

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 7th August, 2001

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:-

Mr. Jackson Muinde Mwalulu

(Applause)

PAPER LAID

The following Paper was laid on the Table:-

Annual Report and Accounts of the Kenya Anti-Corruption Authority for the 14 months ended 30th June, 2001 and the Certificate thereon by the Auditor-General (Corporations).

*(By the Minister of State,
Office of the President, Mr. Sunkuli)*

ORAL ANSWERS TO QUESTIONS

Question No.458

EMPLOYMENT OF EXPATRIATES BY BANK OF BARODA

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

(a) whether he is aware that the following management employees with the Bank of Baroda, Kenya Limited, are expatriates:

M.K. Parek-Managing Director
A.K. Dhupar-Assistant General Manager
S. Sinha-Senior Manager Credit
R.K. Bhatia-Manager Administration
S. Desmuk-Senior Manager Computers
P.J. Halani -Manager Reconciliation
R.K. Mangla -Internal Auditor
Surinder Kumarhans -Senior Manager Digo Branch
Y.P. Shinde -Manager, Branch Operations
S. Shivaranakrishman -Senior Manager Kisumu;

(b) what special qualifications these employees possess to necessitate their employment; and,
(c) who the Kenyans understudying these expatriates are, and when they are going to take over these positions.

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the bank has seven expatriate employees but not ten as indicated.

(b) All the expatriates are professional bankers and their qualifications are as follows:-

M.K. Parek -BA, Chartered Accountant
 A.K. Dhupar -MA, Chartered Accountant
 S. Sinha -MA, Chartered Accountant, Diploma in Management and Computers
 R. Visweswar -MSC, Chartered Accountant
 Surinder Kumarhans -MSC, Computer Training for banks
 Y.P. Shinde -BCom., Chartered Accountant
 S. Shivaranakrishman -MSc, Chartered Accountant

(c) The following Kenyans have been appointed to understudy the expatriates and are expected to take over within the next three years: Mr. Aloysius Waweru; Ms. Margaret Awiti; Mr. Edwin Baraza; Mr. Polycap Odaa and Mr. Peter Kimani.

Mr. Sifuna: Mr. Speaker, Sir, this country has so many qualified Kenyans. In 1981, in line with the Kenyanisation Programme, the Bank of Baroda in Kenya signed an accord where it agreed to have its expatriate officers gradually reduced, thus, paving way for local employees. Could the Minister tell this House why, in 1988, we had only six expatriates, but now they have increased to ten?

Maj. Madoka: Mr. Speaker, Sir, I regret that I do not have the figures for 1988. All I know is that in the year 2001, the bank agreed to reduce its expatriate employees by three and they did that immediately.

Mr. Ngure: Mr. Speaker, Sir, could the Minister tell this House of what nationality these fellows are, and why their qualifications can only be obtained from where they come from?

Maj. Madoka: Mr. Speaker, Sir, all these people are Indians.

Dr. Kulundu: Mr. Speaker, Sir, this country is awash with Kenyans who possess the same qualifications as those the Minister has read out. There was an accord in 1981--- In fact, the Kenyans he has given as understudying these Indians were hired way back in 1981. Does it take more than 20 years for a Kenyan to understudy an Indian expatriate?

(Applause)

Maj. Madoka: Mr. Speaker, Sir, let me say that I do not particularly agree with the hon. Member. Kenyanisation or Africanisation of this particular bank is an area which we would like to look at because the situation is definitely unsatisfactory.

Mr. Keriri: Mr. Speaker, Sir, over the years, we have trained many Kenyan bankers, especially in the National Bank of Kenya and the Kenya Commercial Bank. We have undertaken a very big training programme. Many of these trained bankers have, in fact, been retrenched, not because they were inefficient, but because those banks wanted to restructure their operations. What criteria does the Government use to admit into the country expatriates when we have so many trained Kenyans?

Maj. Madoka: Mr. Speaker, Sir, as I have said in this House before, as a policy, we allow investors to bring in their chief executives, finance managers and chief operations managers. The other expatriates are considered purely on merit. As I said, I am not happy with this situation and it is an area which I will personally look into.

Mr. Sifuna: Mr. Speaker, Sir, the Minister has said that he is not aware of the 1981 agreement. In 1981 we had a total of 305 employees of the Bank of Baroda, out of which 13 were expatriates. In 1984 the bank reduced the number of expatriates to five. In 1988 the bank increased the number of expatriates to six. Now, it has increased the number of expatriates to ten. The bank has even refused to give the particulars of Mr. R.K. Bhatia, Manager, Administration, Mr. S. Desmuk, Senior Manager, Computers, and Mr. P.J. Halani, Manager Reconciliation. Do you need an expatriate for mere reconciliation, and an Indian of all the people? Could the Minister tell us why it has taken such a long period of time? Why has the number been increased from five to ten expatriates?

Maj. Madoka: Mr. Speaker, Sir, as I have said, the hon. Member's figures are not correct. There are only seven expatriates and the other seven had their work permits cancelled. Mr. Bhatia, who was the Manager, Administration, and Mr. Halani, who was the Manager, Reconciliation, had their work permits cancelled in June. Mr. Mangla, who was the External Auditor, also had his work permit cancelled.

Question No.488

COMPENSATION TO WORLD WAR PRISONERS

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

(a) how much compensation currently is being paid to Kenyans who were prisoners of the Second World War in Japan;

- (b) how many Kenyans have benefitted so far and how much has been paid out; and,
- (c) considering that most survivors are at least 80 years old, whether he could urgently compensate those who have not been paid before they die.

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Speaker, Sir, I beg to reply.

- (a) There is no compensation being paid to Kenyans who were prisoners of the Second World War in Japan.
- (b) The Department of Defence (DOD) has no records of the Kenyan prisoners of the Second World War.
- (c) Since there are no records, there is nothing the DOD can do at the moment.

Mr. Achola: Mr. Speaker, Sir, I am at a loss from the answer that has been given by the Minister. In my home area, we have five people who have actually been compensated by the DOD. How come the Minister says that he is not aware of any compensation being paid, when there are aged people, whom I can actually wheel in here to confirm that the Department is actually compensating some of these people? Having said that, could the Minister now answer the Question properly?

Mr. ole Sunkuli: Mr. Speaker, Sir, somehow, the acoustics are not very good. I did not hear the question.

Mr. Achola: Mr. Speaker, Sir, I will repeat the question. The Minister has misled the House by claiming that there are no records of Kenyans who actually fought in the Second World War and were prisoners of war in Japan.

In my home area, I have five people who fought in Japan and were prisoners of war there, and who are being compensated by the DOD. This Minister comes here and tells us that he has no such records. How come that these people are being compensated? Having said that, could he now answer the Question?

Mr. ole Sunkuli: Mr. Speaker, Sir, I have no knowledge of a record that exists about prisoners of war in Japan.

Mr. Anyona: Mr. Speaker, Sir, it is a matter of fact that there are very elderly Kenyans who were war veterans in the Second World War. Some have died, but there are quite a few alive. Could the Minister clarify two issues? First, was there any compensation paid at all to any of these war veterans? Secondly, could he instruct the District Commissioners (DCs) to compile a list of all these people, regardless of whether they will be paid or not? At least, we should have a record of these people since the Minister has said that he has no records.

Mr. ole Sunkuli: Mr. Speaker, Sir, the only money that was paid was discharge money for those who were recruited by the colonial government to serve in the Second World War.

Mr. Michuki: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to mislead this House? In fact, there is in existence the "East African Land Forces Organisation" that pays pensions to people who were in the army during the Second World War. The organisation's records are in existence at the DOD.

Mr. ole Sunkuli: Mr. Speaker, Sir, you cannot blame me if the hon. Member knows more about this issue than I do. I have gone through the records in my Department as it stands now and not as it stood during those days, and I have not found any such records.

Mr. Obwocha: On a point of order, Mr. Speaker, Sir. This Minister stands here and says that he does not have records on this issue. In those records, there is my father who is an ex-Second World War veteran, Mr. Jeremiah Obwocha Nyabuto, and he has not been paid any money. Could the Minister tell us whether these people were ever paid any money, or whether they are due for any money, so that we can advise these old men on---

Mr. Speaker: Order, Mr. Obwocha! You see, you are now asking a supplementary question. You rose on a point of order. But Mr. Minister, the question being asked by the hon. Members is: Has there ever been a record of Kenyan veterans of foreign wars? I hear of something called the "Kenya Veterans of War Association".

Mr. ole Sunkuli: Mr. Speaker, Sir, if you do not mind, I would like to answer your question. I hope you will realise that the Question here is actually not asking about Kenyans who fought during the Second World War. It is asking about Kenyans who were prisoners in Japan and that is a different issue.

Mr. Anyona: Mr. Speaker, Sir, we are asking the Minister a very simple question. These are Kenyans who deserve an answer from this Government. Could he go back and compile a list of all these war veterans? If he cannot get the names, the DCs are there to help him. They will call these people, list their names down and then he can table that list here. That is all we are asking him to do.

Mr. Speaker: Order! Just before the hon. Minister answers, I think we require the time of the House. When you talk about Kenyan prisoners during the Second World War in Japan, they could not possibly have gone there to steal. What prisoners are you talking about, Mr. Minister?

Mr. Sunkuli: Mr. Speaker, Sir, I would like to be taken seriously. I would have answered this Question differently if the House wanted to know about the veterans. Not everybody who fought in the Second World War was imprisoned in Japan. This was a very specific Question.

Mr. Sambu: Mr. Speaker, Sir, the people who fought in the Second World War came out under three categories; those who died, those who were held prisoners in Burma and other parts of the world, not necessarily in

Japan and; those who were later discharged. The Japanese have paid war reparations to persons of other nationalities. Why is it that Kenyans have not been paid? Is it because the Ministry does not have records?

Mr. Sunkuli: Mr. Speaker, Sir, it also appears to me that there was no claim actually made by prisoners who were in Japan and that is why there was no compensation and there are no records.

Mr. Sambu: On a point of order, Mr. Speaker, Sir. The Minister is misleading the House. People have made claims since Independence. I can even submit a list of claims made from Nandi District, not only of the prisoners of war, but also those who were killed by torpedoes when they were travelling to Japan. He is misleading the House. The list and the claims are there.

Mr. Speaker: Order! I do not want to take anybody a prisoner. So, let us obey the rules of the House.

Mr. Sunkuli: Mr. Speaker, Sir, I am not misleading the House. The hon. Member might be right, but there are no records.

Mr. Imanyara: Mr. Speaker, Sir, is it not the duty of the Kenya Government to make claims on behalf of Kenyans who may have been taken prisoners of war while fighting wars outside this country? Is it in order for the Minister to say that no claims have been made when it is the responsibility of the Government to make these claims on their behalf?

Mr. Sunkuli: Mr. Speaker, Sir, I hope the hon. Member understands that these are things which happened when Kenya was still a colony. A lot of time has passed between that time and now. At this point in history, I do not have any records showing who went to Japan and who was imprisoned there.

Mr. Achola: Mr. Speaker, Sir, arising from what the Minister has said, would I be in order to suggest that I bring a list of all ex-servicemen who have actually made claims and have been paid, and yet the Minister continues to say that there are no records? Further, the reason why the Minister does not want to answer this Question correctly is because there are people in the department pretending to pay the ex-servicemen, but instead they are pocketing the money. Would I be in order to bring the list so that this Question can be adequately answered?

Mr. Speaker: Mr. ole Sunkuli!

Mr. Sunkuli: Mr. Speaker, Sir, I thought the hon. Member addressed you.

Mr. Speaker: Order! Since the hon. Member has set the ball to me, and as you know I do not answer questions, I think to reciprocate, I will give you time to bring an appropriate answer.

(Question deferred)

Next Question!

Question No.249

COMPENSATION FUND FOR POLICY HOLDERS

Mr. Kariuki asked the Minister for Finance:-

(a) whether he is aware that whereas there are statutory provisions for compensation funds to cater for investors on the capital market as well as for bank depositors, there is no comparable compensation fund to cover insurance policy holders in case of unforeseen occurrences, and;

(b) what he is doing to seal this loophole.

The Assistant Minister for Finance and Planning (Mr. Arap-Kirui): Mr. Speaker, Sir, I beg to reply.

(a) I am aware there is no compensation fund to cover insurance policy holders in case of unforeseen circumstances. However, insurance companies should have sound financial bases to meet their liabilities when they arise. There would only be a problem when a company is wound up because of insolvency, and if there are no other funds to meet the outstanding claims. It is under such consideration that Section 179 of the Insurance Act provides for the establishment of a Policy Holder Compensation Fund.

(b) In order to ensure protection of policy holders in case an insurer is wound up due to insolvency, my Ministry is working on the modalities of establishing a Policy Holders' Protection Fund as provided for under the Insurance Act.

Mr. Kariuki: Mr. Speaker, Sir, realising that the Insurance Act was passed 17 years ago, I wonder why the Ministry has taken so long to work out the so-called modalities while he knows that the Kenya National Assurance Company, among others, was wound up because of insolvency. There are number of insurance companies currently facing major cash-flow problems and are due to wind up. Seventeen years is a very long time. We have enactments of Parliament of a similar nature like the Banking Act and the Capital Markets Authority Act which were hitherto followed

by the Compensation Fund. Could the Assistant Minister tell us how soon a Compensation Fund will be created so that insurance companies can compensate their policy holders in case they wind up?

Mr. Arap-Kirui: Mr. Speaker, Sir, I accept it has taken rather a long time to establish the Fund. But as I stated, this is provided for in the Act, and as hon. Members will recall, the matter was, in fact, raised by the Minister during his Budget Speech. When he was talking about the need to review the Insurance Act, he also talked about the need to protect the interests of policy holders. So, we are, in fact, working on the and specific proposals are currently before the Minister and we hope the Fund will be set up very soon.

Mr. Donde: Mr. Speaker, Sir, there is the Kenya Reinsurance Company which reinsures policies. Is the Assistant Minister telling us that the Kenya Reinsurance Company is not compensating insurance policies?

Mr. Arap-Kirui: Mr. Speaker, Sir, reinsurance is a different matter from compensation. Reinsurance is, in fact, a situation where the insurance companies cede certain risks to a reinsurer. When claims are made on this insurers, part of those claims are paid by the reinsurer. What we are talking about is a situation where an insurer fails or becomes insolvent. In that case, it is not a question of a policy that is due under normal circumstances. This is where a reinsurer comes into play. We are talking of failures in the insurance industry. When such failures occur, there will be need for this Fund we are talking about.

Mr. Kariuki: Mr. Speaker, Sir, in view of the fact that an Insurance Compensation Fund will not entail any expenditure on the part of the Government, but the Policy Holders Fund or the Insurance Company Fund, should any of the insurance companies that are operating in this country fall prey to winding up, will the Government take responsibility for acting irresponsibly to create this Fund to compensate policy holders?

Mr. Arap-Kirui: Mr. Speaker, Sir, I deny that the Government has acted irresponsibly in any way, and in which case, it will not be willing to take up any claims.

Question No.504

OPENING OF KAPLONG SCHOOL DINING HALL

Mr. Kimeto asked the Minister for Education:-

- (a) whether he is aware that Kaplong Secondary School dining hall was built in 1994 and that todate it has not been put to use; and,
- (b) when the hall will be opened for use by students.

The Minister for Education (Mr. Kosgey): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the dining hall at Kaplong Secondary School was built in 1994 and it has not been put to use todate.

(b) The dining hall will be opened for use by the students once the community raises enough funds to furnish it.

Mr. Kimeto: Mr. Speaker, Sir, I thank the Minister for the answer he has given this House. Unfortunately, I do not know whether he is aware that the dining hall was built by His Excellency the President of this country. In fact what remained was for the President to visit the school and open the dining hall. I would like to inform this House that people have been waiting for him to come and open the dining hall so that the students can use it as he promised. That is all. When will the President visit the school to open the dining hall?

Mr. Kosgey: Mr. Speaker, Sir, if the hon. Member can organise the community to furnish the dining hall, it will be opened. I would like to say that the opening of the dining hall does not prevent it from being used. What has made it not to be used is lack of furniture.

Question No.552

NUMBER OF NYANDARUA KCPE CANDIDATES

Eng. Muriuki asked the Minister for Education:-

- (a) how many candidates have sat for the Kenya Certificate of Primary Education in Nyandarua District during the last five years; and,
- (b) how many were from public schools, and how many were from private schools in each of the five years.

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

(a) I would like to inform this House that 51,738 candidates sat for the KCPE in Nyandarua District during the last five years in question.

(b) Indicated below is the table of candidates for both public and private schools in each year:-

Year	Public	Private
1996	8,850	292
1997	9,463	412
1998	10,209	387
1999	10,117	755
2000	10,509	754

Eng. Muriuki: Thank you, Mr. Speaker, Sir. We have serious problems in Nyandarua District, and a few other districts will find themselves in the same situation, where there is a small number of candidates in private schools. When it comes to Form One intake, the same Assistant Minister, on 26th March this year, gave us the statistics of the students who joined national and private schools. The candidates from private schools are less than 10 per cent, but at the moment, they take more than 75 per cent of the positions in the national and provincial schools. Is the Assistant Minister satisfied that, that is in order? What is he doing about the situation?

Mr. Awori: Mr. Speaker, Sir, we do not discriminate against students in public and private schools. The criteria for admitting students in national schools is very clear; certain cut-off marks. That is the criteria we use to admit students to national schools, whether they are from private or public schools.

Mr. Ndicho: Mr. Speaker, Sir, now that the Assistant Minister has admitted that, that is the position, is he aware that teachers are leaving public schools to teach in private schools because there is better pay and, as a result, they produce high quality students as opposed to those who are in public schools? Is he aware that there is an exodus of teachers from public schools because of poor pay and how can he stop this? This will enable us to give our children an opportunity to be taught by the same teachers.

Mr. Awori: Mr. Speaker, Sir, first of all, there is freedom of labour movement. We cannot tie down anyone into employment that he does not feel he wants to remain in.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! I do not see any disorder there. Your point of order is overruled. I do not see any disorder in what he has said.

Mr. Ndicho: No! No!

Mr. Speaker: Order! Eng. Muriuki, ask your last question!

Eng. Muriuki: The problem we have is that the private schools we commonly call "academies" charge between Kshs20,000 and Kshs30,000 per term. Whereas it is true that everyone has freedom of choice, it means that the academies are now meant for the elite or rich people who can afford to pay Kshs20,000 or Kshs30,000 per term. When the Assistant Minister gave the criteria for entrance to national schools, he said that there is quota system so that the areas in the country which are disadvantaged are given consideration. Could the Assistant Minister consider introducing a quota system so that the many parents who cannot afford to pay Kshs20,000 or Kshs30,000 per term are given a chance so that their children can go to bettion which I asked him earlier on? What will he do to stop the exodus of teachers from public schools to private schools? He did not answer that question! He knows what I am talking about!

Mr. Speaker: Order! Let us move on to Dr. Murungaru's Question!

Question No.556

DESTRUCTION OF CROPS

Dr. Murungaru asked the Minister for Environment:-

(a) whether he is aware that on 14th November, 2000, forest guards destroyed food crops and dwellings of peasant farmers at Guara area of Gathiuru Forest, though the farmers had paid for the plots and had been allowed to cultivate in the forest by the Forestry Department;

(b) when he will compensate these farmers for the losses incurred; and,

(c) what disciplinary action he will take against the officers concerned.

The Minister for Environment (Mr. Ngala): Mr. Speaker, Sir, the answer to this Question has not been

prepared well. We would like to request the House to give us more time to get proper details.

Mr. Speaker: How long?

The Minister for Environment (Mr. Ngala): Mr. Speaker, Sir, we require two days.

Mr. Speaker: Dr. Murungaru, what is your reaction?

Dr. Murungaru: Mr. Speaker, Sir, as long as I get the answer before we go on recess, I will not mind. I am also of the same view as the Minister because what is contained in the copy of the written answer is very different from the position on the ground. **Mr. Speaker:** Mr. Minister, will Thursday be all right with you?

The Minister for Environment (Mr. Ngala): Yes, Mr. Speaker, Sir.

Mr. Speaker: The Question is deferred to Thursday!

(Question deferred)

Question No.481

RECONSTRUCTION OF BURA BRIDGE

Mr. Shill asked the Minister for Roads and Public Works:-

(a) when he will reconstruct the Bura Bridge in Fafi Constituency that was partly washed away by the *El Nino* rains; and,

(a) the amount of money the Ministry has so far spent on this bridge.

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

(a) My Ministry will not reconstruct Bura Bridge, but it will instead complete the approaches during this financial year. This is because the bridge was not washed away, but the approaches were washed away.

(b) My Ministry has so far spent Kshs5 million on this particular site.

Mr. Shill: Mr. Speaker, Sir, this bridge was washed away in December, 1997, and it is now four years since that happened. The Assistant Minister has said that Kshs5 million has been spent on the bridge so far. Is he aware that only five lorry loads of hardcore are on the site?

Eng. Rotich: Mr. Speaker, Sir, I am not aware of the five lorry loads of hardcore. But the information that we have is that the job has been done half-way and we are completing it this year.

Mr. Shill: Mr. Speaker, Sir, this bridge was washed away by the *El Nino* rains. This is a very important bridge in Garissa District. So why was it not included in the *El Nino* Project despite the recommendations by the DDC?

Eng. Rotich: Mr. Speaker, Sir, I am not able to answer that question because that project is not under my Ministry. It is under another Ministry. But this job will be done this financial year. In fact, it will be done by the contractor who is doing Masalani Bridge. It will be completed.

Mr. Omamba: Mr. Speaker, Sir, could the Assistant Minister tell us the policy of the Ministry with regard to those roads under the *El Nino* Project that were left unrepaired?

Eng. Rotich: Mr. Speaker, Sir, as I said, the *El Nino* Project is not under my Ministry. We only seconded officers to that particular project.

Mr. Kiminza: On a point of order, Mr. Speaker, Sir. The Assistant Minister has repeated a number of times that the *El Nino* funds are not under his Ministry and that is true. But I thought that, as far as these funds are concerned, that is a Government policy which Government the Assistant Minister is serving. I am sure he can tell us the policy although the project is not under his Ministry. Is he in order to mislead the House?

Eng. Rotich: Mr. Speaker, Sir, I do not know which Standing Order I have breached. But the truth of the matter is that this particular project is not under my Ministry. We take over the roads after they have been done.

Mr. Shill: Mr. Speaker, Sir, there is Kshs3 million that was squandered by some contractors in conjunction with the Ministry of Roads and Public Works. The DC tried to investigate the matter. Is the Assistant Minister aware that such a thing has happened? What action is he taking against the former provincial works officers who have squandered the Kshs3 million in conjunction with some contractors?

Eng. Rotich: Mr. Speaker, Sir, I am not aware of any misuse of funds in this particular case. I wish we could get information to enable us to take action on it.

QUESTIONS BY PRIVATE NOTICE

CROP FAILURE IN GWASSI

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

(a) Is the Minister aware that there has been crop failure this year in Gwassu Constituency?

(b) What steps is the Minister taking to ensure that the residents of this constituency do not starve as a result of the bad harvest?

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

(a) I am aware that the last long rains partly failed in Gwassu Constituency but the same does not necessarily amount to food insecurity at the moment.

(b) The districts currently being covered under Emergency Relief Food Operations by the Government and the World Food Programme (WFP) have experienced rain failure for four consecutive seasons since 1999. The Government will keenly monitor the food situation in Gwassu and other regions in the country in a bid to put up appropriate intervention measures in place if the situation worsens.

Mr. Kanyauchi: Mr. Speaker, Sir, the Assistant Minister is implying that for a food insecurity status to be declared in a district, there should be crop failure for, at least, four years or so. Supposing there is crop failure for two to three years, does that kind of a situation not warrant food insecurity being declared in that area? Does it have to be four years and above? Is that really reasonable?

Mr. Kochalle: Mr. Speaker, Sir, I did not say that it should be four years consecutively. We are only saying that we know partly that it does not rain. If the crop fails, the Government is ready to help by giving them food.

Mr. Sambu: Mr. Speaker, Sir, the indicator on the ground is that the maize and wheat farmers, and particularly maize farmers, are facing a bleak future. At the moment, the National Cereals and Produce Board (NCPB) is not buying any maize. Indian millers are buying a bag of 90 kilogrammes at Kshs700 maximum.

What is the Ministry doing to prepare for the expected harvest, which is forthcoming, in terms of provision of funds to the NCPB to buy produce from the farmers?

Mr. Kochalle: Mr. Speaker, Sir, I am not aware that Indian millers are buying maize. However, the Government is giving assistance, through the WFP, and we are ready to give out food when the situation worsens.

Mr. Kanyauchi: Mr. Speaker, Sir, the Assistant Minister is talking about the WFP. These are donor agencies. What is the Ministry's long-term solution to a situation like the one in my constituency? In my constituency, Lake Victoria is only 20 metres away from my home. What are they planning to do as a long-term measure, like irrigation, so that we do not have to run to the donors all the time when there is drought?

Mr. Kochalle: Mr. Speaker, Sir, the district technical team has been advised to carry out a thorough situation assessment and update my office accordingly.

Mr. Speaker: Next Question, Mr. Khamasi!

COMPENSATION TO TOBACCO FARMERS

Mr. Khamasi: Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that BAT Kenya Limited as well as Mastermind Tobacco Limited companies have in the recent past refused to buy mature and dried tobacco from farmers in Teso and other growing areas with whom they have contractual agreements?

(b) Is he further aware that, as a result of the above, a lot of tobacco is now going to waste because of the breach of contract by these companies?

(c) What steps is the Minister taking to make sure that the farmers whose tobacco has gone to waste as a result of this breach are compensated?

The Assistant Minister for Agriculture and Rural Development (Col. Kiluta): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that BAT Kenya Limited stopped buying tobacco temporarily to establish where the excess tobacco was coming from as they had passed the target they had set for the year 2001 by 30 per cent. The company has already established that the excess tobacco came from a neighbouring country.

(b) I am not aware that a lot of tobacco is going to waste because of the breach of contracts by these two companies as BAT Kenya Limited has gone back to buy tobacco from only contracted farmers beginning August this year. Mastermind Tobacco did not stop buying the crop from farmers.

(c) The issue of the Government compensating the farmers does not arise as the contract is between the buyer and the seller.

Mr. Khamasi: Mr. Speaker, Sir, in the Assistant Minister's answer, there is a contradiction. He has said that

the excess amount of tobacco that was available was about 30 per cent and yet, he says that he is not aware that there was a lot of tobacco that went to waste. The Assistant Minister should understand that the actual facts on the ground are that at the time the temporary suspension of buying tobacco was in place, there was a lot of tobacco going to waste. Could he confirm that those two companies, particularly BAT Kenya, will continue buying tobacco as contracted by the farmers?

Col. Kiluta: Mr. Temporary Deputy Speaker, Sir, I do not think I contradicted myself because the farmers and the tobacco companies agreed on a certain amount of tobacco. The BAT bought 7,000 tonnes of tobacco, while Mastermind Tobacco Limited bought 2,000 tonnes of tobacco. The excess tobacco came from farmers who had not been contracted by these companies.

As a result, the companies bought targeted amounts of tobacco from the contracted farmers. However, the companies agreed to buy more tobacco from their contracted farmers.

Mr. Munyao: Mr. Temporary Deputy Speaker, Sir, those farmers complained to the Agriculture, Lands and Natural Resources Committee of this House. The complaint was that they were asked to take back their tobacco which had lost its quality. That is the loss we are talking about. How will those contracted farmers whose tobacco was not bought on time by these companies be compensated?

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

[Mr. Speaker resumed the Chair]

Col. Kiluta: Mr. Speaker, Sir, the companies said clearly that they knew that their contracted farmers allowed other farmers, who had not been contracted, to supply tobacco. That is the reason why they could not compensate them. There was a breach of contract by those farmers.

*(Messrs. Muturi and Achola stood up
in their place)*

Mr. Speaker: Order! Why are the two of you standing when I have given Mr. Muturi the chance?

Mr. Achola: Mr. Speaker, Sir, we are great friends, but he does not grow tobacco!

(Laughter)

Mr. Speaker: Order! Mr. Achola, how did you know the hon. Member does not know anything about tobacco?

Proceed, Mr. Muturi!

Mr. Muturi: Mr. Speaker, Sir, the Assistant Minister says in his answer that the contracted farmers had supplied what the companies wanted and that the excess tobacco came from a neighbouring country. As a result of the delays in the purchase of the produce, those farmers now have to contend with the lower grading of their tobacco. Does this have anything to do with the threatened relocation of BAT from Kenya to the said neighbouring country?

Col. Kiluta: Mr. Speaker, Sir, I am not aware of any threat. All I know is that BAT has got the right to move and relocate to wherever they want to do business.

Mr. Khamasi: Mr. Speaker, Sir, contracted farmers lost tobacco because, at that particular time, there was suspension of tobacco purchase by BAT. Could the Assistant Minister tell us whether there will be any system where BAT will be made to compensate those farmers who were not able to deliver their tobacco at the right time?

Col. Kiluta: Mr. Speaker, Sir, I said clearly that the BAT insisted that those farmers breached the contract by allowing non-contracted farmers to bring in their tobacco through them. As a result, the blame is on the contracted farmers. Therefore, the companies cannot compensate them.

Mr. Speaker: Next Question!

STRIKE BY MITETA PRIMARY SCHOOL TEACHERS

Mr. Mbitiru: Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that Salama Secondary School, in Laikipia West Constituency, has not admitted Form

One student?

(b) Is he further aware that Miteta Primary School teachers have been on strike since 2nd July, 2001?

(c) What urgent measures is the Minister taking to rectify the problem in these two schools?

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

(a) I am aware that Salama Secondary School wrote letters of admission to 40 students, but only two turned up.

(b) I am not aware that Miteta Primary School teachers are on strike. As a matter of fact, they are at school.

(c) Salama Secondary School headmaster and three other teachers have been transferred. While in Miteta Primary School, the head teacher has also been transferred to another school as an assistant teacher.

Mr. Mbitiru: Mr. Speaker, Sir, first, I would like to make some correction on part "a" of this Question. My Question was:- Is the Minister aware that Salama Secondary School, in Laikipia West Constituency, has no Form One students?

Having done that, it is true that the Assistant Minister may not be aware of the true position because of the poor management by his officers on the ground. Is he aware that in Salama Secondary School, four teachers were transferred because of having sexual intercourse with girl students in Form Four, after giving them alcohol?

Mr. Speaker: Order! Mr. Mbitiru, just look at the Gallery in front of you and mind what language you use!

Mr. Mbitiru: Mr. Speaker, Sir, in order to be able to understand this Question, we must understand the facts on the ground. This is exactly what is happening. As a result of this--

Mr. Speaker: Order! Mr. Mbitiru, please, use a language that is acceptable!

Mr. Mbitiru: Mr. Speaker, Sir, I hope the Assistant Minister understands what I am saying. A hers to remain in that school and that when parents complained, the teachers threatened to go on strike?

Mr. Speaker: Order! Mr. Mbitiru, are you saying that this Assistant Minister has been bribed by those teachers?

Mr. Mbitiru: Mr. Speaker, Sir, I am not saying that the Assistant Minister has been bribed. But it is a well-known fact that the DEO is very corrupt. Initially, he was transferred from Nakuru District to Laikipia District due to his habit of protecting teachers with this kind of problem. Could the Assistant Minister explain the circumstances under which these teachers are still in the service and what action he will take against those teachers who are on strike?

Mr. Speaker: Order! Mr. Mbitiru, do you really want an answer?

Mr. Assistant Minister, would you like to answer him?

Mr. Awori: Mr. Speaker, Sir, first of all, let me make a correction. The Question reads:- "Is the Minister aware that Salama Secondary School, in Laikipia West Constituency, has not admitted Form One students?" That is the Question I answered. I said letters of admission went out to 40 students and only two turned up. The reason, indeed, was that the parents were not very happy with the headmaster on various matters. Drunkenness and disorderliness caused the parents to lose confidence in the headmaster. The Ministry has taken the necessary action of transferring this headmaster from the school to elsewhere as an assistant teacher. The same thing happened with the headmaster and the teachers at the primary school referred to. As to the question of impropriety between the DEO and the teachers, I do not have any information.

Mr. Kihara: Mr. Speaker, Sir, this is a matter of great concern. What Mr. Mbitiru is saying is that, there is a serious problem with the Assistant Education Officers (AEOs) and the District Education Officers (DEOs) in those areas. These officers do not seem to understand the Education Act. We are not having admission into these secondary schools and other schools because the AEOs and the DEOs--

Mr. Speaker: Order! Order, hon. Kihara! I gave you a chance to ask a question, but not to contribute to a Motion!

Mr. Kihara: The biggest problem is that the AEOs and the DEOs do not seem to understand the Education Act and, therefore, there is a tug-of-war between the Parents Teachers' Association (PTA) and the Board of Governors (BOG) with regard to their respective roles. Could the Assistant Minister try to make sure that those people who are supposed to manage these schools, especially the AEOs and the DEOs understand the Education Act? They should get directives from the Provincial Director of Education, to implement the Education Act, with regard to the PTAs and BOGs because we have people who are chairmen of PTAs yet they are not parents in those schools, contrary to the Education Act.

Mr. Awori: Mr. Speaker, Sir, definitely, I will investigate the matter and if, indeed, I find that there is a Chairman of the PTA who is not a parent in a school, action will be taken because a person cannot be a member of PTA unless he is a parent in that school. If a person who is not a parent in a school becomes the chairman of the PTA, indeed, that is contrary to the Education Act. If that is found to be true, then action will be taken to rectify the situation.

Mr. Mbitiru: Mr. Speaker, Sir, as I had said, the answer that the Assistant Minister gave to the first question is not right. That was not my version of the question, because I know that the school admitted students. The fact is that, students were admitted into that school, but went away as a result of misconduct.

Secondly, what action is the Assistant Minister going to take against the teachers who committed that heinous crime in those two schools, as an example, so that in the future, when students will be admitted to that school, they will have respect so that, at least, parents can get services for the money they pay to those schools?

Mr. Awori: Mr. Speaker, Sir, I, personally intend to look into the matter and if, indeed, there is medical evidence and other evidence that these teachers did what the hon. Member said, then they have no business being members of the Teachers' Service Commission and, therefore, they will be degazetted.

STOPPAGE OF CRUISE SHIPS
WORLDWIDE JOBS OFFER

Mr. Maitha: Mr. Speaker, Sir, I beg to ask the Minister for Labour the following Question by Private Notice.

(a) Is the Minister aware that a job offer for 50,000 Kenyans to work in Cruise Ships Worldwide has stopped due to the Ministry's failure to give guidelines on the exercise?

(b) Is he further aware that the delay by the Ministry in giving the guidelines will lead to the cancellation of the whole exercise by the Agents?

(c) What urgent steps is the Minister taking to issue the guidelines?

The Assistant Minister for Labour and Human Resource Development (Mr. Maizis): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that the recruitment of Kenyans to work in Cruise Ships Worldwide has stopped.

(b) The recruitment exercise by five reputable locally-based foreign employment agents is firmly on course. To date, the agents have registered about 25,000 job-seekers and these agents were engaged after signing a formal contract with the prospective employers; Al Najat Marine Shipping Company, who granted them the necessary powers of agreement. The exercise will be completed by 31st December, 2001.

(c) The Ministry is supervising the process to ensure that fairness, transparency and compliance with the national labour laws and international conventions are followed. In this respect, the Ministry is working in partnership with key stakeholders, such as the Ministry of Transport and Communications, the Seamen Union of Kenya and the Kenya Association of Foreign Employment Agents. In order to safeguard the interests of Kenyans, a final agreement will be signed between Al Najat Marine Shipping Company and the Government of Kenya before the departure of the recruits, in January 2002.

Mr. Maitha: Mr. Speaker, Sir, 50,000 Kenyans are going to get jobs in Cruise Ships, in the United Arab Emirates. The Government, through the Ministry of Labour and Human Resource Development, has come in to put unnecessary conditions, which are not applicable, by ordering people to register themselves as seamen and others, contrary to the 50,000 jobs offers which are being taken by the agents, and the agents are now threatening to stop the whole exercise. Could the Assistant Minister assure this House that they will not interfere with the agents' job, now that they are forcing people to pay some money when they had already paid Kshs3,000 to be recruited to take up those jobs?

Mr. Maizis: Mr. Speaker, Sir, in fact, we stopped the exercise to allow the formalities of the contract, only for four days, to be finalised from 13th to 17th, June, 2001. Otherwise, the process is still going on. Of course, there was a dispute over the registration fees and the medical fees and when the Ministry intervened, they waived the payment of Kshs3,000 for registration and reduced by half the payment of Kshs9,000, medical fees so that the applicants pay Kshs4,500 each. We only interfered with the exercise between the dates of 13th and 17th June, 2001 and since then, the exercise is going on until 31st December, 2001.

Mr. Munyao: Mr. Speaker, Sir, the Assistant Minister is aware that the people who are being recruited are Kenyans and they will remain Kenyans wherever they will be employed. Could the Assistant Minister confirm that the Government of Kenya will be responsible for their wellbeing between now and the time they get employed and also make sure that their conditions of work and every other thing is satisfactory? Could the Government assure this House that, if anything happens they will still come back to Kenya?

Mr. Maizis: Mr. Speaker, Sir, indeed, the Commissioner of Labour and the National Employment Bureau are monitoring the recruitment process. Confirmation of the employment contract will be done by the Commissioner of Labour himself, affirming that the terms and conditions of employment are okay.

Mr. Maitha: Mr. Speaker, Sir, now that the Assistant Minister has agreed to do something for these people, could he also confirm to this House that they will not ask these recruits to produce some seamen books which are not obtainable in Mombasa and anywhere? These recruits are being asked to produce these books in order for them to be

recruited. Could the Assistant Minister waive that condition now?

Mr. Maizs: Mr. Speaker, Sir, I am not aware of any books being required from the recruits.

Mr. Speaker: Next Order!

POINTS OF ORDER

INSECURITY IN TAVETA

Mr. Munyao: Mr. Speaker, Sir, last week on Wednesday, I requested for a Ministerial Statement from the Minister of State, Office of the President in charge of Internal Security concerning insecurity in Taita-Taveta after the elections took place. The Minister concerned was here, and I do not know where he is now. You directed that he should give the Ministerial Statement today.

SECURITY AT KISUMU MAYORAL ELECTIONS

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I stand on a point of order. I want to get clearance or some assurance from the Government. Tomorrow, in Kisumu, there is going to be mayoral elections. There are already signs that both sides of the contest are arming themselves to the teeth. This year is the Centenary of the Kisumu Town and I would like to appeal to the Government, particularly both parties, to give this country an assurance that security will be maintained in Kisumu and that, according to the Constitution and the Local Government Act, Kisumu Municipal Council will have the free choice to elect their Mayor without intimidation and undue harassment of Kenyan citizens.

Mr. Anyona: Mr. Speaker, Sir, I would like to raise an issue of procedure with regard to---

Mr. Speaker: Order, Mr. Anyona! What procedure?

Mr. Anyona: Mr. Speaker, Sir, I was going to explain---

Mr. Speaker: Order! I am the one in charge, and I am asking you: What procedure are you talking about? We are not yet anywhere!

Mr. Anyona: Mr. Speaker, Sir, the point that I am raising has a bearing on Standing Order No.113.

Mr. Speaker: On what business?

Mr. Anyona: On the next business.

Mr. Speaker: But we are not there!

Mr. Anyona: But Standing Order No.113---

Mr. Speaker: Order! You must have legs to stand on! Right now, we have no legs because there is no business being transacted. We are not even in business. Your colleagues are still on their various points of order.

Mr. Anyona: Mr. Speaker, Sir, but, Standing Order No.113 requires that a matter of this kind can be raised before the next business. That is why I was raising it, either before or immediately after the business had been read out.

Mr. Speaker: Order! Regarding Standing Order No. 113, Mr. Anyona, again, you have no legs. You are not the Member in charge of any Bill. In any case, what are you trying to raise? Maybe, the House would like to know the contents of what Mr. Anyona is saying regarding that Standing Order that he is referring to. It read as follows:-

"Either before the commencement of business or on the Order of the Day for any stage of the Bill being read, the Member in charge of a Bill may, without notice, move that the Bill be withdrawn."

To the best of my knowledge, there is no Bill on the Order Paper under the care of Mr. Anyona, under the provisions of that Standing Order. Therefore, I do not know what commencement of business we are talking about.

Mr. Anyona: Mr. Speaker, Sir, why do you not let me explain? I said that I was going to raise a matter of procedure, that has a bearing - I did not say that I was using it - to Standing Order 113. What that means is that, after I had raised my procedural points, I was going to ask the Minister, or the Attorney-General, to withdraw this Bill. That is the relevance.

Mr. Speaker: Order, Mr. Anyona! Again, that is why I said that you have no legs to stand on because, first of all, we are not there yet. Secondly, even if we get there, once I call for the Next Order, the business will not be before the House until it has been moved, seconded and Question proposed from the Chair. From there, you know how to proceed. If you want the debate to be adjourned to another day, there is a relevant Standing Order. Could we follow the procedures of the House? We are not anywhere near there!

Is Maj. Madoka here because he wanted to make a Statement? He is not there!

Next Order!

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that the Constitution of Kenya (Amendment) Bill, Bill No.2, be read a Second Time. This Bill is a very important Bill in our declared war against corruption. We are all aware of the devastating effects of corruption, on the social-economic and political foundations of nations. In fact, one 20th Century statesman stated that "unless we beat corruption, corruption will beat democracy." We recall in this House that, under the Statute Law (Miscellaneous) (Amendments) Bill of 1997, we established the Kenya Anti-Corruption Authority (KACA) as the Authority which would be on the forefront, leading the entire nation in the war against corruption. That Authority had a Director and Assistant Directors and was given wide-ranging functions. It was given the functions of investigation, prosecution with the consent of the Attorney-General, public education on issues of corruption and recovering whatever money that may have been lost from the public coffers as a result of acts or omissions by public officers.

Following the establishment of the KACA, it was duly constituted. The Director, Assistant Directors and other members of staff were also appointed and the Advisory Board was appointed in consultation with some specific institutions, like the Non-Governmental Organisations. It began to operate very well. One can only read the first report of the KACA to see the success it had achieved within the very short time it was in existence. In fact, it was well on its way to putting in place a national action plan against corruption.

Mr. Speaker, Sir, in the first report, and the only report of KACA, KACA itself did mention in that report that, when KACA was being constituted, there were fears that the Attorney-General would interfere with its operations and in particular its prosecutions. The first report of KACA did state in black and white that there was no problem whatsoever between KACA and the Attorney-General. In fact, there was what they called an operational rhythm between KACA and the office of the Attorney-General. That operational rhythm meant that--

Mr. Murungi: On a point of order, Mr. Speaker, Sir. I rise to seek your guidance on the following issue: When we were debating in this House the Constitution of Kenya Review (Amendment) Bill, there was also the Constitution of Kenya (Amendment) Bill which sought to entrench the "Ghai Commission" into the Constitution. During that debate, we wanted the Constitution of Kenya (Amendment) Bill to be debated before the Constitution of Kenya Review (Amendment) Bill. On that occasion, it was said that we could not debate the Constitution of Kenya (Amendment) Bill first because without us enacting the other Bill, there would be no Commission to entrench in the Constitution. We seem to be in a situation which is upside down. We are again entrenching KACA which is referred to in a Bill which we have not discussed. Could the Chair give guidance to the House as to whether the Attorney-General should proceed with this Bill or whether we should debate the other Bill first before we can debate this Bill?

Mr. Speaker: Orttorney-General, is that there was an authority called the Kenya Anti-Corruption Authority (KACA) in existence in Kenya sometime in the years past and that, that Authority was declared unconstitutional because it was said that the powers it intended to exercise did not belong to it. They belonged to the Attorney-General. That is how I understand his argument and, therefore, the purpose of this constitutional amendment is to make it possible to create an anti-corruption authority in accordance with the Constitution of Kenya. I, therefore, find absolutely nothing wrong with that and I think it is perfectly in order, and I so order! So, he will proceed!

The Attorney-General (Mr. Wako): Thank you, Mr. Speaker, Sir, for your ruling which is reasonable and logical!

Mr. Speaker: Order, Mr. Attorney-General! Are you suggesting that in the past, my rulings have not been reasonable and logical?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, all I am suggesting is that in the past, your rulings have had a wealth of wisdom in them! As I was stating, the then KACA, in its own report, did acknowledge that there was no problem whatsoever, between the KACA and the Attorney-General's Office; that there was what they called operational rhythm between the KACA and the Attorney-General's Office. That operational rhythm actually meant that there was no case on which the KACA completed investigations and which came--

Mr. Achola: On a point of order, Mr. Speaker, Sir. I thought we were dealing with Order No.7, but according to the documentation that I have here, Order No.7 is talking about Bill No.13, which is an entirely different thing from what the Attorney-General is talking about!

Mr. Speaker: What are you saying?

Mr. Achola: Well, it says that, that is the calendar for Parliament, Sections 58 and 59, Bill No.13.

Mr. Speaker: What is it talking about?

Mr. Achola: It is talking about entrenching the KACA into the Constitution, which is Bill No.12!

Mr. Speaker: Order! Hon. Members, it would help everybody, including the Chair, if we maintained some form of silence, when debate is going on, so that all of us can follow. That is because quite frankly, I did not follow what Mr. Achola has just said. It could be true or not, but I did not follow. I think hon. Members must consult in low tones, so that we can follow the Attorney-General.

*(Several hon. Members stood up
in their places)*

Order, hon. Members! Actually, the Bill you are discussing is The Constitution of Kenya (Amendment) Bill, Bill No.2, Supplement No.12. The Order Paper indicates Bill No.2, Bill No.13. It should be Bill No.12 as well. Maybe, there was a typing error on the Order Paper!

An hon. Member: The Order Paper is not correct!

Mr. Speaker: Order! We are not discussing the Order Paper! We are discussing the Bill! Hon. Members, it does look to me that Members are looking for every excuse---

(Loud consultations)

Order! I am saying that the Attorney-General will move the Bill as printed, and for the avoidance of doubt, we are discussing The Constitution of Kenya (Amendment) Bill, 2001. That is what we are discussing. The Attorney-General is invited to move that Bill and not the Order Paper!

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, as I was saying, there was---

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! I will explain to the House that the Bill before it is the one printed and supplied to Members, indicated as Bill No.2; The Constitution of Kenya (Amendment) Bill. That is the one that the Attorney-General is moving.

Mr. Muite: On a point of order, Mr. Speaker, Sir. Standing Order No.30 says that the Order Paper shall be prepared by the Clerk, showing the business to be placed before, or taken by the House in the order in which it is to be taken. So, this Order Paper is part of the procedure of this House. Could we seriously debate something which is not on the Order Paper in accordance with Standing Order No.30?

Mr. Speaker: Order! You are absolutely right! If hon. Members could follow, the Order Paper indicates what business to be transacted, and it is Bill No.2, as moved by the Attorney-General. It is also indicated as No.13---

*(Mr. Speaker consulted with
the Clerk-at-the Table)*

Order! The two hon. Members who are lawyers must understand this: That you look at the substance and not the form! That is the law and Mr. Muite and Ms. Karua know it; that you look at the substance and not the form. The Bill before the House is Bill No.2 of 2001. The other number 12, is the Kenya Gazette Supplement number.

Hon. Members: And 13!

Mr. Speaker: Order! Let the Attorney-General explain.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, as far as I am concerned, I am moving a Bill which has been circulated to all Members and it reads: "The Constitution of Kenya (Amendment) Bill No.2, 2001. The rest is normally done at the Clerk's office. There must have been a typographical error and I agree with you entirely that it is the form that matters.

(Loud consultations)

Mr. Speaker: Order, hon. Members! I just want him to explain the numbers appearing on the Bill. It is our business as the administration of Parliament to explain what happens on Order Papers. I have sent for the register of Bills that come to Parliament. When we receive Bills in Parliament, we register them in series. It is that series that appears on the Order Paper. Very soon, when I get that register, I will be able to tell you why it is 13 and not 12. Meanwhile, on the face of this, can you proceed?

The Attorney-General (Mr. Wako): Thank you, Mr. Speaker, Sir. There is no doubt whatsoever in my mind as to whether---

Ms. Karua: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Ms. Karua! The Speaker is never in charge of any Bill or Motion! If there is any query about any Bill or Motion, it is the business of the person who has it to explain to the House and not for the Speaker to get involved in debate. I have heard your objection. I will hear him and then make my ruling. I will not be expected to take the position of the Attorney-General.

Ms. Karua: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Ms. Karua! Can I get his explanation? I am the one who will ultimately make the ruling. Therefore, I must understand what is going on. Can he explain to the House?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I think you have stated what the procedure is. This Bill, which every Member has and which is being moved today is the Constitution of Kenya (Amendment) Bill No.2 of 2001. Obviously, when it reaches the Clerk's office he gives it a number. It is the Clerk's responsibility to reflect that number on the Order Paper. If there is a typographical error, it must have been made somewhere in the Clerk's office. I am saying "if" because we are still waiting for the register to arrive from the Clerk's office. Whether or not the Clerk's office put there 12 or 13, it is very clear that the Bill we are discussing today is Bill No.2, 2001. It is clearly stated on the Order Paper, the Constitution of Kenya (Amendment) Bill No.2. So, whether you find out that it was entered as 12 or 13, it is immaterial.

(Loud consultations)

Mr. Speaker: Order! I want to put this matter to rest now, particularly what appears on the Order Paper. Hon. Members, on 4th of May, 2001, a Bill was published. That Bill was circulated from the Clerk's office to Members on 7th May, 2001 and it is the Constitution of Kenya (Amendment) Bill, Bill No.2, 2001. It was registered in our register of Bills as Bill No. 13. It was registered in our register of Bills received as Bill No. 13. Therefore, the Order Paper is a true extract of the register of Bills maintained by the Clerk of the National Assembly, being the Constitution of Kenya (Amendment) Bill, Bill No.2, registered as Bill No. 13. That is how it will come when you pass it and not what it is in the Kenya Gazette Supplement. Parliament is superior to the Government Printer. We go by our register and it is here. There will be no more discussion on this matter now.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. Obviously, what you said is correct. In terms of what other proceedings will reflect, that ruling will be in the proceedings. What is happening, including the contents of the Order Paper which happens to be correct as it stands, will be in the proceedings. What the Attorney-General is moving in terms of that Bill, which is No.12, will also be in our proceedings. How do we resolve that problem?

Mr. Speaker: Order! I think hon. Members must understand the following: If you heard me read this Bill, which is under debate, from the register it states: The Constitution of Kenya (Amendment) Bill, Bill No.2, 2001.

(Mr. Murathe stood up in his place)

Order! You know, I hate these interruptions. It is against the Standing Orders and you must obey the Standing Orders. Will you give the Chair the dignity it deserves?

Hon. Members, the correct position is this: The Bill presented to the National Assembly, in accordance with Standing Order No.30, is the Constitution of Kenya (Amendment) Bill, Bill No.2, 2001. It was registered in the register of Bills of this National Assembly as the 13th received Bill. It retains the title as I read of "Bill No.2, 2001". It is the 13th Bill received in Parliament for the year 2001. That arrangement on the register of Bills in Parliament, in accordance with Standing Order No.30, is what appears on the Order Paper for today. Although the Attorney-General actually ought to explain this, I think hon. Members must understand that there is a difference between the Kenya Gazette Supplement numbering and the title of the Bill printed and presented to Parliament. As far as I am concerned, I do not care about the Kenya Gazette Supplement series because we do not register as a Parliament in the series. We register the Bill number and give it our own number. That is it.

Proceed now!

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, as I was stating, the Office of the Attorney-General was working very closely with---

Mr. Murathe: On a point of order, Mr. Speaker, Sir. You have rightly mentioned that it is Bill No.2 of 2001. That is not even reflected on this Order Paper. We could be debating a Bill of 1997! Could they draft the Bill properly?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, in order to discuss this Bill, I was giving the historical

background leading to the drafting of this Bill the way it is. I was refreshing the hon. Members' memories, that the Office of the Attorney-General, as soon as KACA was formed, and according to their own report, was working very well with KACA. The Government was also giving it the necessary resources to be executive in its work. "Operational rhythm" means that whenever they required the consent after completing investigations, they were getting it within 24 hours. So, we were on course as far as the war against corruption is concerned.

Mr. Speaker, Sir, this war against corruption was then interrupted by a constitutional court ruling in the case of Messrs. Stephen Mwai Gachiengo and Albert Muthoe Kahuria versus the Republic, which ruled that KACA was unconstitutional and that its purported exercise of prosecutions, even though approved by the Attorney-General, was also unconstitutional. It is because of that, that it became necessary to make KACA a constitutional body although we are aware that, in most parts of the world, authorities of this nature are not really constitutional bodies. However, in the light of the ruling by the constitutional court which said that KACA was unconstitutional *vis-a-vis* the Constitution, then it became necessary to make KACA itself a constitutional authority. It also became necessary to vest KACA with independent powers of prosecutions. It also became necessary to ensure that the Director of KACA had the security of tenure similar to that one enjoyed by the Attorney-General, Controller and Auditor-General, Judges of the High Court and others. So, that is why we are here today; to ensure that KACA is actually a constitutional body.

Mr. Speaker, Sir, I will not take too long in making the reference to the Bill which is very short and clear in its terms and what it seeks to establish. However, I can assure Members that any points that will be raised, I will be able to respond to them very effectively when replying.

Mr. Speaker, Sir, basically, Section 109 of the Constitution states:-

"If the Bill is enacted, it will be to create KACA consisting of a Director who shall be the chief executive and not more than four Assistant Directors all of whom shall be appointed by the President in accordance with such procedure as shall be prescribed by Parliament."

The fact of the matter is that if we are creating a constitutional office, authority or institution, then we must, first of all, amend the Constitution and then, thereafter, in an Act of Parliament, provide the details on how that institution or authority will be functioning. It is not the other way round; that we first of all, provide in detail how it will be functioning; and then end up in amending the Constitution.

The Constitution of Kenya Review Bill had to follow that way because what we were doing was not to create a constitutional office but to entrench an entire Act of Parliament and we could not do so until all the processes of that Act had gone through Parliament and renew the Act of Parliament in its final form. It is only when we renew the Act of Parliament in its final form that we can now proceed to entrench that Act of Parliament into the Constitution.

(Loud consultations)

Mr. Speaker: Order! Members, are you truly sure you do not want to hear about this Bill?

The Attorney-General (Mr. Wako): Thank you, Mr. Speaker, Sir. So, we are by this proposed amendment, establishing KACA as a constitutional institution with the Director and Assistant Directors who will have terms of four years each but shall be eligible for appointment.

The Director, as I stated earlier, will have security of tenure for those four years similar to that enjoyed by other constitutional offices under our Constitution.

Mr. Speaker, Sir, the main functions of the Authority will be to investigate and prosecute offences of corruption of public officers, economic crimes and such other related offences as shall be prescribed by Parliament; and also to carry out such other functions as appears to be necessary or desirable for the prevention of corruption. It has been suggested that this particular Bill does not contain the definition of what are the offences of corruption and Economic Crimes Bill. I would like Members to bear in mind that we are here dealing with a constitutional amendment and the most we can do in it, is to provide the categories of offences which will be under the jurisdiction of KACA both for investigation and prosecution. We cannot provide the detailed definitions of these offences in the Constitution.

Mr. Speaker, Sir, even under the current Constitution, prosecuting of criminal offences refers to issues of a fair trial in the criminal justice system and so on. There is no definition of those criminal offences other than just to say those were the offences which are created under an Act of Parliament. To say that the specific criminal offences must be provided for in the Constitution is to say that the entire Penal Code must be entrenched in the Constitution and that is incorrect and improper. You will be introducing categories of offences. It will mean that these offences are even more serious than the offences of treason, murder and so on which are really provided for under an Act of Parliament.

Mr. Speaker, Sir, we are also aware that, particularly when it comes to economic crime and corruption offences, the issues of definition become issues on which the lawyers battle in court and somebody who is otherwise guilty of offences. It is clearly stated there that: "Those offences shall be prescribed by an Act of Parliament."

Mr. Speaker, Sir, there is also a Kenya Anti-Corruption Economic Crimes Board which shall comprise of

members as prescribed by Parliament and the functions of the Board are to advise the Authority on matters. The independence of the Authority is secured by the security of tenure on the part of the Director but also by the fact that they will be exercising those powers both investigative and prosecution notwithstanding any other provision in the Constitution. That means notwithstanding even the powers of the Attorney-General to prosecute.

Mr. Speaker, Sir, we have also provided that in the exercise of the powers of investigation and prosecution, both the Authority and the Board shall not be subject to the direction or control of any other person or authority. This is a very sound Bill. It is brief to the point of what is required to be provided for in the Constitution. All other details will be provided for under an Act of Parliament which we have already published.

With those few remarks, Sir, I beg to move and call upon the Vice-President and Minister for Home Affairs to second this Bill.

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Speaker, Sir, I concur with the Attorney-General that this is, indeed, a very important Bill in the sense that it seeks to amend the Constitution. There is no doubt that any constitutional amendment is so substantive for the country that debate on it needs to be conducted properly and clearly, and that every hon. Member needs to be heard. I believe that it is important for us to listen to whatever divergent views one gives here. I believe that what matters finally is the way each one of us is going to vote in accordance with his or her conscience.

As the Attorney-General said, the purpose of this Bill is to amend Section 109A in order to entrench the Kenya Anti-Corruption Authority (KACA) into the Constitution. We are all aware of the defunct KACA. The Bill that created it was first debated here in 1997; it was set up by an Act of Parliament. Sufficient resources were accorded to the KACA so that it would carry out its functions as spelt out in the earlier Act. We are also aware that in December, 2000, some aggrieved Kenyans were not happy with the way the KACA was operating. So, in exercise of their rights, as provided for in the Constitution, they went to a constitutional court where KACA was declared unconstitutional.

The Attorney-General has recounted the various events that have taken place since December, 2000 to the time when this Bill was published. There have been various discussions and arguments as to how the new KACA should look like. The Attorney-General has consulted extensively, both locally and internationally. He has had discussions and consultations with Transparency International (TI). With its integrity and knowledge on matters relating to corruption, the TI has no doubt about the viability of this Bill. During the drafting of this Bill, the Attorney-General was able to reach an understanding with TI. In fact, the views of TI were that, indeed, the Bill being proposed is perhaps a bit too onerous. I am sure that I am not misquoting the Attorney-General on that. Be that as it may, we have also had discussions with our development partners and---

*(Mr. Wamunyinyi tried to cross the Floor
between the Chair and the Table)*

Mr. Speaker: Order! Order! Hon. Members must know the rule that they may not cross the Floor between the Chair and the Speaker. So, Mr. Wamunyinyi, could you apologise to the House? I give you the Floor!

Mr. Wamunyinyi: Mr. Speaker, Sir, may I apologise for that?

Mr. Speaker: Very well; apology accepted!

Proceed, Prof. Saitoti!

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. Considering the fact that Mr. Wamunyinyi is one of the new hon. Members of this House, it would be fairer to teach him and his colleagues the "dos" and "dents" while in this House. I think we should teach them that.

Mr. Speaker: Order! Order! Mr. Ndicho, that is a frivolous point of order! If we were not discussing a momentous issue, I would have ordered you to leave this Chamber. I will not do so for now.

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Speaker, Sir, I was saying that the Attorney-General has brought with him a wealth of consultation, both locally and internationally. He has consulted our development partners and many other bodies which are involved in corruption-related issues.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. In view of the sovereignty of the National Assembly of Kenya, is it in order for the Leader of Government Business to purport to legitimise an incurably flawed Bill on the basis that the Attorney-General has talked to entities that are beyond the realm of our Parliament? He is even misrepresenting the position of TI!

Mr. Speaker: Order! Order! To the extent that he is expressing his views, Prof. Saitoti may be allowed to do so. But, as the Speaker of this House, I will not allow any bulldozing of anything by any other authority except hon. Members of this House. That is why we are debating this Bill. It is up to this House to decide, at the end of the day, whether the Bill before the House is in the interests of Kenyans or not. That is why we are debating this Bill. I urge all

hon. Members to discuss this issue as Kenyans, and with open minds; they should contribute to it as best as they can and convince each other that it is, indeed, right to pass this Bill or not right. But, as the Speaker of this House, I stand by the fact that this is a sovereign Parliament.

Proceed, Prof. Saitoti!

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Speaker, Sir, in saying what I have said about the consultations, I was drawing the attention of this House to the fact that, indeed, no one has a monopoly of knowledge. As a country, we cannot claim to have a monopoly of knowledge on everything. However, that does not negate the fact that, at the end of the day, only we, as Kenyans, will have to decide the destiny of this nation.

Mr. Speaker, Sir, the result of the consultations and the process of seeking views of intellectual importance is that the Attorney-General has come up with a Bill, through which he seeks to entrench KACA into the Constitution. The reason for this is that neither we nor our friends and Kenyans at large want to have another KACA that will once again be shot down in a constitutional court. That has not been a very easy decision to make, but it has been made.

The objectives of this Bill are clearly defined. More than anything else, Clause 4 seeks to empower KACA to investigate and prosecute all corruption-related matters. Clearly, the Constitution today empowers only the Attorney-General to prosecute any such case. One must, therefore, appreciate the difficulty the Government and the Attorney-General faced in agreeing to this Bill, which seeks to hand over the power, to investigate and prosecute matters relating to corruption, to KACA.

Mr. Speaker, Sir, that is an important constitutional entrenchment, to investigate and to prosecute. Much more important, there may be those who may believe that, perhaps, KACA can actually be manipulated here and there. The intention here is to have KACA as an independent body which cannot be manipulated. This is clearly stated under Clause 7 which reads as follows:-

"The Authority and the Board shall exercise their functions under sub-sections 4 and 6 of this section notwithstanding any other provisions of the Constitution, and in the exercise of their aforesaid functions, the Authority and the Board shall not be subject to the direction or control of any other person or authority."

So, I do not think that KACA could become more independent than that. Perhaps, it is even much more. It has quite a lot! It states that notwithstanding any provision of the Constitution, the Director and the Board will do their work as stated. It is not that easy but there it is, and we have accepted, as a Government, to move in that direction. That means even here in Parliament, you cannot produce a report which states that certain persons should be prosecuted. The KACA will have to ensure that it goes through the allegations contained in the report, study carefully the recommendations, and then independently---

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. Are you satisfied that the hon. Vice-President and Minister for Home Affairs is not discussing a Bill which is pending before the House?

Mr. Speaker: Which one?

Dr. Kituyi: The Kenya Anti-Corruption Authority Bill.

Mr. Speaker: Yes, he is almost dangerously getting there. Mr. Vice-President and Minister for Home Affairs, could you concentrate on the Bill before the House?

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Speaker, Sir, I think this is a constitutional provision. It states very clearly that the Director and the Board shall not be directed! You cannot direct it to do its work the other way. It has to act independently. I like that because there are some people who would wish to make allegations against others and recommend to KACA to go and prosecute. The hon. Members who may wish to do that are now completely barred. There may be hon. Members who may want to take exception to certain provisions, and we hope that they will come here and tell us much more. The centrality of the matter is what kind of society do we want to have in this country. That is the bottom line. I am sure that hon. Members will agree that we have several cases of transgression of the law and we need to put things in place. We are not the only country that is corrupt!

Although it has been said that Kenya is corrupt, many other countries are corrupt. I believe that if we are rated to be one of the most corrupt countries, it is because we speak a lot about ourselves. There is a lot of self-criticism among us. I am not saying there is anything wrong with that. But I know of many other countries that are corrupt.

Dr. Kituyi: On a point of information, Mr. Speaker, Sir.

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Dr. Kituyi, I do not need your information! The truth of the matter is that we have a lot of self-criticism! We talk more about ourselves. As a result, we have been rated wrong. Corruption is immoral and it is an evil in Kenya and Africa. It is also an evil found in the developed countries. What is important is what measures does a country take---

Mr. Muithia: On a point of order, Mr. Speaker, Sir. Is it in order for the Vice-President and Minister for Home Affairs to mislead this House by saying that Kenya is corrupt rather than the Kenya Government?

Mr. Speaker: Order, Mr. Muihia! I think you should have waited to give your own view. Kenya is not a void. Kenya is what it is because Kenyans are there!

Proceed, Mr. Vice-President and Minister for Home Affairs!

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Speaker, Sir, corruption is a universal vice. The major question is: What does a country do when confronted with such a scenario? What measures does it take?

Mr. Speaker, Sir, the bringing of this Bill to the House is a testimony to the world that Kenya is willing to take the first step in order to deal with this vice. As the Chinese say, a journey of a thousand miles starts with the first step. We are, therefore, beginning with the first step and we want to move as fast as possible. Why do we want to do that? Today, the greatest problems we are faced with in this country are poverty and unemployment. Of course, we do have HIV/AIDS. Although HIV/AIDS does contribute to poverty, poverty too can escalate the incidents of HIV/AIDS. Unemployment is the cause of poverty.

Poverty is the greatest problem we have in Kenya and in Africa today. About 56 per cent of Kenyans today live on less than one dollar a day. The question here is: How do we then embark on an effective war against poverty? How do we bring back our country to prosperity? We need to understand the issues at stake. In a globalised world, we have to increase productivity, and we can do that by increasing efficiency. Efficiency means we need to reduce transaction costs. The cost of doing business has got to be reduced. That is what is happening in countries all over the world today.

Every country in the world today is doing everything possible to reduce transaction costs. Reducing transaction costs has to do with eliminating incidences of people asking for bribes and giving bribes. It has also to do with ensuring that public servants deliver the services which they are supposed to---

Mr. Speaker: Order, hon. Members! I hate to do this, but we have two Bills very close to this Bill pending: The Public Service (Code of Conduct and Ethics) Bill, which deals with what Prof. Saitoti is saying now, and also the Economic Crimes Bill. I am duty-bound not to allow hon. Members to anticipate debate. There is a very fine line between the Bills, and I am asking you not to overstep it. These two other Bills will come before the House and you will have an opportunity to debate on them.

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Thank you very much, Mr. Speaker, Sir. I am completely aware of the fact that I should not really try to anticipate debate. I was trying to provide the background against which this Bill has been brought here. I do not think we can debate this Bill meaningfully without stating the rationale behind its formulation. I shall not get into the mechanics of how the other two Bills are supposed to work.

It is important that we have a mechanism in place that will handle these matters of corruption. We need a mechanism that will assist our society to operate effectively and competitively in the world. Today, we have no alternative but to increase our competitiveness. I want to give a rationale here. For example, if you look at the City of Nairobi, you will see that it is a beautiful City, but at the same time, it has become one of the filthiest cities in the world today. At the same time, if you look at the employment opportunities, for example, you will find that there are none. How come the City is filthy? This shows clearly that there are people who are not providing services and people, perhaps, who do not even show up at their work stations. There are various other services that are not being provided, but because of your advice, I do not want to get into the details. There are difficulties all over and if you want certain documents, you cannot get them.

We want to be in a position where, if an investor wants to invest here, once he presents his documents, they are cleared within a day or two. Once again, we need a mechanism to deter any person from trying to mess up things. Only then will we get the flow of investments into the country; have the local investors re-investing their resources; expanding what they have; creating jobs and wealth, and fighting against poverty. In essence, I am saying that there is no meaningful way in which we can fight against poverty unless we have certain structures. I believe that, that is important, otherwise poverty will be a problem.

I want to say the following as my final point. Yes, we have discussed this Bill with both the World Bank and the IMF, and we are not ashamed of it. It is equally true that the enactment of this Bill is a pre-condition for the release of funds by the IMF. Once those funds are released, they will trigger substantial flows of resources from the World Bank and multilateral partners.

In the current Kenyan economic situation, it cannot be denied that we require external aid into our economy. Even if it is not for general balancing of our books, we require resources to improve our infrastructure. We need more resources to build roads, increase our energy capacity, and undertake more water projects. We cannot develop or fight poverty if our infrastructure is in bad shape.

Why do I say that we still require resources from our donors? I want to repeat an argument I have repeated elsewhere, and one which I subscribe to fully and clearly. Africa, including Kenya, must find ways to exit from aid dependency. For too long, African countries have depended too much on donor aid. They have believed that they

cannot do anything without donor aid. African countries, including Kenya, must now re-look at ways of increasing their efficiency and reducing transaction costs. I believe that this continent of ours has substantial untapped resources. If these resources are meaningfully managed - and we can do it - then I have no doubt that Africa can fight poverty.

Mr. Speaker, Sir, in a peaceful and secure environment, and in a situation where Africa embraces the latest technology and techniques of management, I have no reason to believe that in the long term, it cannot exit from donor dependency. In that way, we will not have to be subjected to various conditionalities. But I want to say that with or without donor aid, it is upon us to fight poverty and corruption. Even without the donor aid, it is upon us to put in place institutions that will ensure that our economies and societies operate efficiently. We should also ensure that our societies become more inclusive and participatory. We should have societies in which every individual, irrespective of colour, skin, tribe or gender, can offer his best potential for the nation. This is the only way in which we will build this nation.

It is unfortunate today, we have to do, what we have to do or what we are bound to do because there are conditionalities. But the truth of the matter is that we should look at the bigger picture. The bigger picture is that we want a society where things are done properly and clearly. This is a phenomenon all over the world. As I have said, I do not believe in Kenya being demonised alone. We are dealing with a global vice, but we must start here because every country in the world is doing it. If we do not do it, we will be left behind in globalisation of a competitive world. We shall find ourselves totally out-paced.

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

(Question proposed)

Mr. Anyona: On a point of order, Mr. Speaker, Sir. I hope I have some relevant information to enable me to now raise the issue of procedure I wanted to raise earlier on. I would like to seek a considered opinion and ruling from the Chair on this matter in the following terms: Normally, when Motions are submitted to you for approval under Standing Order 40, Paragraph 3, Sub-paragraph (b), you ensure that the Motion does not contravene the Constitution. If it does, it becomes inadmissible or you can ask for that Motion to be---

Mr. Speaker: Are you talking about a Motion?

Mr. Anyona: Mr. Speaker, Sir, I was giving it as an example. Similarly, the Motion before the House is that the Bill be read the second time. That Bill has elements which have that problem. The point I would like you to consider is that this Bill, under our own Standing Order No.95, Paragraph 3, and also under Section 47(4) of the Constitution of Kenya, is not subject to amendments on the Floor of the House. So, if it has problems in it, it is too bad. That is why we were preferring earlier on that the Attorney-General withdraws the Bill before the debate goes on. So, what I am inviting the Chair to consider is, given the fact that we are actually responding to a decision of the High Court which found a previous law we made unconstitutional; therefore, we must satisfy ourselves as a House and as the Chair, that, indeed, we have fully complied with the requirements of the Constitution.

Mr. Speaker, Sir, I do not believe that the proposed Bill and Section 26 of the Constitution, particularly sub-sections 3, 4, 5, 6 and 8, are not actually in conflict. I am, therefore, inviting the Chair to find whether or not the two sections are in conflict. If they are in conflict, then the House should be able to act wisely. I am saying that because, if you look at Sub-clause 7 that the Vice-President was emphasising, it does not take away what Section 26 provides for. I would have thought that if you wanted to take these powers away from the Attorney-General, then you would so provide in Section 26 and then transfer those powers to this new section. But at the moment, those powers in Section 26 are entirely intact. You are topping it up with something which clearly does not seem to create conflict.

Mr. Speaker: Order, Mr. Anyona! I think, as a result of standing on a point of order, you have started debating on the Bill. I would like to invite the House to look at the Standing Orders. The Speaker has a role to play in determining or not whether Motions are in accordance with the Constitution or they are not. Hon. Members can find all these from Standing Order No.40 downwards, titled: "Motions and Amendments to Motions". On such an issue, the Speaker has a very big role to play by, first of all, admitting the Motion before it comes to the Floor of the House.

I would like hon. Members to contrast that with the Bill. The publication of a Bill by the Government or by an hon. Member who has been given authority by this House does not require the authority of the Speaker at all. In fact, they are delivered to the Clerk as a matter *accompli*. Our duty is to register it under Standing Order No.30. If you look at the whole sequence of Bills; the whole chapter dealing with Bills, you will find that in public Bills and private Bills, Mr. Speaker has absolutely no role to play in the contents and in the manner in which they are introduced, except for amendments to those Bills. When you want to amend those Bills on the Floor of the House, then the Speaker is invited to approve the Motion of Amendment and the contents of amendment. It is, therefore, not the business of the Chair to scrutinise the Bill against the Constitution or other laws and find whether or not they are in consonance with one another. That would be inviting the Chair to enter debate, a role for which, I think this House - in my view, it is in good sense - decided to deny the Chair. It is really up to you, Mr. Anyona, to convince the Attorney-General and the hon.

Members on the Opposite side of the House, and the ones with you and behind you that indeed, the Bill brought by the Attorney-General is bad in law and, therefore, we should not pass it, and solicit their opposition to it through a vote. Give the Chair a break!

Proceed, Mr. Murungi!

Mr. Murungi: Thank you Mr. Speaker, Sir, for giving me this opportunity to oppose this Bill. I had occasion to do exactly what you have advised Mr. Anyona to do. I sat down with the Attorney-General and tried to convince him that this Bill is actually fundamentally flawed, and that it will cause major constitutional problems if it is passed the way it is, and that as a matter of fact he should withdraw the Bill and then we assist him in redrafting it, and then he brings it to the House. But all our pleas have fallen on deaf ears.

Mr. Speaker, Sir, it is not that we are against KACA being entrenched in the Constitution. What we want is a powerful, effective KACA. The reason why we are opposing this Bill is because the KACA that this Bill creates is a KACA shrouded in controversy from the very beginning. It is a KACA which is shrouded in constitutional and legal uncertainty, and it is a KACA which does not provide an adequate institutional framework for fighting against corruption in this country.

Mr. Speaker, Sir, the struggle against corruption in this country has, for quite a number of years, been bogged down in interminable legal and political complexities. I have reason to believe that these legal parallelism are not accidental. I have reason to believe that these legal parallelism and apparent incompetence in the Office of the Attorney-General are actually a deliberate strategy on the part of the Government to block any meaningful anti-corruption reforms. Our struggle against corruption has been based on some kind of deception. We seem to adopt a strategy of "talk, talk and talk, but make sure that nothing happens."

Mr. Speaker, Sir, all the anti-corruption measures that have been taken in this country have been undertaken under pressure from external donors. The measures we have taken have actually been intended to impress those donors so as to attract external resources to this country. To a lesser extent, the anti-corruption reforms have also been intended to pacify the natives and create some internal legitimacy for this regime. To that extent, the Kenya Government has been an agent of confusion and deception. The State has been an instrument of plunder. We have seen large-scale fraud, like the Goldenberg scandal, and massive plunder of State and public resources being a common feature of this country. This somehow suggests that the State has some complicity in this large-scale criminal activity. Given that reality, I think that it will be extremely naive for us and Kenyans in general to believe that the Government will undertake any serious legal reforms, or implement any serious anti-corruption measures just because the Kenya Anti-Corruption Authority (KACA) has been constitutionalised.

Our analysis of the State is that it is an abstraction in this country. In fact, in daily life, the real state is made up of some hidden power brokers, intermediaries and front-men who use the official organs of the state for private accumulation of wealth. These hidden power brokers are the principal beneficiaries of the economy of plunder. It is the hidden power brokers who work behind the scenes, even after Parliament has passed laws, to frustrate them and turn serious or otherwise, very well designed anti-corruption strategies into harmless gestures which have no consequence.

So, given this reality, even if we pass this Bill or entrench KACA into the Constitution, there is no chance that the struggle against corruption will move forward in any meaningful way. That is the first point I would like to make.

Secondly, this Bill is based on a theory of counter-reform, which has been used in Latin America to frustrate land reform. What has happened in Latin America is that there are laws, policies and practices which are put in place by conservatives in the Government to frustrate the land reforms, and make it impossible for those reforms to benefit the common people.

Mr. Speaker, Sir, we believe that what is happening in the anti-corruption reform in this country is no more than counter-reform. We have seen many laws, policies and institutions in this country being frustrated by elements in this Government, so as to make those reforms useless. Although the official propaganda is that with the passing of this Bill, great changes will come, or are in the offing, and new laws are being introduced; as a matter of fact--

Mr. Speaker: Mr. Murungi, are you reading a speech or debating?

Mr. Murungi: Mr. Speaker, Sir, I am debating.

Mr. Speaker: You had better do that because it does appear to the Chair that you are reading a speech!

Mr. Murungi: Mr. Speaker, Sir, I am just making brief reference to my notes. I will take note of that.

Mr. Speaker: Well, you had better do that!

Mr. Murungi: Mr. Speaker, Sir, I am saying that the very complexities of the laws that we make create an intricate wave of limitations, restrictions and exceptions which make the implementation of these laws impossible. We believe that the various attempts that we have made to draft anti-corruption laws in this country have been victims of counter-reform. That is why we do not make any movement forward.

Mr. Speaker, Sir, even looking at the history of the various institutions and steps we have taken to fight corruption in this country, it would show that all these steps, at the end, turn out to be meaningless. The Chair will recall

that when His Excellency President Daniel arap Moi took over power in 1978, he declared total war on *magendo*. In fact, he was very popular when he came to power because in those days people remembered about coffee in Chepkube which was theft, but it had made many people in this country rich during the last days of the late President Mzee Jomo Kenyatta. When President Moi came to power and said that he would fight corruption, in fact, he was well received by Kenyans and we believed him. But ten years down the line, corruption has become endemic and it has grown deep roots in all the sectors of this society.

During the one-party era, it was impossible to talk about corruption. You will remember that Mr. Anyona, who is here, was detained because talking against corruption threatened State security. I think it was about the locomotive deal with the Canadian firm which made Mr. Anyona serve a stint of detention without trial in Kamiti Maximum Prison. He also lost his parliamentary seat. So, this was a sacred cow.

It was not until 1991, with the advent of multi-party democracy, that there was more freedom of the Press, and that we started reading about corruption scandals in this country. It was also in 1991 when the donors, who have also been in this for all this time, got some voice and cut off aid to Kenya on grounds of bad governance, and specifically corruption.

The Vice President and Minister for Home Affairs (Prof. Saitoti): On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Mr. Murungi, would you like to be informed?

Mr. Murungi: Mr. Speaker, Sir, I do not want to be informed.

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Speaker, Sir---

Mr. Speaker: Order! Order! You stood on a point of information which was rejected. You are not entitled to change your mind.

Proceed!

Mr. Murungi: Thank you, Mr. Speaker, Sir. In 1991, we, under pressure from both local and international communities, amended the Prevention of Corruption Act, Cap.65, to introduce stiff penalties for corruption-related offences. Nothing came out of those amendments because nobody was convicted and, therefore, nobody was punished. So, the stiff penalties that we introduced in 1991 were useless. Then, again, in 1993, big issues like the Goldenberg came to the fore. It is at that time that President Moi appointed the Anti-Corruption Squad as a unit within the Police Force, headed by one Stanley Mutungi. The Anti-Corruption Squad was there between 1993 and 1995. It was seen to be very active but again, no major prosecution was undertaken by the Anti-Corruption Squad. In the end, the Anti-Corruption Squad itself was disbanded on the ground that it had become corrupt. In fact, all the records of the cases they had investigated over the years went down in a fire which consumed the files in their offices. To date, the police are investigating the cause of that fire and they do not know who caused it.

Mr. Speaker, Sir, between 1995 and 1997, all was quiet on corruption. It was not until 1997, towards the last days of the Seventh Parliament, when we again amended the Prevention of Corruption Act; again, under intense pressure from the IMF. The Attorney-General admitted it and we rushed it through this House during the IPPG days to create the Kenya Anti-Corruption Authority (KACA). When KACA was created, Mr. Harun Mwau, who was then the boss of the Party of Independent Candidates of Kenya (PICK), said he was not going to run as a presidential candidate, and he was appointed the Director of KACA. Mr. Mwau was given very little money because his budget was tightly controlled by the Office of the President. He had no permanent staff. He operated with staff seconded from various departments, including the Police. That was a lame-duck KACA. When, towards the end, Mr. Mwau became active and arrested a few senior Customs officials, our friend, hon. Nyachae, protested. Mr. Mwau got into a lot of trouble and a commission of judges was appointed to investigate his competence. We do not know on what basis they found him to be incompetent, but they say he was found to be rude. He was eventually removed from office, and one of the witnesses, a former Solicitor-General, hon. Justice Ringera, was appointed to head KACA. When Justice Ringera reported at KACA, there was no office. He had to look for an office and he spent about one year trying to put KACA together, build the institution and develop its capacity. When, finally, he was able to have some prosecutors, he picked up some senior people, including a Cabinet Minister, and then his trouble started. It is after that, that a case was filed in court, which said Justice Ringera, in the first place, being a judge, should not be heading KACA. It is contrary to the doctrine of separation of powers. Secondly, KACA itself was said to be infringing the territory of the Attorney-General. According to the High Court, their reading of Section 26 was that the Attorney-General has exclusive prosecution powers. That being the case, KACA had no business prosecuting anybody, and that it had usurped the powers of the Attorney-General.

Mr. Speaker, Sir, lawyers continue to debate on the merit of that judgement and, personally, I think it is of doubtful legality. Section 26 is quite clear that the Attorney-General does not have exclusive prosecution powers. It says he can discontinue criminal proceedings instituted by himself or other authorities. So, those other authorities which are mentioned in Section 26, surely, must include KACA. Anyhow, the Attorney-General decided not to appeal against that

judgement and he accepted it. It was found that the only way to get KACA back into operation was to write it into the Constitution. That is why we are here today to correct a mistake which the court found in the jurisdiction of KACA. But our own reading of this Bill does not resolve the territorial wars between KACA and the Attorney-General. This Bill does not resolve the jurisdictional conflict between KACA and the Attorney-General. We think that is the principal weakness of this Bill. We have told the Attorney-General about it many times, we do not know why he has not listened to us.

The Law Society of Kenya (LSK) drafted a Bill which tried to resolve the conflict and forwarded it to the Attorney-General, so that he could use it to draft this Bill. But the Attorney-General has ignored the very good draft presented to him by the LSK. Instead, the Attorney-General went to the IMF and said he had no capacity in his office to assist him to draft such a Bill. He brought in some lawyers from South Africa, who, obviously, have no idea about what happens in this country. The technical assistance that the Vice-President and Minister for Home Affairs was talking about are the lawyers from South Africa who were brought in by the IMF.

I am talking about things which I know---

The Vice-President and Minister for Home Affairs (Prof. Saitoti): On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to attribute to me a statement that I did not infer to, that lawyers were brought from South Africa? I never even mentioned the words "South Africa".

Mr. Murungi: Thank you, Mr. Speaker, Sir. The Vice-President and Minister for Home Affairs is right. He did not mention South Africa, but he said the Attorney-General made extensive consultation, both locally and internationally. He mentioned Transparency International and so forth. I am even informing him about some details he might not have known, although he is in this Government!

Mr. Speaker, Sir, looking at the Bill, it is a very short one. I think it purports to amend the Constitution. Section 109 of the Constitution is the one which creates the Office of the Attorney-General. So, what the Bill has done immediately below the section that creates the Office of the Attorney-General is to introduce Section 109(A), to establish the KACA, made up of a Director-General and four assistant directors. Section 109(A)(4) defines the functions of the Authority as to investigate and prosecute offences of corruption of public officers and economic crimes.

The Assistant Minister for Lands and Settlement (Mr. Sudi): On a point of order, Mr. Speaker, Sir. There is a stranger in the House.

Mr. Speaker: Who?

The Assistant Minister for Lands and Settlement (Mr. Sudi): That man over there!

(Laughter)

An hon. Member: He is the new Member for Taveta Constituency

Mr. Speaker: Order! Mr. Sudi, it is your business to come to this House at 2.30 p.m. At 2.30 p.m. today, that hon. Member was sworn in as an hon. Member of this House. If it was on an ordinary day, you would be out now! You must apologise to the House for being frivolous!

The Assistant Minister for Lands and Settlement (Mr. Sudi): Mr. Speaker, Sir, that was only for your information, but I do apologise to the House.

Mr. Speaker: Very well. Point taken!

Mr. Murungi: Mr. Speaker, Sir, the first point to note about the functions of the KACA is that, in fact, the jurisdiction of the proposed new KACA is much more limited than the jurisdiction of the defunct KACA which it purports to replace. The new KACA can only investigate and prosecute offences of corruption of public officers. It has no jurisdiction to deal with corruption in the private sector. The old KACA had jurisdiction to deal with corruption both in the public and private sectors. Secondly, this new KACA has no jurisdiction to institute civil proceedings to recover stolen or, otherwise, ill-gotten property. The previous KACA had jurisdiction to institute civil proceedings to recover any public property which had been misappropriated. We have a KACA which is being weakened deliberately. We have a KACA which is given no-go areas. It cannot institute prosecution against the private sector, neither can it institute civil proceedings.

Mr. Speaker, Sir, we also have a problem with Section 109(A)(7). This is a clause which the Attorney-General has introduced in order to rectify the defects in the old KACA and solve the jurisdiction problems that can be highlighted by the High Court. This section says:-

"The Authority and the Board shall exercise their functions under subsections (4) and (6) of this section notwithstanding any other provision of this Constitution and in the exercise of their aforesaid functions, the Authority and the Board shall not be subject to the direction or control of any other person or authority".

Mr. Speaker, Sir, as Mr. Anyona said, there is no direct reference in this Bill to Section 26 of the Constitution. The Bill retains the powers of the Attorney-General under Section 26 of the Constitution intact. So, the Attorney-General, even after passing this Bill, will still retain powers to prosecute offences of corruption and economic crimes. There is no reason why the Attorney-General cannot use these powers to preempt KACA. If the Attorney-General wants to be mischievous when he hears KACA is about to take somebody to court, he could rush and prosecute that person instead of KACA doing so.

Mr. Speaker, Sir, there is nothing in this Bill which says that the Attorney-General will not exercise *nolle prosequi*; that the Attorney-General will not move in to terminate cases being prosecuted by KACA. This is because his powers to terminate proceedings instituted by other authorities under Section 26 remain intact. However, the Attorney-General has given verbal assurances that he will never move in to terminate any prosecutions being brought in by KACA. This is a gentleman's word, coming from hon. Amos Wako. Who says hon. Amos Wako will always be the Attorney-General of this country? A person who has not given these assurances will one day sit in that office and he will move in to terminate cases brought in by KACA, either because they have come in against their close friends, or they are politically sensitive. So, in this day and age, when we have the opportunity to write a very clear constitutional provision, we should not leave any matter into the realm of a gentleman's agreement.

Mr. Speaker, Sir, we think this section would have been better drafted. As Mr. Anyona suggested, the best way would have been to go to Section 26 and introduce an amendment there to provide that the Attorney-General shall exercise no jurisdiction at all in prosecutions instituted by KACA. Secondly, the Attorney-General will have no power to terminate any legal proceedings brought in by KACA. That way, we would be comfortable. Of course, there is a language that "in exercise of their functions, KACA shall not be subject to the direction or control of any other person or authority." This phraseology is a platitude. It is known by all the lawyers. Any lawyer who has read Section 123(8) of the Constitution knows that the phrase that "a body or authority shall not be subject to direction or control of any other person or authority" does not preclude the court from examining the exercise of the functions of that authority, to ensure that they are in accordance with the Constitution or any other law.

Mr. Speaker, Sir, Section 109(A)(7) does not preclude individuals from coming to court to challenge the new jurisdiction of KACA. In fact, what we are likely to see immediately after passing this Bill and establishing the KACA is a flood-gate of litigation. There will be many more cases in our courts, seeking to declare KACA unconstitutional; that it cannot do this or that. The principal mischief which this Bill intends to correct will not have been corrected.

Therefore, we are begging the Attorney-General, even at this late hour, to withdraw this Bill. There are still a few of us in this House who want an effective anti-corruption authority. We do not want to create more litigation. We do not want the courts to keep on ridiculing Parliament, that we cannot make law when we have so many lawyers in this House. So, let us quietly withdraw this Bill, sit down and redraft it, and then reintroduce it. This is because if you want us to defeat it through a vote, it means we are delaying this process for another six months. We desperately need funds from the donors. This IMF programme that we have really waited for will be postponed for another six months or more, if this Bill will not be withdrawn now before we vote.

Dr. Kituyi: On a point of information, Mr. Speaker, Sir. I would like to inform hon. Murungi, who is my friend and colleague, that to ask the Attorney-General to do something decent is to assume that he wants this House to pass this Bill, because that would be a very generous assumption. Every constitutional amendment Bill that has come to this House since multipartyism started, the Government has sought consensus with the Opposition before bringing it to the House. When you see them going to have a KANU Parliamentary Group meeting, they are not looking for consensus. When you see them turn their backs to our recommendations, they are not looking for us to vote for the Bill. They want to appear serious about a Bill being passed in the House, knowing very well that they cannot win because we will defeat it constitutionally, and then they will tell the donors that: "We tried to have the Bill passed, but our robust Parliament defeated it." That is what they want!

Mr. Murungi: In fact, what Dr. Kituyi has said falls squarely within that theory of counter-reform, which I was trying to advance earlier that, in fact, we could be going through various Motions here. However, when this Bill, which is deliberately drafted badly is defeated by this House, our colleagues on that side will go to IMF and World Bank and say: "You see, we tried very hard, but Parliament has let us down by refusing to pass the Bill." Actually, it is not Parliament which has refused to implement that Act, but the courts. So, please, do not blame Parliament for your failures. Do not blame Parliament for not drafting good laws. We are capable, under the guidance of the Speaker, to debate and pass very good laws in this House.

There is also the question of financial autonomy. If you look at the last paragraph of the Memorandum of Objects and Reasons, it states:

"The enactment of this Bill shall entail additional expenditure of public funds, which shall be provided for in the Estimates."

In the draft that we made as the Parliamentary Select Committee on Anti-Corruption, we provided for financial

autonomy of KACA. We are not seeing that financial autonomy in this Bill. Maybe, it could be provided for in the other Bill, but I do not want to get into the other Bill. If there is any conflict between that Bill and this one, it is the constitutional amendment Bill which will take precedence over the other one. So, we are going to have a weak KACA, like the one which was headed by Harun Mwau, which is not sufficiently provided for financially. Such bodies like KACA cannot have operational independence or effectiveness.

Mr. Speaker, Sir, one thing that we also note, under this Bill, is that the Bill has no transitional provisions. The Bill does not connect the new KACA with the old one. What does this mean? It means that the new KACA has no authority, under the Constitution, to take over the assets of the old KACA, and that the new KACA has no authority to take over cases which had been started by the old KACA. What the Attorney-General is doing, without telling Kenyans, is that he is granting *de facto* amnesty to all the criminals who have plundered the resources of this country by not creating a provision where the new KACA will have jurisdiction over them. Worse still, since the new KACA will only be a forward-looking KACA, it will not be able to investigate the past cases. It will be effective from the day it will receive Presidential assent and when it will be established, in accordance with this Bill. So, the new KACA will have no authority to investigate past crimes.

I know it is possible that could be provided by another law, but if that other law is inconsistent with this one, then this law is going to prevail. So, it means, therefore, that all the corruption cases up to the year 2001 cannot be investigated by the new KACA. What other amnesty do you require, if this is the institution which is supposed to investigate and prosecute corruption, and yet it cannot reach the corruption cases of yesterday? So, this is a very dangerous omission to have in the Bill, and Kenyans should not allow amnesty to be brought in through the back door by passing this Bill.

Mr. Speaker, Sir, there is also a major weakness. If you look at Clause 109A(4), it states that: The functions of the new KACA will be "to investigate and prosecute offences of corruptions public officers, economic crimes and such other related offences as shall be prescribed by Parliament." The question is: The old KACA had power to investigate and prosecute crimes under other laws. So, it did not only prosecute crimes which were spelt out in the Anti-Corruption and Economic Crimes Bill. It was able to prosecute tax evasion under tax laws; it was able to prosecute abuse of office under the Penal Code. There is nothing in this Bill to show that the new KACA that we are fashioning under this Bill will be able to prosecute corruption related offences in other laws like the Penal Code or tax laws. We feel that this limitation of jurisdiction is deliberate, and it is meant to weaken the new KACA.

Mr. Speaker, Sir, we have serious contradictions between this law and the Bill that it refers to. If you look at Section 109A(4) (a) and (b), it states that the new KACA is to investigate related offences that shall be prescribed by Parliament; carry out such other functions as may appear to be necessary or desirable for the prevention of corruption as may be prescribed by Parliament.

Then there is an Economic Crimes Board which shall comprise such members as shall be prescribed by Parliament. It will perform such other functions as may be prescribed by Parliament. So, what we are saying is that the Constitution of Kenya (Amendment) Bill is so thin and it is very shy on details. It leaves so many things to be prescribed by Parliament. We believe that what should be prescribed by Parliament is what is contained in the Anti-Corruption and Economic Crimes Bill. We have had a casual look at that Bill, and there are major contradictions between the Constitution of Kenya (Amendment) Bill and the proposed Anti-corruption and Economic Crimes Bill, to the extent that if we pass this Bill, then, the Anti-Corruption and Economic Crimes Bill itself would be unconstitutional when it is passed. What are we doing? All this will amount to one thing; it will seriously undermine the fight against corruption---

Mr. Kajwang: On a point of order, Mr. Speaker, Sir. If you have heard the hon. Member speaking, he is attacking this Bill which we are discussing today on the basis that another Bill which is proposed and which is not before the House is likely to fall short of certain things. Is he in order to engage us in discussion of another Bill which has not come before the House when he is discussing this Bill?

Mr. Speaker: If he attempts to do that, he is guilty of anticipation.

Mr. Murungi: Mr. Speaker, Sir, I do not agree that I am guilty of anticipation because the Bill itself anticipates the other Bill by saying that the offences and the Board shall be prescribed by Parliament. So, the Bill itself refers to another Bill and, in fact, no discussion of this Bill can be complete without reference to the Anti-Corruption and Economic Crimes Bill.

Mr. Speaker: Order, Mr. Murungi! You will not overrule the Chair, no doubt! The rule is simple and it has not been amended; that a Member is not allowed to anticipate debate or Motion whose notice has not been given or a Bill which has not been presented to the House. I do not mind you making your presentation, but you will not be allowed to bring to the Floor of the House, a Bill that is pending debate. It will have its own time.

Please, Mr. Murungi, proceed.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. That is precisely the awkwardness of this Bill because,

ordinarily, we should be talking about something that is in place. Then, we can freely refer to it. Now, we have put it the wrong way round, and the Bill itself, as Mr. Murungi is saying, refers to another Bill. We have to deal with that part of that Bill. How do you avoid talking about the other Bill in vacuum? It is a blank cheque!

Mr. Speaker: Order! It does not take away the rules; does it? And you have not given me the way out of it!

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. Just look at me kindly.

Mr. Speaker: I am looking at you very kindly!

(Laughter)

Dr. Kituyi: Mr. Speaker, Sir, the Attorney-General told us that the import of this Bill is to entrench a certain entity into the Constitution. How can we amend the Constitution of Kenya to entrench **[Dr. Kituyi]** a certain thing without having any perception of its morphology? What are we entrenching in the Constitution?

Mr. Speaker: I do not know!

(Laughter)

Proceed, Mr. Murungi.

(Loud consultations)

Order, hon. Members! One thing that hon. Members must not attempt to do is this: Every time I make a ruling, some of you tend all the time to stand up in an unlawful attempt, to overrule the Chair. So, please, get out of that habit.

Proceed, Mr. Murungi.

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

Mr. Speaker: Order! Overruled!

Mr. Murungi: Mr. Speaker, Sir, first of all, let me assure the Chair that I will be the last person to stand up to challenge any ruling from the Chair. I would like the Attorney-General to note what the Chair has said, regarding what we are entrenching in this Bill. He has said that he also does not know.

(Laughter)

Mr. Kajwang: On a point of order, Mr. Speaker, Sir. There is a word which is being used in this House called "entrenchment." I do not know whether it has a legal meaning or an ordinary meaning. But I do not understand it. What is this word "entrenchment", so that I can also participate in the debate?

Mr. Murungi: Mr. Speaker, Sir, I would like Mr. Kajwang to pay me some legal fees, and then I can educate him on what the word "entrenchment" means.

Mr. Kajwang: Mr. Speaker, Sir, I raised that point because we are here trying to create a legal institution; a constitutional office and some people are saying that we are entrenching some Bill into the Constitution. What is this? Could you now explain it and then I will pay you?

Mr. Speaker: Order! I think the two of you being lawyers, you know one cardinal sin not allowed of advocates: Advertising. The two of you are attempting to use the Floor of this House to advertise for your services. I hope the Law Society of Kenya is listening.

(Laughter)

But on a more serious note, what we are doing this afternoon is the primary function of Parliament, namely to legislate. So, we are carrying out a legislative function. In this regard, it is a much higher legislative function than usual because this is not legislating on ordinary Bills. It is legislating on the grand norm of this country, namely the Constitution. So, that is what we are doing, for those who do not know. Could we proceed on that understanding; that we are legislating on the grand norm?

Proceed, Mr. Murungi.

Mr. Murungi: Mr. Speaker, Sir, the point that we trying to make is that through this Bill, the Attorney-General is trying to make us leap into the unknown. I know that this was a debate which has been raised before, because, first of all, the Attorney-General published the Constitution of Kenya (Amendment) No.2 Bill of 2001 without publishing the Anti-Corruption and Economic Crimes Bill. It is only much later, after a lot of complaints, when we said

that we cannot even debate this Bill without knowing what the other Bill contains, that the Attorney-General published the Anti-Corruption and Economic Crimes Bill. It has major contradictions and inconsistencies with the Constitution of Kenya (Amendment) Bill No.2, but because the rules do not permit me to highlight those inconsistencies, let me just make a general statement; that if we pass this Bill, then, that other Bill cannot even be introduced in this House because it is going to be unconstitutional.

We have been involved in the fight against corruption since President Moi came to power. Our fight has only yielded negative returns. I think it is high time that we went back to the drawing board and asked ourselves: After ten years of trying, why have we not succeeded? Let us take stock of all the efforts we have made, including these laws that we are writing. Until we resolve that problem, then, we are going to take this House and other institutions of Government round in circles, and we shall never succeed in the war against corruption. I do not believe that the Attorney-General's Office is incompetent. I do not believe that the Attorney-General's Office is unable to write laws, and it has not received enough information from Kenyans from which it could have drafted a better Bill. But what has happened is that the Attorney-General's Office is under great pressure on various fronts. The Attorney-General has complained of being harassed by donors.

Mr. Speaker, Sir, he has complained of being hurried. But I think there are some other hidden forces, that are applying pressure on the Attorney-General, to make very dangerous compromises in the fight against corruption. Those pressures are the ones that he is not talking about! We would like to liberate the Attorney-General from the pressures that he is receiving. We do know that it is a complicated office because now, he is sitting here as a Member of Parliament. When he goes back to his office, he sits there as a civil servant. When the Cabinet meets on Thursday, he will be there as a Member of the Cabinet. So, all those contradictory roles are making the Office of the Attorney-General appear to be incompetent. He is trying to balance too many pots. He is trying to balance too many balls. That is why those compromises are being made. That is why he is not able to write any clear laws because he is trying to accommodate too many interests. The people he would like to prosecute are powerful people in this country! The people who have plundered the resources of this country are not simple! They are earth shakers and the Attorney-General must be feeling their full weight. That is why it is getting difficult for him to write laws in a sound and clear manner, because wherever he is, he must be feeling that pressure.

Mr. Speaker, Sir, in his book, "A Theory of Justice", Prof. John Rawls says that when people are writing laws, they should wear a veil of ignorance, and they should write laws without anybody in mind. They should write laws without asking themselves what their positions in the society in which they are legislating for are going to be. That way, you can write very neutral laws. That is a very good position to take from an abstract position, teaching an amateur at the university. But could the Attorney-General really wear a veil of ignorance? Whenever he is writing those laws, he is asking: "Now, if we are writing amnesty, who is going to benefit. Who is going to be absolved by that law? If we say we are punishing people, who are we to punish? How are they going to react?" He must be having that on his mind. I think it is those considerations that are causing the Attorney-General to write very bad laws that we are seeing these days. He is trying to placate certain interests. He is trying to please certain people and although he has constitutional protection of security of tenure in his Office, we know, as Judge Muli said when he was the Attorney-General, that the security of tenure is not just contained in a mere piece of paper; the security of tenure lies elsewhere! So, although the Attorney-General cannot say it, we do know those considerations are also there.

But we are asking him to rise above that. He is not a poor man and his job is still there at Kaplan and Stratton Advocates! Let him write good laws for this country and Kenyans are going to remember him. Let him write effective anti-corruption laws without caring who is going to be hurt by them. If we are concerned too much about pleasing Mr. ole Ntimama or Mr. Karauri, we will never move. Let us write laws which will achieve the purpose which we want. Let us write laws which will create effective and powerful anti-corruption agencies for this country. I think, if the Attorney-General follows this advice, he is going to withdraw this Bill and bring us a better Bill, which will provide more adequate and effective legal instruments for fighting corruption in this country.

With those few remarks, I beg to oppose.

The Minister for Energy (Mr. Raila): Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this Bill. I believe that it is the concern of every Member of this House that we should not only come up with a good law, but that we should come up with a framework that will help us to deal with the cancer of corruption. Over that, there is no dispute or disagreement.

Mr. Speaker, Sir, this House consists of very many highly qualified lawyers. But it also consists of highly qualified political scientists, engineers, doctors, agronomists and so forth. That is the reason why every Member in this House has a right to make a contribution to any Bill or Motion that comes before this House.

Mr. Speaker, Sir, at one time, in the 1990s, Prof. Anyang'-Nyong'o, Mr. Muite and I, in the capacity of Members of the African Leadership Forum, attended several workshops which were hosted by the African Leadership Forum, dealing with corruption. One of them was held in Entebbe in Uganda, and Mr. Muite, Mr. Imanyara and I

attended. I had an opportunity then, to present a paper on Parliamentarians and Corruption.

Mr. Speaker, Sir, Members of Parliament have a role to play in dealing with corruption. Those workshops were being organised by Gen. Olusegun Obasanjo, the current President of Nigeria. When Gen. Obasanjo took over the leadership in Nigeria, he immediately set up a task force to look into the key issue of corruption in Nigeria and how they could deal with it.

As a result of a lot of research and investigations, they published what is called "The Anti-Corruption Law of the Federal Republic of Nigeria." This document has been produced in this format because it is intended to reach every Nigerian citizen. It is like a Bible that is carried by every citizen in Nigeria. I will quote what Gen. Obasanjo said in this document:

"Corruption has been responsible for the instability of successive governments since the first republic. Every coup since then has been in the name of stamping out the disease called corruption. Unfortunately, the cure often turned out to be worse than the disease and Nigeria has been the worse for it. Nigeria's external image took a serious bashing as our beloved country began to feature on top of every corruption index."

Mr. Speaker, Sir, on that score Nigeria and Kenya have been competing in the corruption index. I am sure that all of us in this House would like Kenya to move out of the top ten in the league of the most corrupt nations. In doing this, we are all convinced that we must create institutions that will enable us to deal with this cancer of corruption. Corruption is not a new phenomenon. It has been there since the very beginning. We are aware that even Judas Iscariot was corrupted with 30 pieces of silver to betray Jesus Christ. The difference between nations is the institutions that have been created to deal with the cancer of corruption and their commitment towards achieving this. Laws alone cannot help us fight corruption. In this regard I agree fully with my friend, Mr. Murungi, when he made his concluding remarks by saying that we should do a soul search and look at why we have failed to deal with corruption within the last ten years.

No perfect legislation will help us to deal with this issue if there is no moral commitment on the side of our people to deal with this. I have with me a book on Prevention of Corruption Act, 1998, of India. These laws of India have been revised severally; this is the eighth edition. The first anti-corruption law in India was enacted in 1947, which is the same year that India became independent. Over the years, they have revised these laws. There is an admission in this book that the laws were not perfect and that they have continued to encounter some loopholes in the laws as they practice them and sometimes as they carry out litigations. I am trying to say that no law is perfect.

My friend Mr. Murungi, in criticising this Act, has referred to conflict of jurisdiction between the Attorney-General and the director of KACA. He has referred to Section 26 of the Constitution, which Mr. Anyona also referred to. If you look at the Bill on page 637, Sub-clause 7, it states clearly that:-

"The Authority and the board shall exercise their functions under Sub-sections 4 and 6 of this section notwithstanding any other provision of this Constitution and in the exercise of the aforesaid functions, the Authority and the board shall not be subject to the direction or control of any other person or authority."

The import of that provision says: "notwithstanding any other provision in this Constitution". This also includes Section 26 of that Constitution. I, therefore, did not see that there is any conflict of jurisdiction between the Attorney-General and the Director-General of KACA in as far as this is concerned.

It is true that one cannot really refer to this Bill without also referring to the other Bill. If these two Bill are read together, one would be satisfied that the deficiencies which my hon. friend is talking about are very well taken care of in the---

Dr. Kituyi: On a point of information, Mr. Speaker, Sir. I need to inform you that if you read the other Bill---

The Minister for Energy (Mr. Raila): I am not reading the other Bill.

Mr. Speaker: Order! Sit down, Dr. Kituyi. Hon. Members, I do not expect to see such a situation again, where two Members are standing and pointing at each other. If a Member wishes to inform another, he must wait for the Member to accept or decline his information.

Dr. Kituyi: Mr. Speaker, Sir, my beleaguered friend had allowed me to inform him. What you should be saying is that you have asked him to refuse.

The Minister for Energy (Mr. Raila): I have refused the information.

(Laughter)

Mr. Speaker: Order, Mr. Minister! For the guidance of the House, when you have given a Member the right to inform you, then you are immediately obligated to sit down. If you refuse to give that person the opportunity to inform you, that other Member is obligated to immediately sit down.

So, proceed.

The Minister for Energy (Mr. Raila): Thank you, Mr. Speaker, Sir, for the protection. The hon. Member talked about the Bill confining KACA merely to public officers.

Mr. Anyona: On a point of information, Mr. Speaker, Sir. I would like to inform the hon. Minister that when he was chairing the Constitutional Parliamentary Select Committee this matter did come up; which comes first, the chick or the egg? He very wisely, together with the Committee, decided that the Bill would come first and the constitutional amendment Bill would come later so that we are free to talk about them. How is that position now different from what we are doing now?

The Minister for Energy (Mr. Raila): I would like to thank my friend for that piece of information. We did discuss this issue, but it has turned out to be a chicken and egg affair; that is, which one comes first. It would appear---

The Attorney-General (Mr. Wako): On a point of information, Mr. Speaker, Sir. The two situations are very different. As far as the Constitution of Kenya Review Commission Act is concerned, it is entrenching the Act into the Constitution. As far as this is concerned, in the Memorandum of Objects and Reasons, it is very clear that it is to establish a constitutional Authority. You have to establish it as an Authority first before you can provide the details on how it will work in a legislation. Mr. Speaker, Sir, you cannot pass a legislation which says the Authority has the power to investigate and prosecute before you have vested that Authority with the constitutional powers to investigate and prosecute. It stands to reason. So, there should really be no argument on this particular issue.

Mr. Speaker: Very well.

The Minister for Energy (Mr. Raila): Mr. Speaker, Sir, I thank the Attorney-General for that point of order. However, I should agree with my friends that debating it this way round creates certain problems. For example---

Mr. Speaker: What is happening with this microphone? Can you use the other one?

The Minister for Energy (Mr. Raila): Yes, Mr. Speaker, Sir. I agree that debating it this way creates certain obstacles in the sense that---

Mr. Murungi: On a point of order, Mr. Speaker, Sir. The Minister has not answered hon. Anyona's question as to which comes first. Is it the chicken or the egg?

(Laughter)

Mr. Speaker: Order! Hon. Murungi, I hope you enjoyed your speech without unnecessary interruptions and I hope after that very long treatise, you will give the others time to contribute without unnecessary interruptions.

(Applause)

Order! The hon. Minister gave way to Mr. Anyona to be informed and not to be questioned.

The Minister for Energy (Mr. Raila): Mr. Speaker, Sir, thank you for that protection.

Yes, I do agree that there are certain restrictions or limitations discussing it this way. For example, some of the issues that are being raised by my friend regarding the restrictions of KACA to merely prosecute public offences or officers is answered very well in the Bill itself. When you look at the offences themselves, they are described and it is clearly stated that the Authority has the mandate---

Mr. Muite: On a point of order, Mr. Speaker, Sir. You were very strict with hon. Murungi in restricting him from going beyond the current Bill in order to point out the conflicts in the other Bill. Is it in order for hon. Raila to now start telling us the substance of the other Bill, which is not before the House?

Mr. Speaker: Order, hon. Members! I appeal to hon. Members to give us an opportunity to hear. I did, indeed, caution the House that no Member is allowed to go "fishing" in "boats" that are not here, and among the "boats" that are not here is the Economic Crimes Bill.

So, no Member is allowed to go and "fish" there. "Fish" where we are and that is the Constitution of Kenya (Amendment) Bill, and that is what I had said. But, unfortunately---

(Loud consultations)

Order! My God! Let us hear this. I think we all get educated when we get into this thing because I think we are not just doing it for procedure. We are doing it live for the benefit of the Kenyan people. Let us listen to each other.

Proceed, Mr. Raila!

The Minister for Energy (Mr. Raila) Mr. Speaker, Sir, I will not go into details about the other Bill which is not before the House. However, I was saying that the hon. Member had an opportunity to try to criticise this Bill on the basis of information which is contained in the other Bill. So, I am just trying to tell him that most of the points he was

trying to raise were misplaced.

Mr. Speaker, Sir, there are also transition provisions which are made in the other Bill. Hon. Murungi dwelt at length on the issue of amnesty and here I want to make a very strong plea because the debate outside there has been about the provision of amnesty. In fact, amnesty is an issue which has been discussed very extensively at different fora and I do not want to condone any kind of past mistakes.

I know that I am one of the few Members of Parliament who can stand here and say: "I want my company to be examined because I know there are no skeletons." However, some of the people making the loudest noise have a lot of skeletons in their cupboards.

(Applause)

So, I will say, let us not even talk about 1997 but go back to 1963. However, if we go back to 1963, the new KACA will have no other work to do but just opening the old cupboards. In those old cupboards you will find very many dirty things. For example, I have a lot of respect for most of the Members here, but if I were to open the cupboards and show them what they did, they would not want to hear it.

Hon. Members: We want to hear them!

The Minister for Energy (Mr. Raila): Mr. Speaker, Sir, I am sure I have a lot of respect for the Official Leader of the Opposition, the hon. Member for Othaya--

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Is the hon. Minister in order to dissuade this House from opening cupboards where Kenyans' properties have been hidden?

(Laughter)

Mr. Speaker: Order! I do not want to rule that he should now open the cupboards. What I can rule is that the time for opening or closing cupboards is not yet. If I can recollect well, the Bill before the House has no provision for opening or closing cupboards.

I think what the hon. Minister is referring to is a Bill that is not before the House and, therefore, he is anticipating debate.

Mr. Raila, keep the cupboards closed until that time.

(Laughter)

The Minister for Energy (Mr. Raila): Mr. Speaker, Sir, the Bill before the House is about corruption and, therefore, I think a Member is perfectly within the limitations of debate to talk about corrupt practices that have been committed---

Mr. Speaker: Order, Minister! I have had occasion also to address the other Members who had argued the same way. I would have no problem at all to buy that argument if there were no other Bills waiting for debate in this House. If it was only this Bill, and the other Bills have not come to this House, I would have no problem at all, but now that we have the other Bills coming, wait for those cupboards. Now, just say that "I shall open those cupboards when the time comes", and I will allow you to do that.

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

Mr. Speaker: Order! Order, all of you! You know there is something called derailment of a train of thought. The more we keep this Member up and down, we derail his train of thought. I do not think, on a matter as serious as this, I wish---

Mr. Katuku: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order, Mr. Katuku! I may begin opening your cupboards now!

(Laughter)

So, I do not want hon. Raila to be unnecessarily interrupted. You have the Floor!

The Minister for Energy (Mr. Raila): Thank you, Mr. Speaker, Sir. However, I want to put the other Members on notice that next time the other Bill comes before this House, we shall open the cupboards!

(Laughter)

(Mr. Wamunyinyi stood up in his place)

Mr. Speaker: Order, Mr. Wamunyinyi! Sit down now!

(Mr. Wamunyinyi continued standing up in his place)

Order, Mr. Wamunyinyi. Will you, please, obey my rule?
Proceed, Mr. Raila!

(Mr. Wamunyinyi resumed his seat)

The Minister for Energy (Mr. Raila): Mr. Speaker, Sir, I want to say that we are committed to bringing proper laws in this country that will give us institutions to help us purge this cancer of corruption. The majority of Members of the House are committed on this issue. However, in doing so, let us not play politics with this. I know that the intention behind some of the objections that are being raised have nothing to do with these drafts here. The intention is to try to deny the country donor funding when the time comes in September, so that the economy can continue to limp. That will provide a good platform for campaigns next year.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. I am sure you heard what Mr. Raila said; he used to hear that from the Opposition side before. Is it in order for Mr. Raila to impute a very improper motive on those of us who are fighting a Government that is steeped in corruption?

Mr. Speaker: Order! Order! I urge hon. Members to look at the Standing Orders. Imputing improper motive can never be collective; it can only be individual to an hon. Member. You cannot collectively be imputed any motive. In any case, Mr. Raila has a right to hold an opinion.

Proceed, Mr. Raila!

The Minister for Energy (Mr. Raila): Mr. Speaker, Sir, the truth should be said about this issue. What I am trying to plead with my friends is that they should look at the interests of the common Kenyan who will suffer. It is not the Government that is going to suffer; it is the common Kenyan.

Mr. Wamunyinyi: On a point of order, Mr. Speaker, Sir. You have witnessed the KANU Secretary-General walk out when Mr. Raila caught your eye. Is he in order to contribute to this debate after the Secretary-General has walked out?

(Loud consultations)

Mr. Speaker: Order! Order! Hon. Members, that the business of this House must be so frivolously stopped is actually contempt of this House.

Mr. Wamunyinyi, I think your point of order is very frivolous. So, I order you out of this Chamber.

(Mr. Wamunyinyi withdrew from the Chamber)

The Minister for Energy (Mr. Raila): Mr. Speaker, Sir, this Bill is very simple. In my view, it serves the purpose for which it is intended; to entrench the Kenya Anti-Corruption Authority (KACA) in the Constitution. I will have much more to say next time when we will deal with the KACA Bill proper. So, let nobody try to oppose this Bill on the basis that it is deficient. This Bill is not deficient.

I have shown here that a similar Act in Nigeria is not even entrenched in the Constitution. If this Bill is not passed, we will have to bring here the other Bill and pass it as an ordinary Act of Parliament; it will also serve the purpose. Therefore, no one should intimidate others with numbers and threats of "killing" this Bill. If we "kill" this Bill, we will bring the other Bill as an ordinary Act of Parliament and pass it. That will serve the purpose.

I thank you, Mr. Speaker, Sir.

Mr. Speaker: I will, first, recognise those hon. Members who have been patiently sitting here with me since 2.30 p.m.

Let us have Mr. Muite.

Mr. Muite: Mr. Speaker, Sir, when we talk about a Bill to amend the Constitution, that is a very fundamental matter. The correct approach in amending the Constitution is for the Government of the day to make every effort to develop a consensus across the entire House. Any constitutional amendment which does not enjoy the support that

comes from a consensus is not really good for the nation. Regrettably, the Attorney-General has not made any effort to reach out to the Opposition and develop a consensus.

Mr. Speaker, Sir, if the Attorney-General had adopted the correct methodology of bringing a constitutional amendment to this House by seeking as much input as possible, from all hon. Members in order to develop a consensus, we would have made it very clear to him from the very beginning that we want him to, first and foremost, bring back the "Musikari Kombo Bill", which was brought here following a resolution by this House, so that it can be enacted as an Act of Parliament. Thereafter, the Attorney-General can bring a suitably-worded constitutional amendment to entrench the "Musikari Kombo Bill" in the Constitution. That is the approach we would like to adopt.

Mr. Speaker, Sir, we want aid to this country resumed; I do not know anybody from the Opposition who is opposed to the resumption of aid to Kenya. However, we should have a home-grown approach to both the Anti-Corruption and Economic Crimes Bill as well as to the Constitution of Kenya (Amendment) Bill. We should pass those Bills into law because we have decided, as Kenyans, to do so. So, let us agree on their contents. The Attorney-General should not have brought here a half-baked constitutional amendment Bill to only unblock the blocked aid to Kenya. So, we are going to oppose this Bill. I can tell the Government that it is not going to raise the two-thirds majority it requires to pass this Bill.

If the Government wants aid resumed, we will support it to that end, but it should withdraw this Bill and bring back the "Musikari Kombo Bill", which came about after this House passed a resolution. Let the Attorney-General adopt the "Musikari Kombo Bill" and bring it here for enactment. Thereafter, he may bring the constitutional amendment to entrench KACA in the Constitution. He should not tell us that the passage of this Bill will pave the way for the creation of offices, thus avoiding to say that he is entrenching the Act into the Constitution. The substance of the matter is that he is trying to entrench it in the Constitution.

Mr. Speaker, Sir, how can we entrench in the Constitution that which we do not know? We should have the creature first and then bring a suitably-worded Constitution of Kenya (Amendment) Bill that will have the effect of entrenching in the Constitution the Bill that we shall already have enacted. We are saying that, that is the way we want this issue approached. If the Attorney-General does it that way, he will have the full support of this House. What he is now trying to do cannot work; it will never work.

Mr. Speaker, Sir, Mr. Murungi, very carefully went through the technical defects of the Bill. I am also aware of some Non-Governmental Organisations (NGOs) that have written to the Attorney-General, pointing out very meticulously the flaws contained in the Bill. The fact that the Attorney-General does not listen to these parties raises questions. Without really wanting to attribute improper motive, this raises the question as to what games the Attorney-General is playing, if he deliberately creates loopholes in order for Mr. John Harun Mwau, or somebody else, to go to court tomorrow and have an Act of Parliament declared unconstitutional. We should be very scrupulous in observing the Constitution ourselves, particularly when we are debating a constitutional amendment Bill.

Mr. Speaker, Sir, we have to be scrupulously thorough in terms of observing the Constitution. Therefore, it is a matter of moment that we begin debate on this Bill by actually, in my view, violating the concept of constitutionalism, which demands that we, as the National Assembly, must respect the spirit and the letter of the law.

ADJOURNMENT

Mr. Speaker: Order! Mr. Muite, debate on this Bill will resume tomorrow. You will speak for another 25 minutes, or such other shorter time as in your own discretion you may deem appropriate.

Hon. Members, it is now time for us to interrupt our business. So, the House is adjourned until tomorrow, Wednesday, 8th August, 2001, at 9.00 a.m.

The House rose at 6.30 p.m.