate corruption and line the pockets of certain people. Maybe, it is too late now because the people who subsequently bought those properties have since developed highrise buildings and I do not know what will be done about it. I do not think very much can be done about it under the law. But it is those kind of people or the perpetration of that amount of corruption that must be brought to book and must be stopped.

More important, Mr. Temporary Deputy Speaker, Sir, this Clause 44 and, the Bill in general, will make the people of this country to have faith in a Government that they have elected. They will

see that this is not just being done to please certain sectors of people. The recent arrests, arraignments in court and the recent charges that have been brought against several people under Clause 58 of the Bill will now become subject to the new law. In my view, this is a law that will go a very long way to bring back our country to normalcy or to where it ought to have been. I tend to think that if this Bill had been brought 10 or 20 years ago, this country would have progressed tremendously. It would be a tiger most likely because all the money that has been stolen would have been invested in our country.

But the best thing I note about this Bill is that Clause 3 does not create limitation. The law shall operate even to offences committed long before it came into force. Some people have argued that this might be in contravention of Section 77(4) of the Constitution. But if one reads Clause 58 of the present Bill against Section 77(4) one would see that there is a saving clause on the provisions of Clause 77(4) of the Constitution. I believe, contrary to some views in this House, Section 77(4) of the Constitution shall not in any way be infringed and that there will be no constitutional conflict.

But more important, like I said earlier, the fanciful decisions of the High Court of this country, where it has interpreted the law to suit the purposes of the accused persons or I dare say, even for their own purposes will not be there any more. This will not happen if the provisions of the Bill are made mandatory.

Clause 52 will greatly deter corruption in this country. It is a clause which, as I said earlier, clearly shows the intention of this Government to have zero-tolerance to corruption. The fact that the Bill is subjective in Clause 52, and that the person will have to explain himself is very important. Some people have argued that again, this might be against the provision of Clause 77(7) of the Constitution where no person shall be compelled in any court of law to say anything in defence of himself. But the law has always been clear. In criminal proceedings, an accused person can decide to keep quiet if he or she thinks that by not uttering a word, they will be able to elevate their case more or canvass their case better; everybody has a right to keep quiet. But then, one has to decide whether keeping quiet will convict him or have him acquitted. We have had laws here which are also subjective. Even in the previous anti-corruption provisions of statute, the case has invariably been subjective because it is that person who has to say how he earns so much money when it is common knowledge that his salary, when he/she was not doing any other gainful business, cannot explain the kind of wealth that, that person today goes flaunting so arrogantly before other people. I do not think that there is anything wrong in making Clause 52 or the generality of the Bill to have a subjective test as regards property acquired illegally or that which cannot be explained.

It is my view and my humble submission that it is for that magistrate in Murang'a, Kerugoya, Marsabit or any other part of this country to explain how they acquired the wealth. It is that land registrar whose salary is not more than Kshs20,000 and he is in an office in Murang'a, Kajjado and Ngong who has to say how he acquired such large tracts of land which otherwise would have gone to the group ranches of the Maasai people like they have done over the years with their property. He or she should explain how he/she became a member of a particular group ranch in Maasailand when he is not even a Maasai and does not have hereditary rights in Maasailand. This is prevalent in so many parts of this country.

The fact that the person knows that Clause 52 will put him/her in the public glare will help to very greatly deter corruption in this country. Since it is the only language many of these people seem to understand, let it be made in such a way that even as they start to contemplate corruption, they know that will happen to them. When I think about corruption, I think more about magistrates because they are the lowest of the courts and yet that is where corruption is mainly endemic. If the only language they can understand is one of them being put to public glare or scrutiny to explain themselves, they will think twice before they commit the acts that they wish to commit. Having said that, in my opinion, this is a very good Bill which ought to be enacted without much more ado.

Clause 53 of the Bill in my humble opinion, ought to be redrafted. I do not think it will be fair

to subject a *bona fide* purchaser for value without notice that a property may have been illegally acquired, to have his assets frozen like the section proposes. In my view, if the third party has purchased the property in good faith and for a valuable consideration of what is marketable value of the property, I do not think it will be right to put him to further test, if he can prove that he properly obtained that property. It would not be right to have his rights frozen. In any event, in my view, Clause 53 as proposed will go against certain statutes and more particularly, against Section 23 of the Registration of Titles Act, Cap.281, Laws of Kenya, and even against the Registered Land Act, Cap.300 Laws of Kenya, where they talk about the indefeasibility of titles which are not otherwise obtained by fraud.

It should also be made clear because we do not want to have witch hunting like has happened so much in the previous Government. It should be made very clear in the Bill also, that even the Commission will be liable to actionable claims by people who are damaged or have suffered as a result of the commission or the board having acted in excess of its jurisdiction.

Clause 56 of the Bill should be able to settle once and for all, the issues I raised about NSSF and the NHIF. These are matters to be put to rest once and for all. I reiterate that the valuer to be engaged by the commission or the board, must be a person of impeccable professional integrity. We cannot afford, at the risk of repeating myself, to have witch hunting under the law. After all, the NHIF and the NSSF use duly registered valuers when we had quarter acres valued for Kshs60 million, Kshs70 million and Kshs100 million in Nairobi. They gave clear bills of health by way of valuation reports to say that those plots were worth so much money. They are valuers and they are the same ones that will most likely be used by the new board.

So, what will they do about those valuers? The valuer will be an extremely important and very central person in the matter of this Bill. I would also propose that if we are going to have a chief valuer for the Commission or the board, be it a Government or a private valuer, such persons, if they have to be of impeccable character and professional integrity, then that chief valuer, so that his assistant can be in control, should be a person subject to the scrutiny of a Parliamentary Committee so that we know exactly who we are putting on the board to help run its affairs.

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

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

All in all, having looked at the memorandum of objects and reasons of this Bill, I am of the considered opinion that this is a very important Bill of Parliament. It should be passed into law as soon as possible so that we can be able to tackle the so many issues that are now plaguing our society. We cannot afford to see the rape of our society any more, nor have situations where matters are done by way of favouritism. We cannot afford to see people enriching themselves at the cost of society when we know what kind of poverty our people are going through at the moment. Corruption takes very many forms and we have talked about those issues that have brought our country to its knees. These are issues that must be dealt with once and for all if this society is to benefit. We must not always think about ourselves for the period that we are here; whether in Parliament or in this life.

We must think about posterity. We must have a law that will be supported not just now, but for several years to come. As I said at the beginning, if we had a law of this type 20 years ago, then what we are going through in our country today would not have happened.

With those few remarks, I beg to support.

The Assistant Minister for Planning and National Development (Mr. Kombo): Thank

you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to make a short contribution on this very important Bill. As many Members have said, this Bill should have come to this House a long time ago. The history and the road we have travelled on to come to where we are today has been sometimes torturous and very difficult, but we are here. Corruption is defined as the use of public office for private gain. That is the general description of corruption. Taken in those general terms, you will find that practically, every aspect of the Kenyan society has been permeated by this cancerous thing called corruption.

It was the realisation that it had permeated our society that led to the formation of an anti-corruption Select Committee that I chaired in the last Parliament. The Committee went around the country and spoke to very many different people. Wherever we went, we found that Kenyans had taken corruption as a way of life. They believed that unless you paid for a service that was due to you, you would never get it.

It is for this reason that you will find that when Kenyan motorists are stopped on the road by traffic policemen, even today, the first thing they do is to go into their pockets and walk to the policeman with money in their hands. They even do not stop to find out why that policeman has stopped them. Since they believe that bribery is a way of life and that is the only way they can get away with whatever the policeman may have to say to them on the famous TKK, they go ready to give something to the policeman.

Mr. Temporary Deputy Speaker, Sir, after we went round the whole country, we came up with our Report, which contained various aspects. The Motion that created the Select Committee had asked us to find out the extent of corruption. So, we defined the extent of corruption in this country as at that time. The Motion had also asked us to come up with a list of the perpetrators of corruption. So, we did all that as perceived by Kenyans out there. The third aspect of the Motion was that we come up with a Bill which would help in the fight against corruption, which we did.

Unfortunately, the power barons of the time concentrated only on what came to be known as "list of shame". That was all they kept on looking at and thinking about. Of course, we had a very deliberate decision to make at the Committee level, that we would name names and shame their owners. That is how the list of those people who were perceived to be corrupt by the public came to be known as the list of shame. We did that deliberately to show Kenyans that their country would go to the dogs if they did not take care.

As I said, the list of shame was what captured the imagination of Kenyans and the power barons of that time. The power barons struggled very hard to expunge the list of shame from our Report. Today, as I watch things unfold, I feel quite vindicated, because some people whose prosecution we recommended are now appearing before courts of law. We were obviously ahead of the time for this country. Everybody has now caught up with us, and we are moving together.

Mr. Temporary Deputy Speaker, Sir, the fight against corruption in this country must be seen in a very holistic manner. That is the beauty about the Bill we are debating. It has recognised the fact that prosecution of suspects of corruption and economic crimes is important. The Bill has recognised that education is important, and that in order to fight corruption, you cannot just take one line but you must look at the issue in a holistic manner. At this juncture, therefore, I would like to congratulate the Minister for having brought before the House this beautiful Bill.

The Anti Corruption and Economic Crimes Bill is based on Cap.65, Laws of Kenya, which unfortunately does not at all describe economic crimes. Cap.65 only deals with bribes, particularly the giver and the taker of a bribe. In this Bill, however, we are moving away from that narrow definition and, for the first time, we are saying what these offenses ought to be. Previous contributors to the debate have wondered why it has taken Kenya this long to come up with that kind of law. Obviously, the previous regime had great interest in the gains from corruption. So, people in that regime were not interested in a Bill of this nature. However, things have now changed. There is political goodwill in the

fight against corruption. A lot of activities are now taking place, both in law courts and before the Judicial Commission of Inquiry into the Goldenberg Affair. All that shows that we now have the goodwill to fight corruption.

That goodwill should not be seen to be politically-motivated. That goodwill should now come from all Kenyans. The people should now utilise the opportunity and participate in the fight against corruption. Particularly, regarding the Goldenberg issue, Kenyans now have a chance to come out and say what they know. Kenyans should not be afraid of going to tell the Commission what happened. I hope that even those people who have been mentioned adversely regarding the Goldenberg Affair - be they sitting Members of Parliament or ordinary citizens - will come out in the open, speak their mind and tell the truth, so that we dispose of the Goldenberg issue once and for all.

Mr. Temporary Deputy Speaker, Sir, as I said, the history of this Bill starts with the application of the provisions of Cap.65, Laws of Kenya. We previously had a police unit which tried to fight corruption; it was set up by the former regime. However, that regime set up the particular police unit for its own interest. When that police unit tried to do some serious work, and in the process stepped on some people's toes, it was disbanded very quickly. The floor of the building from which the police unit was operating was set on fire. So, all the files that contained corruption related information were burnt down, and we will never know what happened with the cases the police unit was investigating.

We then came up with the defunct Kenya Anti-Corruption Authority (KACA), which started doing a very good job. At that time, many Kenyans began to realise the dangers of corruption. However, KACA, too, was not to last long. As soon as KACA started stepping on the toes of some important personalities of the time, the infamous Gachiengo case came up. Some of the personalities that were prosecuted by the defunct KACA were Cabinet Ministers in the previous regime. They used to be driven to court in Government vehicles that flew the Kenyan flag. Subsequently, a Mr. Gachiengo filed a constitutional case and got rid of KACA. The ruling in the Gachiengo case was bad. Many of us talked about it and said that it was wrong. Unfortunately, the previous regime could not think otherwise.

Mr. Temporary Deputy Speaker, Sir, following that history, we now have a Bill which is going to deal with the issue of corruption squarely and in a holistic manner. For a long time, after the Gachiengo ruling, we tried to save the situation by legislating against that ruling. We tried various possibilities, but we did not succeed. The Gachiengo decision was made during a regime which was considered protective of corruption. It was a regime which had made corruption official. The insistence then was that any body which would be created to replace the defunct KACA should not have prosecution powers, because the Attorney-General was the only one who had prosecution powers. That was a wrong decision. So, today, the only thing that one can do is to legislate and give the Attorney-General sufficient powers to work. That is what this Bill has done. So, I will go into its specifics to try and show why it is a good Bill.

Firstly, this Bill avoids the Gachiengo debate; it goes around it. So, it saves us the headache of the possibility of some people coming up to claim before court that there are two Attorney-Generals. So, nobody can argue in that manner any more. Secondly, the Bill conforms with standard practice for the establishment of statutory authority. We thought of trying to enshrine the anti-corruption body into the Constitution but the Minister does not find that important any more. Thirdly, the Bill creates a requirement for the Attorney-General to also account for his prosecution decisions to this House. That is covered under Clause 34 of the Bill. In my view, that is the most important aspect of this Bill. For the first time, this House will be asked to have a big say in what will go on with corruption cases. So, the Attorney-General will have to come back to this House and give an account of prosecution of corruption and economic crime cases. This is the mating piece of legislation that tries to rein in a wide discretion of prosecutions. That is because some people have been worried that, perhaps, we are

creating a monster. By coming back to this House to report, the monster can be tamed if it exists at all. The Bill also contains all the important features that will help-- When the directors want to get materials, they can have some supplies. They can get documents through a supplies method, so that they do not destroy or go and spend like somebody who took a whole hard disk and hammered it to pieces. This Bill deals with those issues.

Mr. Temporary Deputy Speaker, Sir, the Bill also merges criminal and civil processes in Clause 51, by providing for an order of compensation to be made in criminal proceedings. I think that is very important. If we are going to fight corruption effectively, then the fruits or benefits of corruption must be taken away. If you have stolen Kshs600 million and hidden the money somewhere, even if we take you to court for five years, you can afford to say: "It is gathering some interest and when I go back, I will enjoy those benefits." So, this Bill gives powers to the authority to remove away the fruits of corruption. That is one effective way of making sure that it is very painful and expensive to be corrupt. That way, I believe we can fight the monster effectively.

Mr. Temporary Deputy Speaker, Sir, it also provides for suspension from office of public officers once charged for corruption under Clause 59. That, in the last regime, was not possible. People could be taken to court and could come and issue Ministerial Statements when they were charged in court on corruption charges.

Mr. Temporary Deputy Speaker, Sir, from now on - and I think we saw it recently from the Meme case - as soon as he appeared in court, he had to give way to make sure that we move on. Those are some of the very important aspects within the Bill which I thought I would mention. They make the Bill very interesting and one that would help us in the fight against corruption very effectively.

Mr. Temporary Deputy Speaker, Sir, I want to conclude by really asking Kenyans wherever they are that, without grappling with the issue of corruption, our country will remain on its knees forever. I do hope that, as we move ahead, another aspect that we will have to deal with is the issue of transitional justice. I want to say that many Kenyans have been corrupt, especially those who have been in power. Many Kenyans have looted from the country.

In fact, the culture of "lootocracy" was so rampant for the last 24 years that, if we were to follow and take every one of them to court, our courts and jails would be full and they would not have been finished! I do want to urge the Minister, as we go along, that the next process-- Because the fight against corruption is an on-going and not a one off aspect, he should move to the next step and start dealing with what we must do with the past. That is what we have called transitional justice, so that we can deal with it once and for all, whether it is through a Truth and Reconciliation Commission or whatever. But this debate should continue, so that we make sure the process is on-going as we fight corruption.

With those few remarks, I beg to support.

Dr. Galgalo: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to add my voice to the voices of reason that have been in this House for the last few days.

I stand in support of this Bill and from the very beginning, I think it has enjoyed bipartisan support from both sides of the House. That is because there is no leader worth that title, who would stand up and oppose a Bill of this nature; a Bill that seeks to restore sanity into our way of life. Actually, this Bill is a baby of KANU in the last Parliament. Our brothers and sisters on the other side of the House just adopted our baby. We shall work together to make sure that the Bill comes out to serve our country rightly.

Mr. Temporary Deputy Speaker, Sir, we all know corruption has been with us for many years.

For a long time, it has affected literary every sector of our society. It manifests itself in many ways. We know there are Kenyans in positions of responsibility who have been involved in outright theft of monies entrusted to them. We have many such cases. We know there are Kenyans who have

outrightly stolen public land in form of forests, public utility lands and plots. We know that there are Kenyans who have stolen drugs from dying patients. It is a very rampant and bad practice. There are doctors and nurses who are entrusted with drugs and lives of people but they steal those drugs. Some Kenyans die because of that theft. We know that there are Kenyans in positions of responsibility who have stolen relief food and people starve and die en masse because an individual has stolen food which was meant to save lives of poor Kenyans. In fact, at this stage, I would hasten to add that the whole idea behind continued supply of relief food to Kenyans is to sustain some people's appetites. Some people in those positions would rather maintain Kenyans on relief food than channel those funds to meaningful development projects that would allow them to engage in meaningful economic activities.

A few weeks ago, we heard that senior people in the districts entrusted with relief food in Turkana stole that food and people were starving because of that. I know from the days when I used to work in the field that there are district commissioners who would just pick a lorry, take it to the National Cereals and Produce Board stores and load it full of maize meant for poor people and sell it! Then, they would build maisonettes and send their children to expensive schools at the expense of poor Kenyans. In fact, as I said, the whole idea behind relief food programmes is just to enrich a few people. Those are the kind of people this law should follow and bring to book. We know there are education officers entrusted with schools feeding programmes food for starving school children. They load those vehicles with food and sell it. Then the children in those schools go without food. It is this corruption that has become part and parcel of our lives that this law seeks to eradicate. That is why we support it.

Mr. Temporary Deputy Speaker, Sir, corruption manifests itself through senior and junior Government officers demanding kickbacks for services that they should offer to Kenyans free of charge. We know of cases of missing files which surface after the owners give bribes of Kshs100. If one does not have the Kshs100, he misses a major service. Policemen, doctors and other Government officers are culprits in corruption. Kenyans have accepted corruption as part of their way of life. We must change this attitude. We know about projects which have stalled because senior Government officers who have been charged with their implementation demanded kickbacks from contractors. So, contractors give kickbacks to Government officers and as a result, they do shoddy jobs for which they are fully paid, get a pat on their backs and clean certificates. The projects end up not serving anybody because they are shoddy. They could be hospitals, roads or schools. There are Government officers who design projects and ensure that they stall. Every year, they design a new project, have it half done, pay the contractor in full and in the next financial year, they design another project. That is why we have hundreds of stalled projects in this country.

In Embu Provincial General Hospital, where I used to work, there are four stalled projects, namely, a maternity wing, a mortuary, a theatre and a staff housing project. All those projects were designed to stall and the officers have siphoned off money through them. The projects have stalled and cannot serve our people. This Bill intends to fight against such corrupt practices, and this is why we support it.

Mr. Temporary Deputy Speaker, Sir, laws alone cannot fight against corruption. We can have magnificent laws; laws that are required to fight against corruption, but unless those laws are enforced, they are of no use to us. If laws are selectively applied, then they are of no use to us. For example, the former Chief Executive Officer of the National Hospital Insurance Fund (NHIF) has been taken to court. The officer deposited NHIF's money with the Euro Bank after he held a meeting with the NHIF Finance Committee. Why have the committee members not been taken to court also? Why are we using the law selectively? The NHIF Finance Committee members should also be in court because they sanctioned the transaction. If laws are to be used selectively, then it would appear as if the law is being used for vengeance. This is unfair. The law must be used across the board.

We know about Mr. Somaia's case. Government officers who were supposed to apprehend Mr. Somaia at first sight were dragging their feet. Mr. Somaia almost left this country. He was arrested at the instigation of some people, especially hon. Members of Parliament who wanted to know why he was being let free. Why would a thief of Mr. Somaia's nature walk around in this country for days, when we have all the machinery here to apprehend him at first sight? It would appear as if the law is being applied selectively. That is wrong. Anybody who has a case to answer should answer it. The law should not be applied selectively.

The Goldenberg scandal has been in courts for over a decade now. There are people whose names are synonymous with the Goldenberg scandal, and they still hold public offices. At least, two or three names come to one's mind the moment the word Goldenberg is mentioned. The moment the word Goldenberg is mentioned, a very big name comes to one's mind, and nobody bothers about these people.

It is okay for such people to hold public offices while others are taken to court! We are saying that we shall enact all these laws. They are good laws, but they should not be applied selectively.

The Minister for Energy (Mr. Ochilo-Ayacko): On a point of order, Mr. Temporary Deputy Speaker, Sir. The only name that is synonymous with Goldenberg is Mr. Pattni's name. Is the hon. Member in order to insinuate that Mr. Pattni holds a public office?

Dr. Galgalo: Mr. Temporary Deputy Speaker, Sir, I will ignore that point of order, because the Minister knows that what I have said is true.

The only other---

Mr. Kimeto: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member has insinuated that some big names of people who are already in the Government are synonymous with the Goldenberg scandal. Even the Minister knows who these people are. **The Minister for Justice and Constitutional Affairs** (Mr. Murungi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Kimeto in order to insinuate that the Minister knows the hon. Members in the Government who are involved in the Goldenberg scandal without naming them? Is he in order to impute improper motives on the Minister?

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

The Temporary Deputy Speaker (Mr. Wetangula): Order, Mr. Kimeto! There is no debate between you and Mr. Murungi. Proceed, Dr. Galgalo!

Dr. Galgalo: Mr. Temporary Deputy Speaker, Sir, I am just about to finish making my contribution. I want to conclude by telling Kenyans that this is a good law. This country belongs to us, and we should not allow a few people to wreck it. We should all work together.

I want to assure the Government that we, hon. Members of the loyal Opposition, will fight against corruption. We shall work together. Kenyans who believe that corruption is a way of life; those who believe that for them to get service from a public officer they must give a bribe; those who believe that the moment they see a police officer, they have to dig into their pockets, I want to inform them that we have to turn our country around. We must get rid of that culture.

Mr. Temporary Deputy Speaker, Sir, laws alone will not fight corruption, but the fight against corruption requires the participation of every Kenyan. Kenyans must get that belief out of their minds. We should work together, whether we are in the Government, the civil society or in Parliament.

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

The Minister for Water Resources Management and Development (Ms. Karua): Thank you, Mr. Temporary Deputy Speaker, Sir.

I will try to be brief because I can see there is a lot of interest. The question that comes to my mind when thinking about this Bill is: Who needs this law? As a nation, we need this law enacted. What has stalled economic progress and service delivery is corruption in all Departments, Ministries

and even in the private sector. We, therefore, need a law that will help us curb corrupt practices and economic crimes, so that funds allocated for delivery of service to the public go to the public.

Mr. Temporary Deputy Speaker, Sir, every year, we vote funds for projects and service delivery, but the public ends up getting zero-value for each shilling voted. This is because the monies end up in people's pockets. We, therefore, need as a country, this law in order to deliver services to our constituents. It is in this spirit that I am happy to note that majority of hon. Members who have spoken have actually supported this Bill. There was an hon. Member who contributed yesterday, and was worried that this law is shifting the burden of proof to the accused persons by saying that people with unexplained assets will be presumed to be guilty of corrupt practices. This is not a new thing. Even in our Criminal Procedure Code, today, and in the Penal Code, we have instances where the burden of proof shifts to the accused persons. Such instances are where one is found in possession of suspected stolen property. It is up to that person to give a reasonable explanation of how he or she came by that property. When he or she fails to give a reasonable explanation, he or she is convicted of handling stolen property, if there is no evidence that he or she was the actual person who stole the property. Therefore, the section in this Bill which penalises those people who are unable to explain how they got the property that they have, in cases that the Authority is investigating for corruption, it is not anything objectionable.

Mr. Temporary Deputy Speaker, Sir, this is a principle already recognised by our Criminal Law, and it is something which should be upheld. If we do not uphold this Clause, we will be giving a blank cheque to those people who are corrupt.

It has been said before, and I support it, that for somebody whose earnings are known to be having property which is way beyond his or her means; to be generally living beyond his or her means is something which ought to be questioned. For that reason, if that person is being investigated for corruption, it is up to him or her to give an explanation as to how he or she acquired those assets. It should not be difficult for anybody who acquired assets in the right manner to explain how he or she came by them. I, therefore, wish to support the provisions of this law as they are.

This law is good in that it provides for institution of civil proceedings for recovery of assets obtained contrary to the provisions of the Act. The message is, therefore, clear that after this law is passed, corruption will not pay. Everybody will know that he or she will not only end up being convicted, but the ill-gotten wealth will actually be recovered and put to public use.

I am also happy that Section 4 recognises that investigations can be instituted at the request of Parliament. Presently, Parliament faces a lot of frustration. The recommendations of the Public Accounts Committee (PAC) and the Public Investments Committee (PIC) are rarely acted upon. In the past, the office of the Attorney-General has been accused of failing to act on those recommendations. Parliament will have teeth to bite after the passing of this law. Parliament, can recommend investigations for offences it believes have been committed. I, therefore, foresee a situation whereby, after the reports of the PAC and the PIC, or any other Committee are adopted by Parliament, Parliament will communicate with the Anti-Corruption Commission, authorising or instructing them to investigate offences. This will make the work of Parliament, as the watchdog of the people, easier.

This law also makes the Commission accountable to the people. Section 22 provides that where a member of the public or anybody has made a complaint and for any reason, it is not investigated to its conclusion, then the Commission will write to that person giving the reasons why the investigations have been abandoned. This is a mechanism to make the Commission accountable to the people. This means that an aggrieved person can thereafter pursue his or her complaint either through Parliament or any other medium. Gone will be the days, after the passage of this law, where one goes to report a crime and he or she is never given a feedback of what is happening.

I am also happy that Section 33 provides a mechanism of report-backs to the National

Assembly. This means that if the National Assembly has instituted investigations, the Commission will be duty-bound to report back. Even where it gives quarterly reports, it will appraise Parliament of its activities. Therefore, Parliament will perform its role as a watchdog of the people of Kenya.

I am happy with the provisions of Section 44 which describe what a corrupt conduct is. There are some people who are not happy with this section, especially because of the provisions of Section 44(2)(b) which talks of a conduct which took place before the commencement of the Act, but which at the time constituted an offence. I heard my learned colleague from the opposite side, Mr. M. Kilonzo, saying that this will amount to contravention of the Constitution; that one should not be punished retroactively for an offence which was not an offence when it was committed. But I have been looking at the Section and it is quite clear. This Section only refers to a conduct that was an offence under other laws. Therefore, this section is referring to things which are currently punishable under the Penal Code or Cap. 65, the Prevention of Corruption Act. I, therefore, wish to support this Section and say that there is no conflict between it and the Constitution. The same applies to Part V, Section 52, which actually defines a corrupt conduct. It also says that such conduct will cover operations which, if the offence had taken place after the offence became law, would have constituted corruption or an economic crime.

I would like to agree that perhaps we need to look at the transitional provisions of this Act so that we harmonise how prosecution will take place after we have passed this law for offences which were offences under the previous Anti-Corruption Act. I think that instead of providing that we can prosecute for those Acts under the new law with modification, it is better to save the provisions of the old law as far as they relate to offences which occurred before the Act. That will then not bring any conflicts or any possible conflicts with the provisions of the Constitution which states that a law should not operate retroactively. I think the Minister concerned ought to look at these sections and see whether the transitional provisions could be made more smooth in ensuring that if we pass this law today, and an offence which occurred in 1993 is discovered, rather than prosecute under the new law, the prosecution should be under the provisions of the old law to avoid any conflict. This is an area which requires some thought and I am sure that this Parliament will give some thought on it.

Mr. Temporary Deputy Speaker, Sir, we are also saying that the Act does cover both private and public bodies. Section 35, which provides for meaning of "agent" and "principal" talks of persons acting in any capacity, whether in public or private sector. This widens the scope and operation of this Act. Under the Prevention of Corruption Act, we are only dealing with offences happening in the public sector and not in the private sector. Widening this definition to cover both the public and the private sector means that investigations can be commenced and prosecutions can include people both in the public and private sectors. In my view, it would cover those in the co-operative world because co-operative societies are not public bodies within the meaning given in this Act and even within the general meaning. They are private entities created by the membership, but this definition of agents and principle, would cover acts of people in the public sector like the co-operative societies, self-help groups *et cetera*. I think this law is widening the scope and is going to help cover the loopholes that are left by the current prevention of Anti-Corruption Act.

Mr. Temporary Deputy Speaker, Sir, I think that all Kenyans and especially all hon. Members of Parliament, should support this Bill and help our country change the manner in which things have been done. This Bill will help lessen the culture of impunity, where people feel they can do anything because nobody will touch them. I am glad that changes are also taking place within the Judiciary. Previously, the war against corruption has been affected by rulings that are questionable, made by our judicial officers. We need to intensify the reforms in that area. I am glad that this is being taken care of, because without a Judiciary that is credible, without people of integrity holding positions in the Judiciary, no number of enactments in this august House are going to be of real value to Kenyans.

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

Mr. Chepkitony: Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this opportunity. I would like to say that I hope this Bill is well intended and I think it is overdue. It is my hope that it will bring fairness to all Kenyans; the privileged and the under-privileged because in the past, corruption has mainly been practised by those who are privileged. Although, when you look at the definition of corruption, it is very wide. It encompasses the giving out of bribe in all the institutions. It could be in the courts. For instance, if you wanted to get your court file, you would have to bribe for it. It could be in any public office, for example, the lands office. If you want a title deed, you would have to bribe in every stage you pass. Even getting a driving licence involves the same. I hope this Bill is going to be implemented effectively so that we apprehend all those who are involved in such cases of corruption, as is evident even in motor vehicle inspection exercise. Bribery is a daily event in this area. It is known that corruption is rampant there. Vehicles get stickers only after their owners have paid so much money.

Mr. Temporary Deputy Speaker, Sir, it is known that foreigners in our country pay a lot of money to acquire citizenship. I hope all the necessary measures are going to be put in place to see that the Bill stops corruption in this area too. We have recent cases of corruption involving banks like Euro Bank, where we had corrupt managers running it. They knew the accounts of the bank and the direction it was heading to and yet, they deposited public funds in the same bank. Indeed, they deliberately run it down. This is another case of corruption which I believe this Bill is going to address. The Bill will stop further collapse of other banks.

Mr. Temporary Deputy Speaker, Sir, I know even in institutions like the municipal councils, city councils or in local authorities, people manipulate water metres. Those are small cases of corruption, but it altogether corrupts our societies. Cheating is also a corrupt practice and it seems to have been institutionalised. People say that cheating is not a crime, but a sin. However, I think it is not a crime before our law. I hope this Bill will also address that area. Another very familiar case is witnessed during the election campaigns. Aspirants dish out a lot of money in order to win elections. This should also be termed as corruption and a way should be found to curb it, otherwise, we will not be doing anything.

Mr. Temporary Deputy Speaker, Sir, we have heard of several cases where people pay for services which they do not end up getting. It is covered in the Bill, but to implement, we will require giving assistance to the ordinary mwananchi, who for instance, goes to a lawyer, pays legal fees and the lawyer does not render the services. In fact, he fails to defend the client or execute what the client has paid for. If the client has no money to enable him sue the lawyer, then, the case will fail to take off. I hope there will be a system whereby the ordinary mwananchi is able to report and action to be taken by the advisory body which will be set up under this Anti-Corruption and Economic Crimes Bill.

Mr. Temporary Deputy Speaker, Sir, we also have serious cases of unemployment which is one of the biggest problems that we are facing. It is characterised by poor economic performance. Unemployment has caused a lot of discrimination in sharing out employment opportunities. Discrimination in employment should be regarded as corruption. Employers always employ their relatives, friends and children of their friends, either in the private or public sectors. We should pass a law to ensure that all vacancies in the private sector are advertised. Applicants should apply through the District Labour Officers in their respective areas. The correct procedures of recruiting people must be followed to avoid corruption. In most cases, we have people who obtain money corruptly from the job seekers. They are paid money in order to employ them. This is one of the worst cases of corruption. I think this Bill should be able to address it. In order to reduce discrimination in employment, we should have equal opportunities for all as a policy in the country. Affirmative action should be put in place to assist the disadvantaged groups and communities, so that they can also get access to employment. We should reserve some jobs for those people in rural areas, who cannot

come to Nairobi to look for Government jobs.

One of the ways in which corruption has thrived is through unfair business practices. Under liberalised economy, we say that the rule of supply and demand will dictate on the prices. But in cases where we have monopoly businesses, like the example of fertiliser, where we have two or three importers who dictate prices, this will amount to exploitation. They will make huge profits because there is no even playing ground. Exploitation is another form of corruption, which I think should be addressed by this Bill.

Mr. Temporary Deputy Speaker, Sir, there is a case of unexplained assets. I would like it to be redefined to read, maybe, "suspect property" or something like that, because the term "unexplained assets" is ambiguous. The same also applies to the period when the Act will become operational. Although it has been said that we can still retain the old Act, I think the whole issue is not clear. But when I read it, it looks like this Bill is going to supersede any other Act.

Mr. Temporary Deputy Speaker, Sir, the secretariat of the Commission should be strengthened so that we have the secretary, who is also the Director, having a very strong staff under him, who will be able to execute the functions of the office effectively.

With those few remarks, I beg to support.

Mr. Kajwang: Thank you, Mr. Temporary Deputy Speaker, Sir. I have little time, so I will be very swift. One, we are dealing with a way of life and we are trying to restore order in the management of public affairs in a situation where people have celebrated corruption and are proud of it. So, we are trying to change that way of life and to make people ashamed of corruption. We are also trying to ask people to shun corruption. That is something which is not going to happen unless the executing authority is serious about the change of the way of life.

Mr. Temporary Deputy Speaker, Sir, the first thing I have noticed and which is lacking in the Act is security of tenure of the Director. The Director's terms and conditions of service will be determined by the Advisory Board, but he has no security of tenure and yet, he is going to be in a situation where he will investigate everybody. We have been told that the war against corruption is going to start from the top, so, we expect the Director to be a person who can investigate the very top and bottom of the public service and private business. This is a person who needs some two terms of office properly fixed, maybe, four years each, but not renewable after that, so that he is aware that in the eight years which he may be in the service, he can do a good job for this country without fearing that his term may come to an end.

Mr. Temporary Deputy Speaker, Sir, it is not that we did not have a law which we could use to fight corruption. Today, we are debating this Bill, but we know very well that just a few weeks ago, many people were taken to court for abuse of office, an offence which is also defined in this Bill. So, it was not so much the lack of this Bill that made us not fight corruption; it was more of lack of enthusiasm on the part of the Government to prosecute those who were involved in corruption. Even if we were to make good laws, if there is no political will to prosecute those who are involved in corruption, we will go nowhere. So, we hope that this Bill will send the correct message to whoever is on the seat of the executing authority, that Kenyans want them to deal with corruption fairly and squarely.

We also know what made corruption become a household thing. We allowed people who were in public offices to engage in businesses with the same corporations or Government departments, which they were leading. For example, an engineer in the Roads Department is also a road contractor; a hospital director is also a director in a private hospital, and a person in charge of investments in the Treasury is also an investor in banks. We cannot ever escape corruption if the public officer who is carrying out the public job is also doing business with his own department or corporation. We must be very clear here, and I wish this Bill stated it clearly, and through the Public Officer Ethics Bill, that any public officer who does business with the department, or the Ministry, or

the corporation which he leads, either by himself, or by his spouse, or by his relative or proxy, will be prosecuted. That way, we might reduce some corruption. How does a bank, which knows very well that Mr. Kajwang is employed as a Member of Parliament and earns so much money, and after deductions he remains with so much, just keeps quiet when all of a sudden, it receives Kshs30 million from Mr. Kajwang? It just puts the money in his account without asking him: "How did you fall by this; was it a fortune? Somebody must ask because everybody else who opens an account with the banks states where he works and what he does. He even gives a copy of his pay slip.

Mr. Temporary Deputy Speaker, Sir, if I am a public officer, an engineer, and I take public money and go and put it in an account, and the bank manager somehow handles this obviously corruptly acquired property without question--- When we talk about dealing with suspect property, the person who should be arrested first is the manager of the bank who receives money knowing very well that it is suspect property. He should ask the depositor: "This money originates from where and which deal is it?" This is because a deal which can bring Kshs10 million, the bank should be able to know; they must have given you some loan to go and do that business. If it was an import/export business, then they should know because they must have given you some guarantee. You know very well our civil servants have millions and millions of shillings. That is why, when we talk about salary here, some of them talk carelessly because they have plundered public resources.

(Applause)

When we say that Kajwang is angry since his car is written off because he suffered during the campaign, somebody talks here carelessly saying we do not need money. That it is shameful because these people sat in positions of trust and raped those institutions. The next thing which this Bill has not done is to talk about forfeiture of property and freezing of those suspect accounts. If America can freeze Saddam Hussein's money, which he got from his own Government and kept it in some banks, why can our own Government not freeze some of those accounts which are suspect? The problem with us is that Mr. Somaia has a bank called Delphis and we know that it was stolen. He has some property in Miwani and we know it was stolen. He still can write cheques from the hospital where he is sleeping! Why can we not, first of all, "freeze" Mr. Somaia?

(Applause)

Then Mr. Somaia will say: "Please, now do what you like because I cannot write any more cheques, and I cannot pay anybody any more money." Why did he go to hospital? It is because he paid some money and he told some officers that: "You know, I am going to die on this stone; please, take me to hospital." He is now being seen by dignitaries; very big dignitaries from this Government are seeing Mr. Somaia in hospital, and he is talking from his mobile and through his computer. He is running his empire from a hospital bed because we are not serious with corruption!

(Applause)

Mr. Temporary Deputy Speaker, Sir, if the Bill is not going to give power of forfeiture and seizure that, immediately you are a suspect of corruption, all your accounts all over the world are seized, until later. If it is proved that you are not guilty of corruption, you are given back your money. That is the only way people will find that corruption is too expensive and unnecessary. This is because even if I work so hard to be so corrupt and become so ingenious to make this corrupt money, I will lose all of it. So, why should I work so hard for it, if eventually I will lose it anyway? If we do not have that spirit in this law, we are wasting our time! I am telling the Minister for Justice and Constitutional

Affairs that, if that is not the spirit of his Bill, then he is wasting his time. We want to see some action; immediately you take some of these people to court, we want to hear that their bank accounts have been frozen. We want to know, after putting Kshs51 million in the account, what was the cheque which he received back? This is because a director of a national hospital or a director of medical services cannot have that kind of money in his account and it just stays idle. What kind of business did he do? What kind of business can we say that somebody has done which makes a civil servant have hundreds of millions of shillings in his account?

In fact, all of us now want to be civil servants. You do not want to be a Member of Parliament because as an hon. Member, they will make a lot of noise because you are earning minus salary here. But in most cases, when you are a Permanent Secretary and you have Kshs200 million in your account, it is normal in Kenya. That is the way of life because if you do not have Kshs200 million in your account, you are regarded as a fool. All the politicians from your region will protect you because you lavishly entertain them, and you furnish and fund their campaigns, and they will kill anybody who jokes with you.

(Applause)

This is why corruption has become so grandiose; it is something good because when you go to your villages, everybody dances; even the politicians dance when the PS comes, because the PS is the underwriter of all our expenses. If we do not correct this image and this practice, we are destroying this country. If the Government of NARC is serious, we want to see accounts seized. We want to see bank managers arrested. They must show us how they allow a civil servant to keep Kshs100 million. I know one of the them, a young man who is in the Civil Service. I hear that he has deposited Kshs6 billion at the Standard Bank abroad. How can a civil servant have Kshs6 billion? He can overthrow this Government!

An hon. Member: Are you saying Kshs6 million?

Mr. Kajwang: Did you hear me? I am saying Kshs6 billion!

(Laughter)

This is shameful! Mark you, you know we respect these people. If you have such amount of money in your account, even a police officer cannot arrest you. How does he arrest you when, of course, if he comes around, he goes back very happy? How does the CID Director arrest a guy like that because, if he comes around, the Director will go home very happy to the extent that, even if he was sacked, he will be very happy.

This thing must start from the top! We want to hear the instructions right. When I came to this House for the first time, I told you that I come from a fishing area. What I learned is that fish rots from the top. If you want to check whether fish is good or bad, you check the gills.

(Laughter)

If Kenya is rotten, we are going to look at his Excellency the President because that is where the corruption can begin and stop. Mr. Minister, do you hear me? We will blame the Head of State. If corruption continues in this country, it starts up there. If it stops, we will be very happy because if the President says that corruption should stop, it will stop. This is because Prof. Meme will not sit in the office for one month when we are yelling here. The Director of NHIF will not sit in office for two more days, when we yell for two months. If the President coughs, corruption will not be in this country. Mr. Minister, the President has coughed; it will be you who will go next. Corruption must

stop or you go. Why did you take this job?

Thank you, Mr. Temporary Deputy Speaker, Sir.

(Applause)

Mr. Angwenyi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance.

My colleagues have put the matter the way it should be. If the Government is serious and does not want to be contaminated and polluted by the corrupt activities of some of the Kenyans, then it should not give us a headache that corruption will end.

Mr. Temporary Deputy Speaker, Sir, in the mid of last year, we went to China as a Departmental Committee of this House, and I was a member. We were told the way they completely stopped corruption in that country is that they rounded up 200 corrupt senior officers of various organs of the government, including a mayor of Shanghai, who was a brother to the Prime Minister of China. They took them to a playing field and they gave 200 police officers guns and they said: "If you are sharpshooters, each one of you should clear one person"; and they were cleared! Corruption ended in Shanghai and in China!

(Applause)

So, I am supporting what hon. Kajwang has said. If the President coughs and say: "Corruption should stop today", it will stop today, because those who will continue with corrupt activities could be rounded up - although we do not have that law in this country - and be put in jail for the time being before we change our law to include execution.

Mr. Temporary Deputy Speaker, Sir, corrupt people are killers. If you are the head of Kenyatta National Hospital and you corruptly take money from that hospital such that the hospital runs short of drugs, and patients in that hospital die because they cannot access drugs, have you not killed that patient who could not get a drug? If you are the head of the National Hospital Insurance Fund and you cannot pay for my hospital bills, and I am "arrested" there - maybe I will not be treated after that, and I die - have you not killed me?

If you are an engineer and you do a shoddy job on a road and then people die on it because of potholes, you will be blamed. May God rest the wife of hon. Okundi in eternal peace. She drove on a road full of potholes and she lost her life. This was because of the shoddy work on that road. Was it not that engineer who caused the death of that lady? If you are the auditing firm of the Euro Bank and you give false and unqualified reports about that bank; then I deposit my money in that bank on the basis of that report; when it collapses with all my savings or my retirement benefits, what will happen? Maybe by that time, my children are grown up. My wife and I are living on those terminal benefits and the bank collapses. If my wife falls sick and, probably, she ends up dying, is it not that auditing firm that has killed her because I could not get money to take her to hospital? So, what I am trying to say is that corruption in this country has killed more people than the HIV/AIDS pandemic. The strange thing is that we know the corrupt people. We know people who have looted money from the City Council of Nairobi to the extent that we cannot provide drugs to Pumwani Maternity Hospital, and yet we let them go scot-free. If anything, we arrest them for a day or so and leave their bank accounts open so that they can raise Kshs20 million. They cannot stay in custody for more than a day.

Mr. Temporary Deputy Speaker, Sir, we all live in this county. It is this Parliament which is supposed to legislate laws that will curb or eliminate corruption in this country. One of my colleagues said if you have got money you can buy justice. I do not know whether it is justice or injustice. We all know about the Goldenberg issue where Kshs68 billion was looted from Treasury. This was

almost two-thirds of our revenue collection at that time. That one person or that group of people took away from our economy Kshs68 billion, which was equivalent to two-thirds of our revenue. No wonder this country cannot perform or create job opportunities to our children because we paid money to people who exported "air", purporting it was gold and diamonds. As we all realise, those people who took that to buy justice in this country. You cannot take them to court because, as Mr. Kajwang said, you take them there, they give the person who will decide on their case Kshs100 million. An amount of Kshs100 million to a person who has stolen Kshs68 billion is loose change. Do you think that Judge or Magistrate will decide in favour of the State?

We have seen, to a large extent, a situation whereby the Judiciary is being used to block investigations into the Goldenberg affair. They are being used to block the fact-finding Commission of Inquiry on the Goldenberg affair. This House sits down and just watches. The President has appointed a Commission to find facts, and not make judgement about the Goldenberg affair. However, the Judiciary is being used to block that fact-finding Commission. Next time they will block the Attorney-General from investigating, or they will block the Authority we are creating here today from investigating. All they need to do is to walk with loose change of Kshs20 million to the Judiciary and they will block an investigation.

Mr. Temporary Deputy Speaker, Sir, I am really surprised by the Press. They are busy talking about our Kshs600 million instead of talking about somebody who is blocking a fact-finding Commission about Kshs68 billion that belongs to Kenyans. This economy will not be turned around until we get to the bottom of the Goldenberg issue and other corrupt deals in this country.

Mr. Temporary Deputy Speaker, Sir, even if we had to recover Kshs20 billion; that is the interest earned over the years on Kshs68 billion, we will be able pay our teachers well. We will give a cheque to Prof. Saitoti to pay teachers good salaries in the next five years. However, this House is sleeping on its power.

We believed the NARC Government will make a change. They have tried, but they need to try further. Some of the corrupt deals happened because of wrong appointments. The same thing is happening now. There are situations where you find somebody who was working in a certain organisation and was dismissed because he was corrupt, has been appointed to be the boss of his bosses. So, we are now surprised! Is the NARC Government going the same direction of the previous regime? I was a member of KANU and the KANU Government never pledged in any manifesto to fight corruption. So, we could not blame them for not fighting corruption in this country. But we will blame the NARC Government if it does not fight corruption because they promised Kenyans to fight corruption in this country.

Mr. Temporary Deputy Speaker, Sir, what became of professionals in this country? Why does a land valuer value a half-acre plot in Marani, where I come from, to be worth Kshs100 million? Normally, its value is Kshs100,000. They value it at Kshs100 million because they will later sell it to the NSSF. Now you take this case to a court of law and charge the Managing Trustee of NSSF, but you do not charge this valuer who valued that plot for Kshs100 million. This House must deal with professionals who act unlawfully. We must take to court the lawyers who write conveyancing agreements for a plot which is non-existent or on protected roads. They then sell the plot to the NHIF for Kshs380 million, and yet they know this plot is only an eighth of an acre. You cannot even sell a quarter of an acre in the city centre of Nairobi for Kshs500 million or Kshs600 million. I know of a case where an acre of land was sold for Kshs300 million. That is a very tricky case because it involves leaders and a Government agency.

We should commission a probe team that can go round and find out about these corrupt activities. They can then give us the correct value for those assets bought or sold. If we are buying these properties we should pay the correct value. Any overpayment should be recovered. I do know that this Bill says that we cannot make it retroactive. If we do not make it retroactive, what is the

purpose of enacting it anyway? Kenya has been devoured in pieces. It has been brought to its knees. If this law cannot be applied to past crimes like the Goldenberg affair and other similar cases, then there is no point in enacting this Bill.

We would like to enhance the position of the Attorney-General. I would wish that he is given clear instructions as to his functions as stated in Section 26 of our Constitution. Hitherto, the PAC and the PIC reports recommend action against people who have committed corrupt acts, but the Attorney-General has never even taken a single case to court. I hope the authority we will create will take these people to court. The Government has been taken to court by corrupt people for having contravened a bogus section of an agreement, but our Attorney-General has not been going to court to defend the Government. As a result, our Government has been fined excessively. According to some reports, every year we lose between Kshs15 billion and Kshs20 billion through litigation against the Government where we do not defend ourselves. We should clearly tell the Attorney-General that if he cannot defend the Government, then there is no use for him to hold that office. We may as well scrap that office altogether since we are losing Kshs15 million to Kshs20 million a year because of the Attorney-General's failure to defend the Government. We also lose a lot of money to some "cowboy" contractors like the one "Agwambo" referred to. This indicates that this Government is not serious in fighting corruption and protecting and defending the assets of this country.

I talked a little about appointments. We would like appointments to be basically based 80 per cent on merit, 10 per cent on experience, and 5 per cent on rewards. You know if somebody fights for you and you get power, you can give him something small. If we base 80 per cent of appointments on merit, this country will really grow. The procurement system in this country is amongst the worst in the world. You saw a case where somebody was defending himself for selling to the Kenyatta National Hospital (KNH) bedside lockers. The cost of these lockers normally ranges from between Kshs1,000 to Kshs2,000. If you haggle around, you might buy one for Kshs1,500. This person was selling it to the KNH at Kshs50,000 per locker. The man had the guts to tell the entire world that he did clean business!

An hon. Member: No! That is wrong!

Mr. Angwenyi: I would not be surprised if the Speaker got up one day and said he is selling the entire Parliament Buildings for Kshs10 million. It could be done if we accept that kind of situation in procurement. Our people have been praised after they have earned money from corrupt deals. I have a case in point where a certain Kenyan supplied City Hall with 20 pieces of water metres. That person was paid Kshs242 million for 20 pieces of water metres. When he got a cheque, he cashed part of it and attended a church function that we were hosting in my constituency. He asked us how much money we had raised and we told him we had raised about Kshs400,000. When he asked how much it would cost to build the church, he was told it would cost about Kshs1.6 million. He said he would pay the difference of Kshs1.2 million. That same day, it was reported in the newspapers that he had been arrested for stealing money from City Hall and he was now bringing that loot to the church. Everybody prayed for him to go and get more from wherever he got. That is the type of country we live in.

When a person steals a goat or a chicken, he or she is imprisoned for seven years. When somebody steals Kshs1 billion, if he made the mistake of not dishing out some money, he may end up being imprisoned for one or two years. What type of justice is that? Is that the kind of justice we have indicated here on our door in Parliament, which states: "For the welfare of society and the just Government of men"? Our punishment for transgressions of the law should be commensurate with the act that has been committed. Lest I tire my colleagues, I know the Minister for Justice and Constitutional Affairs is a person of integrity and that he will implement what we pass here. Therefore, we will wipe out corruption, maybe, in one or two years' time.

With those few remarks, I beg to support.

Mr. M. Kariuki: On a point of order, Mr. Temporary Deputy Speaker, Sir. We have heard several contributions from hon. Members. We appear to be in agreement. Would I be in order to suggest that the Mover be called upon to reply?

The Temporary Deputy Speaker (Mr. Wetangula): Since it appears to be a popular point of order, I will put the Question that the Mover be now called upon to reply.

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

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to sincerely thank hon. Members from both sides of the House who have spoken so forcefully in support of this Bill. Many people erroneously think that Members of Parliament only think about themselves and that they are not concerned about the welfare of the people of this country. The support that Members of Parliament have shown for this Bill is a clear demonstration that they are committed to fighting corruption and to implementing the Government policy of zero tolerance to corruption.

We have looked very carefully at the comments made on the Bill by hon. Members on both sides of the House. Some very constructive suggestions have been made. We have heard suggestions on anti-corruption courts, powers of forfeiture, freezing of assets, among others. I would like to assure hon. Members that we are going to study these comments as contained in the HANSARD very carefully, and if we find it necessary to adopt some of the proposals, we will incorporate them in amendments during the Committee Stage of this Bill. I would like to assure my friend, Mr. Kajwang, that I love my job very much. I do not want to lose it. Therefore, I will fully support the President in the fight against corruption.

With those few remarks, I beg to move.

(Question put and agree to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PUBLIC OFFICER ETHICS BILL

The Temporary Deputy Chairman (Mr. Poghiso): Hon. Members, we are now in the Committee of the whole House. We will start with the Public Officer Ethics Bill.

Clause 2

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended by inserting the following new definition immediately after the definition of "Commission"-

"Minister" means the Minister responsible for integrity issues;

(Question of the amendment proposed)

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

(Clause 2 as amended agreed to)

Clause 3

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended-

(a) by deleting subclause (2) and substituting therefor the following new subclause-

(2) The Committee of the National Assembly responsible for the ethics of the Commission for-

(a) Members of the National Assembly including, for greater certainty, the President, the Speaker and the Attorney-General;

(b) members of the Electoral Commission and the Public Service Commission; and,

(c) the Controller and Auditor-General.

(d) and (b) in subclause (3) by deleting the words "paragraphs (c), (d) and (e)" and substituting therefor the words "paragraphs (e)";

(c) by inserting, immediately after subclause (10), the following new subclause-

(11) A body that is the responsible Commission for a public officer by virtue of exercising disciplinary control over that public officer remains the responsible Commission notwithstanding the delegation of any disciplinary powers with respect to that public officer.

(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 3 as amended agreed to)

New Clause 3A

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 3-

3A(1) Subject to subclause (2), the Public Service Commission may, by notice in the Gazette, delegate to another person or body any of its powers and functions under Part IV or Part V with respect to classes of public officers specified by the Public Service Commission and that person or body shall be

deemed to be the responsible Commission with respect to such delegated powers and functions.

(2) The Public Service Commission may delegate powers and functions only with respect to public officers in a job group below job group "H" or its equivalent.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, what is the purpose of the Public Service Commission (PSC) delegating its powers and functions to other persons or bodies? Can the PSC not perform its duties? Why does it need to delegate performance of its duties?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, the purpose of the new Clause 3A is to enable the PSC to delegate its powers to senior officers such as Permanent Secretaries (PSs) to handle financial declarations and oversee the enforcement of the ethics code in respect of junior officers. As originally conceived, the Bill only covered senior civil servants. It has now been amended to cover all civil servants. It has been felt that the PSC will be overwhelmed by the responsibility of handling the cases of all civil servants directly. So, it was felt that employees who fall within job groups below Job Group "H" can make their declarations before the PSs.

Mr. M'Mukindia: Mr. Temporary Deputy Chairman, Sir, I support this particular amendment because the original Bill was not clear as to who would be responsible for declaration by officers such as the Controller and Auditor-General. That question was raised in this House several times.

It was not clear how members of the Electoral Commission of Kenya would be disciplined if they breached the Code of Conduct. From what we have seen in previous general elections---

The Minister for Justice and Constitutional Affairs (Mr. Murungi): On a point of order, Mr. Temporary Deputy Chairman, Sir. I am sorry for interrupting the hon. Member, but he should have raised that issue when we were discussing Clause 3. The issues he is raising now have been addressed by amendment to Clause 3. Specifically, part (a) of the amendment replaces subclause (2) with a new subclause (2). Paragraphs (b) and (c) of the new subclause (2) put members of the ECK, PSC and the Controller and Auditor-General under the Committee of the National Assembly responsible for the ethics of Members of Parliament as the Commission responsible for them.

The Temporary Deputy Chairman (Mr. Poghiso): Mr. Minister, you need not go back to

Clause 3 because we have already disposed of it.

Dr. Galgalo: Mr. Temporary Deputy Chairman, Sir, my question is based on the Minister's response to Mr. Mwenje's question. We know that some junior officers front for senior officers such as PSs. So, is there a provision to cover a situation where a junior officer could be fronting for his senior officers?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Speaker, Sir, I do not quite understand what the hon. Member has said. The PSC will delegate some of its powers and functions only in respect of public officers in a job group below Job Group "H" or its equivalent. So, it is the PSC which will delegate its powers. I gave the PS as an example of a senior public officer to whom the PSC may delegate some of its powers and functions.

The Temporary Deputy Chairman (Mr. Poghisi): Dr. Galgalo, are you satisfied with the Minister's explanation?

Dr. Galgalo: Yes, Sir.

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Clause 4

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be deleted and the following new clause substituted therefor-

Establishment
Codes

4.(1) Each Commission of specific shall establish a specific Code of Conduct and Ethics for the public officers for which it is the responsible Commission.

(2) The specific Code established by a Commission shall include all the requirements in the general Code of Conduct and Ethics under Part III and may -

(a) include requirements beyond what is required under the general Code of Conduct and Ethics under Part III; and,

(b) set out how any requirements of the specific or general Code may be satisfied.

(3) No requirement shall be included in a specific Code that would infringe any independence of a public officer provided for by the Constitution or an Act and any requirement of the specific Code or in the general Code of Conduct and Ethics under Part III is of no effect to the extent that it would do so.

(4) Until a Commission has established a specific Code under this section, the general Code of Conduct and Ethics under Part III shall apply as though it were the specific Code established by the Commission.

(Question of the amendment proposed)

Mr. M'Mukindia: Again there, since there are going to be several codes of conduct, who is going to be responsible to see that they tally and that they reflect, for example, the basic principles that this country stands for; the Constitution and things like that? Is there somebody who is going to ensure that all the codes of conducts under various commissions stand for the same principles?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, if I could explain, the effect of Clause 4 is to make what we are calling guiding principles in the Bill to be legally binding principles, and that every Code of Conduct must contain all the principles which are contained in the Bill. So, in fact, the Bill, itself, as it stands now, contains a Code of Conduct.

Mr. Temporary Deputy Chairman, Sir, so, even if there is no Code of Conduct, this Bill is enforceable against all categories of civil servants. Clause 4(2)a) provides that the code may include requirements beyond what is required in the general Code of Conduct and Ethics.

Although we are going to have separate specific codes, all of them are going to contain the guiding principles as set out in the Bill. So, they are now legally enforceable.

*(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 4 as amended agreed to)

Heading of Part II

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the heading of Part II of the Bill, appearing immediately after Clause 4, be deleted and the following new heading substituted therefor-

PART II - SPECIFIC CODES OF CONDUCT AND ETHICS

(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)*

(Heading of Part II as amended agreed to)

Clause 5

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause-

Publication of
Codes **5.(1)** Each Commission specific shall publish the specific
Code of Conduct and Ethics established by it in the
Gazette within ninety days after the commencement of this Act.

(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)

Heading of Part III

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary
Deputy Chairman, Sir, I beg to move:-

THAT, the heading of Part III of the Bill, appearing immediately before Clause 6, be
deleted and the following new heading substituted therefor -

PART III - GENERAL CODE OF CONDUCT AND ETHICS

(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)*

(Heading of Part III as amended agreed to)

Clause 6

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary
Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6 of the Bill be deleted and the following new clause substituted
therefor-

Part sets out **6.** This Part sets out a general code general Code of Conduct and Ethics for
public officers.

(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 6 as amended agreed to)

(Clauses 7, 8 and 9 agreed to)

Clause 10

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 10(3) of the Bill be amended by deleting the words "a souvenir or ornament" and substituting therefor the words "a non-monetary gift".

(Question of the amendment proposed)

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, I have a problem with Clause 10, and I would like the Minister to explain how it will operate. Suppose I go to a Harambee and I am given a goat with monetary value; according to this clause, it can be construed otherwise. I do not know how the Minister takes it. When he says: "Without monetary value" and a goat or such kind of thing would have a monetary value, how would it be treated? Would it not be construed that you were given something with monetary value?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, in the Bill which we are seeking to amend, it talks about a souvenir or ornament. We had problems in classifying things like goats, whether they were souvenirs or ornaments. So, that is why we introduced the new terminology of a non-monetary gift. A monetary gift would involve cash, notes or cheques. But a goat is a non-monetary gift. Anything which is not money is non-monetary.

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Chairman, Sir. I think the Minister is not clarifying anything here. I want him to clarify Clause 10(3), so that in future, when you find yourself in a "Catch 22 situation", where if you are given a car which has a monetary value, would it be construed that you have been given something with monetary value according to this Bill? You can even be taken to court. That is what I wanted the Minister to clarify. How would that be treated?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, that will cover all non-monetary gifts. The Bill has not fixed the value of those gifts because they might change over time. It was felt that, that should be covered by the regulations.

The Minister will have discretion to fix the amounts at the time when the regulations are being published.

The Temporary Deputy Chairman (Mr. Poghio): Mr. Minister, could you explain, for the benefit of Mr. Mwenje and others, whether the goats, cars, honey or whatever he gets as gifts will be construed or misconstrued, to make that very clear?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, if you are given a car, donkey or a goat, all those are caught by this particular Bill. But it will depend on the value of the gift that you are given.

Mr. Temporary Deputy Chairman, Sir, we are saying that we have not yet fixed the value.

The value is going to be fixed through regulations. It could be Kshs1,000 or Kshs10,000. So, if you get a car worth only Kshs500 and it is below the value that has been fixed by the regulations, then it will not be caught by the regulations.

Mr. Temporary Deputy Chairman, Sir, so, the important thing to note is the value which is going to be set, and which has not been set here.

The Temporary Deputy Chairman (Mr. Poghisio): I hope it is clear, Mr. Mwenje! Let us have Mr. G.G. Kariuki.

Mr. G.G. Kariuki: Mr. Temporary Deputy Speaker, Sir, the Minister should be specific on this matter. In economic terms, everything has a value. We will not leave this open for him to decide what should have what value, unless it is described here correctly for our understanding. I think we should do away with all kinds of gifts.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, the hon. Member has made a fairly dangerous proposition, that we should do away with all kinds of gifts. This is not practically possible. We want to reduce the corruptive effect of gifts. Otherwise, we cannot do away with the tradition of giving gifts.

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, the Minister has now responded to the issue of communal interests of this country. Our laws should always take into account the interests of our communities. The Minister said that non-monetary gifts, including goats, would not be considered as gifts. If you visit the Kisii community and you are given a goat as a gift and you refuse to take it, members of the Kisii community will curse you. If they curse you, you will not even have a family.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I would hate the cursing of my cousin by members of his community. As of now, we cannot say that we have accepted or rejected the goat as a gift. It would depend on the value of the goat. So, if the value of the goat is in excess of what will be specified in the regulations, then, unfortunately, you will not be able to take it as a gift. If its value is below what will be fixed in the regulations, then you can take it.

Maj-Gen. Nkaiserry: Mr. Temporary Deputy Chairman, Sir, in connection to what Mr. Angwenyi has just stated, traditional gifts sometimes have no value. But they are highly valued by members of a particular community. For example, in the Maasai community, if you visit me and you are my friend, I will give you a bullock worth more than Kshs50,000. How can you quantify the value of cultural gifts?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, the Minister for Justice and Constitutional Affairs is a Kenyan, and will fix these values through regulations. He will take into account all cultural and traditional aspects which hon. Members have raised. He will be sensitive in fixing the values.

Mr. Mganga: Mr. Temporary Deputy Chairman, Sir, there is a clause in the Civil Service Code of Regulations, which for a long time was not followed, that stipulates what should happen when a civil servant attends a public function and is given a gift. It states that the civil servant is supposed to surrender the gift immediately to the Head of the Public Service.

Mr. Temporary Deputy Chairman, Sir, when the Dream Team was appointed, it tried to implement the provisions of that clause, but, somehow, it did not succeed. With the enactment of this Bill, people who could easily fall victims of it are civil servants.

I want to propose that the Code of Regulations for the Civil Service should be amended immediately this Bill is enacted.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, the Code of Regulations for the Civil Service is subsidiary legislation. This will be an Act of Parliament, and so will automatically supersede any subsidiary legislation.

The Temporary Deputy Chairman (Mr. Poghisio): We have dwelt on this clause for a long time.

(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 10 as amended agreed to)

Clause 11

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 11 of the Bill be amended by inserting the following new subclause immediately after subclause (4)

(4A) The regulations may govern when the personal interests of a public officer conflict with his official duties for the purposes of this section.

(Question of the amendment proposed)

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I am not so sure that I know the meaning of the word "govern" as used in Subclause (4A). The subclause states:-

"The regulations may govern when the personal interests of a public officer conflict with his official duties for the purposes of this section"

Does it mean that regulations will prevail? What does the word "govern" mean?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, the meaning of the word "govern" here is "determine". The subclause means that the regulations may determine when the personal interests of a public officer conflict with his official duties for the purposes of this section. So, the word "govern" should be interpreted to mean "determine".

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

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 13(1) of the Bill be amended by deleting the words "the interests of Kenya" and substituting therefor the words "the security interests of Kenya".

(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 13 as amended agreed to)

*(Clauses 14, 15, 16, 17, 18, 19, 20, 21,
22, 23 and 24 agreed to)
Clause 25*

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 25(1) of the Bill be amended by deleting the words "A public officer described in the First Schedule" and substituting therefor the words "Every public officer".

(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 25 as amended agreed to)

Clause 26

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 26 of the Bill be deleted and the following new clause substituted therefor-

When
declarations
must be made.

26.(1) The annual declaration shall be submitted by each public officer in December of each year.

(2) The statement date of an annual declaration under subsection (1) shall be the first day of November of the year in which the declaration is required.

(3) Within thirty days after becoming a public officer, the public officer shall submit an initial declaration.

(4) The statement date of an initial declaration under subsection (3) shall be the date the public officer became a public officer.

(5) Within thirty days after ceasing to be a public officer, the former public officer shall submit a final declaration.

(6) The statement date of a final declaration under subsection (5) shall be the date the public officer ceased to be a public officer.

(7) The following shall apply with respect to a person who is a public officer on the day the administrative procedures relevant to that public officer are first published under section 32-

(a) the public officer shall submit an initial declaration within sixty days after the administrative procedures are published and

(b) the statement date of an initial declaration under paragraph (a) shall be the date the administrative procedures are published.

(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 26 as amended agreed to)

Clause 27

The Minister for Justice and Constitutional Affairs (Mr. Murungi):- Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 27 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause-

Clarifications

27.(1) A person who has submitted a declaration to a Commission shall provide, without undue delay, any clarification requested by the Commission if the request is in writing and is made within six months after the declaration was submitted to the Commission.

(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 27 as amended agreed to)

(Clause 28 agreed to)

Clause 29

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 29 of the Bill be amended -

(a) in subclause (4), by inserting the following new paragraph immediately after paragraph (a) —

(aa) the police or any other law enforcement agency;

(b) by inserting the following new subclause immediately after subclause (4)

(4A) If a different Commission becomes the responsible Commission for a public officer, the Commission that was the responsible Commission may give any information collected under this Part to the Commission that has become the responsible Commission.

(Question of the amendment proposed)

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

(Clause 29 as amended agreed to)

(Clauses 30, 31 and 32 agreed to)

Clause 33

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 33 of the Bill be deleted and the following new clause substituted therefor-

Amendment of
Schedule

33.(1) Subject to subsection (2), the Minister may, by notice in the Gazette, amend the Second Schedule to this Act.

(2) The Minister may not amend the Second Schedule to this Act unless a draft of the amendment has been laid before, and has been approved by resolution of, the National Assembly.

(Question of the amendment proposed)

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I would like to support the proposed amendment to **[Mr. Kajwang]** Clause 33, especially Clause 33(2), which says:-

"The Minister may not amend the Second Schedule to this Act unless a draft of the amendment has been laid before, and has been approved by resolution of, the National Assembly."

I support this amendment because Ministers have sometimes gazetted amendments to certain schedules, with devastating effects, without bringing them to the House. Sometimes they make the schedules become more powerful than the parent Act, and subsequently amending the Act by some reverse activities.

I would like to propose that next time, we add some paragraphs like paragraph 2 to all the amendments to schedules so that we protect ourselves from overzealous Ministers. Thank you very much, Mr. Temporary Deputy Chairman, Sir.

(Applause)

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary

Deputy Chairman, Sir, I support.

*(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 33 as amended agreed to)

(Clause 34 agreed to)

Clause 35

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 35 of the Bill be amended-

- (a) in subclause (1), by deleting paragraphs (a) and (b) and substituting therefor the following new paragraphs—

(a) take the appropriate disciplinary action; or

(b) if the Commission does not have the power to take the appropriate disciplinary action, refer the matter to a body or person who does have that power.

(b) by inserting the following new subclause immediately after subclause (4)-

(5) The regulations may govern what disciplinary action is appropriate for the purpose of subsection (1).

(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 35 as amended agreed to)

(Clauses 36, 37, 38, 39, 40 and 41 agreed to)

First Schedule

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the First Schedule to the Bill be deleted.

(Question of the amendment proposed)

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

(First Schedule deleted)

Second Schedule

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Second Schedule to the Bill be amended in paragraph 8a by deleting words "(Statement date is the first day of the month preceeding the month in which the declaration is due.)".

(Question of the amendment proposed)

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

(Second Schedule as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Mr. Poghiso): Hon. Members, we have just completed the Public Officer Ethics Bill, and now we will go to the next Bill, The Criminal Law (Amendment) Bill.

THE CRIMINAL LAW (AMENDMENT) BILL

*(Clauses 2, 3, 4, 5, 6, 7, 8,
9, 10, 11 and 12 agreed to)*

New Clause

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

THAT, the Bill amended by inserting immediately after Clause 13 therefor a new clause as follows:-

13A. The Penal Code is amended by inserting the following heading and new sections immediately after Section 122-

SAMPLING FOR DNA IDENTIFICATION

122A. (1) A police officer of or above the rank of inspector may by order in writing require a person suspected of having committed a serious offence to undergo DNA sampling procedure if there are reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect committed the alleged offence.

(2) In this Section-

"DNA sampling procedure" means a procedure, carried out by a medical practitioner, consisting of-

(a) the taking of a sample of saliva or a sample by buccal swab;

(b) the taking of a sample of blood;

(c) the taking of a sample of hair from the head or underarm; or

(d) the taking of a sample from a fingernail or toe nail or from under the nail, for the purpose of performing a test or analysis upon the sample in order to confirm or disprove a supposition concerning the identity of the person who committed a particular crime; "serious offence" means an offence punishable by imprisonment for a term of twelve months or more.

Suspect may
volunteer

122C. (I) Nothing in section 122A shall be construed as preventing a suspect from undergoing a procedure by consent, without any order having been made:

Provided that every such consent shall be recorded in writing signed by the person giving the consent.

(2) Such consent may, where the suspect is a child or an incapable person, be given by the suspect's parents or guardian.

Order or
consent to be
proven

122D. The results of any test or analysis carried out on a sample obtained from a DNA sampling procedure within the meaning of section 122A shall not be admissible in evidence at the request of the prosecution in any proceedings against the suspect unless an order under section 122A or a consent under section 122C is first proven to have been made or given.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new Clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

(Clauses 14, 15 and 16 agreed to)

Clause 17

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

THAT, Clause 17 be amended by deleting paragraph (a) and substituting therefor the following paragraph-

(a) in subsection (1), by deleting the words "five years, with or without corporal punishment" and substituting therefor the words "twenty-one years";

(Question of the amendment proposed)

(Question, that 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 17 as amended agreed to)

(Clauses 18, 19 and 20 agreed to)

Clause 21

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

THAT, Clause 21 be amended in paragraph (e) by deleting the expression "after paragraph (c)" and substituting therefor the expression "after paragraph (d)".

(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 21 as amended agreed to)

(Clauses 22, 23, 24, 25, 26, 27, 28, 29 and 30 agreed to)

Clause 31

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

THAT, Clause 31 be deleted and the following clause substituted therefor-

Amendment of
section 162
of Cap. 63

31. Section 162 of the Penal Code is amended by deleting all words appearing after paragraph (c) and substituting therefor the following words and proviso-
is guilty of a felony and is liable to imprisonment for fourteen years:
Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if-

- (i) the offence was committed without the consent of the person who was carnally known; or
- (ii) the offence was committed with that person's consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act.

(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 31 as amended agreed to)

(Clause 32 agreed to)

Clause 33

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

THAT Clause 33 be amended by deleting paragraph (b) and substituting therefor the following paragraph-

(b) by deleting the words "seven years", with or without corporal punishment" and substituting therefor the words "twenty-one years".

(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 33 as amended agreed to)

(Clauses 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102 and 103 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Public Officer Ethics Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE PUBLIC OFFICER ETHICS BILL

Mr. Poghiso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Public Officer Ethics Bill and approved the same with amendments.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Education, Science and Technology (Prof. Saitoti) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Public Officer Ethics Bill be now read the Third Time.

The Minister for Education, Science and Technology (Prof. Saitoti) seconded.

(Question proposed)

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, failure to pass this Bill has been used before as a scapegoat to deny us donor funding.

Since the House has passed this particular Bill, we hope we will see the difference soon.

(Applause)

(Question put and agreed to)

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

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

Hon. Members, we will go back to the Committee of the whole House again, for the Attorney-General to finish his bit.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE CRIMINAL LAW (AMENDMENT) BILL

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Criminal Law (Amendment) Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE CRIMINAL LAW (AMENDMENT) BILL

Mr. Poghiso: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole House has considered The Criminal Law (Amendment) Bill and approved the same with amendments.

The Attorney-General (Mr. Wako): Mr. 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 (Mr. Murungi) seconded.

(Question proposed)

(Question put and agreed to)

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that the Criminal Law (Amendment) Bill be now read the Third Time.

The Minister for Energy (Mr. Ochilo-Ayacko) seconded.

(Question proposed)

(Question put and agreed to)

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

Mr. Deputy Speaker: Next Order!

BILL

Second Reading

THE PENSIONS (AMENDMENT) BILL

Mr. Deputy Speaker: Hon. Members, as you can see on the Order Paper, I am supposed to move that Bill, but I am not in a position to do so until tomorrow.

(Applause)

(Second Reading deferred)

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time for the interruption of the business of the House. Therefore, this House stands adjourned until tomorrow, Thursday, 17th April, 2003, at 2.30 p.m.

The House rose at 8.05 p.m.