

## NATIONAL ASSEMBLY

### OFFICIAL REPORT

Wednesday, 19th March, 2003

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

The Code of Ethics for Members of Parliament

*(By the Assistant Minister for Planning and National Development (Mr. Kombo) on behalf of the Chairman of Powers and Privileges Committee)*

Annual Report and Accounts of Agricultural Development Corporation for the year ended 31st March, 1998 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Agricultural Development Corporation for the year ended 31st March, 1999 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Agricultural Development Corporation (Kulalu Ranch) for the year ended 31st March, 1998 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Agricultural Development Corporation (Kulalu Ranch) for the year ended 31st March, 1999 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Agricultural Development Corporation (Lands Limited) for the year ended 31st March, 1998 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Agricultural Development Corporation (Lands Limited) for the year ended 31st March, 1999 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Agricultural Development Corporation (Garissa Irrigation Project) for the year ended 31st March, 1998 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Agricultural Development Corporation (Garissa Irrigation Project) for the year ended 31st March 1999 and the Certificate thereon by the Auditor-General (Corporations).

*(By the Assistant Minister for Agriculture and Livestock Development (Mr. Munyao) on behalf of the Minister for Agriculture and Livestock Development)*

### NOTICE OF MOTION

#### ADOPTION OF MEMBERS' CODE OF ETHICS

**Mr. Kombo:** Mr. Speaker, Sir, on behalf of the Chairman of the Powers and Privileges Act, who is you, I beg to give notice of the following Motion:-

THAT, this House adopts the code of conduct for Members of Parliament pursuant to Section 9 of the National Assembly, Powers and Privileges Act, Cap.6 of the Laws of Kenya laid on the Table of the House on Wednesday 19th March, 2003.

### ORAL ANSWERS TO QUESTIONS

*Question No.066*

## REHABILITATION OF SIGOR POLICE POST HOUSES

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

(a) whether he is aware that the staff houses and the buildings of Sigor Police Post require urgent rehabilitation; and,

(c) what steps he is taking to rehabilitate these buildings.

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

(a) Yes, I am aware.

(b) The Government has plans to rehabilitate police posts and residential housing for police officers. The rehabilitation programme has been drawn up and is scheduled to commence in the coming financial year. This will, however, depend on Government cash flow.

**Mr. Rotino:** Mr. Speaker, Sir, I asked this Question during my earlier parliamentary term; from 1992 to 1997. The answer that I was given then was that:- "These houses will be rehabilitated when money will be available." That is the only police post that serves about 20,000 people. It is the only police post in the south of that constituency. Could the Assistant Minister consider including some money for this project in the Supplementary Estimates which are coming so that it is used on the rehabilitation of these houses because they are uninhabitable?

**Mr. Tarus:** Mr. Speaker, Sir, indeed, the houses of police officers are in unfavourable conditions and, for the benefit of this House, the NARC Government made a pledge that one of its objects was to ensure that the environment for the security personnel is adequately addressed so that they can be effective. It is not only Sigor Police Post that requires urgent attention. Very many police stations and posts have projects that have not been completed. I would like to inform the House that my Ministry has taken the grievances of the police stations and officers seriously. In a meeting that was held in February, this issue came up. The Ministry is going to address this problem.

**Mr. Rotino:** On a point of order, Mr. Speaker, Sir. I have asked a specific Question, but the Assistant Minister is giving a general answer.

**Mr. Speaker:** Order! That is not a point of order! You cannot rule out the Assistant Minister's answer. He has addressed the question of Sigor Police Post and other police posts. So, can you ask him a supplementary question on that specific issue of Sigor Police Post? Would you like me to give you the Floor?

**Mr. Rotino:** Yes, Mr. Speaker, Sir. Could the Assistant Minister consider building police posts because this is an area inhabited by cattle rustlers and we need *askaris* to be there? Could you even provide tents to these *askaris* to enable them guard the area?

**Mr. Gitau:** Mr. Speaker, Sir, it is common knowledge nationwide that police stations do not have vehicles and they are inadequately staffed. If any of them do have vehicles, they are Mahindra vehicles, which are famous because the highest speed they can do is 50 kms per hour downhill. What will the Government do to make sure that police stations are equipped with vehicles that can be used to combat crime? A good example is Thika Police Station which has had no vehicles for the last five years and it is in a densely populated town.

Another good example is Githurai Police Station without enough staff. It has ten to 15 police officers! What will the Government do about providing police stations with vehicles?

**Mr. Tarus:** Mr. Speaker, Sir, with regard to the question of vehicles for police stations, I did inform this House, and I hope the hon. Member was around that time--- I informed the House that my Ministry is, in fact, sourcing vehicles for police stations and posts to enable them be effective in the performance of their duties.

With regard to shortage of staff, my office will address the issue. As hon. Members are aware, the Police Department recruits personnel annually. I am sure this year the Government will address the problem, although the issue of providing adequate police officers for the nation is both a short-term and long-term plan for the Office of the President.

**Mr. Sasura:** Mr. Speaker, Sir, the police houses are so dilapidated to an extent that newly-posted police women are housed in the houses where there are newly-married couples. That is where they are considered safe. Could the Assistant Minister consider leasing houses outside the police stations for these officers, while waiting for the long-term programme of the Government to construct new police houses?

**Mr. Tarus:** Mr. Speaker, Sir, the accommodation needs of the police force are a top priority of the

Ministry.

*Question No.074*

ENROLMENT CAPACITY OF MTCs

**Mr. Sambu** asked the Minister for Health:-

- (a) whether he could table a list of all medical training colleges in the country;
- (b) what the enrolment capacity for each college is and what vacancies are available in each course per college; and,
- (c) if he could ensure that each constituency gets a fair number of places in the 2003 intake to these colleges.

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

- (a) I hereby table a list of all the medical training colleges in the country.
- (b) I further table the enrolment capacity for each college and the vacancies available in each course per college.
- (c) I will ensure that there is fairness in the 2003 intake to these colleges.

**Mr. Sambu:** Mr. Speaker, Sir, what are the opportunities to fill those vacancies in those colleges and the rest, as asked in part "c" of the Question and, to ensure that the Assistant Minister is fair in allocating places to various constituencies? Will he do it in advance because the colleges are now recruiting students to MTCs? Could the Assistant Minister publish in advance the places available for each constituency so that there is equitable distribution of vacancies?

**Mr. Konchella:** We will do so, Mr. Speaker, Sir.

**Mr. Khamasi:** Mr. Speaker, you have seen how easy it has been for the Assistant Minister to get away with such a serious matter in this country. Over a long time KMTC has not been fair in the way it has distributed the places available for training of medical staff. Now that he says that he will publish the vacancies available, could he tell us when we will have a list or the number of places which will be available? Could he tell us when that list will be out so that we are not taken by surprise?

**Mr. Konchella:** Mr. Speaker, Sir, I want to inform this House that there is a criteria for the selection of students. If the hon. Members wish to know, I will inform them so that when they get one or two vacancies, they will not complain.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to demean our thinking? The criteria has already been published. The requirements to be fulfilled by the students have been such criteria, but what we are requesting for is the publication, in the newspapers of the number of places available to each constituency, course per course.

**Mr. Konchella:** Mr. Speaker, Sir, the hon. Member should know that some of the criteria might not be available in his constituency.

*(Laughter)*

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. I am a Kenyan and the Assistant Minister has to withdraw that remark!

**Mr. Speaker:** Relax!

**Mr. Sambu:** I am relaxed, Mr. Speaker, Sir. Is the Assistant Minister imputing the motive that Nandi students do not qualify for these vacancies? Kapsabet produces some of the top students in the country with triple "As"!

**Mr. Konchella:** Mr. Speaker, Sir, we would like to know during which era.

**Mr. Billow:** Mr. Speaker, Sir, this is a very important matter to all of us, and I think the Ministers have a bad habit. My colleague here has not answered the question. Could he tell us what are those criteria that some of the constituencies may not have, because they have been published and we have them?

**Mr. Speaker:** Order! That is a supplementary question! By the way, he said to everything, "Yes"! "Yes"! The only thing he has not said actually was the date when he was going to publish the quota. That is all there was.

Mr. Assistant Minister, are you likely to publish that quota?

**Mr. Konchella:** Mr. Speaker, Sir, the Director of KMTC will publish the criteria within the course of time.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. When will he publish it and which is the day?

**Mr. Speaker:** Order! We cannot run the office of the Minister from here. Can we? Next time we will even ask him what time!

**Mr. Khamasi:** On point order, Mr. Speaker, Sir. The Chair can remember that some time back there was a ruling that a Question like this one where the attachments are supposed to be made, particularly with the list of the training colleges that the Minister concerned has got to attach and, in fact, distribute to hon. Members such list---

**Mr. Speaker:** That is correct!

**Mr. Khamasi:** Your orders, Mr. Speaker, Sir, are being overlooked! Could you make another ruling?

**Mr. Speaker:** I will not make another ruling. I will ask Mr. Konchella one question: Why are you defying my orders?

**Mr. Konchella:** Mr. Speaker, Sir, I have complied with your orders. I brought 15 copies as you ordered.

**Mr. Speaker:** You have brought 15 copies?

**Mr. Konchella:** Yes, Mr. Speaker, Sir.

*Question No.041*

UTILIZATION OF LATF FUNDS  
IN KISUMU MUNICIPALITY

**Mr. Speaker:** Question No.041 is deferred by consent of the parties concerned.

*(Question deferred)*

*Question No.049*

ELECTRICITY SUPPLY TO TANA RIVER DISTRICT

**Mr. Wario** asked the Minister for Energy:-

(a) whether he is aware that Tana River District is the only district without electric power supply in the country; and,

(b) what plans he has to supply power to the district.

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

(a) The Minister is aware.

(b) A feasibility study was carried out in 1995 on the possibility of connecting a 132 KV line from Kilifi to Bura via Garsen and Hola at a cost of Kshs3 billion on the basis of March 2003 prices. Due to the enormous amounts involved, my Ministry is looking for different ways of raising the funds required. My Ministry is also exploring the possibility of starting a phase development through a modular main grade to serve Bura, Garsen and Hola.

**Mr. Wario:** Mr. Speaker, Sir, I appreciate the Assistant Minister's answer. But 40 years of darkness is big suffering to the people of Bura Constituency. Could the Assistant Minister consider to give it the first priority in the financial allocations of 2003/2004?

**Mr. Kiunjuri:** Mr. Speaker, Sir, I agree that the people of the coast region and North Eastern Province have been suffering for the last 30 years. At the same time, the previous Government ignored their concerns. However, the amount involved is Kshs3 billion which can only be sourced from both the Government of Kenya and the donors. So, I will not give an undertaking whether the area will be considered in the 2003/2004 financial year. But what I can assure the House is that, immediately we establish the right sources of this money, I will be able to give a comprehensive answer.

**Mr. Wario:** Mr. Speaker, Sir, the amount of money in question is for the entire district, which is 34,968 square kilometres wide. My concern is Bura Constituency. Could the Assistant Minister assure the House that he is going to give it the first priority in the next financial year?

**Mr. Kiunjuri:** Mr. Speaker, Sir, we are also considering other ways of providing electricity to those areas, especially by establishing isolated diesel stations, and at the same time the interconnected systems which can be able to provide those areas with power in good time. In the meantime, since the amount of money involved is enormous, I would not like to commit the Government just to please the hon. Member. But if any opportunity

arises, I can assure you, you will be considered.

**Mr. Kamama:** Mr. Speaker, Sir, Tana River District is the only district in this country without electricity. Could the Assistant Minister assure the House that he is actually going to acquire a generator that will take care of the only district headquarters without electricity or power in the whole country?

**Mr. Kiunjuri:** Mr. Speaker, Sir, we are talking of covering an area of 250 kilometres. To ensure that you get power we require the 32 KV line. Right now, we have carried out a study and established that we can be able to supply power to Garsen. The 32 KV line may not be adequate. At the same time, we have an isolated diesel engine in Lamu which is not adequate. The line we are trying to instal will also cover Lamu. To be able to acquire one isolated diesel machine, the Government will require Kshs500 million to purchase it. It will cost four times the cost of the actual electric line to maintain diesel engine. I would like the House to know that we are looking at the possibility of providing those engine diesels at a viable cost.

**Mr. Sasura:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to say that they are looking for possibilities of bringing in diesel engines when we know that, two years ago, when there was a power shortage in this country, the Government imported thermo engines in the country, and now that there is power in the hydro electric power stations those engines are not being used?

**Mr. Kiunjuri:** Mr. Speaker, Sir, Mr. Sasura is my friend, but I would like to inform the House that the engines we acquired from, for example, Westmont and Iber Africa were acquired to supplement the power supply for the whole nation and not a particular area. The isolated diesel stations that I am talking about are, for example, those similar to that one in Garissa.

**Mr. Speaker:** Next Question!

*Question No.045*

DEMARICATION OF ROKA SETTLEMENT SCHEME

**Mr. Khamisi** asked the Minister for Lands and Settlement:-

- (a) whether he is aware that Roka Settlement Scheme in Bahari, Kilifi District has not been demarcated despite promises by the Government to do so; and,
- (b) whether he could inform the House when the demarcation will be undertaken to ease the plight of squatters in the area.

**The Assistant Minister for Lands and Settlement** (Mr. Ojode): Mr. Speaker, Sir, before I reply to this Question, let me say that last week I promised to table a document showing how money was spent on each and every settlement scheme in relation to a Question which was asked by my friend Mr. Sambu. He wanted to know the total acreage and the cost.

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

I beg to reply.

(a) The Ministry does not have a settlement scheme by the name Roka. However, there is Tezo/Roka Settlement Scheme which is already demarcated and registered.

(b) The demarcation of the scheme has been completed and the beneficiaries are already getting their title deeds once they finalise payments of settlement funds trustees dues.

**Mr. Khamisi:** Mr. Speaker, Sir, I would like to inform the Assistant Minister that Tezo and Roka are one and the same thing. This is a very old settlement scheme which was started in 1960. It covers a very large area---

**Mr. Speaker:** Mr. Khamisi, this is not a debate; it is Question Time.

**Mr. Khamisi:** Mr. Speaker, Sir, the Assistant Minister has misled this House because I have a list of 75 people who have not been registered in that settlement scheme. We have had a lot of strangers coming to that area with fake title deeds and evicting our people. Could the Assistant Minister confirm or deny that this settlement scheme has not been registered?

**Mr. Ojode:** Mr. Speaker, Sir, it is an on-going exercise. I have a list of the number of allottees who were beneficiaries. There are also those who have benefitted and have been issued with title deeds. Once an individual finishes paying the amount which is required for the title deed, the Ministry normally issues the title deed. There are 109 people whose titles have already been registered. I would also want to table the list so that he could go

through it and ask supplementary questions on it. If he wants to know the number of allottees, I also have the list, but I will not table it because he does not require it as at now.

**Mr. Speaker:** How many are they?

**Mr. Ojode:** Mr. Speaker, Sir, they are 1,195 names.

**Mr. Khamisi:** Mr. Speaker, Sir, you can see from the list that the number of people who have been registered is very small compared to the list that he is talking about. Could he tell us when the rest of the people will be registered?

**Mr. Speaker:** But he has already said it.

**Mr. Ojode:** Mr. Speaker, Sir, let me tell the House again. I have said that once they pay the amount which is due, I will release the title deeds immediately.

**Mr. Speaker:** Very well. Questions by Private Notice!

### QUESTIONS BY PRIVATE NOTICE

#### OPERATIONS OF PRIVATE CONTAINER TERMINALS

**Mr. Omingo:** Mr. Speaker, Sir, I beg to ask the Minister for Finance the following Question by Private Notice:-

- (a) Is the Minister aware of the existence of private container terminals?
- (b) How much cargo has been cleared through these terminals and how much revenue has been collected?
- (c) What is the justification for the existence of these terminals since they provide an avenue for revenue leakage?

**The Assistant Minister for Finance (Mr. Katuku):** Mr. Speaker, Sir, I beg to reply.

- (a) I am aware that there are private container terminals in the country.
- (b) The quantity of goods cleared through these terminals included 425 containers and 387 motor vehicles. Between July 2001 and February 2003, the amount of revenue collected was Kshs3,189,954,000.
- (c) The reasons for justifying the existence of these terminals is:
  - (1) To decongest the Port of Kilindini by allowing removal and clearance of goods through transit checks.

- (2) To facilitate trade by improving timely clearance of goods through the checks.

- (3) To encourage investment and participation by private companies in handling imports.

Indeed, only Kenya Ports Authority was handling such goods. There was serious congestion of cars at the port leading to delays in clearance of goods. This posed a great threat to the industry.

The flow of goods through the Port of Kilindini has increased over the years. The facilities at the port have not improved to cope with the increased demands. In terms of ensuring that there is no leakage of revenue collection, my Ministry has put proper assessment on the collection of duties on all goods in the transit sheds. Physical escort of goods destined for inland transit sheds, like Pepe in Athi River is done to ensure they are received intact. The transit goods are no longer cleared through the transit shed. They are entered and cleared from the port. Only goods meant for home consumption are cleared through the transit sheds. They must fully comply with the conditions regulating importation of goods into the country.

Further, the transit goods sheds operators are required to maintain proper records for all goods cleared through the sheds in order to facilitate audit by the Customs Department. Finally, operations of the transit sheds are constantly being reviewed in order to seal any possible areas of revenue leakage.

**Mr. Omingo:** This is a very sensitive matter, Mr. Speaker, Sir. Since it is the NARC Government's intention to seal off all the loopholes where we are losing revenue, it should note that this is one of them. Is the Assistant Minister aware that what is actually happening in these transit sheds is domestication of what is supposed to be a Government operation into somebody's bedroom? There is a big likelihood of compromising the officers who are verifying the goods. Can he confirm or deny that the private container terminals are an arrangement to bring in uncustomed goods by some well-connected people who were in the former Government?

**Mr. Katuku:** Mr. Speaker, Sir, if the hon. Member has any tangible information, I will appreciate it. I will then carry out the necessary investigations to confirm whether what he is telling me is true because, as of now, I do not have that information.

**Mr. Ndambuki:** Mr. Speaker, Sir, could the Assistant Minister tell us how many private container terminals are there and could he also give us a breakdown as to how many containers they have cleared?

**Mr. Katuku:** Mr. Speaker, Sir, I have that information and the first one is Kipevu Inland Container

Depot which is in Mombasa. It has cleared 907 containers and 22 motor vehicles, and we have been able to collect revenue amounting to Kshs330,776. We also have Freight Forwarders Trucks Logistics which is also located in Mombasa where we have been able to collect revenue amounting to Kshs381 million. We also have Mombasa Container Terminal which is also located in Mombasa and we collected Kshs40,778,152. We have Mitchell Cotts which is located in Mombasa. We have been able to collect Kshs61,996,646. We also have Awanad Container Freight still in Mombasa where we have been able to collect Kshs501 million.

In Nairobi we have Pepe in Athi River where we have been able to collect Kshs563,998,761. We managed to collect Kshs7,411,454 from Express Kenya which is also in Nairobi.

**Mr. Kabogo:** Mr. Speaker, Sir, what other categories of inland container depots are there and under what authority do they operate? Should it be by a statute, what category does that statute give so that the Assistant Minister is clear? Also the Assistant Minister has not answered a question on the leakage---

**Mr. Speaker:** Let him first answer your question!

**Mr. Kabogo:** It is the leakage of revenue which is very important.

**Mr. Speaker:** He did answer that!

**Mr. Katuku:** On the question of authority, it is contained in Section 9 of the Customs and Excise Act.

**Mr. Obwocha:** Mr. Speaker, Sir, is this NARC Government serious about revenue collection when it allows---

**The Assistant Minister for Lands and Settlement (Mr. Ojode):** Yes, we are serious!

**Mr. Obwocha:** Mr. Speaker, Sir, could you ask the Government to be quiet?

*(Laughter)*

What I am saying is that these private container terminals are a source of leakage of revenue. Since this has not worked well in the past, although we were making noise about it, we are asking the Assistant Minister to scrutinise these container terminals afresh because they are bringing in uncustomed goods including drugs and guns.

**Mr. Speaker:** Surely, the Assistant Minister asked those hon Members who have that information to tell him. You are now saying, on the Floor of this House, that some of those container depots are used to bring in guns and drugs. Could you prove that?

**Mr. Obwocha:** Mr. Speaker, Sir, you and I know that there is proliferation of small arms in this country. In fact, the other day, the Vice-President was burning them at Jamhuri Park.

**Mr. Speaker:** Order! I expect hon. Members to honestly live under the title "hon. Members". They must be responsible for the statements they make. There are many ways, of course, in which small guns can get into this country. What in essence we are saying is that Questions, under the Standing Order should not be speculative. They must be factual. Therefore, Mr. Obwocha, ask the Assistant Minister factual questions, not speculative.

**Mr. Obwocha:** Mr. Speaker, Sir, on that point I agree with you. Let me ask him a specific question: Since we are losing revenue because of those private container terminals, could the Assistant Minister re-investigate these ones and order that they be closed down?

**Mr. Katuku:** Mr. Speaker, Sir, as I said earlier, we are ready to close any inland terminal if we get any evidence that it is being used as a route to bring in such goods. I would be very glad if I get any information and I will close it down immediately.

**Mr. N. Nyagah:** Mr. Speaker, Sir, could the Assistant Minister tell this House whether there is any collaboration between the owner of this particular one in Athi River, where we saw Dr. Kituyi inspecting goods, and the people who are bringing in counterfeit goods?

**Mr. Katuku:** Mr. Speaker, Sir, you will agree with me that the business of the container handlers is not to inspect what the container contains. That is the business of another department. **[Mr. Katuku]** There is no way they can collude with this company in Athi River. We have our officers at the terminal. We are improving this by bringing in scanners so that we can even see what is in the container at Kilindini Harbour. So, I cannot speculate on this.

**Mr. Omingo:** Mr. Speaker, Sir, the issue of revenue leakage cannot be underestimated. A week ago, the Minister for Trade and Industry actually inspected one of the container terminals and he found them to contain counterfeit goods. These were containers brought in for the purpose of congesting the port. There is a lot of inefficiency at the port. That is the reason why we are asking the Assistant Minister to consider closing that private container depot immediately to save this Government revenue leakage and counterfeit goods.

**Mr. Katuku:** Mr. Speaker, Sir---

**Hon. Members:** Say "yes"!

**Mr. Speaker:** Order! He is the one to answer. He should not be intimidated. Mr. Katuku, answer the way you think you should do so.

**Mr. Katuku:** Mr. Speaker, Sir, I want to assure the hon. Member and this House that we, as a Government, are equally concerned. As to the question of whether or not counterfeit goods can come in through these hinterland container sheds, we know that such goods can also come in through the Port of Mombasa. So, that is not the issue. The issue is that we are looking at a way of coming up with scanners so that we can see what is being brought into the country. As to the question whether we can close down these container terminals, I would like to say that we are looking at the policy with the intention of reviewing it. So we will come up with a clear position on this.

**Mr. Speaker:** Very well. Next Question, Mr. Khamasi.

#### ARREST OF NATIONAL SOCCER PLAYERS

**Mr. Khamasi:** Mr. Speaker, Sir, I beg to ask the Minister for Gender, Sports and National Heritage the following Question by Private Notice.

Could the Minister explain the circumstances under which National Soccer players under 17 years, Francis Ochieng' and Nicodemus Anunda, were arrested?

**The Minister for Gender, Sports and National Heritage** (Mr. Balala): Mr. Speaker, Sir, I beg to reply.

The National Soccer under 17 years Players; Francis Ochieng' and Nicodemus Anunda were truly arrested on 27th February, 2003, for falsifying their ages in applications made on travel documents. The arrest came about as a result of investigations by the Immigration Department. The following day they were charged in the High Court with the offence of making false and misleading statements for purposes of obtaining favour.

*(Loud consultations)*

**Dr. Ali:** On a point of order, Mr. Speaker, Sir. Could you order Mr. Wanjala not to make noise because we want to hear what the Minister is saying?

**Mr. Speaker:** Order! Mr. Wanjala, what are you up to?

**Mr. Wanjala:** Mr. Speaker, Sir, I am not even talking. I do not know if this man is sick!

**Dr. Ali:** Mr. Speaker, Sir, Mr. Wanjala has been insulting and harassing hon. Members---

**Mr. Speaker:** Order! Mr. Wanjala, you must not insult your colleagues. You must not, under any circumstance, insult your colleagues. It is dishonourable! It is against the rules of the House. You are now ordered by the Chair to withdraw that insult and apologise to the whole House.

**Mr. Wanjala:** Mr. Speaker, Sir, I was not making noise! I was only consulting quietly here with the hon. Member. However, I withdraw and apologise to the whole House. I would also like to warn the hon. Member not to insinuate that I was making noise.

**Mr. Speaker:** Order! I think hon. Members must realise that the main reason why I am hired by this House is to ensure that there is orderly conduct of business and that this House retains its dignity. If you continue talking like that to Mr. Nyagah, or whoever you were talking to, I will take action. I would like the dignity of this House to be maintained. Mr. Wanjala has just apologised without any condition. Dr. Ali, hon. Members do not make noise. They consult loudly. That is probably what Mr. Wanjala did. I did not hear him consult loudly, but he probably was consulting loudly. He does not make noise. Now withdraw, please, Mr. Wanjala, unconditionally.

**Mr. Wanjala:** Mr. Speaker, Sir, I apologised and withdrew unconditionally. It was Dr. Ali who was supposed to apologise for alleging that I was making noise!

**Mr. N. Nyagah:** On a point of order, Mr. Speaker, Sir. I rise on a point of which is very serious indeed. In this House we do have Dr. Oburu and Mr. Raila. Could you make a big difference between the two Nyagahs in this House? There is Mr. Norman Nyagah. That is me. The other one is Joe. Could he be called Joe and I be called Nyagah because when you say "Nyagah is making noise", we cannot differentiate who is who? Since I am the Whip, I may suffer because of it.

*(Laughter)*



**Mr. Speaker:** Order! Order! By the way, is there any relationship between the two hon. Members?

**Mr. N. Nyagah:** My mother has confirmed to me that "Joe" is actually my elder brother.

**Mr. Speaker:** Very well. I will leave that for the family to arbitrate.

*(Laughter)*

Let us proceed to Mr. Sambu's Question by Private Notice.

**Mr. Khamasi:** On a point of order, Mr. Speaker, Sir. My Question by Private Notice has not been disposed of.

**Mr. Speaker:** You are right. You can see that when hon. Members go astray; they occasionally carry Mr. N. Nyagah along with them.

So, Mr. Balala, could you answer Mr. Khamasi's Question?

**The Minister for Gender, Sports and National Heritage** (Mr. Balala): Mr. Speaker, Sir, I replied to the hon. Member's Question.

**Mr. Speaker:** Mr. Khamasi, it was for you to ask the Minister a supplementary question.

**Mr. Khamasi:** Mr. Speaker, Sir, I brought this Question here because the two boys, Messrs. Ochieng and Anunda, who were members of the Under-17 National Football Team, come from slums in my constituency. You realise that most of our good football players come from the slums.

**Mr. Speaker:** Order! Order! Hon. Members, allow me to interrupt this Question for a while. There is something I have not done before, but I must do it now.

#### COMMUNICATION FROM THE CHAIR

##### PRESENCE OF CUBAN DEPUTY MINISTER IN THE SPEAKER'S ROW

Hon. Members, we do have a guest who must leave for a meeting at 3.30 p.m. Therefore, I would wish to welcome the hon. Roman Ripoll Diaz, Deputy Minister in the Ministry of Foreign Affairs, Investment and Economic Co-operation, Cuba, who is seated in the Speaker's Row. He is visiting Kenya as the leader of the Cuban delegation to a Joint Ministerial Meeting of Kenya and Cuba, which is being held in Nairobi. On your behalf, I would like to wish him a happy and fruitful stay in Kenya.

*(Applause)*

Mr. Khamasi, you can now continue from where we left.

**Mr. Khamasi:** Mr. Speaker, Sir, I was saying that most of our football players come from the slums. The two boys, who were arrested allegedly for making false statements, come from poor families which live in slums. Is the Minister aware that the two boys were actually helped by senior Kenya Football Federation (KFF) officials to obtain their documents? Now, the KFF officials have been left to go scot-free as the boys were arrested.

**Mr. Balala:** Mr. Speaker, Sir, I would like to correct the hon. Member that Messrs. Ochieng and Anunda are no longer boys; they are above 17 years of age. Secondly, I am not aware that KFF senior officials were involved in giving false statements. However, I am aware that the final signatures on the application documents were appended by KFF officials.

**Mr. Sungu:** Mr. Speaker, Sir, the Minister must be aware that the KFF has its own constitution. He should also realise that his rush to tackle this matter publicly rather than privately, at the administrative level, may result in Kenya being penalised by FIFA and CAF. Could he, therefore, tell us how he established that the ages of these boys were more than 17 years when they joined the Under-17 National Football Team?

**Mr. Speaker:** Mr. Sungu, the Minister said that the two players were not boys!

**Mr. Sungu:** Mr. Speaker, Sir, I know that the two were football players. However, I would like to know the medical tests he conducted on them as a Minister to verify their ages, and the documents on which this information is recorded. He took the unilateral decision as the Minister instead of letting the KFF, which is responsible for such cases, take a decision on the matter.

**Mr. Balala:** Mr. Speaker, Sir, an article on this issue was published in the Press. So, I took it upon myself to investigate it. We interviewed the two players in the presence of the Coach of the Under-17 National Football Team and the Commissioner of Sports. We verified that Mr. Francis Ochieng was over-age after he told

us his true age. Even his national identification card attested to this fact.

**Mr. Khamasi:** Mr. Speaker, Sir, you have heard the Minister say that the signatures on the final documents that enabled these boys to obtain the fake travel documents were actually appended by senior KFF officials. What action has he taken to ensure that those officials are also punished instead of him letting them move around freely as if they are innocent?

**Mr. Speaker:** Mr. Minister, in what capacity did the KFF officials sign the application documents?

**Mr. Balala:** Mr. Speaker, Sir, the Secretary-General of the KFF signs the final document after the approval of the technical team. My Department has carried out an investigation into this matter. I expect a full report on it next week.

**Mr. Speaker:** Very well. Let us proceed to Mr. Sambu's Question.

#### SHORTAGE OF PRIMARY SCHOOL TEACHERS

**Mr. Sambu:** Mr. 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 there is an acute shortage of primary school teachers and as a result in most schools, the ratio of teacher to pupil has gone up from 1:40 to 1:50?

(b) What is he doing to solve this problem?

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

(a) The Ministry is aware of the shortage of primary school teachers. The teacher to pupil ratio has especially gone up due to the implementation of the free primary education policy by the current Government.

(b) The Ministry is now analysing data to establish the actual enrolment and determine the teacher requirement in primary schools.

**Mr. Sambu:** Mr. Speaker, Sir, I appreciate the Government's policy of free primary education, which has made education accessible by many children who had hitherto not been attending primary school. However, I would like to know when the Ministry will employ the additional teachers. As I speak now, some primary schools do not offer practical teaching because there are over 100 children to one teacher.

**Mr. Gumo:** Mr. Speaker, Sir, as you are aware, there is no provision in the Budget for immediate recruitment of teachers. Furthermore, not all schools have a high enrolment of children. In fact, some schools do not have enough students. The problem is that most parents want to take their children to schools that perform well in national examinations. That is why some schools have more children than others. However, we have sent out a team to find out and let us know the exact number of schools that have high pupil/teacher ratios. Once we get that information, we will sit down and decide on what to do.

**Mr. Karaba:** On a point of order, Mr. Speaker, Sir. I would like the Assistant Minister to tell us whether the free primary education policy also entails quality education. If his answer is in the affirmative, I would like him to tell us whether a teacher to pupil ratio of 1:50 would guarantee quality education.

**Mr. Gumo:** Mr. Speaker, Sir, it is only a month now since we started the implementation of this policy, and it is very difficult to tell whether the children are getting quality education or not. However, as I said, we will very soon know the truth after I receive reports from the field.

**Mr. Bifwoli:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to say he does not know whether a teacher to pupil ratio of 1:50 guarantees quality education? Does he really know what he is doing in his Ministry?

*(Laughter)*

**Mr. Gumo:** Mr. Speaker, Sir, even the hon. Member might not know whether children in primary school are receiving quality education or not. As I said earlier, we have sent officers to the field---

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

**Mr. Speaker:** Mr. Wanjala, you had better raise a point of order!

**Mr. Gumo:** Mr. Speaker, Sir, I am responding to a point of order.

**Mr. Speaker:** Order! Order! Mr. Wanjala, I hope you are going to raise a point of order since you are not new like Mr. Bifwoli, who is still learning the ropes. You have been around before, and I hope that you are truly on a point of order.

**Mr. Wanjala:** Mr. Speaker, Sir, the Assistant Minister happens to come from Luhyaland, and I know

that he has never been a teacher. I am talking as a former teacher. We are talking about providing quality education to our children, so that they can pass the Kenya Certificate of Primary Education (KCPE) examination and proceed to secondary schools. Is he in order to imply that a teacher/pupil ratio of 1:50 guarantees quality education?

**Mr. Speaker:** Order, Mr. Wanjala! That is a very frivolous point of order! See the door!

*(Mr. Wanjala withdrew from the Chamber)*

**An hon. Member:** Forgive him!

**Mr. Speaker:** Next time! Could you ensure that Mr. Wanjala does not step on any parliamentary premises for the balance of the night?

**Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir. Mr. Wanjala is a source of humour and pleasure in this place---

**Mr. Speaker:** That is a frivolous point of order! Out!

*(Applause)*

*(Mr. Angwenyi withdrew from the Chamber)*

[**Mr. Speaker**]

Order! Who was answering the question? Who is shouting there: "Question! Question?"

**Mr. Owino:** My names are Oyugi Owino Likowa, Member of Parliament for Migori Constituency!

**Mr. Speaker:** Order, now! Mr. Likowa, I will forgive you because you are new. You stand and I see you or fail to see you! You do not stand there and say "Question! Question!" If you do that again, it will be disorderly!

**Mr. Owino:** Mr. Speaker, Sir, I have a question directed to the Assistant Minister. We are aware that the Ministry has done very well to give us free primary education. We are also aware that there is a shortage of teachers all over the country. Is the Assistant Minister aware that there are some private schools with Teachers Service Commission teachers paid by the Government?

**Mr. Gumo:** Mr. Speaker, Sir, I am not aware!

**Mr. Mwenje:** Mr. Speaker, Sir, in some of our schools, the teachers were actually being paid by the parents. When the Government came up with free primary education which we appreciate, the parents stopped contributing money for paying teachers. Could the Assistant Minister assure us that he will send teachers to the schools where parents were contributing money to pay the teachers, or take over the teachers whose salaries were contributed by the parents?

**Mr. Gumo:** Mr. Speaker, Sir, the mapping exercise is going on and we are going to get a report from the field of how many teachers we need per school. The moment we get that, we shall know how many teachers we are going to employ. That is because we must have enough teachers in every primary school. We do not want children to have poor education. As I said earlier, we have some community schools which are not really private, but were being run by the communities. We have decided to give those community schools some teachers, instead of closing them down.

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

**Mr. Speaker:** Yes, at your own risk!

**Mr. Khamasi:** Mr. Speaker, Sir, is it in order for the Assistant Minister to avoid answering Mr. Mwenje's question, which was that there were some schools where teachers were being paid by the parents? He wanted the Assistant Minister to confirm whether the Government will pay them, and he has not answered that.

**Mr. Gumo:** Mr. Speaker, Sir, I have answered him! I said that the education officers are now going round to find out how many teachers are needed in every primary school. That will include the teachers who were being paid by parents. The moment we get a list, we shall know how many teachers are needed in every school and we shall employ them as and when necessary.

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

**Mr. Speaker:** I do not want anybody to take a risk now! Who is that hon. Member?

**Mr. J.K. Kilonzo:** Mr. Speaker, Sir, my names are Kiema Kilonzo, Member of Parliament for Mutito Constituency. Is the Assistant Minister aware that the problem of teachers is very acute in some schools? A case in point is Nzeeni Primary School, in my constituency, where there are only two teachers teaching the entire

school from Standard I to Standard VIII. What is the Ministry doing to ensure that schools which have few teachers are given the first priority?

**Mr. Gumo:** Mr. Speaker, Sir, I think it is the same question! I said that we are going to have a report from the education officers. It is not only that school that has a shortage of teachers. In fact, there are many primary schools that have shortage of teachers. The moment we get a list, we shall know how many additional teachers we need. We will employ them as and when necessary.

**Mr. Sambu:** Mr. Speaker, Sir, the Assistant Minister should be aware that there are things called return casualties, which flow in on a monthly basis from the district education offices. Therefore, they know the number of teachers in every school. Could he include some funds in the Supplementary Estimates that are coming before this House, to enable recruitment of teachers in April? After all, there are many children who are out there and have completed teacher training colleges.

**Mr. Gumo:** Mr. Speaker, Sir, the moment we get resources, it will be done. It is a countrywide problem. It is not only in one district. You must understand that free primary education started two months ago! You do not expect us to be so perfect within two months, so as to ask so many questions! You should be thanking us for having done that!

**Mr. Ogur:** Mr. Speaker, Sir, we have zonal TAC tutors, education officers and assistant education officers in every area. They have records of teachers who die every week. They really die! Those people should be worried about those records in advance. Two months is too much! When will the records be made available, so that we can correct the situation? Why can they not immediately fill the vacancies which arise every week through death?

**Mr. Gumo:** Mr. Speaker, Sir, teachers who die are replaced immediately.

**Hon. Members:** No! No!

**Mr. Gumo:** You are not teachers! Are you? Teachers who die are replaced immediately.

**Dr. Ali:** The Assistant Minister is misleading the House! There are several teachers who died in my constituency and they have never been replaced for the last six years! Why is he misleading the House?

**Mr. Speaker:** As a matter of interest, it looks like when you made that statement, the whole House showed disapproval! How many teachers, say in February, died and were replaced countrywide?

**Mr. Gumo:** Mr. Speaker, Sir, it is only new teachers who are not being employed. But replacement of dead teachers has always been done. It could have delayed a bit, but if you have a list of some teachers who have died from your constituency, bring it to me and we shall replace them immediately!

**Mr. Speaker:** Order! It does help the House if we follow the question. I think Mr. Sambu informed the House, and correctly in my view, that, every month, the returns from district education officers around the country are made as a matter of your own requirement, showing how many teachers are in every school, how many have died, how many have absconded, how many have been dismissed and how many have retired. So, you have all that information in your office even now? Do you not?

**Mr. Gumo:** Mr. Speaker, Sir, I agree that we have that information. The problem, as I have said before, is that there is a shortage of primary school teachers. Even if we replace the dead ones, sometimes this is never noticed. The replacement exercise has always been going on. We will recruit more primary school teachers to be deployed in schools which have been hard hit by the shortage.

#### IMPORTATION OF SUGAR OVER THE LAST TWO MONTHS

**Prof. Olweny:** Mr. Speaker, Sir, I beg to ask the Minister for Trade and Industry the following Question by Private Notice.

- (a) How much sugar has been imported into the country within the last two months?
- (b) Which countries are the sources of the sugar imported into this country?
- (c) What measures has the Government put in place to curtail dumping of sugar that is killing the sugar industry?

**The Minister for Trade and Industry (Dr. Kituyi):** Mr. Speaker, Sir, I beg to reply.

(a) The total amount of sugar imported into the country during the months of January and February, 2003 was 28,036 metric tonnes valued at Kshs636,662,087.

(b) The sources of the sugar imported into the country were Egypt, Malawi, Swaziland, Zimbabwe, South Africa, United Kingdom and Pakistan.

(c) The measures that the Government has put in place to inhibit access of our domestic market by foreign sugar include the following.

(i) The rate of duty on sugar has been raised to 100 per cent, or by Kshs12 per kilogramme of sugar, whichever is higher, as a way of discouraging importation of sugar.

(ii) The Government has initiated surveillance and monitoring of sugar importation. A full-fledged transit monitoring unit has been formed to monitor and escort sugar in transit.

(iii) Under Article 61 of COMESA Protocol and Trade, Kenya negotiated and was allowed to apply safeguard measures on sugar imports, limiting imports to 200,000 metric tonnes per year for the period between 1st January, 2002 to 31st December, 2002. The period between 31st December, 2002, when the safeguard measures expired, and 15th March, 2003, when through negotiation we succeeded in getting an extension for the measures, importers of sugar may have taken advantage and imported more sugar into the country.

(iv) Finally, the above notwithstanding, the Kenya Government, through the just concluded Council of Ministers of COMESA in Khartoum in March, 2003, managed to secure an extension by one year of the safeguard measures on sugar for the period between January, 2003, and December, 2003, retaining the ceiling of total sugar imports at 200,000 metric tonnes.

**Prof. Olweny:** Mr. Speaker, Sir, we know very well that the sugar industry in this country is in a major crisis. Why do we still allow so much sugar to be imported into this country, while the sugar millers cannot get rid of their stocks of sugar? As a result, the millers cannot pay the farmers what is due to them.

**Dr. Kituyi:** Mr. Speaker, Sir, the crisis in the sugar industry in Kenya is not consequent upon dumping of external sugar. This House has been acquainted with specific statements made about distortions in the production and marketing of sugar, and the corruption index that sequenced into what was loaded onto the farmer, making domestically produced sugar none competent in our own markets. We have to address structural problems at home and not excuse them on importation of foreign sugar.

Secondly and importantly, Kenya has to learn to play the big partner in COMESA. Kenya accounts for 37 per cent of all exports within the COMESA region from country to country. We must find out how we can structure our industry so that we do not have to force our Minister for Trade and Industry to go begging like the smaller partners for safeguard measures against weaker economies. The dumping problem during the past two months is not the reason why there has been a long-term crisis in the sugar sector.

**Mr. Ndambuki:** Mr. Speaker, Sir, the Minister has said that the Government will put some measures in place. When will these measures be in place?

**Dr. Kituyi:** Mr. Speaker, Sir, on Friday last week, I succeeded in convincing my colleagues, the Ministers of Trade from all the COMESA countries, at our Council meeting in Khartoum to accept that Kenya can extend by another one year the limit of 200,000 metric tonnes of sugar imported from the COMESA region. Under the COMESA Treaty, we are not supposed to stop anybody from selling sugar in our country. But we hope that the structural problems in the sugar industry will have been addressed by the end of this year, for us to trade freely with the other COMESA countries. That measure is already in place.

**Mr. Shitanda:** Mr. Speaker, Sir, the Minister read out names of countries from where sugar was imported into this country. Could he single out countries which are not members of COMESA, from which sugar was imported into this country?

**Mr. Speaker:** But he did so!

**Dr. Kituyi:** Mr. Speaker, Sir, I can even do better. Apart from naming which countries are not members of the COMESA - if Mr. Shitanda does not know which ones are not - I will even present the list of all the sugar importations into this country by country, the importing company, the quantity and the duty paid to the Kenyan Government and where it was paid. It is my understanding that South Africa, the United Kingdom and Pakistan are not member countries of COMESA. In the same breath, I will now present here a list showing the returns on who imported sugar during the last two months, how much sugar was imported and how much tax was paid. The list also shows from which countries sugar was imported into the country.

*(Dr. Kituyi laid the document on the Table)*

**Mr. Twaha:** Mr. Speaker, Sir, the previous Government closed down my business in order to appease the farmers and the robbers at sugar factories. I was sacrificed and my business was closed down. I have experienced extreme hardship as a result of malicious prosecution. Would the Minister advise me now to sue the State for compensation? I was wrongfully blamed for the problems in the sugar sector. The problems are still there despite the fact that my business was closed down.

**Dr. Kituyi:** Mr. Speaker, Sir, the hon. Member was an Assistant Minister in the former Government, the

Government he says was so hostile to business. I am glad to be part of the Government which assures hon. Members that it will play by the rules. There is no corruption index in this Government. We have set up the rules, and if hon. Members play by the rules, we will play their game.

**Mr. Speaker:** That is the end of Question Time. Mr. Khamisi, Dr. Kituyi and Mr. Salat are the only hon. Members who asked to be given a chance to make statements. I will begin with the Minister for Trade and Industry.

### MINISTERIAL STATEMENT

#### IMPORTATION OF COUNTERFEIT GOODS INTO THE COUNTRY

**The Minister for Trade and Industry** (Dr. Kituyi): Mr. Speaker, Sir, earlier on this afternoon, there was a Question concerning the entry of counterfeit goods into this country. I wish to make a Ministerial Statement related to that matter.

On 11th March, 2003, I led a team of officers from my Ministry, the Kenya Revenue Authority (KRA) and the Customs and Excise Department to M/s Pepe Inland Container Terminal, after my officers had persuaded me to be suspicious of a container imported into this country by a company called M/s Bugiman, which I had delicensed three weeks earlier. The immediate previous container of this company had been stripped by my officers at Kindilini Harbour, and had been found to contain counterfeits of not only fake imitations of patented products, but also of batteries which had not been declared in the bill of lading and the manifest.

Mr. Speaker, Sir, upon investigations, the container was found to contain 700 cartons of main distribution switches of various ratings brand named anchor brands. The total number of switches was found to be 27,600. The relevant officers, particularly in our Weights and Measures Department and the Kenya Bureau of Standards took the samples for examination and inspection. In the meantime, the persons who had tried to irregularly influence my officers had been arrested and charged in a court of law. That case continues and I cannot talk about it. Except for the agreement, they have nothing to do with Bugiman Enterprises. After we stripped the last container of Bugiman Enterprises and found it to contain counterfeit goods we requested the importers to re-export the products. They have not shown up to claim their products. On the basis of that, I wish to present before the House the comprehensive report of the testing of the samples which has conclusively demonstrated that the entire consignment of switches which we stripped on 11th March this year at Pepe Inland Container Terminal were counterfeit and not good enough for the market. This afternoon, I gave instructions that the entire consignment be destroyed.

*(Dr. Kituyi laid the document on the Table)*

*(Applause)*

**Mr. Speaker:** Order, hon. Members! Will you Ministers listen to me? Take a little time to listen to me. This is how Government business should be transacted! Make your statement in Parliament and not in funerals, Harambees or other such strange places!

*(Applause)*

Come and address this House. Those who will ignore that may not find the House receptive to whatever else they say. So, well done, Dr. Kituyi!

*(Applause)*

### POINTS OF ORDER

#### INVESTIGATION INTO MTWAPA POLICE STATION SHOOTING

**Mr. Khamisi:** Mr. Speaker, Sir, I would like to ask the Minister of State, Office of the President in charge of Internal Security and Provincial Administration to make a Ministerial Statement on the following. On

Monday, 17th March, 2003, a police constable at Mtwapa Police Station in Bahari Constituency went on a killing spree and killed three people. I would like the Minister to issue a statement to explain the surrounding of the shooting.

Mr. Speaker, Sir, I would also like to know whether those people or families of the victims would be compensated as a result of this sad incident. I would also ask the Minister to assure this House that the investigations which will be carried out will be done justly.

RECORDING OF STATEMENT BY  
KOIBIYOT SHOOL HEADMASTER

**Mr. Salat:** Thank you, Mr. Speaker, Sir. Actually, this is the third time I am requesting the Minister of State, Office of the President in charge of Internal Security and Provincial Administration to give a Ministerial Statement in this House. I had been promised that the Statement would be made today. On Wednesday, 12th last week, I requested for a Ministerial Statement from the Minister of State, Office of the President in charge of Internal Security and Provincial Administration in connection with harassment of school officials in Koibiyot Secondary School. I requested for a Ministerial Statement from the Minister on why the school headmaster, the area assistant chief and the Board of Governors (BOG) Chairman were forced to record statements after hon. Members of Parliament who had visited my constituency on 23rd February, this year made a Harambee contribution towards the school.

**Mr. Speaker:** Well, you are repeating the same thing! Mr. Tarus, why have you not responded?

**The Assistant Minister, Office of the President** (Mr. Tarus): Mr. Speaker, Sir, I thought the Ministerial Statement was supposed to be made tomorrow in the afternoon.

**Mr. Speaker:** Was it?

**Mr. Salat:** Mr. Speaker, Sir, in fact, in the HANSARD here, the Minister had promised to make the Statement yesterday. I have the copy of the HANSARD here. I went to see the Minister yesterday and he promised to make the Statement today. So, for how long will we wait for him to make that Ministerial Statement?

**Mr. Speaker:** Until tomorrow! I now order Mr. Tarus to make that Statement tomorrow. By the way, if you look at your Standing Orders, you will find that every Thursday, at the end of the normal Sitting time, that is from 6.30 p.m. to 7.00 p.m., 30 minutes are allocated to hon. Members to make all manner of statements in the House. You will see your Whip and apply to be given a chance to make your statement. That is called "Zero-hour" locally. The hour does not move any more. So, for half an hour, you will be at liberty to make any statement, compliment anybody except to condemn or make a general statement. This is done for only 60 seconds. You should apply to the Whip before 1.00 p.m. tomorrow. This is another avenue through which you can make any comments; make a compliment to a good sportsman or pay homage to somebody. You can use that avenue every Thursday. It is called "zero-hour". So, if you want to zero-in on anything, see your Whip to certify on the forms he has. Let the form be brought to me for approval in the usual manner.

MINISTERIAL STATEMENT

OWNERSHIP OF MASINGA/KIAMBERE DAMS

**The Minister of State, Office of the Vice-President and Ministry of National Reconstruction** (Mrs. Kilimo): Mr. Speaker, Sir, I would like to make a Ministerial Statement on a question that was raised by Mr. Muturi on 12th March this year concerning or regarding the legal status and ownership of certain hydro-electric power dams.

The Vice-President and the Minister for National Reconstruction visited Masinga and Kiambere Multi-purpose Reservoirs on 6th March, 2003 while on a familiarisation tour of TARDA projects in the area. The Masinga and Kiambere Multi-purpose Dams were built by TARDA in 1981 and 1987 respectively to guarantee and sustain adequate river water flows for power generation, irrigation and public water supply. In addition, this guaranteed a reliable source of revenue for TARDA from bulk power sales and thus from 1981 to 1988, TARDA was able to wean itself from dependency on the Treasury.

With these two water reservoirs, the Authority achieved its financial independence it aimed for until May 1988 when for unexplained reasons, the Kenya Power and Lighting Company (KPLC) stopped paying TARDA for their bulk power supply. This breach forced TARDA to default in loan repayment thereby precipitating a crisis. This state of affairs has led TARDA to file a court case against the KPLC which is at arbitration stage and the

Ministry is following up this matter.

On the ownership of Masinga and Kiambere Hydro-Power Project, the Masinga and Kiambere Dams were constructed and owned by TARDA until 29th June, 2000, when TARDA was forced by the then Government to transfer generating and transmission assets to KenGen. The transfer was executed under duress. It should be observed that the main thrust of the power sector reform was to separate power generation, transmission and distribution within the KPLC. The advice of the Attorney-General on the matter was that without novation and consideration to re-assign their contractual obligation for all the parties involved, the transfer would be null and void. TARDA, as one of the principal parties has never participated in any novation exercise, hence the whole transfer was illegal. It should be noted that the whole transfer was made on the guise of pressure from the World Bank. Indeed, this is not true. The World Bank in its performance audit report No.1480 of June, 1995 underlined the importance of returning the power assets to TARDA. The observation of the Vice-President and the Minister for Natural Reconstruction that the existence of the KenGen is shrouded in mystery remains valid. This is because no records were available at the time from the Registrar of Companies office and existence files at KenGen, as was acknowledged by my colleague Minister for Energy does not confirm this. Finally, let it be noted that TARDA did not at any time transfer its assets to the KPLC.

**Mr. Muturi:** Mr. Speaker, Sir, this statement even throws the matter into more confusion because it has been mentioned by the Minister, that TARDA has never transferred its assets from either KenGen or Kenya Power Company. So, as you can see, the power sector---

**Mr. Speaker:** Mr. Muturi, we are not debating. If you want to seek any clarification, do so.

**Mr. Muturi:** Mr. Speaker, Sir, this is what I am driving at. So, there are issues which TARDA committed itself to during its formation and those are the issues that the Vice-President and Minister for Natural Reconstruction was alluding to when he said that KenGen was non-existent. Could the Minister, perhaps, try to find out for the benefit of the country and the residents of the areas where TARDA is mandated to operate, what TARDA actually owns and controls so that they can be able to access what is due to them from TARDA?

**The Minister of State, Office of the Vice-President and Ministry of Natural Reconstruction (Mrs. Kilimo):** Mr. Speaker, Sir, it seems the Questioner did not understand my statement. KenGen is shrouded in mystery and all these were KANU gimmicks to get power.

**Mr. Samoei:** On a point of order, Mr. Speaker, Sir. I think it is, indeed, very dangerous to introduce retrogressive politics in Government institutions that exist as of right. KenGen does business---

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

**Mr. Samoei:** Mr. Speaker, Sir, I am getting to that. KenGen exists as a Government entity and, indeed, does business with international communities. It has loans guaranteed by the Kenya Government. Is it in order for this House to be treated to simple politics that KenGen is shrouded in mystery and even for the Minister to suggest that it does not exist when we have Government people who are paid with Government funds?

**Mr. Speaker:** Order, hon. Members! I even do not understand what this is all about. Is it a turf war because whose property is KenGen? Is it Government property or individual property? Does the property belong to TARDA? Is it Government property or individual property? Are we sitting here as a House to arbitrate over the turf war between the Vice-President and Minister for Natural Reconstruction and the Minister for Energy? We have no such time. Go and sort it out in-house.

Next Order!

## BILL

### *Second Reading*

#### THE PUBLIC OFFICER ETHICS BILL

*(The Minister for Justice and Constitutional Affairs on 13.3.2003)*

*(Resumption of Debate interrupted on 18.3.2003)*

**Mr. Speaker:** Mr. Wetangula, you were on the Floor. How much time did you have?

**Mr. Wetangula:** Mr. Speaker, Sir, I had ten minutes.

**Mr. Speaker:** Go on!

**Mr. Wetangula:** Thank you, Mr. Speaker, Sir. At the rise of the House yesterday, I was pointing out the



flaws in this Bill which need to be corrected if we have to pass it. I had pointed out that, for instance, Clause 20 needs to be re-written or expunged altogether because the Minister seems to have fallen victim to the drive of a feminist agitationist in this country, who looks at everything with blinkers of gender and not with reality.

Mr. Speaker, Sir, we want a Bill like this to promote friendship and harmony in working places and not unnecessary fear. The Bill has also left out a lot of segments of the society that are critical to wholesome ethical behaviour in our country. If you look at the First Schedule, it is shocking that in Government, the ethics are supposed to apply to officers in Job Group "P" and above. I am told Job Group "P" is that of a Deputy Secretary. It means that over 90 per cent of the Civil Service is excluded from the operations of this Bill. Over 90 per cent of the police are excluded from this Bill.

Mr. Speaker, Sir, if you go to the Judiciary you will find that the bulk of its staff are excluded from this Bill. I can tell you that as a practising lawyer, the biggest nightmare that we have in the law courts comes from clerks not even from judges and magistrates. Files disappear in the hands of clerks. The biggest nuisance on our roads are not Assistant Commissioners of Police. They are the constables who molest everybody. They are the ones who must be regulated first.

When you go to a Government office, those who are ready to tell you a file is missing are not Deputy Secretaries, but those junior officers who we need to have their conducts and behaviour regulated by this Bill.

Mr. Speaker, Sir, I did say yesterday that the Minister should look at our society as a whole and regulate the conduct of everybody and not pick out a few people. It is surprising that with all the cries, noises and confusion going on in the sports administration in this country, the sports administrators have been completely left out in the ethics set out in this Bill and yet we do know that our football has collapsed because of unethical behaviour of the administrators. We have white men roaming all over Kenya poaching our athletes, taking them abroad and running them like slaves in order to make money from them without any regulations. We have so many examples to show. I want to urge the Minister that before we get to the end of the debate of debate on this Bill, he should be on his drawing board drafting a comprehensive amendments to the various clauses in this Bill.

Mr. Speaker, Sir, the Bill provides for the creation of a code of behaviour which is to be done by a commission, but running through the Bill, every single segment in public life and Government will have its own code. I want to urge the Minister to have a uniform code of conduct for all people in public service who we need to regulate. We cannot have a separate code governing the Judiciary and another governing the police and so on.

Mr. Speaker, Sir, there is Clause 13 which I fail to understand why the Minister included it in this Bill.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

For the purposes of this Section, an individual is a foreigner if he is not a citizen of Kenya. What does this mean? A foreigner is certainly not a citizen of Kenya! Why should we put it in the Bill that an individual is a foreigner if that individual is not a citizen of Kenya? This goes to show the weaknesses that we have in the drafting section, either the Ministry of Justice and Constitutional Affairs or the Attorney-General's Chambers. Such shoddy drafts only goes to undermine the work which we are doing here! If we have to let such a draft to go through unnoticed, tomorrow everybody will wonder whether the Ninth Parliament had any right-thinking people or not.

Mr. Deputy Speaker, Sir, I also want to ask hon. Muite - I have looked at his Committee's Report, and I did not see it pinpointing any such shoddy drafts in the Bill. I would want to urge Committees of the House---

When we drafted the Standing Orders with my learned friend, Dr. Godana, we even indicated that the House Committees have the power and the right to invite experts, if they have any shortage of capacity to assist them to do their work so that we get good laws passed in this House.

Mr. Deputy Speaker, Sir, to wind up my contribution on this Bill, I want to urge the Minister, as I indicated in my opening remarks yesterday, that this Bill has wonderful intentions; but it has totally hopeless, narrow and parochial objectives that will not help us pass a good law. It is incumbent upon the Minister, before we reach the stage of deciding whether to pass it as law or not, to make the necessary changes so that we make a law that will serve this country and cover everybody.

As I end my contribution, I want to point out as I did, that the Constitution of this country, Section 82 or 84, says that a law is a bad law if it discriminates against any single segment of the society. This Bill is attempting to do exactly that and it is headed towards becoming a bad law, if we pass it.

With those few remarks, I beg to reserve my support until I see the amendments.

**Mr. Deputy Speaker:** Very well. Mr. M. Kilongo, I understand you are the one who is responding on behalf of the Leader of the Official Opposition. Therefore, you have unlimited time.

**Mr. M. Kilonzo:** Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity to respond to this Bill on behalf of the Leader of the Official Opposition.

From the outset, I would like to say that we wholly support the concept and philosophy of the ethics in the public sector. We totally agree with all those sentiments that have been expressed about the need to establish proper standards of ethics, and conducts right across the public sector. We also identify with the various sectors that have been identified. I hasten to say, with respect to the Chair, that I believe the Minister is short-changing the country because he has left large areas of public sector that ought to have been covered by the requirements for ethics. I will demonstrate this in a little while.

Once we accept that this country requires ethics and standards of ethics, we have only gone across over one hurdle. The major hurdle remains and, that is, what sort of law should this House enact for purposes of bringing to the country the sort of standards of ethics that are necessary in order to establish the principles that should govern our public life.

Mr. Deputy Speaker, Sir, I would also like to say very clearly and categorically that we are totally opposed to corruption and, we are completely opposed to the entrenchment of corruption that has taken place over the years. We will be very ready to welcome a legislation that ensures that by virtue of public ethics, that terrible piece of conduct in this country like corruption is eliminated. I would like to remind this House that, in fact, the Minister did say, and it is quite true he has attempted to follow word-for-word a Bill that had been introduced by the former KANU Administration as far back as June, 2002, and that, that Bill had been passed. Now, it is that desire for ethics that I would be addressing in some of my submissions this afternoon.

Mr. Deputy Speaker, Sir, I would like, with the Chair's kind permission, to first of all, say that the first thing that this country should not accept is a shoddy legislation. I associate myself with the remarks of hon. Wetangula, who has just spoken, that this Bill should not see the daylight if it is left in the manner it is. In the first place, you will notice that the Minister has not even suggested either a commencement date to the Bill or even the method of determining when it will come into force. I appreciate, and I hasten to say that I am aware of the provisions in the law that create interpretations as to how a law comes into force, if the commencement date is not expressly provided. But I dare say that, if we are establishing a law for ethics, even the Minister should have the ethical standards of saying when the Act will come into force expressly, not to wait for interpretation as we saw in the fiasco that arose over the Donde Bill. Therefore, any support that we give to such legislation is conditional upon the Minister coming to terms with the fact that, an ethics law must itself be ethical so that it meets the minimum threshold of judgement as to whether it is a proper law or not. Therefore, it should contain a commencement date.

The other thing that you will notice is that, in the list of areas where public officers are to be found, the Minister, for some reason, and I do not want to attribute any ill motive to him has left out things like tribunals. In fact, the Industrial Court has not even been mentioned. Tribunals like the ones which govern and handle disputes arising from rents and such other disputes among landlords and tenants have not been included. We would also want to say that areas like public transport - we all know that public buses, *matatus* are licensed as Public Service Vehicles (PSV) - I am convinced without a doubt that this is a suitable area where we should also include those services that go directly to the service of the public.

Now, one of the most amazing thing about this Bill is Part III. I would like to invite those hon. Members who have this Bill to look at part III. You will see that Part III comprises all the things that the Government has been lording it over to us; saying that these are the areas under which the NARC Administration will eliminate corruption and so on. Yet, if you look at Part III, particularly the objective, at page 93, I do not know what the Minister was thinking about. He says as follows:

"Part III provides model principles of ethics and conduct called guiding provisions."

These principles themselves have no force of law.

Mr. Deputy Speaker, Sir, if we were to pass this Bill the way it has been drafted, with those objectives, we will automatically eliminate everything that the Ministers and the Government has been saying as being the foundation under which we can eliminate corruption. This is because, first of all, what the Minister is saying, is that the entire Part III has no force of law, yet they are saying in Clause 6(2), and I quote:

"The guiding provisions do not apply directly to public officers, except to the extent that they are incorporated into a code of conduct and ethics that applies to them."

Mr. Deputy Speaker, Sir, I say this again without fear of contradiction, that Parliament is being asked to pass a law that is not a law! I want to repeat something I said before, with the Chair's kind permission, that the only method for the Legislature to assert its rightful place in this country's total sovereignty and power, is to pass good legislations. I am not aware of any country in the world where Parliament sits and passes a law; puts clauses in the Act and at the same time tell the public, including the officers who are to be affected: "Sorry, these

provisions have no force of law". Parliament will be acting in vain if we were to pass this legislation. Everything has been addressed, extensively by Ministers, for example, Mr. Raila. Under Clause 6 all the way to Clause 24, Ministers have no force of law. They only will have force of law through subsidiary legislations or regulations like the ones that Parliament is going to pass. I dare say that a subsidiary legislation is simply a subsidiary legislation. It is sub-ordinate to law.

Therefore, if we pass this law the way it is, Parliament will be ceding its authority to legislate for this country to those commissions which will be making these regulations. To make matters worse, when those regulations conflict - as not doubt they will - with this Act, then everybody in this country will be left wondering as to who said that a public officer shall to the best of his ability carry out his duties and ensure that the services he provides are provided efficiently and honestly. We are saying that although we like that Clause, it will have no force of law. Even if you translate it and remove it and put it in the regulations, it will be sub-ordinate to the Act itself.

Mr. Deputy Speaker, Sir, I would like to say that this country has enormous resources in drafting of legislation. For one, I am unable to find any reason whatsoever why the hon. Minister who prepared this Bill considered that he should bring what is obviously a waste of time to this House. In fact, it would have been better that we wait for this Commission to make these regulations, and once they make them, then we come and adopt them and say, this is now the law of Kenya on ethics. In fact, that approach then would work. But to tell us that the guiding provisions do not apply directly to public officers except to the extent that they are incorporated into a code of conduct and ethics, that applies to them. I would like to say that, however much, I want to support this law, I feel unable to accept it unless the Minister goes back and amends this Bill and says that the principles we are putting down here will contemplate and constitute a law for this country. Otherwise, hon. Members, I think, and I submit without doubt at all, that we are basically wasting time.

Mr. Deputy Speaker, Sir, Clause 8(e) on page 74 states:-

"Public officers will observe official working hours and not be absent without proper authorization or reasonable cause".

As far as I am concerned, that is absolutely a desirable code of conduct to be accepted by this country right across the board. But we cannot put it in a legislation of this House and at the same time exclude it from the Memorandum of Objects by saying that it is not binding.

Mr. Deputy Speaker, Sir, Section 9 Sub-section 2 states:-

"In carrying out his duties, a public officer shall not violate the rights and freedoms of any person under Part 5 of the Constitution".

Personally, I want that Clause to become law. The reason is very simple: Recently we have seen Ministers all over the place. One of them storming into KICC and purporting to take it over. I am negotiating with him, but that does not change the fact that he stormed into a building and took over property contrary to the enshrinement of Private Property Rights in the Constitution. Similarly, if we say that, that is not law, it is only a guiding principle and we leave it to the tribunals and the Commission to make that law, there would be no purpose in participating in this debate in that form.

Mr. Deputy Speaker, Sir, Clause 9(i) says as follows:-

"A public officer shall carry out his duties in accordance with the law".

With all due respect, we have witnessed, for example, a Minister going out in public rallies and then saying that title deeds are pieces of papers. We have also seen Ministers who have been served with court orders and they say that they will not recognise them. It is about time we had a law specifying that a public officer shall carry out his duties in accordance with the law. So that - with all due respect - a Minister does not give Kenya a law with one hand and at the same time pull it away. It is essential that we understand that this country will be judged by the standard of legislations that we put forward. I dare say without fear of contradiction that this law cannot be passed anywhere else in the world with the sort of clauses that I have identified.

Mr. Deputy Speaker, Sir, may I now deal with another factor which is extremely amazing. Section 29 as originally drafted states:-

"Provided that a Commission shall keep information collected under this part confidential".

It continues to state:-

"No person shall disclose, allow, access or acquire information collected under this part and held by a Commission except in accordance with this Section".

I have seen proposals by the relevant Departmental Committee suggesting that we do not put this Clause in and actually say, that:-

"Once a public officer has declared his income, assets and liabilities, any queries shall be raised within a period and then that declaration will be open for inspection".

Mr. Deputy Speaker, Sir, I have three points to make regarding this Section. First of all, although the Minister is responsible for justice and constitutional affairs, he has forgotten the express provisions of Section 70 of the Constitution which states very clearly that the privacy of the property of a Kenyan shall be protected by law. If we pass this Bill the way it has been drafted, we will go in direct confrontation with that Constitution. I can see a number of lawyers waiting outside there to challenge this law on grounds of constitutionality.

Mr. Deputy Speaker, Sir, allow me to raise the following issue: Supposing after we pass this law, I go and publish the list of what I have - as I will - and I declare, and then it is open, what will stop the practice of being abducted going on in South America and other countries in Europe being adopted here. Somebody comes, and openly has access to the list of your assets, he finds that you can afford Kshs3 million, he goes and picks your favourite child and he calls you and says: "We know that in your bank account you have Kshs3 million; we got that information from the declaration you gave to the Commission; unless I get Kshs3 million, I will send to you the finger of your child in the course of the evening".

Even hon. Members of Parliament and other Kenyan businessmen and women have associates. We are lawyers because business associates are prone to starting disputes among themselves. How will you protect Kenyans against invasion of privacy? To make matters worse, let us take a very extreme example, but it happens in this country---

**Mr. Bahari:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for us to discuss this Bill when the introducer of the Bill, the Minister for Justice and Constitutional Affairs, and the Attorney-General are not here to take note of what the hon. Members are saying?

**Mr. Deputy Speaker:** Do we have any Minister holding brief for the Minister for Justice and Constitutional Affairs? What about his Assistant Minister? Mr. Raila are you taking notes for him?

**Mr. Bahari:** I have not seen any Minister take any notes.

**The Minister for Roads, Public Works and Housing (Mr. Raila):** Mr. Deputy Speaker, Sir, I do not know of any Standing Order which says that the Minister must physically take notes. We are taking mental notes of everything that is being said by the hon. Member.

**Mr. Deputy Speaker:** Definitely there is no such Standing Order, but I think it is desirable that the Minister, having moved a Bill, should be in the House or even his assistant or somebody else because very important points are being made. He can make it easier for the House to consider these matters. Be that as it may, Mr. Kilonzo, you may continue. The Chair has taken note. I cannot do anything about this. It is up to the Government to know how to handle their matters.

**The Minister for Roads, Public Works and Housing (Mr. Raila):** Mr. Deputy Speaker, Sir, of course I said that there is no Standing Order which says that we must physically take notes. My colleague here, Mr. Mungatana, is actually taking note of the contributions. There is collective responsibility of the Government here. When we are here, even if we do not take physical notes, we will inform the Minister concerned.

**Mr. Deputy Speaker:** Very well. Mr. Kilonzo, continue.

**Mr. M. Kilonzo:** Thank you, Mr. Deputy Speaker, Sir. I was describing the sad, but true events that take place in our country every day. A young man and a girl go to church and say "I do". They put rings on each others' fingers and, of course, there is a huge celebration and so they get married. Three years later they are quarrelling and fighting. They end up in court, filing for divorce. This House is well aware that under Section 17 of the Married Women Property Act, 1882, the immediate event that takes place is a dispute over property and assets. Those lawyers who are here have handled such cases left, right and centre.

During that period of time, let us say that the wife is a public officer and she has gone to a commission and established her lists of assets and they are wide open for public inspection without any criteria whatsoever or protection by Section 70 of the Constitution. Let us say that the man is a private businessman, therefore, he does not have the same restriction to publish his assets. I do not have to go further to demonstrate the inequity that will arise in a situation like that because one Kenyan will take advantage of another for reasons that the other one cannot control.

It is important for this House, as we make laws, to consider these things extremely carefully. Even as we fight corruption and establish a code of conduct and ethics, we must make sure that the laws that we pass are fair. If we do that, Prof. Kivutha Kibwana will be able to say, when he is teaching in the university: "I am proud to be a Kenyan, because the Kenyan Parliament has passed a law that is consistent." If we dare pass this law the way it is, it will not only collide with Section 70 of the Constitution, it will also create a nightmare even for Members of Parliament.

The last example I wish to give is with regard to Members of Parliament. Each of you without any doubt has got an opponent out there in the constituency. The moment you defeat him, he is not a public officer. Once you

win your seat you become a public officer. So, you now declare your assets and leave it with the commission. You allow this blanket permission for anybody to come and inspect your assets at will. Again, you are exposing yourself to difficulties whose details I do not wish to delve into because it amounts to educating the public on areas where they would rather be left uneducated. Violation of privacy will become extreme and the dangers of blackmail will be so real that instead of attracting people of integrity, which this law hopes to do, we will end up attracting people who actually do not care at all.

I believe that is the wrong sort of person that this country is looking for as we look for ethics. I believe without fear that when we establish a code of conduct and ethics, our aim is to attract people like Prof. Kibwana and other hon. Members here who are educated and able. This will ensure that they comply with certain minimum standards of ethics and conduct. At the same time, their privacy and that dignity that comes with privacy should be protected by Parliament and the country's constitution.

You will observe that Section 29 as previously drafted had provided that you could go to the High Court and obtain an order from a judge. In the very extreme case, although it was challenged, that is an evil I am willing to live with because a judge will not lightly give an order for inspection of somebody's assets and property. It will be expected that whoever wants to access and investigate those assets will be able to satisfy a judge as to why he wants to inspect those assets and property.

You will also notice that the recommendation in Clause 30 is that the commission shall keep collected under this part concerning a person for at least 30 years after the person has ceased to be a public officer". Again you ask yourself "why for 30 years?" In my own reckoning purely speaking as an advocate, the declarations of wealth and other assets should be permanently sealed and only exposed if there is a court order that has addressed Section 70 of the Constitution, or failing which, if there is a criminal case arising from the misconduct of the officer against whom it is alleged there has been misconduct. That is what will give us dignity and signify to the world that even as we look for ethics, we also appreciate that we are human beings, open to all sorts of problems and that they should as much as possible be contained.

I would like to go back a little, with your kind permission. One of the reasons I am so keen to get ethics in this country is something that all of us know. Maybe now that I am in Parliament, it will change. One of my nastiest experiences has been letters that I have written to Government Ministries, officers and servants. I cannot recollect how many times I have received replies. Nobody bothers to write back and reply to correspondence coming from the public when addressed to Government officers in this country. In fact, in certain situations you will find people coming to lawyers, asking them to write to a Ministry to find out why correspondence has not been dealt with. I believe that is something that the Minister has probably inadvertently left out. I want to give him the benefit of doubt because he is a Minister and, perhaps, he does not want to get overwhelmed by the desire to reply to mail and correspondence, but we should include it.

I would also like to go back to the issue of conflict of interest under Clause 11. You will notice that the Minister has again missed the real argument about ethics. He has simply said that a public officer shall not award a contract or influence the award of a contract to himself, a spouse or relative, a business associate, corporation, partnership or other bodies in which the officer has an interest. I think the Minister has forgotten that people are very clever nowadays. When they are in public offices, they will go and establish blind trusts and transfer their assets to them. The Government will never know that the public officer is trading with himself. He will never say that the company the Government is dealing with is purely his blind trust. Again, I am supporting Mr. Wetangula on this, that this Bill is so badly drafted. If it were not for our commitment to ethics, and the fact that the former KANU Government introduced it, I would flatly oppose it. However, our support for this Bill will be subject to suitable amendments. But when I look at it, I do not even know whether it can be amended because it is so shoddy. You can start amending a dress that you have already made, but in the process, it will end up looking like you have actually cut it up all over again. The principle of this legislation is all wrong.

Mr. Deputy Speaker, Sir, allow me to address the matter of Clause 12 on Harambee. I was amazed and extremely astonished to listen to the Minister berating those Kenyans who meet at KICC and other areas in the country to raise money to support families who have been bereaved. Without wasting too much time, I would like to say that, that is not a practice you can stop. I have known families who lose their beloved ones and they expressly tell the committees planing the funeral that they do not want fund raising. Yet, the public goes there and willingly gives money to fund an honourable send off for the deceased.

I would also like to say that the insurance arrangement that hon. Members enjoy provides for funeral expenses of up to about Kshs50,000. In this Bill, the Minister is suggesting that we should go out there to the public and tell them to stop their harambees for funerals when we will be getting Kshs50,000 from the insurance scheme when we pass away. It is totally wrong. I used that example to demonstrate the danger of condemning harambee in the manner that the Government has been doing over the last few days that this Bill has been

discussed. I believe that it is our responsibility to be extremely careful about the Harambee movement. Speaking for myself, I know the harambee method of fund-raising goes back to the pre-independence days. Many of us will remember the airlifts to America and Russia. Most of those people who this country sent out there, in addition to the airlift, were also supported by the local community through fund raising.

I would also like to remind this House that most of us who are here and other public servants, starting from Ministers and Permanent Secretaries, come from villages tucked away in every corner of this country. In those villages you will find that you are lucky if you can have two Permanent Secretaries or two Ministers at the same time. Those people are looked at as role models. I do not think I can be shy in saying that the young people in schools and colleges in that community look at that senior public servant as a role model. Let us take a basic example of a young man who scores three As in his examination and is then selected to go to Alliance High School, but he does not have the money to go to that school. At this time, the Government is not offering free secondary school education. Let us go further and say that the father of this student and some elders come together and say they want to do a Harambee - as I have got one on 6th April, 2003 - to raise money for this student to be able to finish his high school or university education. The NARC Government - I encourage them to continue thinking - are telling this country that they will ban Harambees because they bring corruption. They are further saying the Permanent Secretary or the Assistant Minister who comes from that area should not participate in that Harambee because it creates corruption. That person is looked upon by that young boy as a role model. My argument is that we should be extremely cautious and encourage the Minister to look for a better formula. I will not mention where I come from, but we say, if a snake crawls into your gourd, do you kill the snake together with the gourd or do you find a way of enticing it to come out so that you are left with your gourd and you continue putting milk for herdsmen and hunters? I dare say this, that the Harambee movement was started by the founding father of this nation, the late Mzee Jomo Kenyatta. KANU intends to continue with the Harambee, but without corruption.

Mr. Deputy Speaker, Sir, the NARC Government is confusing the country by saying that they will ban the Harambee movement. I am waiting to see how they will do that. I am telling them that we will not allow our children not to go high schools or universities because they cannot raise school fees and the NARC Government thinks that the money we give in Harambees has been stolen. I am challenging the NARC Government to come up with a good law to define what is a proper Harambee and how it ought to be organised so that we can continue to assist those people who are in hospitals, who cannot pay their medical bills. The Minister for Health said that there is free health care, but it is not there. We still have people who cannot pay their hospital bills. We do not have a universal insurance scheme for Kenyans.

As this House knows, only last night we were raising money to help a former Head of Civil Service so that he could be given the decent burial that he deserves. I am saying that none of the money that was donated at that fund raising was either stolen or acquired through corruption.

Now I am challenging the NARC Government because they are the ones who are preoccupied with broad condemnation of Harambees to come up with a formula. When they come up with a formula, we will debate it, but for the time being they must understand that KANU will continue to assist poor people across the country, as we have always done through Harambee. Of course, we will let you try to build classrooms, buy uniforms, pay school fees and pay the teachers. And then we will see what will happen in 2007.

Mr. Deputy Speaker, Sir, Harambee is not just for the rich. It is true that a lot of rich people contribute a lot of money at Harambees. I believe we can sieve out those who are corrupt or those who have stolen so that they know that their money can be traced. We should, however, allow our churches to be able to continue to build their churches through fund raising of Harambee nature. We should allow our country to continue supporting poor people. I do not share the view that because Uganda and Tanzania do not have Harambee and they are ahead of us, that is the reason for condemning Harambee. First of all, I believe that our Gross Domestic Product (GDP) is still miles ahead of the GDPs of those two countries. Secondly, the human resources available in this country, especially in the field of education are so enormous. A lot of this resource has been developed through the *Harambee* spirit.

Mr. Deputy Speaker, Sir, while on this subject, I would like to suggest to the National Rainbow Coalition (NARC) Government that time has come for this country to introduce something that is being practised all over the world, which entails encouraging individuals to set up trusts or charities. If one feels that he is rich enough, one can set up a trust or a charity. Even our local communities should be encouraged to set up trusts and charities that are properly registered. I do not subscribe to the view of the NARC administration that to be wealthy is criminal. A country that believes that it should not have rich people is destined to remain poor.

**Mr. Muchiri:** On a point of order, Mr. Deputy Speaker, Sir. Is the Official Opposition Responder in order to mislead the House by implying that the Government wants to abolish *Harambee*? This Bill does not seek

to abolish *Harambee*. Clause 12 of the Bill reads as follows:-

"A public officer shall not use his office---"

**An hon. Member:** That is an argument!

**Mr. Deputy Speaker:** Order! Order! Mr. Muchiri, wait until you have a chance to contribute to the Bill, so that you can advance the points you want to make. You rose on a point of order. So, be precise on your point of order.

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, is the hon. Member on the Floor in order to mislead the House that this Bill seeks to abolish *Harambee* when it does not?

**Mr. M. Kilonzo:** Mr. Deputy Speaker, Sir, allow me to continue with my contribution, because I have not actually said that the Bill seeks to abolish *Harambee*. What I said is that Ministers and other hon. Members from the Government side who have contributed to this debate have stated plainly that they wish to ban *Harambee*.

Mr. Deputy Speaker, Sir, if the NARC Government is serious, it should encourage wealthy Kenyans to contribute to charities and trusts, and such contributions should be exempted from tax. It is through such efforts that you can say that each community, district, location or village has got a pool of resources from which it can tap some money for educating poor children, building churches, among other development activities. As it is, I am amazed that the amount of money that has been raised through *Harambee* is so big. The people who have donated all this money could have left it in the bank. In fact, these people have derived no benefits, because they do not enjoy tax relief on account of the donations that they made. If the NARC administration has chosen to be mean to its people, that is its choice. Again, as I said, we will meet them in the year 2007 and compare notes then.

It is, therefore, important for this House to appreciate that it is not enough to condemn the *Harambee* spirit wholesale. I agree that there has been a large number of corrupt and thievish people, but that in itself is not a good reason to kill the snake because it has crawled into your pot. Normally, you are advised to put the pot upside down, so that the snake comes out, you kill it and then you are left with your pot. My recommendation is that we should maintain a modicum of *Harambee* even as we address the issue of ethics and the like.

Mr. Deputy Speaker, Sir, I would now like to address the issue of care of public property. Clause 11 reads as follows:-

"11. A public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected, and not misused or misappropriated."

Again, for reasons only known to the Minister, he has not spoken about imprest. I happen to know that imprest is one of the most abused items in the Civil Service. Public officers across the country take imprests. Recently, I received instructions from a public institution, seeking legal advice on how to recover imprests of close to Kshs5 million were held by somebody who died. A former public officer took imprest, which he never accounted for, and he is now dead. So, I advised the management of the institution to commence a law suit against the estate of the deceased person. In this Bill, we should include a modality for recovering imprest to ensure that imprest is recovered on a regular basis. I would have liked the Minister to consider making it an offence, and not merely a contravention of the law, if somebody has been responsible for wastage or destruction of public property that has been entrusted to him.

Mr. Deputy Speaker, Sir, allow me to discuss the issue of political neutrality. It is my very firm view that a public officer should not engage in political activity at any time, period. We should not include qualifications about whether he is seen to compromise his political neutrality. It is time that political parties organised their activities without involving public servants. The involvement of public servants in political activities of any nature is in itself perceived by the public as corruption, and should be abolished.

I love Clause 18, which reads as follows:-

"A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer."

Again, I would like this provision to become law. Only this week, a Minister went out there and said that the Kenya African National Union (KANU) is going to pour billions of shillings into the bank accounts of Ministers, so that we can accuse them of corruption. That is an irresponsible statement. It is a statement which should not be allowed. It must be seen as a statement that goes against the kind of country that we want to have. If the Minister had such information, he should have reported it to the police so that the culprits could be arrested and brought to book. Therefore, again, the Minister should not tantalise us by offering this sort of a clause and then withdrawing it by saying that it has no force of law.

Mr. Deputy Speaker, Sir, the same applies to statements about land title deeds. Recently, we heard another Minister saying that the Government was going to issue a new generation title deeds. I asked myself then and today: "Just how is this going to be done? Who is going to meet the cost, and where is the law?" I would like

this to become law, and not just a guiding principle. I asked him what would happen if at the time he will want to issue me with a new generation title deed, I will not actually have asked for it? Or, what if by that time I will have taken my title deed to a bank and borrowed money? Who will pay for the discharge of that title deed? Who will pay for the new title deed? Who will pay for the re-charging, so that the bank reinstates its charged title deed?

**The Minister for Lands and Settlement** (Mr. Kimunya): On a point of order, Mr. Deputy Speaker, Sir. Is "the Member for KANU" in order to challenge a decision that has been taken in wisdom to cleanse the mess that the party he stands for created in this country?

**Mr. M. Kilonzo:** Mr. Deputy Speaker, Sir, I have great respect for the Minister. So, allow me to ignore his point of order, because the party I stand for is new KANU, and the sooner the Minister realises that fact, the better.

Mr. Deputy Speaker, Sir, Cabinet Ministers are bound by the principle of collective responsibility. This Bill says that public officers will act in accordance with the law. What law in Kenya empowers a Minister to say that he is going, without my request, to give me a new generation title deed? What registry will he be using? That is because all title deeds in Kenya are actually registered. But, of course, the *magendo* ones may not be registered, but those are not title deeds! What we are saying is this: If we want to introduce ethics, those ethics must come from across the Floor; the gentlemen and ladies I am looking at right now. The ethics must be: Before you make a statement like that which is misleading to the public, check with your Attorney-General. If you do not like him, check with your Minister for Justice and Constitutional Affairs. If you do not like him, hire a lawyer to tell you what are ethics in this country. I assure you when this becomes law, a statement that the Government is going to issue new generation title deeds will be found to be unethical, because it breaches the law.

Mr. Deputy Speaker, Sir, Clause No.19 says: "A public Officer shall not neglect his financial obligations or neglect to settle them." The question that arises in my mind is this: How does the Minister propose to enforce such a statement of law? Supposing a public officer who is a Minister refuses, as we have seen, to pay the school fees of a child because he is disputing with the mother. Would that be unethical? Would that be neglect of financial obligation? Which would be the tribunal to decide that a Minister should pay the school fees of a child that he says is not his or something like that? You know the reasons that normally come across. Again, to join hon. Wetangula, this law is badly drafted and careful consideration should be made. It would have been far better to say that a public officer will not give a cheque that will be dishonoured for the following reasons, or a public officer will always pay his school fees, or a public officer will always pay his landlord. But you cannot use the words "financial obligations" and expect to create a law. That is because you will be opening a pandoras box and in the end, nobody will know what exactly you are talking about.

Mr. Deputy Speaker, Sir, Clause 21 says:-

"A public officer shall practise and promote the principle that public officers should be-

(a) selected on the basis of integrity, competence and suitability; or,

(b) elected in fair elections."

I welcome that clause although, when this Bill comes to Committee Stage, I will make certain proposals for amendments, so that it can reflect the correct position. We want to say that no public officer will hire somebody on account of his tribe, language, religion, ethnicity or for being a neighbour. We want to be basic and say: "We do not want tribalism and nepotism in the country".

Mr. Deputy Speaker, Sir, another very disturbing clause is Clause No.23. Part (a) of Clause 23 states:-

"A public officer contravenes the Code of Conduct and Ethics if-

(a) he causes anything to be done through another person that would, if the public officer did it, be a contravention of the Code of Conduct and Ethics."

I want that to become law and I will tell you the reason. Recently, we saw a Minister call a big press conference and issue a document under which he purported to be executing and enforcing an executive order. If this had been law, that conduct would have been unethical because there is nothing in Kenyan law called an executive order. By using those executive orders, he went and took over the Kenyatta International Conference Centre (KICC). For you information, they are still inside there! Then, Clause No.23(b) states--- You can celebrate for the moment, but we will meet in court. Clause No.23(b) states:-

"If he allows or directs a person under his supervision or control to do anything that is a contravention of the Code of conduct and Ethics."

Again, I dare say, that if a public officer like a Minister refuses to obey a court order, he will be in breach of the Code of Conduct as envisaged by this law. It is my firm conviction, and it is the position of the official Opposition that, because we were the first ones to introduce this legislation; because we wholly support the idea of ethics and good conduct in public service, we would welcome this law, but the way it has been drafted leaves a lot



to be desired. We want it to be amended way beyond the amendments proposed by the Departmental Committee, so that it has a commencement date, respects Section 70 of the Constitution and it does not create an impression in the minds of the public that, as long as you are not sitting in your offices at Continental House, you cannot solicit Harambee funds. But as one hon. Member said, if you are at the Serena Hotel, you are free to solicit Harambee funds. It is a law that is badly drafted and it ought to be amended.

Mr. Deputy Speaker, Sir, with regard to public officers in business, this country had the misfortune of working under the Ndegwa Commission Recommendations whereby, as hon. Raila pointed out, an engineer could be doing business with himself, making recommendations, doing the inspections and so on. The time for bringing that into law and banning it completely is during the establishment of ethics as proposed under this legislation. I support hon. Raila in that respect; that this law, if it is going to be passed by this House, should be amended, so that we totally tell public officers to make a choice either to go into public service or remain in private industry and business.

The only thing that I would like to say is this and it is a very important point: In fact, that alone, should be enough to kill this law. It is the fact that no public officer can be guilty of corruption unless there is somebody corrupting him. I tend to hold the view that corruption is like indigestion. It is a symptom and not a disease. The greatest corruption that takes place in this country is not, in fact, the Kshs20 and Kshs100 that is given to a policeman on the roadside or, for that matter, a gift of a goat that is given at an Harambee. The greatest corruption is committed by foreign countries and investors in this country. They are the ones who come and induce our civil servants to go to Paris and once there, in one of the big hotels, they are induced with 10 per cent, so that through that, they endorse or not endorse a project that ends up costing the country billions of shillings.

**An hon. Member:** Examples!

**Mr. M. Kilonzo:** I will not give any examples. I will say that many years ago, nearly 30 years now, America passed a law which banned American companies from bribing foreign nationals and foreign corporations. In fact, unknown to this country, that is one of the reasons that America ended up divesting out of Kenya. England itself has been struggling with a similar law and although they have said they will pass it, they have not passed it. Our trading partners in the European Economic Commission (EEC) do not have a law banning their nationals from coming into the third world, particularly Kenya, and bribing us.

**Mr. Wetangula:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. M. Kilonzo:** I will welcome that because it is from my pupil!

**Mr. Wetangula:** On a point of information, Mr Deputy Speaker, Sir. I want to inform hon. M. Kilonzo, to strengthen his point, that former managers of M/s L. Hercuizen in France are in court, charged with corruption for claiming billions of Francs and bribing African leaders to do business with them.

**Mr. M. Kilonzo:** Mr. Deputy Speaker, Sir, I welcome that information. I agree, indeed. I believe that one of the reasons we are debating this legislation when this country has several other Bills pending before the House, is because of pressure from foreign donors and development partners. Yet the bulk of those countries, except the United States of America, have not passed a law banning their nationals and corporations from bribing people in countries where they operate.

I dare say that it is not enough to introduce the Public Officer Ethics Bill in this country if we continue to allow foreign nationals to come and continue inducing our people to breach the same legislation. Bribery is like the shilling in your pocket. Corruption is like the coin in your pocket. It has two sides; there is the giver and the receiver. I urge the Minister to confirm - if he does not, the Official Opposition will oppose this Bill completely and vote against it - that he will introduce a clause to this Bill requiring investors to observe the ethics that we are legislating in this country. The Minister should ensure that foreign nationals do not, at any time, offer to bribe or influence our nationals. I would like the Minister to promise that he will urge his colleague, the Minister for Foreign Affairs, to prepare protocols requiring the countries that trade with us to pass laws banning their nationals from coming to Kenya and seeking to obtain contracts through undue influence and other unethical conduct. Kenyans are human beings just like the Americans, the British and the Germans, and it is not fair for us to require the Kenyan public servants to observe ethics that have no application to the Italians and the Greeks. It is only after this that we will be seem to be a country that understands that the bulk of the corruption that goes on, the most serious corruption, arises from operations of foreigners.

If the Minister does not want to make provisions for that, I am afraid the Official Opposition will say that this is such a discriminatory law. We are discriminating against our own people. We are setting up standards for our own people only, yet when foreigners come here and want to sell hospital equipment to Kenyatta National Hospital, or want to submit proposals for constructing a road, such as Mombasa Road, they will not also be bound by the ethics and the standards that we will have in existence. Those ethics and standards will require that the

entire Part 3 of this Bill be made law. So, if a foreigner influences a public officer, and that includes an hon. Member of Parliament, then he will have committed an offence and can be prosecuted. Further, other countries should also pass legislations or protocols to protect our people from appearing as if they are the only ones who are corrupt. I have never subscribed to the view that corruption is only on the part of the taker and not on the part of the giver.

The other issue is punishment. If you look at the Public Officer Ethics Bill, and look at the punishment that has been proposed, you will find that it is on one hand outrageous to suggest that somebody should be ordered to pay a fine of Kshs5 million, and on the other hand for very serious breaches, no method of punishment has been provided. Again, I ask myself: Is it for want of expertise in the Ministry or is it deliberate to create a law that addresses the problem, while at the same time, it exposes the country to a continuation of the problems that we are trying to address. There ought to be very strict methods of implementation of this legislation and the rules once they are passed. In fact, we should not leave it to the various Commissions to determine how somebody who is found guilty of misconduct or breach of ethics will be punished. Parliament should set the pace and provide the methods of punishment. We should not leave it to the discretion of the tribunals or Commissions. We should provide clearly for the method of punishment. We should set the pace for the enforcement of ethics in this country in order to assert our authority over legislation in the country.

I do not want to address the issue of sexual harassment, because my learned friend did that adequately. But I would like to address the issue of the declarations. If you look at the manner in which declarations will be made, you will find that the Bill requires a declaration of income, assets and liabilities of the public officer, spouse or spouses and his dependent children under the age of 18 years. It worries me very much that the Minister has not gone further to define these things in a much more elaborate manner. As you are aware, the word assets is so wide and so far reaching that each sector of the economy comes up with different styles of management of assets, for example, the stock exchange. It is possible for a Kenyan to buy one million shares in the Kenya Commercial Bank and sell them next week. Under which category will that trading be declared? It is possible also to operate through nominees and blind trusts. What method will you use to describe and declare those operations that come under those categories? The same thing applies to liabilities. How will a public officer describe rent or school fees which has not yet accrued? If a person is making his declaration in December and he is due to pay school fees in January, will he also declare school fees for the following November? How will you declare rent as a liability if it is your primary source of business if you are a professional, or you are running an estate agency?

I would have thought that if this Bill is to be meaningful, greater effort should be put into categorising the areas of both incomes and liabilities, so that you do not burden public officers, and punish them even before they have been found guilty of any misconduct or any other wrong doing. If you compare that with Clause 29 of the Bill which states that the "A Commission shall keep information collected under this part confidential", you see that the Minister seems to have forgotten that in this country people also file income tax returns. When you file your income tax returns on an annual basis, what will those returns mean with regard to your declaration? In fact, in countries which have these standards of ethics like the United States of America, one is not required to make a separate declaration from his income tax returns. That protects the officer against a charge of misleading the Commission. What happens if you file your income tax returns, and I see this everyday in court, and they happen to differ with the declaration that you have filed before the Commission? Again, it is sloppy drafting because this is something which is well known to the Minister.

Mr. Deputy Speaker, Sir, I would like to say that the Official Opposition party of this country welcomes a law on the public officer ethics, but the draft Bill which has been presented to this House is grossly wanting, inadequate and contradictory such that unless those amendments are considered by the Minister and incorporated in this Bill, there will be no purpose whatsoever of passing this Bill the way it is. I will go further and urge hon. Members of the House to look at the amendments proposed by the Departmental Committee. Those amendments are not enough because they have not addressed the very serious issues which I and other speakers have raised.

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

**Mr. Kajwang:** Thank you very much, Mr. Deputy Speaker, Sir, for allowing me to contribute to this debate after my senior. First, I would like to say that the Public Officer Ethics Bill is so important for this country that we cannot overemphasise that fact. That is the reason why when this matter came up sometime last year, as the Chair will remember there was not a very clear definition of who a public officer was. The public officer, as it is described here much later is the officer who is supposed to declare his wealth and this runs from the President down to a Member of Parliament and a councillor. It also runs down from the Civil Service to the Electoral Commission of Kenya and the courts; from the Chief Justice to the officers in the court. It also touches on the Teachers Service Commission (TSC), the co-operatives, state corporations, public universities and so on. It also touches on disciplined officers and accounting officers. While attempting to cover everybody in this Bill, if you

read its body, you will find that there is a lot of contradiction as to who is meant to be netted under it. I will come to this.

Mr. Deputy Speaker, Sir, I had an opportunity to talk to a Tanzanian Member of Parliament recently and he gave me a story of how they dealt with corruption in what they call "The Tanzanian Revenue Authority". This Authority had similar problems to ours. Their officers were collecting revenue and not submitting it to the Government. Some of the officers were not collecting the revenue at all, but getting kick-backs. The Government of Tanzania was not meeting the target it had set with regard to collection of revenue. So, that Government hired some experts to deal with corruption in the Revenue Department.

This is how they dealt with this vice. First of all, the Government of Tanzania gave a form for declaration of assets to the officers who were employed by the Tanzanian Revenue Authority. It told the officers to fill in all the assets they had, such as money, houses, shares, land and whatever else that had economic value and sign the form. The Government further told the officers that if they did not say the truth, it would sack them.

So, some of the officers declared all the assets they had, while others declared them *nusu nusu*. When the Government looked at the officers' forms, it told those who had declared all their wealth that it knew their salaries.

The salary of Tanzanian Civil Servants is not a lot. They were told to explain how they had acquired their wealth and because they could not explain that *vis-a-vis* their income, they were sacked. So, those officers lost their jobs. Then the Government turned to the officers who had declared their assets *nusu nusu* and asked them why they had not declared the house they bought for their second wives, the car they bought for their girlfriends and so on and so forth? These officers were also sacked. So, the Government of Tanzania sacked every officer in the Tanzanian Revenue Authority and hired new officers. The new officers were required to declare their wealth before they were employed. The Government further told the officers that at the end of every year it would inspect the assets and if they were found to own anything more than what their salaries would have "given" them at the end of one year, they would be sacked. There have been inspections every year and the officers have tried to hide their assets, but most times, the revenues have gone up. Since the Government of Tanzania put this into force, the revenue has gone up five times more than what it was collecting before and the officers of the Tanzanian Revenue Authority are paid high salaries. There is no more corruption because there is nowhere you can hide the money.

The frustration in Kenya is that we know that some public officers have a lot of money which they cannot explain how they got it, but there is nothing we can do about it. That is the frustration. You will know that a tax clerk in the Kenya Revenue Authority (KRA) drives a BMW car and lives in his house in Kileleshwa. This is the case, and yet you know very well that there is no other business this very young man who came from the university five years ago does, but he seems to be richer than you. This is what happens, and yet you have worked, like my brother hon. M. Kilonzo here has practised law for the last 30 years--- This is why this law is vague. Immediately this law comes into force, we should go to every public officer and tell him to declare his wealth. Whether the wealth include bicycles, he should declare it. At the end of every year, we should do an inspection on the officer, his wives, brothers and sisters. If we find that he has hidden some money there, we sack him, trace the money and jail him. But if we see a Permanent Secretary who started from a graduate trainee and rose to his present level and we know very well that he has this and that; we know his salary and there is nothing we can do about it because he is a hard-worker--- The KANU people used to be hard-workers! How come that the people who work hard do not seem to have as much? That is what has destroyed our society and made corruption to thrive. That is the reason why some people who have worked very well ask: "Why should I work so well and my subordinate staff seems to be doing better than me, and yet I am the one who authorises these things? So, he asks the subordinate staff how he does that. They conspire and do it and the country is happy with them.

The reason why the country is happy with them is because immediately you make some money more than your salary, because even the villagers know what we earn, you start being invited to Harambee, first of all, to churches, schools and then to bigger Harambee. When the Harambee is being conducted, of course, the women groups dance and you become big headed. So, you steal more to contribute more in these Harambees so that they can sing louder. Immediately somebody touches you, your village and constituents will protect you. They will go to court on horse backs, cars and carts to protect their own because he has been looting from the Government and taking the money to them. This is because it is a "virtue" to steal from the public and take home the loot. However, after saying all that, this is not the way to deal with it. The way to deal with it is first of all to define who we want to attack.

Mr. Deputy Speaker, Sir, if you look at this Bill, a Member of Parliament is also a public officer. I said last year that if you want to create an Ethics Bill, create one for different branches of the Government. Create one for Parliament to deal with the Speaker and Members of Parliament. Create another one for Judiciary which will deal with the Chief Justice, his judges and magistrates. Create another one which will deal with the Civil Service

because that is another branch of the Executive which we actually want to target and then, of course, include other constitutional offices. However, you cannot put all the categories together. The Bill says here that the officer should be elected in fair elections. It presupposes that the officer can be a Member of Parliament or a councillor, but at the same time it says that he cannot support a political party. So, I am a Member of Parliament, a public officer, who is elected in a free and fair election, but I am not supposed to support a political party. Can you not see that this Bill is causing confusion?

Mr. Deputy Speaker, Sir, I am a member of NARC and I am supporting NARC and I have made a lot of noise about it outside. How can you then tell me that because I am supporting NARC, I will be disciplined because that is what the Bill is saying? The Minister for Justice and Constitutional Affairs and the Attorney-General should go back and do some work.

*(Applause)*

When I said this last time, the Attorney-General withdrew the Bill and said he was going to consider that. He was going to separate these issues. In fact, the Speaker showed us in our *kamkunji* some of the rules that he has drafted for Members of Parliament because he feels we do not fit properly in this Bill. I thought so. I thought this Bill was going to deal with public officers. Here a public officer means a civil servant. Then there would be other public officers in the Judiciary and the Parliamentary Service Commission which is separate from the Civil Service. We are getting confused by the way the Bill is drafted here.

Mr. Deputy Speaker, Sir, Section 2(B) refers to the National Assembly and the Parliamentary Service. I do not know how far the Parliamentary Service extends. Maybe the Parliamentary Service starts from the Clerk downwards and then the National Assembly takes care of Members of Parliament including the President although I do not know for sure whether that is the case. However, if you look at Section 3(2), it states as follows:-

"The Committee of the National Assembly responsible for the ethics of Members is the responsible Commission for Members of the National Assembly."

So, it is actually independent to deal with a Member of the National Assembly and that Member of the National Assembly is not supposed to have any debts. Look at Section 19 (2). How can you say that a National Assembly Member should not have any debts? Who will be a Member here?

*(Laughter)*

*Kama ni hivyo, kila mtu ataenda nyumbani!* Section 19 (3) states:-

"A public officer shall not neglect his financial obligations or neglect to settle them."

Mr. Deputy Speaker, Sir, if you look at this Bill, you will find that it was intended for a salaried employee in the Civil Service, who earns a specific salary and is supposed to pay his rent and so on and not borrow too much because that will make him or her corrupt. It was not meant for businessmen who are always in debts because they are always borrowing lawfully. Every businessman borrows lawfully and they call it an overdraft facility. If you have an overdraft and you are a Member of Parliament, you will be disciplined. This is what this Bill is saying. How can you make such a law? The Assistant Minister for Justice and Constitutional Affairs is here. He was my classmate and I want him to hear this.

Mr. Deputy Speaker, Sir, if you read Section 19 (1), it states:-

"A public officer shall conduct his private affairs in a way that maintains public confidence in the integrity of his office."

Now, what are these private affairs? Does it mean, therefore, that, as a Member of Parliament I cannot have more than one wife because some people think that is not decency? What is this private behaviour which is likely to make the public lose confidence in me?

We have hon. Members here who have eight wives, will you sack them? We are only making a law and, we must be very specific because a law is a serious matter. It is not just a white paper; because it is going to be enforced and people will challenge it in court. So, you do not make a law which is likely to cause so much chaos. How do you discipline me, assuming that in private, I behave in a manner which a member considers to be not decent? First of all, you must check my private affairs and then you come and report me! How will you deal with me? Will you recall me so that I am no longer a Member of Parliament and demote me so that I become a councillor? What are you likely to do?

When you are making a law, you must know the person you are targeting. If you are targeting a civil servant, you should make a law which relates to a civil servant because we know why you want to target him. You want to say, "please, if you want to work in the Civil Service be honest, and do a good job. If you earn a salary, just

work hard and you will be promoted. Do not earn more money than your job gives you." I think that is the bottom line. "While you are there, do not be ethnic-oriented". It is called nepotism. Maybe that is all! So, we make different laws especially on ethics; Parliamentarians and Judges differently. What we want from the judges is very different; "please, let them not take a bribe." That is all we want from judges; so long as judges do not take bribes, they are very fair men.

Mr. Deputy Speaker, Sir, we know the salary of a judge. Until the other day, we were paying judges not more than Kshs100,000. We know that the only other thing we give judges is a car, a driver, a home where they live and a salary of Kshs100,000. When that judge starts doing business and establishes a construction company, and starts calling a Minister to his office and says; "you know my company also tendered", and the judge starts becoming a millionaire in office. It is a terrible thing in this country! I am not talking about judges only, but that is what is happening.

Mr. Deputy Speaker, Sir, the other day I was told that - I am not going to quote my source - one of the officers in the Ministry of Roads, Public Works and Housing has an account abroad, through Standard Chartered Bank, of Kshs6.3 billion! A civil servant earning less than Kshs30,000 per month; of course, he has worked there all his life, like I also worked for all my life, because he is almost my agemate. Where did he get Kshs6.3 billion? It is a shame!

So, this Bill should be re-drafted. We want it because we want to bring discipline in the public sector. But the way it is drawn will make it not to be passed or if it is passed, it will be bad law and chaotic. It will not be enforced because every time you want to enforce it, somebody will take you to court.

Mr. Deputy Speaker, Sir, if you look at this Bill, there is no mention of other public officers. One of the public officers I have not seen in this Bill is the Attorney-General. Or did anybody see the Attorney-General mentioned here? I have not seen the Attorney-General! He is supposed to go to that office and become rich, if he wants. According to the current Constitution, the Attorney-General has got no retirement age. So, you see, he will be a rich man for the rest of his life. But he has not been mentioned here.

Another public officer who has not been mentioned is the Controller and Auditor-General; the one who catches thieves, but we cannot catch him. Who will ever tell us how rich the Controller and the Auditor-General is? The Controller and Auditor-General has held that post since Kenya got Independence and he has no retirement age. He can check all the books of accounts and threaten all public servants and have a lot of money and not disclose it. Even for that reason alone this Bill should go for redrafting to include the Office of the Attorney-General and the Office of the Controller and Auditor-General so that they also fall---

**The Assistant Minister for Justice and Constitutional Affairs** (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to mislead the House that the Attorney-General's office and the Controller and Auditor-General's office are not included in this Bill whereas Clause 2(a) states:-

"Public officer" means any officer, employee, or member including an unpaid, part time or temporary officer, employee or member, of any of the following: (a) The Government or any department, service or undertaking of the Government".

This includes the Attorney-General and the Controller and Auditor-General.

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, although the hon. Member was my classmate, before he stands up to oppose me he should first of all read the Bill properly. There is no mention of the Attorney-General in the entire Bill. If you look at the First Schedule as to who is supposed to declare his wealth, it is indicated on page 88. The public officers who must submit declarations are the President, the Vice-President, the Speaker, Members of Parliament, Parliamentary Service, the Government, and public officers and Job Group "P" and above". I do not know whether the Government includes the Attorney-General, because the Attorney-General is not part of the Government. He is only a constitutional office holder. Then there is the Chief Justice, the local authorities, teachers, co-operative societies, state corporations, public universities *et cetera*. Mr. Githae, is the Attorney-General mentioned anywhere? There is no mention of the Attorney-General. So, when you are making those suitable amendments which we are going to ask the Government to make, you should include those constitutional offices.

Mr. Deputy Speaker, Sir, of course, if hon. Members of Parliament are targeted, and I wish we had a Bill for them, then we must agree on what we want to do for this country. Do we want hon. Members of Parliament to also do business? We must make that decision as a country. If we find that an hon. Member of Parliament by making business has a conflict of interest, because he can walk into a corporation office and threaten the Managing Director that he is going to expose him in Parliament and he gets a contract, then we should say that no hon. Member of Parliament shall do business. Then if we find you doing business, there must be a consequence which must also be provided for in the Act.

Mr. Deputy Speaker, Sir, we should also state clearly that no civil servant shall do business either by

himself, his spouse, relative or business associates. If we want them to continue doing business the way Ndegwa wanted them to, then we should go that way. And that is the way of corruption. If we do not want them to do business apart from their work and we pay them well then we should just include one simple sentence in this Bill: No civil servant shall do business or no judge shall do business. Any judge who does business is not a judge any more. If, for example, he is doing the business of the insurance industry, he will always be sympathetic to the insurance industry. If he is doing the business of banking, he will always be sympathetic to the bankers. If he is doing the business of shipping, he will always decide in their favour because he is a human being. So, we should agree that if one wants to become a civil servant, one should not engage in any business. If he already has some, he should sell them and bank the money in some trust as my brother has suggested. We must decide which way we want to go. You cannot do it half-heartedly. I was just about to finish my contribution. I must say that the Ndegwa Commission did a lot of harm to this country. Immediately after this Commission completed its work, people incorporated companies and appointed their wives and under-aged children as directors. They did roaring business and now that they are millionaires, they are telling us that they worked hard. If I am the Pay Master General at the Treasury, the Investments Secretary or the Finance Minister in this country and I am the one who certifies who should be paid for what contract, and I also have a company through my wife whose bill is called a bad bill-- There are so many bad bills now amounting to several billions of shillings. If my wife requires my signature to be paid, I will append my signature very fast.

We must decide. If you want to serve this country as a Minister, you should stop doing business. If you want to serve this country as an MP, councillor or civil servant, you should also stop doing business, then we will have a good country.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Kembi! What is your last name?

**Mr. Kembi-Gitura:** My name is Mr. Kembi-Gitura.

**Mr. Deputy Speaker:** Is Kembi the last name?

**Mr. Kembi-Gitura:** No, Mr. Deputy Speaker, Sir. I do not have a last name. My name is Kembi-Gitura, written as one name.

What has given me courage about the debate on this Bill is the realisation finally that both sides of the House seem to accept that these Bills are not necessarily brought for the sake of a Party, but that they are for the good of everybody in the country. I have listened to the arguments from both sides, particularly that of my learned colleague, Mr. Mutula Kilonzo. I must say that I find a lot of merit in what I have heard said by Mr. Kilonzo. What I find good is that nobody seems to say that we should not have a Bill of this nature in the present time of our country. The counter argument against the Bill is that it is very badly drafted. For that reason only, I think it is time that the Ministry of Justice and Constitutional Affairs seriously rethought about the kind of Bills they bring to this House. There are a lot of lawyers in the present House and the least one can expect is that if there is any doubt, or if the Minister is not certain about certain aspects of a Bill, they can be discussed before it is brought to the House. If properly drafted, I am sure that nobody would oppose the Bill as presented.

Mr. M. Kilonzo talked about Part III of the Bill. I would agree with him that it is futile to have a law enacted and then say that it is not binding. In any event, a cursory glance at the Bill will show you that Clause 4 is in contradiction with Clause 6(2). One cannot understand why these are guiding principles only. One cannot understand why we have Part III incorporated into the main Bill to form part of the law. If need be, there can be specific guidelines and codes of conduct as pertain to specific public officers.

I am going to be very brief in my contribution on what I find most strange is the definition of a public officer. If we will have different classes of public officers, some of whom will be culpable while others will not be, then in my view, this Bill cannot stand and it should not be allowed to stand. I have in mind the banking industry. After the Central Bank (Amendment) Bill or the so-called Donde Bill, the banking industry started their own code of ethics which was meant to guide them so that they could be able to deliver to the public and maybe, also to oppress us more in terms of interest rates and related matters. But currently, we have been discussing in this House and in the public domain, the issue of Euro Bank. We know that the code of conduct or ethics that was made by the Bankers Association has not served us at all, in the light of what has happened lately with the Euro Bank saga. If that code of conduct had been legislated or made part of the law, maybe what is happening today could not have happened.

Mr. Deputy Speaker, Sir, for the last ten years, Kenyans have laboured under the goldenberg scandal. I know that a Judicial Commission of Inquiry has been appointed to probe the goldenberg scandal, so I will not discuss it. However, we do not want to waste another ten years of our life discussing the Euro Bank saga. If, for the sake of argument, there was a code of conduct or if this Bill had been enacted and included all the professionals like the bankers, maybe what we are seeing today would be a case of the past and it could not be

pertaining to our economy today. I have in mind a code of conduct for bankers. I have in mind a system that allows the Government or whoever is responsible to be able to trace the assets of a public officer who has done wrong or misappropriated public funds.

The hon. Attorney-General told us the other day that he is contemplating bringing charges against the directors and/or shareholders of Euro Bank. I do not think that is sufficient. What we need to be told is what will happen to the depositors. We are told that some of the directors or shareholders of that bank have tremendous wealth out of the country. What is the Ministry of Constitutional Affairs and Justice doing to recover some of the money? Will there be a way that the known assets of some of the directors can be traced and frozen in the meantime so that the depositor is protected, even if it is only to a small extent? There is nothing as hurting as knowing that after depositing your money in a bank in good faith, you can only collect Kshs100,000 if and when the bank collapses. That must be the most difficult part for any business person. But if the money at the Euro Bank, for the sake of the argument, has been used to enrich specific individuals and the whereabouts of that property is known, shall we wait until criminal charges are preferred and then we are told that they cannot trace any of the assets of these persons to make good the misappropriation or the losses that have been suffered by the depositors? I submit that the correct position, in my view, would be where a Bill like this on ethics will allow the Government to trace the assets of a public officer, where possible, for the public good.

So, my proposal would have been that Part III of the Bill should not possibly be referred to as the guiding principles. It must form part of the main body of the Bill. If there are any areas like code of dress, I do not believe that those are matters that should form the substantive law. Instead we should clearly spell out the specific codes of conduct for specific public officers. I would not agree with Mr. Kajwang that different codes of ethics should be made for each category of public officer, so that the Judicial Service Commission can have a different law on ethics from that governing the Parliamentary Service Commission, for instance. Most of the things that bring about differences are similar. What should guide a public officer should be exactly the same as what should guide a Judge of the High Court, or a Permanent Secretary. Most of the administrative technicalities involving these offices have a lot in common. Therefore, there should be no reason to have different laws for these offices. However, there may be certain domestic areas which do not touch on the substantive law. These can be addressed through the creation of codes of conduct.

Mr. Deputy Speaker, Sir, while reading this Bill, I got the impression that somebody was in a hurry to bring it to Parliament distinct without having consulted other stakeholders. The responsible person did not take it seriously. I am, therefore, not surprised that even as we discuss this Bill, there is not a single representative in the House from the relevant Ministry. It is my considered opinion, therefore, that the Ministry officials may not be taking this Bill as seriously as they ought to. It is as if they have dumped this Bill on us, and said: "Do what you want to do with it. If you throw it out, it is up to you." I have noticed that, for most of the time we have discussed this Bill, there has been no official in the House from relevant Ministry to hear our views. For the reasons I have given, therefore, I believe that this Bill should not be enacted in its present state.

Mr. Deputy Speaker, Sir, yesterday, Mr. Wetangula talked about Clause 20, which is about sexual harassment. I do not think we can have two definitions of sexual harassment. It does not matter what category of public officer is implicated. That is why this particular clause should have provided for the enactment of a substantive law. Even then, this clause is so badly drafted that it cannot stand the way it is now. I know that Mr. Wetangula took some time to go through it. However, the test suggested by this clause is extremely subjective. It puts the balance of proof, as it were, on the offending person.

Going by the way this clause is drafted, it can be assumed that even a woman can sexually harass a man. However, if you read through it, you will realise that it is extremely feminine. I will not be surprised to learn that this particular clause was slipped into the Bill by the feminists of this country with a view to pushing men to the limit. How is a young person, for instance, going to have a spouse in future if paragraph (c) of this clause stands the way it is? It makes no sense to say that making gestures, noises, jokes or comments, including innuendoes, regarding another person's sexuality is an offence; it beats the essence of ethics. We must be more specific. This is a very serious theme. We know that there is sexual harassment in all areas of public life and, therefore, it should be curbed. I would subscribe to the curbing of sexual harassment by whatever name it is called, but this must be done in a way which is understandable. It must be common to everybody, and must be such that it does not appear to discriminate.

Mr. Deputy Speaker, Sir, in my considered opinion, the way it has been put in this Bill, it is extremely meaningless. So, maybe, we should have simply said that sexual harassment shall be an offence punishable by law, and then left it to the judges and the magistrates of this country, and this House to interpret to the best of their ability as to what sexual harassment means. Once you try to define sexual harassment and, therefore, give it a finality, then it means that it has to be within some ambit. I am certain that there are very many areas of sexual

harassment that have not been defined.

This would have been an important Bill for this House to pass. Maybe, the biggest mistake that we have made in this country has been to always close the stable after the horses have bolted. We are now talking about the Euro Bank scandal and Daima Bank; we have talked about the Goldenberg scandal. All these are things which should have been dealt with before they came to pass. Before they became such big national disasters, they should have been addressed through a Bill like the one before the House. I am very happy to note that even the Opposition supports the idea of having the kind of law proposed by this Bill. However, Parliament would not want to become a laughing stock. We do not want people to ask us why we enacted a law that is not in tandem with the reality. At the Attorney-General's Chambers, there is the Department of Drafting. If the drafters at that office take their work seriously, this kind of Bill should not have seen the light of day in its present form. Therefore, I propose that we define a public officer, and let us do so more seriously. Let that definition cover every person who is capable of being a public officer now and in the future. For instance, when we were conducting our campaigns during the elections, there was a problem. There were people who wanted to buy votes in one way or another. The common one among them was the culture of handouts; giving handouts to people so that they can vote for you. That is a culture that I sincerely think we must end once and for all in this country, so that our people would wish to work and earn money out of their own hard work.

Mr. Deputy Speaker, Sir, who is a public officer? Could a candidate who has been passed by his party to run for elections in whatever constituency be construed to be a public officer, so that there are certain levels of ethics even in electioneering and campaigns? That way, we will all have the same conduct governing us. When I say that handouts should not be encouraged because that culture affects all of us, are we going to leave it that you become a public officer after you have been elected to Parliament? I think that is unrealistic and I think the definition aspect of this Bill should be extended to include everybody, so that we do not have to come back here with amendments, so that people below Job Group "C" or "H" in whatever department are included in the Bill. A public officer is a public officer and they must be included in this Bill without any exception. We do not want to have piecemeal legislation. I think that has been a major argument in this House where we deal with something now, and then realise, as somebody said, the clerks in the Judiciary may be more corrupt than the judges and magistrates. When are we going to legislate for them? When are we going to call them public officers? When are the people in the matatu industry going to become public officers, so that they have respect for humanity; so that when you board a matatu, you are treated like a human being; so that it would be an offence for an operator of a matatu - the driver, conductor and even the owner not to own up when they do not give the dignity that a commuter deserves on a public road.

So, Mr. Deputy Speaker, Sir, in my considered opinion, this is a Bill that cannot possibly stand now. I heard a Member saying that, maybe, Members of Parliament should, therefore, not do business. I think that is unrealistic. I think those are matters that have to be dealt with when this matter is brought back. But for the time being, what I would like to propose is this: It seems to be the agreement of the whole House that we need a Bill like this in the House in due course.

In the heading of the Bill, it is called: "An Act of Parliament to advance the ethics of public officers, by providing for a Code of Conduct and Ethics for public officers and requiring financial declarations from certain public officers and to provide for connected purposes."

Now, that becomes the dividing line - certain public officers! Does it matter that you earn Kshs5,000 a month or Kshs100,000 per month lawfully? Does it matter that whatever your situation in life at the moment is, that you should not be corrupt? What we want to curb in this country is corruption. At the present moment, if you earn Kshs5,000, and before the Government increases the salaries, that is your salary--- If you feel that you are not able to meet your needs in the ambit of that salary and, therefore, you must be corrupted because you cannot make ends meet, then I submit that you should find something else to do. But you cannot hide behind the cloth of a low salary or bad working conditions that, therefore, you must be corrupted. We must accept our present situations in life. Obviously, I am one of the greatest proponents of the fact that policemen, teachers and army should be properly paid. But until that is done, it should not be a licence to corruption; that because you are in a certain situation in life, you must be corrupted. I take great exception to the fact that this Bill will apply only to certain public officers. This is pure discrimination, and the Bill cannot be passed as it is. Mr. Deputy Speaker, Sir, a look at the general body of this Bill, shows that when it is passed it will not have retrospective effective. Section 25 of the Bill talks about declarations. It states that a public officer should make a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years. This, of course, would have to be legislated in such a way that it is objective. If my wife does not tell me what she buys from time to time, I cannot be held liable. I can only state to the best of my knowledge what assets my wife or my children under the age of 18 years own.



If you look at the Memorandum of Objects and Reasons, you will find that there is a contradiction. Mr. M. Kilonzo stated that there is a contradiction in Part III of the Bill. Part III states that these are guiding principles and they are not binding. What does that mean? Part III should just have been left blank. We should have been left alone to formulate our own codes of conduct. We know that, that will not be possible because we do not want to have diverse codes of conduct in this country. We know that there are some basic issues that concern us all. So, the Minister should have drafted a more comprehensive Bill and made Part III inclusive. We should remove the words that do not form part of the Bill and make Part III part of the substantive law. Then after that we can deal separately with anything that will not have been provided for. If a chief executive officer of a certain company feels that he needs to have his own code of conduct over and above the substantive law, he should be left free to formulate it. However, we should have a law that governs all of us in the meantime.

I would propose that this Bill should either be shelved or sent back to whoever drafted it. It should be referred to the relevant Departmental Committee to consider it and if the Committee needs some help, there are many lawyers in this House to assist it. We should have a Bill that is all-encompassing. The Minister should stop bringing to this House half-baked Bills.

What I have found very refreshing is that the Opposition is not opposing this Bill for the sake of opposing it. The Opposition is opposing it because there is a reason to do so. The Bill is not properly drafted. The Minister ought to give serious thought to this issue because we cannot keep on having Bills brought to this House, withdrawn, and then brought back. I would request that we have more seriousness in matters that will affect us and our children, now and in the future.

Thank you very much.

**Mr. Bahari:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to contribute to the debate on this Bill.

I stand to support this Bill in principle because we need to establish a code of conduct for public officers. Any organisation, state or group that does not have a clearly spelt out code of conduct publicly known to its members, will face difficulties in its operations. I say this because we should be able to delink the individuals who occupy public offices from the requirements of those offices. If standards are set and clearly spelt out, and it is a requirement enforceable in law that the code of conduct must be complied with, then the individuals will comply with that requirement. In the past, many officers in public offices acted as they wished instead of acting in the manner in which they were supposed to act. If the Code of Ethics was there, maybe, it was not known to them, or they ignored it with impunity because perhaps legal action could not be taken against them.

Mr. Deputy Speaker, Sir, that kind of a sorry state encouraged unfairness in those offices. At the same time, the same also encouraged nepotism and corruption of all sorts. So, this Bill has come at a very critical time in this country when we need to show fairness. It has come at a time when we ought to show and prove beyond doubt to the rest of the world that we can act fairly and practice fairness across the board. For example, it is well known that certain parts of this country have also been neglected and discriminated against in terms of development because the public officers in those offices wanted to develop their areas. Those areas which did not have officers in those public offices were left behind, under-developed and unfairly treated. I have no doubt that once this Bill is passed, after it has been redrafted properly, there will be no temptation for anybody to continue with that kind of malpractice.

We need to institutionalise change in this country. We need to have sets of values which guide us. We need to inculcate those sets of values, ethics and conduct so that this country is looked at differently. This will make Kenyans feel free and not to unnecessarily struggle for their clansmen or people from their regions to be in certain positions. This is because they will know that irrespective of who is appointed to serve in the public service, there are certain codes of conduct, guidelines and ethics that he is supposed to follow. It is only then that we can be a truly democratic and free country.

Mr. Deputy Speaker, Sir, I would like to add my voice perhaps to some of the issues which have not been raised in this Bill. There is no remedial measure or punishment set out for any public officer who has been convicted for having mis-conducted himself or for not having complied with the Code of Conduct or Ethics. What I mean here is that this is a situation where such persons should not be allowed to hold public offices in future. We should not give them another chance. I think it is important that these issues are covered here. Also, I find that an inadequate fine of Kshs15 million has been imposed on those public officers who will be found guilty. Kshs5 million is in relation to what? Maybe such a person has disappeared with Kshs6 billion like hon. Kajwang said and you are fining him Kshs5 million. Then, what are we talking about? I think those areas need to be addressed with care so that when this Bill is implemented it is going to be practicable, preventive and will ensure that the intended purpose of this Bill actually comes into play by making sure that there are codes of conduct for all public officers.

Mr. Deputy Speaker, Sir, one of the diseases in Africa is "Godfatherism". These kinds of behaviour, conduct or expectations will be gotten rid of and once we eliminate this menace we will improve our service delivery. Kenyans will be better off and it is on the basis of such thoughts that I am inclined in principle to support this Bill. Not having to repeat myself, it is very critical that the standards that we set in relation to conducts and ethics are acceptable at universal levels. We should be able to go anywhere and say: "Yes, we can defend this."

Mr. Deputy Speaker, Sir, it has been mentioned here that investors, for example, who come to this country must subscribe to codes of conduct. If they go against that, the code of conduct must clearly spell out what we should do with their investments. We must be seen to be serious that we want to eliminate double standards for public officers. We must be seen to eliminate practices that undermine the fundamentals of this nation. I have in mind issues like nationalising those investments so that it acts as a deterrent so that these people know very well that if they come to Kenya, they should do clean business.

Mr. Deputy Speaker, Sir, this is because we know investors in this country have had it extremely difficult because of those unscrupulous businessmen who come in, evade taxes and as a result, prudent investors are put out of business. Employment ends with that one and some of them are only here temporarily. They are container or briefcase businessmen who own warehouses here or manufacturers who at the end of the day employ hundreds of Kenyans. Some of those businessmen do not subscribe to acceptable codes of conduct and ethics or follow good business practices. I must re-emphasise this because it has been a stated policy of the NARC Government that employment opportunities will be created. We cannot achieve that if we continue to follow past practices. That is why corruption has been rampant in this country.

Mr. Deputy Speaker, Sir, we must create a level playing field for our investors, businessmen and the local citizens. If we set standards, for example, in educational institutions that every school in this country must have specific facilities and a given number of teachers with specific minimum qualifications, then the kind of things we see in marginalised ASAL areas, which make us continue to trail in educational performance, will not be ethical, acceptable and will not even happen. In those instances, there will be no need to ask for the quota system because we will have put in place a fair system and institutionalised the changes in this country by standardization. This is very crucial and I want to stop there.

With those remarks, I beg to support.

**Mr. Muchiri:** Thank you, Mr. Deputy Speaker, Sir. I would like to contribute to the debate on this Bill. I think this Bill is timely. I appreciate the sentiments that have been aired by my colleagues from both sides of the House.

It is high time we looked into what caused corruption in this country. As it has been said, I believe, corruption is a two-way traffic; there is a giver and taker. Here in this Bill, we seem to be targeting the taker. We presume that the public officers are all corrupt and that is why we want to regulate their conducts and ethics.

Mr. Deputy Speaker, Sir, I think hon. Members would appreciate the fact that ethics are part and parcel of our life. There is no sector of life that does not have ethics. For example, we have professionals in this country from various sectors; we have the engineers and everybody else. All those members of various professions have their own ethics. What we are trying to do in this Bill is to codify ethics. I think it is important that ethics are codified.

I think the Act has a few omissions that, perhaps, I would like to highlight. For example, it has been said and, I want to repeat it, that Section 25 talks of declaration of interest. I see no reason why somebody should be asked to declare his assets and those of his wife and children because quite often, although the law recognises man and wife as one in matrimony, it does not recognise man and wife as one when it comes to property. It has been said by the learned friends that there is a law in this country that allows married women to own property; and that law allows a wife and husband to own property separately. What is at issue quite often is the contribution to the acquiring of that property. When amendments are being made to the Constitution an issue like that should be put in consideration.

Mr. Deputy Speaker, Sir, I think the idea of having a code of ethics for public officers is good in principle. But I also believe that the law should also encompass all citizens of this country. I do not see the reason why those people who deal with public offices should also not come under the ambit of this law. If we want to eradicate corruption through this law, because any law must have a purpose, then certainly, all those people who deal with the public should also come into this net. A code of ethics must control an individual, his profession and the third party. This law should not appear to be discriminatory. We would like to support this Bill not necessarily because we are on this side of the House, but we would like to support it because it has good intentions.

Mr. Deputy Speaker, Sir, at the same time, we do not want to punish particular cadres of our society. Whereas this law is targeting public officers from Job Group "P" and above, I am wondering why this law should not encompass other public officers below Job Group "P". It has been said, and I would like to repeat it, that corruption involves the small cadres and the big cadres. A sin is a sin. If we want everybody to have some

decorum or some ethics--- Ethics are merely rules to govern people against one another. They are not different from the rules that exist in clubs and other places. If ethics are codified, we get into the law. When we get into the law, it must be borne in mind that, that law must be able to encompass all sectors of the society.

Mr. Deputy Speaker, Sir, quite often when the law is being interpreted, the Judiciary always finds out what was in the mind of the Legislature. That is why we must make sure as Parliamentarians that this law is not going to be challenged anywhere. I would like to reiterate that if any law contravenes the Constitution of this country, that law becomes null and void. We have all the stamina and the morale to support this law, but we should not contravene the law on discrimination.

Mr. Deputy Speaker, Sir, I went through most of the sections of this Bill, and I know that the private sector, for example, is not included in this Act. Much as we do not want public officers and hon. Members not to run businesses, we must appreciate that it is those people in business who will encourage public officers to engage in corruption. When amendments are brought to this House, an annexure to it must also be brought to net those people who often deal with public officers.

#### ADJOURNMENT

**Mr. Deputy Speaker:** Mr. Muchiri, you will have 20 minutes when we resume the debate on this Bill. Hon. Members, it is now time for interruption of business. The House is, therefore, adjourned until 20th March, at 2.30 p.m.

The House rose at 6.30 p.m.