

## NATIONAL ASSEMBLY

### OFFICIAL REPORT

Wednesday, 8th August, 2001

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### ORAL ANSWERS TO QUESTIONS

*Question No.048*

#### BARRING OF MEMBERS FROM VISITING REFUGEE CAMP

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

(a) why the Government blocked some Opposition Members of Parliament from visiting and donating food and clothing to the occupants of the Shimoni Camp hosting Tanzanian refugees, including 17 Members of Parliament, in February, 2001; and,

(b) why some other Members of Parliament were allowed free entry into the said camp a few days later.

**Mr. Speaker:** The Minister of State, Office of the President is not in? We shall come back to that Question later on!

Next Question!

*Question No.557*

#### ARREST OF MR. MURIUNGI'S KILLER

**Mr. Speaker:** Mr. Mwenda is not in? We shall come back to that Question later on!

Next Question!

*Question No.551*

#### PAYMENT OF LOW SALARIES TO ADULT EDUCATION TEACHERS

**Mr. Obwocha** asked the Minister for Labour:-

(a) why part-time Adult Education Teachers are being paid a paltry salary of Kshs500 per month;

(b) why there are delays, sometimes of up to five months, in paying the above amounts; and,

(c) whether he is satisfied that Kshs500 per month is sufficient for the work they do.

**Mr. Speaker:** The Minister for Labour is not in? We shall come back to that Question later on!

Next Question!

*Question No.554*

#### TERMINAL DUES TO MR. MABUYA

**Mr. Kibicho** asked the Minister for Transport and Communications:-

(a) whether he is aware that Mr. Nahashon Mabuya, Pointsman RC1, a former employee of Kenya Railways Corporation based at Sagana Railway Station, retired on 21st November, 2000, and has

since not been paid his terminal benefits; and,  
(b) how much is owed to him and when he will be paid.

**The Assistant Minister for Transport and Communications** (Mr. Lengees): Mr. Speaker, Sir, I beg to reply.

(a) I am aware.

(b) As a Pointsman Grade RC1, Mr. Mabuya was entitled to a gratuity of Kshs315,107,050 excluding the employer's portion of NSSF dues totalling Kshs22,460. Out of his dues, he has been paid Kshs60,000 leaving a balance of Kshs255,107. Mr. Mabuya is among the 700 staff who retired normally. The terminal benefits of the retirees are projected to materialise from the Corporation's land sales in various designated areas in Nairobi, Nakuru and Mombasa. The sales are expected to be finalised by December this year. The Government, however, had put an embargo on land sales, and negotiations are going on to accelerate modalities of reversing the sale to raise the revenue to pay the workers.

**Mr. Kibicho:** Mr. Speaker, Sir, is this not a crude way of telling the House that the Kenya Railways Corporation must sell its assets to pay retirees' benefits? Does the Corporation not have a scheme whereby they invest such money, so that when people retire, they can be paid?

**Mr. Lengees:** Mr. Speaker, Sir, at the time they were retiring the workers, there was no such money available for their benefits. I think the arrangements have already been finalised. An agreement has been reached between the employees, the union and the Kenya Railways Corporation, so that they are given their monthly instalments until they finalise this process.

**Dr. Kituyi:** Mr. Speaker, Sir, it is a strange public Corporation which only counts on sale of land to pay pension. Could the Assistant Minister explain to this House what will happen to retirees after they have sold all their land?

**Mr. Speaker:** What about if nobody buys the land?

**Dr. Kituyi:** Mr. Speaker, Sir, and also how they can accelerate the process of selling land if the Government embargo is still in place?

**Mr. Lengees:** Mr. Speaker, Sir, as per the agreement, there are conditions set, that if the land is not to be sold, there are other avenues to be established for the payment of the workers' dues before December.

**Mr. Anyona:** Mr. Speaker, Sir, surely pension is a matter under the Constitution of Kenya. The process of submitting funds towards the Pension Fund or NSSF is stipulated in law and that money being kept somewhere intact waiting for someone to retire. Now, is he saying that they broke the law and the Constitution, and where did this money go to?

**Mr. Lengees:** Mr. Speaker, Sir, I am not aware of any pension money kept there, although I am aware that it is included in the Kenya Constitution that pension is reserved for payment to workers upon retirement. Since Kenya Railways Corporation was not able to pay them at that time, they are now trying to establish ways of paying them. Maybe, in the future, workers will be paid their dues through the pension scheme.

**Mr. Kibicho:** Mr. Speaker, Sir, is the Assistant Minister telling this House that the Kenya Railways Corporation has no money in the bank at all; it is bankrupt, and can only pay after selling that land? In any case, he has said that there are other avenues which the Corporation is going to explore if the land is not sold. On humanitarian grounds, do you not think that it is only right that the Corporation pays that money from that other avenue he is talking about?

**Mr. Lengees:** Mr. Speaker, Sir, I am not able to tell the other avenues because it is not indicated in this reply. But for sure, payments will be ready before December. I would also like to inform the House that all the 700 employees are getting monthly payments until their amounts are settled.

**Mr. Kibicho:** On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister say that if the land is not sold, the money will be paid from other avenues. Is it not right for him to tell the House which other avenues are available?

**Mr. Lengees:** Mr. Speaker, Sir, there is revenue collected on a daily basis within the Kenya Railways Corporation. If the land is not sold, there will still be some money to pay the workers before December.

**Mr. Speaker:** Next Question!

*Question No.500*

NUMBER OF COAST HOTELS UNDER RECEIVERSHIP

**Mr. Wamae** asked the Minister for Tourism and Information:-

- (a) whether he is aware that tourism at the Coast is on the verge of collapse;
- (b) how many hotels at the Coast have closed down or are under receivership; and,
- (c) what urgent measures the Government is taking to reverse this trend.

**The Assistant Minister for Tourism and Information** (Dr. Wamukoya): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) Hotels under receivership are 17; those which are closed due to low-season tourist activity and for renovation are 30, and 18 out of the 30 have re-opened or are due to re-open soon.

(c) The Government is committed to sustain the current momentum of tourism sector through the following: Repositioning Kenya as a tourist destination of choice where one can get good value for money; diversification of Kenya's tourist product range and source market; having realised that Kenya's tourism promotion and marketing strategy must be in tune with the changing times and consumer demands, the Government has handed over destination marketing mandate to the Kenya Tourist Board; enhancement of security and safety of tourists; provision of exemption from VAT and customs duties on important refurbishment and renovation materials so as to enable hoteliers improve their properties and uphold their required standards, and rehabilitation of physical infrastructure destroyed by the *El Nino* weather phenomenon in 1997.

**Mr. Wamae:** Mr. Speaker, Sir, you must be as worried as I am, that when the Assistant Minister says that, when 17 hotels are under receivership and another 30 are closed, he is not aware that there is a crisis. Could he tell the House how many Kenyans have been sacked from these hotels so far?

**Dr. Wamukoya:** Mr. Speaker, Sir, there is no crisis because we have 440 hotels at the Coast. I have said that only 17 hotels have closed down and are under receivership for management reasons which have nothing to do with the Government. I cannot tell the hon. Member the number of people who have lost their jobs so far, as a result of these hotels being placed under receivership. I would also like to say that some of the hotels which are under receivership still operate.

**Mr. Kajembe:** Mr. Speaker, Sir, is the Assistant Minister aware that 150,000 workers have lost their jobs in these hotels which have been closed down? Is he further aware that the Moi International Airport, Mombasa, used to receive three chartered flights everyday, and now they receive two chartered flights in one week? Is he aware of that?

**Hon. Member:** He is not aware! He does not know!

**Dr. Wamukoya:** Mr. Speaker, Sir, I am not aware of that, but we have indicators, which I can show here, to prove that we are still doing well. In fact, we are on the upward trend.

**Mr. Parpai:** Mr. Speaker, Sir, now that the Assistant Minister is talking of an upward trend, what had, in the first place, brought about the downward trend? Is it not the Government?

**Dr. Wamukoya:** Mr. Speaker, Sir, 1997 was a bad year for the tourism sector. There are various reasons for the decline in tourism activities as enumerated. One, there was concern over security and safety of tourists which came in the wake of the infamous ethnic clashes that affected Coast and Rift Valley Provinces, and other parts of the country. Two, incidents of carjacking, robbery and harassment of tourists by beach vendors and street urchins were also reported. Three, there was destruction of our physical infrastructure by the *El Nino* rains. Four, there was adverse publicity in international print and electronic media. Five, there was lack of focused and innovative promotion and marketing strategy. Six, we over-relied on our twin products of beach and safari holidays, almost to the total exclusion of all other products. Seven, there was also increasing competition from other destinations in the Africa region, particularly South Africa, and finally, there was inadequate promotion and marketing budget.

**Mr. Wamae:** Mr. Speaker, Sir, could the hon. Assistant Minister tell this House what the Kenya Tourist Board (KTB) has done in concrete terms to revitalise this important sector?

**Dr. Wamukoya:** Mr. Speaker, Sir, the European Union (EU) has pledged a total of 27 million Euros for promotion and marketing under the same Board that the hon. Member has mentioned.

*Question No.255*

POLLUTION OF ATHI RIVER

**Mr. Katuku** asked the Minister for Environment:-

- (a) whether he is aware that water in Athi River which cuts across Mwala Constituency has turned green due to pollution;
- (b) whether he is further aware that there have been frequent outbreaks of cholera and other water-borne diseases, resulting in many deaths, particularly around Mbiuni, Mwala, Wamunyi and Kibauni Locations; and,

(c) who is responsible for the said pollution and what immediate action he is taking to arrest the situation.

**The Minister for Environment** (Mr. Ngala): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that River Athi is polluted by both industries and natural runoff.

(b) I am also aware that there have been frequent water-borne-related diseases resulting in deaths particularly around Mbiuni, Mwala, Wamunyu and Kibauni Locations.

(c) I will tell you who is responsible and the action that is being taken. Sources responsible for pollution of Athi River are:-

(i) Industries in Athi River and Nairobi Municipalities.

(ii) Point and non-point domestic/agricultural waste sources from the catchment areas.

Immediate actions being taken to arrest the situation include:-

(i) Collection and analysis of water samples for chemical and bacteriological analysis.

(ii) Plans for sensitization campaign on good sanitation practices and importance of boiling water before drinking.

(iii) Environmental Management and Co-ordination Act 1999 is being enforced with some success.

What I mean by being enforced is that the Ministry has already established District Environmental Committees whose main role is to oversee the implementation of activities related to environmental protection at the district level. The Ministry is currently developing environmental pollution control standards which the industries are expected to comply with.

**Mr. Katuku:** Mr. Speaker, Sir, you have heard the Minister admit that people in my constituency and other areas who use water from Athi River have lost their lives as a result of pollution. The Minister has also admitted that the river is polluted by the industries at Athi River and some parts of Nairobi. Could he tell us the industries he is talking about? This is because we are aware that there are some industries which "buy" their way out and continue to pollute the river, and his officers do nothing to rectify the situation. Could he name the industries which pollute the river, and why he cannot close them if they cannot be controlled?

**Mr. Ngala:** Mr. Speaker, Sir, I may not be able to give the names of the industries, but I will give the areas which I referred to as being point and non-point. From that, we can then find out the kind of industries that pollute the river.

On point domestic and agricultural waste sources, one can easily pinpoint where the pollution originates from. These include industrial waste and sewerage. On non-point domestic agricultural waste sources, one cannot identify a particular source where pollution comes from. Such sources include agro-chemical residues, for example, fertilizers and pesticides. Athi River has a mixture of these industries. We cannot close them immediately because we have given them some conditions which they have to meet. I would like to point out that stern action will be taken against the industries which will not meet these conditions, including closing them.

**Mr. Ndicho:** Mr. Speaker, Sir, this river passes through the lower part of Juja Constituency, and what Mr. Katuku's constituents suffer is also what my constituents suffer. Could the Minister admit that the Kenya Government, which he serves quite well, is not sensitive at all about environmental degradation, not only in this particular area, but also in other areas as opposed to other countries in this world which are very strict about degradation of the environment? Could he admit that his Government is tied up by what they call "encouragement of investment" and they do not want to scare away investors at the expense of our people? Could he admit that he is unable to control the degradation of the environment along this river because he fears the investors?

**Mr. Ngala:** Mr. Speaker, Sir, I would like to deny the sentiments being expressed by the hon. Member. We are not incapacitated. We have set in motion the processes that should be followed and, therefore, there is nothing like getting scared of investors. We would like investment that will be environmentally friendly to be initiated in this country, and efforts are being made to ensure that our people are safe.

**Mr. Sambu:** Mr. Speaker, Sir, the Ministry has closed down some industries and tanneries that were polluting Athi River. But there are some which continue to discharge raw chemical and biological effluent into the river and yet, the steps to be taken are so simple; that is, building oxidation ponds. Why has the Minister not closed down the London Distillers near Athi River which is discharging raw chemical and biological effluent into Athi River?

**Mr. Ngala:** Mr. Speaker, Sir, I want to thank the hon. Member for giving us that information. We will take that matter very seriously and investigate it. If we find what the hon. Member is saying to be true, proper action will be taken.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. My Committee, together with a representative of the Ministry, visited that factory. They gave those people 14 days to build an oxidation pond but nothing was done and the factory has not been closed down. What investigations are they going to do? Why is he misleading the House?

**Mr. Speaker:** Well, I suppose the rider to that, Mr. Minister, is that you claim in the answer that you have District Environmental Committees (DECs); what do they do?

**Mr. Ngala:** Mr. Speaker, Sir, I did say that the DECs do oversee issues related to environmental matters. But I do not think that is the point of argument by the hon. Member. I have said that we are going to check and find out what their position is. If they were given two weeks notice and they have not complied, then we will take the necessary steps.

**Mr. Katuku:** Mr. Speaker, Sir, this is a serious matter. Every weekend, I bury two to three people in my constituency in this location I have talked about. That river extends like from here to Mombasa. You can imagine how many people are dying because of one individual with an industry in Athi River, and the Ministry is protecting him. Does this Government protect Kenyans? The Minister can get that information from Mr. Nyenze who was the then Minister in this Ministry. He visited the factory and gave instructions on what should have been done, but nothing has been done. The industry is operating. Could the Minister undertake to dissolve the Machakos DEC in the interest of Kenyans who are dying?

**Mr. Ngala:** Mr. Speaker, Sir, the hon. Member has asked three questions. About him burying three people every weekend, we are sorry about that situation. He also wanted to know whether I can dissolve the Machakos DEC. I do not see why I should dissolve it. I think they are doing the best they can. Therefore, I think what I have referred to is the position. If the industry was supposed to be closed down, then I will verify that with my colleague who was in the Ministry then. So far, I have not been given that information, but we will get it. But if they have flouted the regulations, this Ministry or this Government will not in any situation favour any particular person with regard to environmental matters. They have got to stick to the regulations and standards which they have been given.

**Mr. Speaker:** I will be a little lenient on this because I think the Chair lives in Kenya!

**Mr. Gitonga:** Mr. Speaker, Sir, you realise that the Minister has avoided the question you raised. What are the responsibilities of these DECs? What legal backing do they have to be able to perform whatever responsibilities they have?

**Mr. Ngala:** Mr. Speaker, Sir, maybe, the hon. Member was not listening. I said that DECs are charged with the overall responsibility of overseeing environmental matters. That is what they are supposed to do.

**Mr. Parpai:** On a point of order, Mr. Speaker, Sir. I think we need your guidance on this one. While I do not want to impute improper motives on this, but the Minister has said that he is not aware that his officers have visited this site with the Departmental Committee to ascertain that effluent is being discharged into the river. If an officer who is seated next to him has not informed him, how would we expect him to tell us what is happening in the district? It is important that the Minister tells us how he gets information, because we are being disturbed. We are losing Kenyans day in, day out, and he is telling us that he is not aware. What is he aware of, if he is not aware of what an officer was supposed to have reported to him?

**Mr. Speaker:** Order! Order! Even the Chair knows that most of the rivers in this country are polluted; having raw sewage from every town discharged into them. Maybe, we could give the Minister a week to look at the totality of Kenya and how we could address the problem as a nation. But I will give you a week.

**Mr. Ngala:** Mr. Speaker, Sir, I think Mr. Parpai is giving a wrong impression. I went through a list of things that the Ministry is doing with respect to this particular river. But the hon. Member is trying to insinuate that what I have said here has nothing to do with the exercise of trying to control pollution. I think it is not fair because I gave exactly what we have done in relation to Athi River. That is what we were asked.

**Mr. Katuku:** Mr. Speaker, Sir, I have raised an issue here in relation to the committee which is supposed to look at the situation on the ground at Machakos. I have asked the Minister whether he can consider doing something about that committee. The officers just go round the industries collecting money from these fellows. That is corruption. Could the Minister tell us what action he will take against these officers who are messing up the Ministry?

**Mr. Speaker:** I think, in fairness, with all this information coming to the Minister, let us give him a little time to evaluate what he was told and what he has heard from you. He will come back. The Question is partly deferred.

*(Question deferred)*

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. Mr. Sambu did say that a Committee of this House charged with the responsibility of taking care of this matter visited the factory and yet, there has never been a report in this House. Is that really the way the Committees are supposed to be working?

*(Mr. Haji consulted with Mr. Nassir)*

**Mr. Speaker:** Order! Order! Order, Messrs. Haji and Nassir! I think Mr. Anyona is raising a very valid point. On Committees of this House, I think the whole idea is to get into the bottom of a lot of matters in their charge and report to the House. We do spend a colossal amount of money in running Departmental Committees and, I think in all fairness, the number of reports being tabled in this House from the various Departmental Committees, you cannot say are commensurate with the amount of money we use. I will expect the various Departmental Committees, when they do undertake certain of their duties, to make available their findings to this House. They may not be debated for lack of time, but they must be tabled here so that Members can look at them as a record of this House, and we have something in evidence. I hope that all Departmental Committees will discharge that duty as per our Standing Orders.

**Mr. Ngala:** Mr. Speaker, Sir, we take note of what you want us to do with regard to the state of our rivers. However, I am not quite sure whether you want us to address the state of Athi River or all rivers in the country. Secondly, you heard Mr. Katuku say officers in my Ministry are corrupt. With regard to handling the affairs in Athi River, I have no evidence. But if he has evidence, it would help. I do not want that to be lumped together with what you have said. I will not investigate officers who the hon. Member alleged are corrupt. Maybe you could clarify this?

**Mr. Speaker:** Order! Mr. Katuku, what is your evidence for corrupt officers?

**Mr. Katuku:** Mr. Speaker, Sir, I will give the Minister the evidence to use it and get the culprits. I will talk to him after this sitting. But if you want me to do it on the Floor of the House, I will do so later after I get the culprits. Could I know when---

**Mr. Speaker:** Order! I will come here, most likely tomorrow, or Tuesday with a detailed considered Communication from the Chair in respect of substantiation. I had the benefit of having the rulings of the Chair since 1963 on this particular issue. But suffice it for me to say for now that you are required to substantiate on the spot when you make a serious allegation. From this moment, Standing Orders requiring substantiation will be enforced strictly. You will be required to substantiate on the spot. But I will come to the House to give further reasons for that. But that will remain throughout, whether I am sitting here or not. That will be the rule.

Mr. Minister, with regard to rivers, I was just wondering aloud, although I am not allowed to do so. But somehow, I frolic wondering on my own whether the Minister for Environment and Natural Resources would not be interested in the state of our rivers across the country. That is a wonder. It is not an order. But I frolic to wonder whether the Minister in charge of Environment and Natural Resources is not interested in the environmental state of the rivers of Kenya across the country. So, Mr. Minister, whether you want to consider my "wonder" is really up to you. It is not an order. But for the River Athi bit, that is an order. We will come back to it.

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

**Mr. Speaker:** Order! Mr. Katuku, I am Speaker, not a Clerk. That is a clerical issue. So, the Clerks will take care of it.

**Mr. Ngala:** Mr. Speaker, Sir, in view of your ruling, is Mr. Katuku supposed to substantiate now?

**Mr. Speaker:** Order! I think two things will emerge from the ruling: that when you have been challenged to substantiate and you do not do so, then your utterances will be taken as no utterances at all. They should not even be part of the record of the House. But for now, that is another issue. You will have another opportunity to come to the House and respond effectively to this Question. I am very generous to you for very good reasons. The lives of Kenyans are threatened by toxic materials in those rivers.

Next Question, Dr. Ochuodho!

**Dr. Ochuodho:** Mr. Speaker, Sir, I am sure the Speaker may also include the lakes.

*(Laughter)*

*Question No.209*

#### REGISTRATION OF MATATU OWNERS ASSOCIATION

**Dr. Ochuodho** asked the Attorney-General why the Matatu Owners Welfare Association has not been registered.

**Mr. Speaker:** Dr. Ochuodho, I was given the impression by the Attorney-General that he talked to you to allow the Chair to defer this Question to tomorrow?

**Dr. Ochuodho:** Mr. Speaker, Sir, if the Attorney-General will take a long time to serve us better, I oblige.

**Mr. Speaker:** Very well. The Question is deferred to tomorrow.

*(Question deferred)*

Next Question.

*Question No.264*

LIQUIDATION OF LAND BUYING COMPANIES

**Mr. Speaker:** Mr. Kihara, the Attorney-General told me that he hectically looked for you about this Question so that we defer it to tomorrow. Is that so?

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

**Mr. Speaker:** Very well. The Question is deferred to tomorrow.

*(Question deferred)*

For the second time, Dr. Kituyi's Question.

*Question No.048*

BARRING OF MEMBERS FROM  
VISITING REFUGEE CAMP

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

(a) why the Government blocked some Opposition Members of Parliament from visiting and donating food and clothing to the occupants of the Shimoni Camp hosting Tanzanian refugees, including 17 Members of Parliament, in February, 2001; and,

(b) why some other hon. Members were allowed free entry into the said camp a few days later.

**The Minister of State, Office of the President (Maj. Madoka):** Mr. Speaker, Sir, I apologise for coming late. However, I beg to reply.

(a) The refugees from Tanzania had expressed fear for their lives. Therefore, it was decided by the District Security Committee and the members of the UNHCR that no outsider should be allowed to visit the camp without express authority from them.

On 15th July, 2001, four Opposition Members of Parliament and not 17 as alleged, attempted to enter the camp without notifying the DSC and UNHCR officials. They were advised to seek clearance, but they refused and left.

(b) No other Member of Parliament or any other person was allowed to enter the camp without following the laid-down procedure. Those who were allowed in got clearance from the DSC.

**Dr. Kituyi:** Mr. Speaker, Sir, first of all, there are factual errors in this answer. First, by 15th July, there was no single Tanzanian refugee in Shimoni Camp. So, there could not have been any visit on 17th July. Secondly, if my understanding of the English language is the same as that of the Minister, there is no allegation in the Question that 17 Members of Parliament attempted to enter the camp. So, your notion about 17 is confusing the Tanzanian Members of Parliament who were in the camp with the Kenyan Members of Parliament who were visiting them. Now, after that lesson in the English language---

**Mr. Speaker:** Order!

**Dr. Kituyi:** Mr. Speaker, Sir, after that clarification, could the Minister explain to this House why on the material day, 17th February, four Opposition Members of Parliament were barred from entering the camp by a DO, and yet UNHCR personnel were facilitating their entry to provide food and clothing to the refugees, particularly our colleagues, hon. Members of Parliament, whom we know because they were the backbone of the Tanzanian Parliamentary Football Team and they had played against us? We were acting in solidarity in order to assist our colleagues. Why were we barred from entering the camp by the DO, and yet other people from Mombasa Town were donating food and clothes without any interference from the DO?

**Maj. Madoka:** Mr. Speaker, Sir, first of all, thank you very much for protecting me. We certainly do not like the insinuation of the hon. Member, who is always trying to underrate the intelligence of others. I agree there is a bit of confusion in this Question. This was a typing error. Secondly, we did not want politicians to go into the camp and politicise the issue because it would have negatively affected our relations with the Tanzanian Government.

Secondly, we were not aware that these hon. Members were trying to take any food into that camp.

**Dr. Ochuodho:** Mr. Speaker, Sir, I am surprised the Minister is talking of politicians going there to politicise the matter and yet this was, for all intents and purposes, a political matter. Could the Minister tell this House what security threat the Members of Parliament posed to the refugees if they were allowed inside?

**Maj. Madoka:** Mr. Speaker, Sir, I did say that we did not want the politicians to enter the camp and politicise the issue.

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

**Mr. Speaker:** Order! Order, Dr. Ochuodho! I do listen to questions and I know when there is breach of order. It does not mean that every question that is put to the Minister he must agree with it. It can be something he disagrees with!

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

**Mr. Speaker:** Overruled! Mr. Muiruri!

**Mr. Muiruri:** Mr. Speaker, Sir, during the last Session, the same Minister said that I was not even allowed to visit a remand prisoner. The same Minister is saying that Members of Parliament are not supposed to visit a refugee camp. Which is this law which bars Members of Parliament from visiting remand prisons and refugee camps? What law can the Minister quote that prohibits hon. Members from visiting remand prisons and refugee camps?

**Maj. Madoka:** Mr. Speaker, Sir, we are referring to a specific incident when it was decided that politicians should not be allowed in Shimoni Refugee Camp and that is what we refused them to do.

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. The Minister has said that hon. Members were refused to enter Shimoni Refugee camp because the Government feared that they might politicise the refugees in that camp. The work of politicians is to politicise anything and everything. You cannot expect hon. Members to go and preach to people or to go and talk about soil erosion and how to uproot bhang like the chiefs! The work of politicians is to go and check issues and politicize them. So, is the Minister trying to suggest that any time politicians visit a refugee camp, they should go in clerical collars and try to preach to these people and that is when they can be allowed to enter the camp? Is he trying to say that politicians should not go and politicise issues? This was already a political [Mr. Ndicho] issue and that is why these hon. Members were going there as politicians. So, could the Minister give us guidelines on how hon. Members including hon. Muiruri, can visit their colleagues? He should also tell us how we should dress or talk to these people. Could the Minister give us a litany of all that?

**Maj. Madoka:** Mr. Speaker, Sir, I am referring to a specific incident. Indeed, I agree with the hon. Member that politicians are politicians, and in this particular case, we did not want to jeopardise the relationship between Tanzania and the Kenyan Government. We felt that it was not proper to allow our politicians to start politicising this particular issue because it was already political enough in Tanzania.

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

**Mr. Speaker:** What is it?

**Mr. Murungi:** Mr. Speaker, Sir, I am worried about the answer being given by the Minister. Hon. Members, like any other Kenyans, have constitutional rights and the freedom of movement and speech. I am worried as to why a Minister says that they cannot allow hon. Members to visit a refugee camp or prisons because they are afraid that politicians might politicise issues. Is the Minister aware that such directives violate the constitutional rights of Members of Parliament?

**Mr. Speaker:** You have already violated the rules of the House. That is a supplementary question!

**Dr. Kituyi:** Mr. Speaker, Sir, why has the Minister, in response to a supplementary question, given an answer that is contradictory to his original written reply? He said four Members of Parliament were not allowed to visit Shimoni Refugee Camp because they had not declared the purpose of their visit and had not gone through the District Security Committee. In his subsequent replies, he is saying that they were going to politicise issues. So, it means that the Government knew their purpose and he is purporting, in the written reply, that they did not know their purpose. Could he explain the difference between these two positions and tell us why he thinks that this Government can, with impunity, decide when and when not, Kenyan politicians can talk to Tanzania politicians? Who gave him the authority to decide for me whether I should talk to politicians from Pemba or not?

**Maj. Madoka:** Mr. Speaker, Sir, I did say that it was decided by the District Security Committee and UNCHR that movement into the refugee camp should be controlled. If hon. Members had gone and stated clearly that they were going to distribute food *et cetera*, we would have allowed them in. But when they were told to try and do that, they did nothing, but they just refused and left. Let me state that, in this particular incident, everything was determined on the merit of the situation.

**Mr. Speaker:** Mr. Mwenda's Question for the second time!



## ARREST OF MURIUNGI'S KILLER

**Mr. Speaker:** Is Mr. Mwenda here? Mr. Mwenda is not yet here? Question dropped.

*(Question dropped)*

**Mr. Speaker:** Mr. Obwocha's Question for the second time.

*Question No.551*

PAYMENT OF LOW SALARIES TO  
ADULT EDUCATION TEACHERS

**Mr. Obwocha** asked the Minister for Labour:-

- (a) why part-time adult education teachers are being paid a paltry salary of Kshs500 per month;
- (b) why there are delays, sometimes of up to five months, in paying the above amounts; and,
- (c) whether he is satisfied that Kshs500 per month is sufficient for the work they do.

**The Minister for Labour** (Mr. Ngutu): Mr. Speaker, Sir, I am sorry, the Minister for Vocational Training was supposed to answer this Question because it covers his area of responsibility and it was referred to him, but it appears that there is nobody here to answer the Question at the moment.

**Mr. Speaker:** Can I defer the Question, Mr. Obwocha?

**Mr. Obwocha:** We have no alternative because I really want the answer as to why these people are being paid money only enough to buy our lunch per day for a whole month.

**Mr. Speaker:** Do you mean our collective lunch?

**Mr. Obwocha:** No, Mr. Speaker, Sir.

**Mr. Speaker:** Very well, I will defer the Question to next week.

*(Question deferred)*

## QUESTIONS BY PRIVATE NOTICE

## DISPERSAL OF KINORU KANU RALLY

**Mr. Muturi:** 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 police in riot gear dispersed a KANU rally at Kinoru Stadium, Meru, on Saturday 28th July, 2001?
- (b) Is he further aware that the Democratic Party of Kenya held a public rally at the same venue without any interference on 28th April, 2001?
- (c) What circumstances led to the discrimination by the police against the ruling party KANU?

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

(a) Yes, I am aware.

(b) Yes, I am also aware.

(c) I wish to state that the DP rally was not dispersed because it was properly convened. The KANU rally was not properly convened. Indeed, there was a dispute and that is why it was dispersed.

**Mr. Muturi:** Mr. Speaker, Sir, arising from the answer given by the Minister, and considering that those who convened the KANU rally at Kinoru Stadium on 28th July, claimed to have been genuine KANU members or sympathizers, may we know why there was discrimination? This is because part of the answer is that they did not produce their membership cards. May we know the actual names of the convenors of the meeting so that we may know whether they had genuine cards or not?

**Maj. Madoka:** Mr. Speaker, Sir, in fact, this is the problem that led to the dispute as to who was convening the meeting. The dispute arose from two interest groups. As a result of that, it was felt that it would have caused problems if the meeting was allowed to continue.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, could the Minister explain to this House what the law says

regarding convening and cancellation of rallies and meetings? This is because, as far as I remember, the Inter-Parties Parliamentary Group (IPPG) resolved that you only needed to notify the police that you are going to hold a meeting. There are so many incidents where the police allow a meeting to be held, but in the last moment, without any warning or any civility or good manners, they just cancel the meeting. What kind of democracy is this? Could the Minister tell us what the law says about holding meetings and whether there is, indeed, any sense of what democratic governance means on the part of the police, realising how they treat these rallies?

**Maj. Madoka:** Mr. Speaker, Sir, I have said in this House, and I will say it again, that, certainly, after the IPPG, it was clearly stated that hon. Members just need to notify the police that they want to meet. But, equally, under the same IPPG package, it was stated that, the police can also refuse a meeting to be held.

**Mr. Kajwang:** Mr. Speaker, Sir, I have heard the Minister talk of IPPG here several times, and we are aware of the amendments which were made. But the police have a certain form which they call "notification of a meeting". The police themselves are the ones giving us a form, supposedly notifying us of a meeting. Why did the Government spend money to print forms called notification forms? Did the Government understand the law, that it is us who are supposed to notify the police and then we go on with our meeting; or is it the police who are supposed to give us a form called a notification form?

**Maj. Madoka:** Mr. Speaker, Sir, the Member should notify the police about the intended meeting. The police can also cancel that meeting for whatever reason. That is provided for. Unfortunately, I have not brought the actual amendments, but I could bring them here and show the particular clause which gives the police permission to cancel such meetings.

**Capt. Ntwiga:** Mr. Speaker, Sir, the Minister is also a Member of KANU, and I believe he is aware--- He should tell us!

Now that he has talked about a dispute in the Meru KANU Branch, could he elaborate and tell us what the two factions are all about, so that we will not be embarrassed again as KANU Members when we visit there?

**Maj. Madoka:** Mr. Speaker, Sir, the action proves how democratic we are. Here is our own party and when it disagrees, we certainly stop its meeting. I am not in a position to give the names of the groups, but that is what happened.

**Mr. Anyona:** Mr. Speaker, Sir, could the Minister confirm or deny that the forms that the police use are illegal? The Inter-Parties Parliamentary Group (IPPG) refused to criticise the form and only made a provision that notification should be in writing by the applicant. So, could he confirm that, that form is illegal and have it withdrawn because it is causing a lot of trouble?

**Maj. Madoka:** Mr. Speaker, Sir, I am not aware of that particular form he is talking about. I agree with the Member that it is the Members who are supposed to write and notify the police. Equally, if the police reject the meeting, they are supposed to notify them in writing.

**Mr. Muturi:** On a point of order, Mr. Speaker, Sir. I did ask the Minister to tell this House who the names of the convenors of that meeting are, because they must have given their names in the so-called notification form to the police. The Minister has skirted around that question, and I still insist that he gives us the names of the convenors, so that we know whether they are genuine members or mere sympathisers without KANU cards, as the answer tells us here!

**Maj. Madoka:** Mr. Speaker, Sir, I can provide those names later.

**Mr. Murungi:** Mr. Speaker, Sir, it is a matter of public knowledge that there are two KANU camps in Meru. The KANU which had convened that meeting is headed by Mr. Mugwika, who is the Chairman of the Meru County Council, and which is the Kamotho faction. That is why the meeting was cancelled.

The other faction is headed by the Secretary-General of FORD(K), Mr. Gitobu Imanyara. Could the Minister explain, under all circumstances, how a Secretary-General of a different party could control a faction of KANU?

**Mr. Kajwang:** On a point of order, Mr. Speaker, Sir. Is Mr. Murungi in order to parade Meru politics in this House?

**Mr. Speaker:** Order! Actually, I am very thrilled by that; that Mr. Murungi is very much interested in KANU affairs! But I do not think we should hurl brickbats on other colleagues in the House! I think common decency debars Members, and I said it last week, from taking liberties on each other without a substantive Motion.

**Mr. Murungi:** I did not finish my question, Mr. Speaker, Sir!

**Mr. Speaker:** Yes! Proceed!

**Mr. Murungi:** The question that I want to ask the Minister is: Could he confirm or deny to this House that the only reason why that meeting was cancelled was because the people who convened it are sympathisers of the KANU Secretary-General, Mr. Joseph Kamotho?

**Mr. Madoka:** Mr. Speaker, Sir, I deny that!

## POLICE INVASION OF TABAKA MARKET

**Mr. Omingo:** 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 the police from Gucha invaded Tabaka Market on 10th June, 2001, and terrorised residents in the pretext of flushing out chang'aa drinkers?

(b) Is he further aware that Mr. Henry Nyabuto Onkendi was beaten and frog-marched by the police to Ogembo without any reason?

(c) How many bullets were shot to scare away the residents?

(d) What is the Minister doing to ensure that the search and arrest of the chang'aa takers is co-ordinated and that those arrested are taken to court?

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

(a) Yes, I am aware that police officers conducted a raid in Tabaka Market and arrested eight people in connection with chang'aa. I am also aware that during the same raid, some members of the public pelted the police officers with stones in a bid to secure the escape of the suspects.

(b) I am aware that Mr. Henry Nyabuto Onkendi was among the eight suspects. He was not assaulted. He was taken to the police station and released on a cash bail of Kshs1,000 to appear in court, but he disappeared. A warrant for his arrest is in force.

(c) There was only one bullet which was fired in the air to scare away the members of the public.

(d) Chang'aa raids are well organised by the security officers and the suspects are usually taken to court.

**Mr. Omingo:** Mr. Speaker, Sir, that is one of the most embarrassing answers that I have had to my maiden Question. On part (a) of the Question, the Minister has said that eight people were arrested. He has said that Mr. Nyabuto was released on a Kshs1,000 cash bail. Suffice it to say the man called Mr. Henry Nyabuto Onkendi is mentally retarded. It is a shame that the police can inflict pain to disadvantaged people like Mr. Nyabuto! Mr. Speaker, Sir, could the Minister confirm or deny that, that raid was actually not a raid? The Officer Commanding Police Division (OCPD) was not aware of it. One Mr. Shikanda took it upon himself to conduct that raid and it was discovered much later that he was not officially on duty!

**Maj. Madoka:** Mr. Speaker, Sir, according to my information, the raid was properly organised and co-ordinated by the officer in charge.

**Mr. Obwocha:** Mr. Speaker, Sir, could the Minister tell us what the law is on brewing and drinking chang'aa on one hand, and brewing and drinking of busaa, which is a very sweet local brew? Could he tell us what the law provides?

**Maj. Madoka:** Mr. Speaker, Sir, I am sorry I was checking on my notes. Could he ask that question again?

**Mr. Speaker:** He is asking you the legal difference between brewing and drinking chang'aa and brewing and drinking of busaa which is very sweet! That is what he said!

**Maj. Madoka:** Mr. Speaker, Sir, under the Chang'aa Prohibition Act, Chapter 70 of the Laws of Kenya, Section 3 states: No person shall manufacture, sell, supply, consume or be in possession of chang'aa. It is an offence under that Act!

**Mr. Speaker:** How about busaa?

**Maj. Madoka:** Mr. Speaker, Sir, on busaa, I must confess that I do not know, but I will check on it!

**Mr. Muiruri:** On a point of order, Mr. Speaker, Sir. The Minister has avoided answering Mr. Omingo's question. Mr. Omingo has said that Mr. Henry Nyabuto who was arrested is a mentally retarded person. The Minister went further to say that there is a warrant for his arrest!

**Mr. Speaker:** Order, Mr. Muiruri! You are now asking a supplementary question! It is not a point of order! If you want me to see you on a supplementary question, please, stand up!

*(Mr. Muiruri stood up in his place)*

I will now give you a chance to ask a supplementary question. Proceed!

**Mr. Muiruri:** Mr. Speaker, Sir, you heard the Minister say that Henry Nyabuto was among the eight people who were arrested. He was given a cash bail of Kshs1,000 and he jumped bail. Now there is a warrant for his arrest. Mr. Omingo said this man is mentally retarded. Which is which?

**Maj. Madoka:** Mr. Speaker, Sir, that is new information. I do not know whether he was mentally retarded. This is something I would have to check.

**Mr. Omingo:** Mr. Speaker, Sir, the Minister's answers have been disappointing to me throughout. I am sorry to say that it is not only one bullet that was shot. There was more than one police officer present and each one of them was defending himself. I can table evidence to that effect. One of the bullets which was shot from a policeman's gun is here.

**Hon. Members:** Table it!

**Mr. Speaker:** Mr. Omingo, proceed to the bar and give it to the Serjeant-at-Arms. That is an offensive weapon.

*(Mr. Omingo gave the bullet  
to the Serjeant-at-Arms)*

**Mr. Omingo:** As I was saying, it is not just one bullet that was shot. Several bullets were shot. To confirm that most of these raids are not organised, on 28th of May, this year, five police officers who had gone to escort coffee proceeds of farmers to one of the factories went on the rampage while one was left guarding the money. We require either a total overhaul of the police force, or, alternatively, let the people run the show. All this was happening at a time when people were suffering because of the conflict at the border. Instead of the police ensuring that there is security at the border, they were harassing mad men. Who is more mad? The police or the arrested person?

**Maj. Madoka:** Mr. Speaker, Sir, with regard to the empty cartridge, if that is the one he picked, maybe, that is the only one they are talking about.

**Mr. Speaker:** Very well. Next Question!

#### AWARD OF CLEANING TENDER BY KENGEN

**(Mr. Ndicho)** to ask the Minister for Energy:-

(a) Is the Minister aware that there were a lot of irregularities during the awarding of the tender for cleaning services at KenGen recently?

(b) Which firm won the tender and how much did it quote vis-a-vis the second and third lowest tenderers?

(c) Why were the tenderers ordered to identify themselves by printing their names on the envelopes?

(d) How much is KenGen spending on these cleaning services this financial year?

**Mr. Ndicho:** Mr. Speaker, Sir, I beg to request the Chair that this Question be deferred up to tomorrow if possible because I do not have my facts with me.

**Mr. Speaker:** Very well. The Question is deferred.

Next Order! Mr. Obure!

**Mr. Kikuyu:** On a point of order, Mr. Speaker, Sir. Last week when the Minister for---

**Mr. Speaker:** Order, Mr. Kikuyu. I have already given the Floor to Mr. Obure.

**The Minister for Energy (Mr. Raila):** Mr. Speaker, Sir, Mr. Ndicho is asking that this Question be deferred to tomorrow and we ---

**Mr. Speaker:** Order, Minister. If you are referring to the Question, I deferred it. If tomorrow is not convenient to you, then take it up with the Clerk. I will give an appropriate time next week.

*(Question deferred)*

#### MINISTERIAL STATEMENT

##### IMPORTATION OF OIL FROM SUDAN

**The Minister for Foreign Affairs and International Co-operation (Mr. Obure):** Thank you, Mr. Speaker, Sir, for giving me an opportunity to make this Ministerial Statement on the question of importation of oil from Sudan in response to a Question from Dr. Ochuodho, the MP for Rangwe.

On the occasion of a courtesy call by the Ambassador of the Republic of the Sudan to the Minister for Energy, Mr. Raila, on the 6th of May, the Ambassador proposed that Kenya should import crude oil from the Sudan to take advantage of the preferential arrangements for the Common Market for Eastern and Southern Africa (COMESA) Free Trade Area. The Ambassador's statement arose out of the fact that nine COMESA member countries, including both Kenya and Sudan, entered into the COMESA Free Trade Treaty on 31st October, last year. Since then, the

statement has generated a lot of interest and speculation in the Press, among the general public as well as within the business community in this country. I, therefore, would like to take this opportunity to clarify the position.

I wish to state that the Government of Kenya does not import petroleum products. It was last involved in sourcing of oil products in October, 1994, prior to de-regulation of the industry. The Government has since then delinked itself from direct petroleum importation. Consequently, the National Oil Corporation of Kenya's mandate to import 30 per cent of the country's crude oil requirement was scrapped. Thereafter, oil companies were given a free hand to import their market requirement from any source. In a liberalised economy such as ours, importation of oil is carried out by private sector companies and individual businessmen. The Government has no role whatsoever in determining where and from whom these companies and individuals make their purchases. This is determined purely by the private sector participants on the basis of market forces.

I conclude my statement by stating that as a neighbour of the Sudan, the long running conflict in that country has a direct impact on Kenya's socio-economic development. Kenya is host to over 120,000 refugees from the Sudan. The conflict poses a grave threat to peace and stability in the region, as well as on humanitarian security. I wish to emphasise that the Government continues to be fully committed and engaged in the search for a just and lasting political settlement to the conflict in Southern Sudan under the auspices of the Inter-Governmental Authority on Development (IGAD) Peace initiative.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Dr. Ochuodho, can you be very quick. It is not debate time. The House must understand that after a Ministerial Statement, the only thing allowed is to seek clarification. So, I will give you an opportunity to seek clarification from the Minister.

**Dr. Ochuodho:** Mr. Speaker, Sir, none of the four points I wanted clarified have been responded to. The first one was whether the Minister is convinced that our position of neutrality will not be compromised. The second one was how much oil has come into the country since this importation was started. The third one was the list of companies involved in this importation. The Minister should have had the courtesy to tell us which are these companies. The reason I raised this query is because I am convinced, along with others, that this is where the Government wants to get money to rig the forthcoming elections. I have data--

**Mr. Speaker:** Order, Dr. Ochuodho! In spite of me telling you the position as far as a Ministerial Statement is concerned, you still proceeded to give your own statement. That is not allowed. It is out of order. It is for the Minister to clarify anything that you are not clear on from his Statement, and not from yours.

Dr. Kituyi!

**Dr. Kituyi:** Mr. Speaker, Sir, I seek a brief clarification from the Minister. It may be true that the Kenya Government does not import petroleum. For political reasons, a government in a liberalised market can bar importation of petroleum by private companies. For example, the American Government barred its companies from importing petroleum from Libya. Considering the role of the President of this Republic as the mediator in the IGAD initiative in Sudan, our long historical domicile for refugees from Sudan, and the vulnerability of Kibish to SPLA if they want to overrun it if we seem to be siding with Northern Sudan, is the Kenyan Government supporting, indifferent or opposing companies based in Kenya from importing petroleum from Sudan?

**The Minister for Foreign Affairs and International Co-operation (Mr. Obure):** Mr. Speaker, Sir, the issue of Kenya conducting any trade with Sudan as at present does not pose any moral or political issue to us. As a matter of fact, Sudan is a member of the COMESA group of countries and, in fact, one of our major trading partners. We do not feel that this situation in any way, compromises our position in bringing about peace in the Sudan. I have emphasized the point that we will continue to play our part in bringing about peace in the Sudan, and we do not feel that conducting trade will jeopardize that, provided that it is properly conducted.

#### POINT OF ORDER

##### ADDITIONAL INFORMATION ON MACHAKOS ARRESTS

**Mr. Kikuyu:** Mr. Speaker, Sir, last week, the Minister of State, Office of the President said that he would go and--

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Could we hear Mr. Kikuyu?

**Mr. Kikuyu:** Mr. Speaker, Sir, after my Question by Private Notice, he said that he would go and get some information on how people in Machakos Town were rounded up, tortured, injured and money stolen from them. Also,

women were raped. Up to now, almost a week after, I have been waiting for him to bring the information to the House. He has been running away now and then. You cannot get him after Question Time. Now that he is here, could he answer that Question?

**The Minister of State, Office of the President** (Maj. Madoka): Mr. Speaker, Sir, it has not yet been put on the Question Paper. If it had, I would have come prepared to answer it.

**Mr. Kikuyu:** Mr. Speaker, Sir, the Question was not dropped. He asked for time, and you can confirm from him, so that he could go and get more information. He should have brought that information.

**Mr. Speaker:** After Question Time! I do understand that. Maj. Madoka, you volunteered to give further information and asked for more time, which you did in consultation with the Chair, after Question Time.

Very well, next Order.

## BILL

### *Second Reading*

#### THE CONSTITUTION OF KENYA (AMENDMENT) BILL

*(The Attorney-General on 7.8.2001)*

*(Resumption of Debate interrupted on 7.8.2001)*

**Mr. Speaker:** Mr. Muite, you were on the Floor. You have 25 minutes to go.

**Mr. Muite:** Mr. Speaker, Sir, as I said, Mr. Murungi did an excellent job in pointing out the technical flaws in this Bill. But there is one matter that I would like to refer to. The argument was advanced, and I think by Mr. Raila, that the wording of Clause 2, Subsection 7 of this Bill takes care of the conflict between Subsection 7 and Section 26 of the Constitution of Kenya. I would like to make the following contribution; that, that is not so. If you look at the wording of Subsection 7, it says that the Authority and the Board---

## COMMUNICATION FROM THE CHAIR

### MEMBER'S WALKING STICK AN OFFENSIVE WEAPON

**Mr. Speaker:** Order! I note that Mr. Sudi has a stick with him in the Chamber, and it is an offensive weapon. I appreciate his condition. What he should do from now on is that, when he comes to the Chamber; across the Bar, he should hand it over to the Serjeant-At-Arms and sit nearest to the Bar. As soon as he leaves, the Serjeant-At-Arms should be kind enough to quickly give it to him. That has been the practice, and I think those hon. Members who saw the late Mr. Angaine know that although he used his walking stick, he always sat there to facilitate the taking away of that offensive weapon.

So, Mr. Sudi, you slowly and quietly move and hand it over to the Serjeant-At-Arms and sit on the seat next to you. It is not allowed on the Floor of the House.

*(Mr. Sudi moved to the Bar)*

**Mr. Kajwang:** On a point of order, Mr. Speaker, Sir. I do not want to question your ruling, but it could be a friendly gadget, only that it can be offensive if we try to use it in an offensive manner. What is the distinction between an offensive weapon and a very useful gadget?

**Mr. Speaker:** Order! As I said, I honestly sympathise with the hon. Member, but the rules are there. I do not know what goes on in an hon. Member's mind. I do not know when you want to turn what you say is a useful gadget to a very destructive gadget and, therefore, I do not take chances. I do not subscribe to the military language of "friendly fire" which kills you; a fire that kills is fire and cannot be friendly. So, I do not subscribe to that. I sympathise, but Mr. Sudi will be facilitated by the Serjeant-At-Arms. The Serjeant-At-Arms should always watch out when the hon. Member enters the Chamber. They should escort him up to his sitting position and then take away the walking stick. Then, when the hon. Member is about to leave, they should give it to him and let him go out.

**Dr. Kituyi:** Mr. Speaker, Sir, Mr. Sudi is an Assistant Minister of the Government. How will he be answering Questions?

**Mr. Speaker:** Order! There are microphones even there.

**Dr. Kituyi:** You have ordered Ministers and Assistant Ministers to come and answer from the Despatch Box!

**Mr. Speaker:** Order, Dr. Kituyi!

**Mr. Gitonga:** Mr. Speaker, Sir, would it not be unfair, since President Moi comes to this House carrying his *rungu* and he is an hon. Member?

*(Laughter)*

**Mr. Speaker:** When that arises, bring it to my attention. But on a more serious note, you have noticed that even the lady hon. Members are not allowed to bring in their handbags. It is as serious as that. In fact, in 1964, the Chair ruled that the flying whisk of the Late President, then the Prime Minister, Jomo Kenyatta, was an offensive weapon and he had to give it away. It is that serious.

*(Applause)*

Order! Proceed, Mr. Muite.

*(Resumption of Debate on Second Reading)*

**Mr. Muite:** Mr. Speaker, Sir, fire can only be friendly when it injures people from the same side. So, Mr. Sudi's weapon can only be termed "friendly fire" if it injures people on that side of the House. But do you notice that the Attorney-General is missing from the House, when we are debating this very important constitutional Bill?

**Mr. Speaker:** Well, I may communicate to you and through the House that, in fact, it is true that the Attorney-General did alert the Chair that he is addressing some Lady Judges from Africa and should be in this House from 4.00 o'clock. But he did alert the Chair. I am sorry I forgot to let the House know.

**Mr. Muite:** Mr. Speaker, Sir, I was pointing out that, regarding Clause 109(a) Subclause 7, the Authority and the Board shall exercise their functions under Subsections 4 and 6 of this section, notwithstanding any other provision of this Constitution. In the exercise of their aforesaid functions, the Authority and the Board shall not be subject to the directions or control of any other person or authority. The fact that the words "notwithstanding any other provision of this Constitution" are used in this subclause, and it goes on to say that "The Authority and the Board shall not be subject to the direction and control of any other person or authority", does not detract from the express powers of the Attorney-General, which are given in Section 26, Subsection 3(b) of the Constitution which states :-

"To take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority."

Mr. Speaker, Sir, what I am saying here is that it would be perfectly legitimate for the Attorney-General to argue that he is not controlling or directing the Authority when he takes over proceedings that have been instituted by the KACA. This is because the words here are: "Shall not be subject to the direction or control." So, as long as the Attorney-General can argue that: "I am not directing and controlling them. What I have done as the Attorney-General is to take over and terminate the proceedings", he will be perfectly within the powers which are conferred on him by Section 26 (3)(b) of the Constitution. This is so that conflict or overlap in the jurisdiction between the office of the Attorney-General and the Authority has not been resolved by the wording that the drafters in the Attorney-General's office have employed in drafting Clause 109, subclause 7. The conflict remains that the Attorney-General is still entitled to take over, because in doing so, he is not controlling. He is still entitled to take over and terminate. That is not controlling or directing. So, that conflict is not resolved and the whole purpose of this Bill, presumably, is to address the issues that were raised by the High Court in the Constitutional Court and it would appear that this issue has not been adequately addressed and resolved. This is in addition to the issues that were raised by hon. Murungi, and these are the reasons which form the basis on which we are asking the Attorney-General to withdraw this Bill and to make it watertight.

Mr. Speaker, Sir, talking about that ruling by the High Court, when a ruling or a judgment has been given, citizens of a country are perfectly entitled to criticise a ruling or judgment of the High Court. This ruling that was handed out by the High Court cannot really stand any scrutiny or jurisprudential analysis. For example, the High Court confused the office and the holder of the office. One of the grounds on which the High Court declared KACA unconstitutional was because the then holder of the office of Director was also a Judge of the High Court. However, there is a distinction between the holder of an office and the office itself. KACA was a creature of the statute. So, if, indeed, and here there is merit to agree with the High Court, it was wrong for somebody who was a Judge of the High Court to, at the same time, hold the office of the Director of KACA, but it is that particular individual who was

unqualified to be Director of KACA; that, in itself, did not make KACA unconstitutional because what the High Court should have directed is that hon. Justice Ringera should have been put to his election either to resign as a Judge of the High Court or to resign from being Director of KACA. However, it was an error of judgment for KACA to be declared unconstitutional because the individual who happened to have been holding the office of Director was also a Judge of the High Court. The High Court failed to appreciate the distinction between the office, KACA as the creature of the statute, and the then incumbent holder of office of Director.

Mr. Speaker, Sir, the second ground on which KACA was declared unconstitutional was that the exercise of the powers by KACA of prosecution infringed on the powers of the Attorney-General to prosecute. However, you heard the Attorney-General, when he was introducing this defective Bill, say how harmoniously his office worked with KACA. The Attorney-General never complained and a lot of times when we file proceedings in the High Court, you find the Attorney-General sending one of his State Counsels to come and argue *amicus curie*, and in this particular case the Attorney-General was not even represented. He was not complaining about his powers being eroded. Also, when you look at Section 26, that the powers of the Attorney-General are to take over proceedings instituted or undertaken by another person or authority, it is in recognition of the fact that there are other authorities other than the office of the Attorney-General, who are entitled to institute criminal proceedings, including the private prosecution.

Mr. Speaker, Sir, clearly, that could not possibly form the basis for saying that the powers of the Attorney-General were being eroded. The fact that, that ruling and judgment cannot stand any critical and legal analysis, makes one wonder as to who was the beneficiary of KACA being declared unconstitutional. Is it a coincidence that KACA was created? Donors have resumed funding, and because of this, it was perhaps convenient to then have KACA being declared unconstitutional. Who was the beneficiary of KACA being declared unconstitutional?

Mr. Speaker, Sir, what we are saying is that we should create a KACA that is watertight. The position has been made very clear here, that we do not, in fact, have to enact this constitutional Bill in order to enact any other Act of Parliament creating KACA, and that is the correct position. However, we do understand that those---

*(The microphone went off)*

**Mr. Speaker:** Order! What is happening with the microphone? Can you try to rectify it?

**A hon. Member:** It is KANU who have switched it off!

**Mr. Speaker:** Order! Hon. Members must know that no hon. Member or party participant works for the House. We have parliamentary staff and, please, let us have it rectified.

**Mr. Muite:** Mr. Speaker, Sir, when we visit other parliaments of other countries, including those of small ones like Rwanda, we are embarrassed by the quality of the public address systems in those parliaments and one hopes that sooner than later, we will have modernised public address system in this august House so that we can take these antique pieces to the museums where they actually belong.

*(Applause)*

**Mr. Speaker:** Mr. Muite, for your information and that of the House, this Parliament has budgeted this financial year for the overhaul of our public address system. So, bear with it for a while. It is coming.

*(Applause)*

**Mr. Muite:** Mr. Speaker, Sir, we shall look forward to that. I was saying that I know the majority of the Members on this side of the House want to support the Government and the office of the Attorney-General in coming up with a proper legislation to create KACA. But the way we want to go about it is, first of all, to ask the Attorney-General to bring the legislation itself creating KACA to this House for debate, and for us, thereafter, to entrench that legislation in the Constitution. We want to do it in exactly the same manner as we did with the Constitutional Review process. It is no use trying to christen these processes: "Oh, what we are trying to do here is to create the constitutional legal framework for the creation of KACA". No! That is not the way we want to proceed, Mr. Attorney-General, through Mr. Speaker.

Mr. Speaker, Sir, we want the legislation itself brought here so that we can debate and enact it into law. The Attorney-General (AG) should then come up with a re-worded constitutional amendment Bill to entrench in the Constitution the legislation that we shall have passed here. The AG needs not create a constitutional legal framework for the enactment of an Act of Parliament which is going to create the Kenya Anti-Corruption Authority (KACA). That is the wrong way of going about things; it is unacceptable to us. That is why we are not going to enact this Bill into law



in its present form.

Mr. Speaker, Sir, we want a constitutional Bill which will entrench in the Constitution the legislation that shall create KACA and give it powers, and have all other provisions, so that we can scrutinise it. Once we are satisfied, we shall give the AG the green light to bring here a constitutional amendment Bill to entrench that piece of legislation. The AG does not need to go about this issue in the manner he is doing so; he does not need any constitutional amendment in order to bring the other legislation for enactment. So, he must bring that other legislation first.

Everybody knows the shortcomings of the Constitution. A few minutes ago, while making a ruling on the dangerous gadget brought into the House by Mr. Sudi, you said that the rules of the House are in place and that your job is to enforce them. If the rules in our Standing Orders are not satisfactory, we have made them first. But as long as the rules are there, your duty is to enforce them.

Mr. Speaker, Sir, I would like to put on record my reservations that we are now debating a constitutional amendment by violating our own Standing Orders. You have made a ruling on this matter. But as an hon. Member of this House, I am entitled to place my views in the HANSARD, which is the permanent record of our proceedings. It is the law that requires---

**Mr. Speaker:** Order! Order! Mr. Muite, whatever else you feel or think about this matter, you cannot override my ruling. Once I have made a ruling, it binds you; any time you try to go over it, you are out of order. As you have stated clearly, my duty is to enforce the rules. I now do enforce those rules by ordering you not to question the ruling of the Chair.

**Mr. Muite:** Mr. Speaker, Sir, whether it is right or wrong, your ruling is binding. Sometimes you may be wrong, but your ruling is binding. I accept your ruling. However, I would be entitled to point out the violations of our Standing Orders. This is not the first time the Standing Orders have been violated.

Mr. Speaker, Sir, the other day, when we were scrutinizing the Vote of the Ministry of Health in the Committee of Supply, we sat beyond 7.00 p.m. without the Committee reporting progress to the House and seeking leave to continue. We tried to point out that shortcoming but we were overruled. All I am saying is that we have a duty, as a House, to scrupulously adhere to the current Constitution. If we cannot respect the current Constitution, what business do we have amending the Constitution or carrying out comprehensive constitutional reforms?

**Mr. Speaker:** Mr. Muite, I think you are flogging a dead horse, as the saying goes. I sat here the whole day yesterday. I do not remember any Standing Order that was pointed out to me to show that this Bill is contravening it. So, as a matter of curiosity, I would like to know what it is that you have at the back of your mind. Which Standing Order are you referring to?

**Mr. Muite:** Mr. Speaker, Sir, Standing Order No.30 and another Standing Order which require that Bills be published in the Kenya Gazette before they are brought here for enactment into law are being violated. We are debating the Constitution of Kenya (Amendment) No.2 Bill (Bill No.13), which is an amendment; the actual Bill is Bill No.13.

**Mr. Speaker:** Order! Order! I do not think any hon. Member has the right to impose his wrong views on the House. I think it is the duty of the Chair to give directions, as provided for in the Standing Orders.

I explained yesterday that a Kenya Gazette always indicates at the top the series of Bill it is that has been published. A Kenya Gazette issue may - and they occasionally do so - contain more than one Bill. You will notice, for example, that Kenya Gazette Supplement No.13 contains not one but two Bills. They are the Criminal Law (Amendments) Bill 2000, at page 983, and the Statute Law (Miscellaneous Amendment) Bill, at page 1053. The two Bills are contained in the Kenya Gazette Supplement No.13, which is titled "(Bill No.51)".

If hon. Members do not know what happens, when the Office of the Clerk of the National Assembly receives a Kenya Gazette Supplement, the Bills contained in it are registered in Parliament's Register of Bills. The first would probably be Bill No.19, if there was no other Bill No.19 recorded earlier. If the Kenya Gazette Supplement No.18 contained two other Bills, one would have been Bill No.18 and the other one Bill No.19. If we receive another Kenya Gazette Supplement, probably, the fourth one would be Bill No.20, and the second one, Bill No.21 in our Register of Bills.

The "No.2" on the Order Paper refers to the constitutional amendment for the year 2000; this was the second constitutional amendment Bill presented in the year 2001. So, you should not confuse the Kenya Gazette Supplement and Parliament's Register of Bills. As a matter of fact, when you pass this Bill, if you will ever do so, it will contain what is registered in Parliament. It will come as Act No.13 of 2001. I think I cleared that matter; it is under Standing Order No.30 that we maintain our Register of Bills. It is an extract of that register that has found itself on the Order Paper as the Constitution of Kenya (Amendments) No.2 Bill (Bill No.13). The "No.2" here refers to the second amendment Bill to the Constitution for this year.

Everything has been perfectly explained by the Chair, and has been perfectly done in accordance with the law. That is what I said yesterday; it is the law. That is the way it has always been done. It is the procedure. So, now

forget about that and debate the Bill.

**Mr. Muite:** Mr. Speaker, Sir, you are in this happy position of being the final "Court of Appeal", and there is no---

**Mr. Speaker:** Will you now debate the issue?

**Mr. Muite:** In fact, there is no place where one can take differences of opinion in terms of interpretation.

What I was saying is that this is a Bill that the Attorney-General ought to withdraw. We have appealed to him to develop a consensus because every Member of this House is also a Kenyan. Nobody wants to use the blocking of this Bill in order to deny resumption of aid to this country. What we want is to be effective in the KACA which we are going to put in place. The fact that some Members of this House were summoned to ensure that this Bill is passed immediately is not enough reason for not developing a consensus. We know that they were summoned to some place within the precincts of this Parliament and they were told that this Bill must be passed. It is not going to be passed!

**Mr. Ngure:** On a point of order, Mr. Speaker, Sir. Now that we are in a multiparty Parliament, is it not in order for Members of parties to caucus in order to assert a common front? Is it in order for the hon. Member to infer that hon. Members were "summoned" when, indeed, Members of political parties were caucusing?

**Mr. Speaker:** Order, hon. Members! Take your duties in an honourable version. Do not cast aspersions on others. Things called "Parliamentary Groups" were not invented yesterday and neither were they ever invented in Kenya. They have been there around the world. What is the purpose of a Parliamentary Group? It is to strategise on your approach to Bills and other issues. Secondly, I have been Speaker since 1993 and I have been encouraging you, hon. Members, to consult, and I will continue to encourage you to consult.

*(Applause)*

**Mr. Muite:** Mr. Speaker, Sir, I agree entirely. In fact, I am not suggesting, even remotely, that there is anything wrong with caucusing! In fact, I was using that as an example that if the Attorney-General wants to develop a consensus, he should reach out to the Opposition. I do know that even my friend, hon. Sinyo, who was---

With those remarks, I beg to oppose as strenuously as possible. I do hope I have persuaded more than a third of Members of this House to vote against this Bill.

**Mr. Speaker:** Order, hon. Members! You must respect the rules of this House. When the red light goes on, it means you are off air! In fact, you have no "mouth!"

*(Laughter)*

You must keep quiet at that stage! Your time is up! Those are your own rules and again, I happily enforce those rules very strictly. So, when you see it red, it means danger and you must sit down.

**The Minister for Trade and Industry (Mr. Biwott):** Mr. Speaker, Sir, I thank the hon. Member who has mentioned me. I think that has made it necessary that I respond to some of the points which some hon. Members have raised.

Mr. Speaker, Sir, this Bill is fairly straightforward. Anybody of goodwill and anybody who thinks clearly and without any other considerations will see that the Bill as it is drafted will work. It is intended to create in our Constitution a second "Attorney-General" to handle corruption-related matters - the Kenya Anti-Corruption Authority and the Board that will work with it. That is essentially what we were trying to achieve today. But the problem we have is that there are too many lawyers in this House. When they stand to contribute, they proceed as if they are making submissions in a court of law and not realising that we are actually creating that law which will be used by them in furthering the cause of justice.

Mr. Speaker, Sir, the other problem is that there seems to be pessimism in looking at this Bill. If all of us were to be optimistic and were willing to speak clearly for the good of this country, I think hon. Members could facilitate the creation of the Anti-Corruption Authority and its Board so that we can tackle this problem called corruption. It is also surprising that it is Members of this House who sit on the Opposite side who are now the champions of trying to derail this Bill because they do not want to see the Government excel, as it has always done. They want to delay the passing of this Bill so that there is a derailment in the programmes that are forthcoming as soon this Bill and the other two are passed. It must be obvious to them that once that happens, this Government will be much stronger, and in the next General Elections, it will romp back home and sit here.

I think the Attorney-General has done his level best to produce a Bill which is simple, clear and can facilitate the creation of this Authority, so that it can then act independently as it is set in this Bill without the direction of anybody. In fact, if you looked at the Bill, the Director will operate independently without causing anybody else to do the investigation, whereas the Attorney-General, according to the Constitution, will have to cause the Commissioner of

Police to carry out investigations and then prosecute. So, what more would you need other than an independent Director who will be charged with full responsibility to prosecute? Indeed, it is absolutely necessary that we enact Bills which are very clear and unambiguous in order to avoid litigation from time to time. If we, therefore, engage in splitting hairs in order to derail this Bill, then we will be doing a great disservice to ourselves, the people of Kenya and also the fight against poverty and corruption, which we would like our partners and this Government to work tirelessly to ensure that our people are catered for.

Mr. Speaker, Sir, the only part here which might require the Attorney-General's attention, in future, is Section 4(a) where the two functions of investigating and prosecuting are vested in one individual. That might be going against the principle of natural justice. The investigator must be a different person and the prosecutor must be a different person so that the two can ensure, that at least, a crime will have been committed before a person is prosecuted. Prosecution alone, which might end up in acquittal, is a frustration in itself because somebody suffers during the process. For purposes of this law, we need a person of integrity who will exercise his authority judiciously and without malice. The notion that it is the Opposition hon. Members who are fighting against corruption is not correct. I bet that if we were to carry out a thorough investigation, it would reveal that it is hon. Members from the KANU side who are fighting against corruption. People who shout most have something to hide because it is always the empty vessels that make the loudest noise.

Mr. Speaker, Sir, I would, therefore, appeal to the hon. Members to look at the wider aspect of this Bill.

**Mr. Michuki:** On a point of order, Mr. Speaker, Sir. I am trying to see whether I can be guided by what you said yesterday on the rule of insinuation. You said that it does not apply to people in general. This afternoon - and this is where my point of order arises from - the Minister has twice insinuated that there are people on this side who want to derail this Bill, but there are particular people who have spoken. These are Mr. Murungi and Mr. Muite. Therefore, it can only be that the Minister is insinuating that Mr. Muite and Mr. Murungi wish to derail this Bill. Could he then, therefore, because of this insinuation, substantiate?

**Mr. Speaker:** Order! Hon. Members, I want debate on this Bill to proceed in a cool atmosphere and one that allows rational thinking. Yesterday I told hon. Raila not to open cupboards. I think you are also trying to open a cupboard. There will be a time of opening cupboards. So, let us put this Bill in place and, once the constitutional amendment is in place, let us bring the Bill that will open up all cupboards. So, we should reserve all the opening of cupboards to that time. For now, let us concentrate on the Bill.

Also, there is another valid point raised by the hon. Member. It is not fair to say so many hon. Members of this side hold this position when we have not heard them. We have only heard Mr. Murungi and Mr. Muite. So, you may refer to those hon. Members who have spoken. Mr. Minister, you should make all attempts to win them to your argument!

**The Minister for Trade and Industry (Mr. Biwott):** Mr. Speaker, Sir, I do not mind mine being opened up, but I am not opening cupboards because they will be opened by the director whom we will put in place as provided for in this Bill.

I did not refer to any individual. I think it was Dr. Kituyi who had raised this issue. I was not even thinking about Mr. Muite or Mr. Murungi. It was Dr. Kituyi who accused the Attorney-General of drafting a shoddy Bill in order for it to be defeated in this House and then blame others. I was saying that there is no such thing. If anything, the Bill is as clear as crystal. The sole object is to entrench in the Constitution the office of the Director of the Kenya Anti-Corruption Authority (KACA). It is not in any way intended to delay the process of its passage in this House. This House is supreme and wise enough. It is composed of hon. Members of high integrity, who have a lot of experience and are very clever.

**Mr. Mwenje:** On a point of order, Mr. Speaker, Sir. In the context of what the Minister has said that, and what he had said earlier on, that empty vessels make the most noise, is he, therefore, referring to Dr. Kituyi as an empty vessel? Is that what he is insinuating?

**Mr. Speaker:** Are you asking me a question?

**Mr. Mwenje:** Mr. Speaker, Sir, it is a point of order!

**Mr. Speaker:** That is not a point of order, but a question which I am not willing to answer!

**The Minister for Trade and Industry (Mr. Biwott):** Mr. Speaker, Sir, I wish the hon. Members asked me a question to answer as a Minister.

I talked of empty vessels making the most noise. This is a common expression; that anybody who shouts a lot has something to hide. But if somebody has nothing to hide and his conscience is free, he does not have to shout. I did not refer to any particular individual, but this is a general saying which is known to every Kenyan. That is irrelevant as far as my contribution is concerned.

Mr. Speaker, Sir, I was talking about KACA. We need KACA because having it is in keeping with the world trend at the moment. Throughout the world, everybody is pursuing transparency, accountability and integrity. That can

only be achieved through the creation of a body which will ensure that enforcement of ethics and the right principles is adhered to. We are not actually legislating for something because the World Bank wants us to legislate, but because we are part of the globalised world. Today, Kenya is not isolated. It is already participating in global organisations and forums; we are creating room for Kenyans to be in the globalised world. So, we should not lag behind in the passage of Bills which will enhance the enforcement of transparency, and this is one of those Bills.

I think every clear-minded Kenyan who has the interest of Kenyans at heart will support this Bill. I am quite sure that at the end of it, all Kenyans who are against corruption will see to it that we pass this Bill so that we can attack corruption and root it out of this country.

With those few remarks, I beg to support.

**Mr. Speaker:** I encourage the hon. Members present to show their interest because I intend in the end to give chances to the hon. Members who have been patiently waiting. So, any time I call another hon. Member, if you are interested, just stand up and I will take note of that.

Proceed, Mr. Anyona!

**Mr. Anyona:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute to this very important Bill.

I want to borrow your words a little while ago, when you said that this Bill, of all Bills, should be debated in a very calm atmosphere. That is the case because the circumstances that---

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. Will I be in order to ask hon. Members through you, that because of the importance of this Bill and the fact that many hon. Members want to contribute, each one of them speaks for about ten minutes? We should borrow a leaf from Mr. Biwott.

**Mr. Speaker:** Well, you can always move a Motion for limitation of time. But I now appeal that, in the light of what the hon. Member has said, please be generous with your time.

**Mr. Anyona:** Mr. Speaker, Sir, that is correct. In fact, that is in essence what I was trying to say. We really want a meeting of the minds on this issue.

Let us clear a few doubts. I do not think there is any doubt in this House that we need to fight against corruption. We may not be comfortable with it, but we have come to accept the fact and the reality that we have to fight corruption because if nothing else, we have seen some of its negative impacts on our national affairs. I do not think there are any questions about that. You keep hearing that hon. Members of this side want to derail this Bill and hon. Members of that side are not genuine in what they are saying. There have also been allegations that the Attorney-General wanted to bring a shoddy Bill to the House so that it is defeated and so he will have an excuse. I do not think that, as a National Assembly of this Republic, that is how we should approach this matter.

I think what we are talking about are the methodologies and the strategies of fighting corruption. That is where we may have a difference of opinion, and that is why the matter is before the House for debate so that we can harness and harvest some of those ideas and strategies in order to be able to create an effective process of fighting corruption.

Mr. Speaker, Sir, these strategies include a legal framework, and that is what we are talking about; both in terms of the Constitution and in terms of statutes. Some other structures are also necessary to be able to fight corruption. It is not enough just to make laws. We need social ethics to generate in our society. We need ethics that respect honesty and integrity and frown on corruption and things of that kind. We require, not just as this Parliament, but as a country and as a people, a moral commitment to the fight against corruption. You can make all the laws and all the pledges, but if we do not have a serious moral commitment which is both personal and selective, we will not go very far. Above all, we need political determination and will. That, really, is what has been lacking. The laws have been there, but for various reasons, our political determination and will wavered. What we are saying is: At this point in time, we need to bolster that determination and that will. I have a feeling that really we have reached there. I have a feeling that we are agreed that we must go along this journey.

Mr. Speaker, Sir, the question of corruption is not new. We have always had a law; the Prevention of Corruption Act, Cap.65. In fact, if you look at that Act, if we had the political commitment, the moral commitment, political determination and will, we really did not need another law. That is a very good law.

If you read it again, you would realise that we are not doing anything new. But we did not contain corruption. As a result, we were told to create KACA. All that time, there was no necessity for KACA. The provisions of the Constitution under Section 26 of the Constitution and the provisions of Cap.65 and others, including the Penal Code and the rest, were sufficient to fight against the evil of corruption. I remember how KACA was actually created. At that point in time the Government side was against the formation of KACA not because they condone corruption - I do not want to say that - or they did not want to fight corruption, but in my view, rightly, at that point in time, the feeling was that you really did not even need KACA. All you needed to do is strengthen the provisions and the implementation process. That was actually my view. In fact, if you remember the Motion that created this Bill actually passed by

default because the Government did not make up their mind early enough on what they wanted to do. And when they came to amend the Bill, they hit a technicality. The Motion could not be amended. It was either to be defeated or be passed.

**The Attorney-General** (Mr. Wako): On a point of information, Mr. Speaker, Sir. I think the hon. Member is right on the issue of how KACA came to be discussed in November, 1997 and then came to be part of the Statute Laws, (Amendment) Bill. It is also true, and I did say it even at that time, that these were really piecemeal amendments, and that I had appointed a task force to review penal laws and procedures, and that they were bound to come up with a comprehensive Bill which would deal with the issue of corruption. And, therefore, we wanted three to four months to come up with a comprehensive Bill. But then, that was not to be. We had to bring those piecemeal amendments to the Prevention of Corruption Act.

**Mr. Anyona:** Mr. Speaker, Sir, I am grateful for that concurrence. In other words, this was a caesarian birth. We created KACA out of a caesarian operation. We did not allow the baby to mature and be born naturally. As a result, we got into trouble because we did not consider the totality of our provisions; to see if there was harmony between the new law and the Constitution.

I still believe, and I want to agree with Mr. Muite, that even now you do not require a constitutional amendment to create KACA. The only reason we need KACA, now under the Constitution, and we have come up against another constitutional obstacle, is because there has been a court ruling. This is a court ruling which remains law as long as it is in place. I do not know why the Government did not challenge this ruling so that we would have it at the highest level of the judicial process. Now, therefore, because of that debacle we are likely to land into another one, by creating a new KACA that creates even more conflict within the Constitution. And a new KACA that, in fact, is less effective than even the KACA that was there before and the kind of KACA we have in mind. I do not want to belabour this point, since it has been made.

Mr. Speaker, Sir, a point was made here by Mr. Biwott, that we are trying to create a second Attorney-General. That is the problem! We have a single prosecution process through the office of the Attorney-General plus these others which can initiate prosecution, but he has a final word; he can take over, terminate or proceed. Now we are creating a double or parallel prosecution process where you have the Attorney-General on the one hand and the Director of KACA on the other hand. There is nothing in the law to harmonise their relationship. In fact, the hon. Attorney-General said that they were working extremely well with KACA. This is as a result of a memorandum I wrote to the Attorney-General, in which I was saying that to cede the powers of prosecution as they are in the Constitution as you seem to be doing, is in itself unconstitutional. In fact, you know I still do not agree with you when you go and designate your deputy as a public prosecutor because he is not. It is the Attorney-General who is the public prosecutor. Anybody else is your deputy, assistant, senior assistant and the rest of it. That is where things went wrong.

Mr. Speaker, Sir, when I was discussing this matter with the Attorney-General in his office, there was a telephone call from the Director of KACA precisely about this. And there was an amicable gentleman's agreement between the two of them that they would try and operate in a manner that would facilitate the prosecution of the fight against corruption. They were fully aware that the law, as it stood created conflict, but they agreed like that and that is how they operated. I am a witness and I sat there with the Attorney-General as that discussion took place. But we cannot rely on the goodwill of individuals; we must create the law. Now that this problem has come up, again, we should not create a further problem. That is why we are saying, and if I may say what I said at the beginning, we are not against this Bill. Mr. Murungi said here yesterday that I was one of the first victims of the fight against corruption when I raised corruption cases on the Floor of this House. As a result, I was detained and lost my seat unconstitutionally. So, I would be the last person--- I heard many hon. Members say here, when we were debating the so-called list of shame, that Mr. Anyona was supporting corruption. How can I do that? If you knew what I have gone through, you would not say that! But we cannot make mistakes out of the bitterness of the past.

*[Mr. Speaker left the Chair]*

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

We would like to persuade both sides of the House that Parliament, the country and all of us need this law; let us do it properly. Let us not make mistakes; let us not try to settle scores over this matter.

Mr. Temporary Deputy Speaker, Sir, we had better come out in the open. In fact, as I have said, there are two reasons why we must create the KACA. One of them is the court ruling, which is secondary, but the main one is because the World Bank, the International Monetary Fund (IMF), the donors and the NGOs have said so. Let us be honest. Let us tell our people the truth. They have said that if there will be no KACA in place, there will be no money

in September. That is why he has done what he has done, and he has done well. He has brought this matter before the National Assembly of this Republic; before the people of Kenya. We are saying that the last thing that should happen is that anybody should be in a position to dictate willy-nilly to this Parliament, the Government and the Republic of Kenya. We have a crucial choice to make. We have to decide either to remain poor and be independent, or sell our souls.

I would be the last person to support a situation like that. After all, all these people who talk about corruption, retrenchment and globalisation--- Mr. Biwott, globalisation is our enemy! We are helpless! The Minister should not come here and tell us that globalisation is for our benefit; it is not! I was in Australia recently attending a conference, and there is a big fight in that country against globalisation. Why, and yet they are part of that world?

**The Minister for Trade and Industry** (Mr. Biwott): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead us by saying that, in my contribution, I said that globalisation is beneficial? All I said is that, at the moment, the whole world is involved in globalisation, and that Kenya is a part of that one. But I am aware of the problem he is talking about. If I was arguing on that, I would have argued differently.

**Mr. Anyona:** Mr. Temporary Deputy Speaker, Sir, I do not mind the speech. I have learnt to be very liberal partly because of the process I have gone through. That is true. You and I know that globalisation is only good for those who want to globalise us, but we are victims. But we must choose a bench-line below which we cannot go. This is because, if we are slaves, we are slaves in poverty or in globalisation.

I am saying that the message that we should send out from this National Assembly is that the Government has done its part in the negotiations and they have made promises. After all, they did not inform us when they made those promises, but we understand. They have come to us; the Attorney-General has brought a Bill before the Floor of this House which will create more problems. We are not saying "no", but we are saying that let us do it properly. If they do not understand that, then there can be no goodwill, and whichever way, we will not win.

In fact, they are saying that the money will be released in September. Are they sure of that? We will pass this Bill today, and tomorrow it will be the Children's Bill, the next day, it will be the Public Service Code of Conduct Bill and the day after that, it will be a Bill for the Conduct of Members of Parliament, and the game goes on forever!

So, I would like to appeal that, instead of either side of the House looking at this Bill from different perspectives, let us do it from one perspective. If issues have been raised that make sense to both sides of the House, and they do, let us sit down, take some time, look at those views and find out what is best in this circumstance. This is because what worries me is that we will pass this Bill today, but tomorrow there will be litigation in court. These are the same people who instigate people here to go to court to challenge what we pass here. They are the same people!

*(Applause)*

We are just being twisted around! After somebody has gone to court, there will be no KACA in place. There will be a standstill. I was talking to the Attorney-General yesterday, who is one of my friends, and he told me: "Well, we shall have done our part." I agreed but what does our face look like? What is our face in the eyes of the world? What kind of Parliament is that? What kind of country is that? Despite what other people say about this country, this country is still a top player in this continent. I was in Australia and saw people there. Why do we want to make ourselves so cheap?

We heard a story here yesterday, of some lawyers from South Africa. I have no problem with South Africans; they are very dear brothers because we were involved in some of their struggle, at least, in spirit. But surely, in terms of political maturity, I thought we were much more mature than South Africa. I was at the Juba Airport and they are now trying to bring ladies and men to man the counters. You know they are learning. In their aircraft, there are no African hostesses yet. This is the case, and yet the Attorney-General has told us that the World Bank told him to go and get lawyers from South Africa to come and assist him! I was in school with the Attorney-General, and we were brought up very well, as he knows. The motto of the Alliance High School is "Strong to Serve." The Attorney-General is expected to get some lawyers from South Africa, whom I do not know whether they were young or old, to come and show him how to draft a Bill! So, this Parliament is made to pass some laws that have been imposed on our system!

**The Attorney-General** (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to confirm that I was with the hon. Member at Alliance High School and he was also the Deputy School Captain, but I would also like him to confirm that I became the School Captain, a grade higher than his, at least.

*(Laughter)*

**Mr. Anyona:** Mr. Temporary Deputy Speaker, Sir, I am sure he knows what happened. He knows that I did not go to climb Mount Kilimanjaro to prove that I could be the School Captain. I refused to do that. He knows that. I

would like to finish so that other hon. Members---

**Mr. Orengo:** Mr. Temporary Deputy Speaker, Sir, I would like to inform Mr. Anyona that I joined Alliance High School when he had been the Deputy School Captain. He was actually going to be the School Captain, but because he was a man of principle, it became very difficult for him to become the School Captain. But my hon. friend here who was my teacher was very close to the authority and that is why he is---

*(Laughter)*

**Mr. Murathe:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This is becoming irrelevant! Mr. Anyona pledged to be conscious about other Members' contribution in terms of time. I would like to point out that 25 minutes have passed since he started to contribute, and they are contributing irrelevancies about Alliance High School.

**Mr. Anyona:** Mr. Temporary Deputy Speaker, Sir, if that is the case, I am entitled, under Standing Order No.80, to contribute for half an hour! I am well within my rights. We want to relax; the House is very tense. In fact, I am tempted even now to move, under Standing Order No.102(2), that if he insists, and if we all insist, then the best scenario is to kill this Bill. But I do not want to do that yet, because I think we can reach a consensus. Let us send one message from this Parliament; that we want to pass this Bill but we want a bit of time. I even noticed that people who were supposed to nominate the Board under the previous Act, which we were facilitating, have already said they will not take part because they have not been consulted. This means there is controversy. So, let us take some time and caucus, as it was very well said here, and agree on the way to go. Then, let us come here and pass it. I think as a country and a Parliament, we shall have come out much better that way than if we pass this Bill because this side is forcing that side to defeat it. I am appealing to the Attorney-General and the Government, and this side, that we agree to withdraw this Bill and hold consultations and then come out with a Bill that does not put this country to disgrace when other litigations come up.

Mr. Temporary Deputy Speaker, Sir, as I said, I want to reserve my right. If I find that we are insisting on forcing the issues, then we might as well use the provisions of the Standing Orders. But I do not think we want to do that.

With those few remarks, I beg to support.

**The Minister of State, Office of the President** (Mr. ole Ntimama): Mr. Temporary Deputy Speaker, Sir, from the outset, I want to say that I support the principle of this Bill. I know the Attorney-General must have taken a lot of pain to see that he brought a good Bill to this House. He is trying to entrench the KACA in the Constitution so that we do not have a situation again where the legislation passed by this House to help eradicate corruption will be ambushed somewhere else and probably in the courts of law of this country. We want to make it foolproof so that it is no longer a subject of ambushing. By making sure that the KACA is entrenched in the Constitution, the Attorney-General wants our fight against corruption to continue without any hitch at all. Although I have heard very good arguments from the other side of the House, I still want to insist that our colleagues should look at the Bill again differently and support it.

Mr. Temporary Deputy Speaker, Sir, it was unfortunate that the previous KACA Act was declared unconstitutional. I think it was very unfortunate to a degree; that some of us felt it was really unfair. I do not know where the whole problem started and what the motives were. But I think the fact that it was thrown out as unconstitutional is very unfair. This is why I want to emphasise the fact that we must, this time round, be sure that the KACA legislation which we will pass in this House, will not only be entrenched in the Constitution but will live for many years to help us eradicate corruption.

Mr. Temporary Deputy Speaker, Sir, it is very important to know that we are now in the process of constructing and remodelling the Constitution of this country through the Constitution of Kenya Review Commission (CKRC) that is going on in this country. Maybe, this is the right time. I am not speculating about the actual time but, probably, this is the right time to get this Bill entrenched in the Constitution so that it will be part of the whole major constitutional process that we are currently remodelling in this country.

Mr. Temporary Deputy Speaker, Sir, it is very important also to know that the basic principles of any democracy is the fact that any good governance is through the three major institutions or arms of Government; that is, the Executive, the Legislature and the Judiciary. I think we should be very careful so that we make sure that these three arms of Government are observed so that we do not go wrong again. I am saying this because the three arms of Government are normally complementary. They always check one another and have a balancing effect. If one of the branches of Government is not checked, then it could run amok. It could create problems instead of balancing and checking. I am saying this because the previous KACA Act gave KACA the power to prosecute and investigate. The Attorney-General wants to entrench those powers in the new Bill. It is very important that KACA is given the powers to investigate and prosecute. But in the three arms of Government, the bottom line is that it is the Judiciary which will

be required to implement some of these investigations. It is the Judiciary which will give the last word as to whether somebody is guilty or not. It is the Judiciary which then is supposed to dispense justice and satisfy the public that justice has been done.

I know very well that, sometime ago, the late Chief Justice appointed a Commission chaired by Justice Kwach, to investigate and report on the activities of the Judiciary. We know that this Report was published and launched publicly. In this Report, the members exposed massive corruption in the Judiciary. It also pointed out certain omissions and commissions, ineptitude, laziness and so forth.

Mr. Temporary Deputy Speaker, Sir, if this Bill is enacted, it will entrench KACA in the Constitution. Therefore, the three arms of Government will work together complementarily to make sure that the fight against corruption is fought properly and won. In fact, if you carry out an opinion poll, you will realise that even members of the public today are very apprehensive about the ability of the Judiciary to effectively dispense and discharge justice in this country. This is a big worry. Who checks and balances the Judiciary? It must be balanced and checked. It must be complementary to the Executive and the Legislature, so that the three branches of Government can work together to redeem this country from the scourge of corruption. If one of the branches lags behind, then we will be doing nothing in our fight against corruption in this country. We are just making things more complicated for members of the public.

Mr. Temporary Deputy Speaker, Sir, I am surprised that the Kwach Report has not been implemented to date. What is the reason? I do not know! Probably, somebody will tell us why the Kwach Report has not been implemented. This shows very clearly that there is something wrong somewhere. We do not want these wrongs to continue, in one of the arms of Government, if we are really interested in eradicating corruption in our society. If there is corruption in the Judiciary, as the Kwach Report indicates, then we are in great trouble.

Mr. Temporary Deputy Speaker, Sir, we were invited by the Constitution of Kenya Review Commission to give our views on Majimboism. We shared a podium with Mr. Kibaki, the Leader of the Official Opposition in this House. Whatever the newspapers said was not correct. We did not really differ because he had his free expression and I had my own. I felt that, that was democracy in action. We did not even differ because we finally agreed that the local authorities should be given more powers in order to deliver services to our people at the grassroots level.

Mr. Temporary Deputy Speaker, Sir, we agreed that the powers and functions of local authorities should be devolved so that they are strengthened and empowered. We really agreed on that issue with hon. Kibaki. Even in this House we differ a bit on the issue of a three-tier Government. He said he did not want a three-tier Government because it is too expensive. We can debate that as well. He suggested that regionalism, or majimbo, was not good for this country. We could have a Central Government at the top, but we empower our Local Authorities at the grassroots level. That is subject to debate. I am even prepared to talk about it later. We could agree on whether we should go for the two-tier or three-tier Government. We agreed also that land allocation should be the responsibility of the local authorities. We do not want to have a situation whereby somebody at the top makes a decision to allocate land to some people either in Narok or Kiambu District, or anywhere else. We should avoid situations whereby somebody at the top strikes the ground like a thunderbolt and allows land to be grabbed without the knowledge of the local people. We agreed on that one as well. I am very concerned about the land issue in this country. I will talk about this issue fully if I will ever have a chance to do so before the Constitution of Kenya Review Commission when it visits Narok or any other place that will be appropriate to me. We can have local authorities managing the vast land, medical services, education, the police, magistrates---

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Minister, are you addressing yourself to this Bill?

**The Minister of State, Office of the President** (Mr. ole Ntimama): Mr. Temporary Deputy Speaker, Sir, I am building my case to show how corruption thrives in our local authorities. In any case, corruption has been thriving in land issues for a long time. I am trying to establish the facts on the ground.

Mr. Temporary Deputy Speaker, Sir, if you allow me to talk about land, I will show how corruption is dominant in the national parks of this country. For the benefit of hon. Members, and members of the public in general, we all know that the tourism industry is the major foreign exchange earner in this country. Most of the land that forms national parks was carved out of Maasailand. For example, Masai Mara Game Reserve, Samburu, Amboseli, and Serengeti, Tarangele and El-manyara on the other side of the border, were all initially occupied by the Maasai community. I am very worried that, just the other day, some people, using some litigation processes, annexed some parts of Masai Mara Game Reserve. There is a group of people, which includes a few white men, who are *persona non grata* in this country, and other two people, who have an unsatiable greed for money, who have grabbed and appropriated revenue from Masai Mara Game Reserve in the pretext that they will remit it to the relevant local authority. These people are pretending that they are a non-profit making organisation. They are not a non-profit making organisation. They are pirates. Theirs is an act of corruption! If these people will be allowed to grab and seize revenue from the Masai Mara Game Reserve, we will liquidate the local authority and our community in general.

Mr. Temporary Deputy Speaker, Sir, I am surprised, but I do not have to ask my friend, the hon. Minister for



Local Government, because this is not the right forum. However, I have been in the Ministry of Local Government for eight and half years and I know the Minister must approve some of these things. The local county council must unanimously agree on these issues. Therefore, I do not know whether the Ministry of Local Government will allow a whole local authority to be liquidated by a few people who want to reap where they did not sow. This is why corruption is so rampant in this country. We must let people reap what they have sown.

Mr. Temporary Deputy Speaker, Sir, I even do not think the Kenya Wildlife Service (KWS) knows whether some of these things are happening. If they do, then it is wrong because if they allow an NGO or a private company to control the security of an area like Masai Mara Game Reserve, who will provide security to tourists and the local people, for example? Who will provide security to the wildlife itself? Is it the NGO? This thing must come out in the open.

**Mr. Muite:** On a point order, Mr. Temporary Deputy Speaker, Sir. Mr. William ole Ntimama is making very serious allegations indeed about an NGO which has grabbed Trans Mara Game Reserve and which is corrupt. Would it not be in order for him to substantiate his allegations? Who are the two whitemen who have formed an NGO? Let him not cast aspersions on all the NGOs, but substantiate and tell us the names of the two whitemen!

**The Minister of State, Office of the President** (Mr. ole Ntimama): Mr. Temporary Deputy Speaker, Sir, there are many other avenues of revealing this matter and right now, I am not prepared to substantiate. But it is not only whitemen who have grabbed land because there are also very prominent Africans who have always been waving a flag of privilege and patronage. This is exactly why we have to wait for the right time. I promise that when we will be discussing the KACA Bill, it does not matter when, I am going to expose the whole issue before this House, if I will get an opportunity to speak. I am only saying this because I am concerned like everybody else.

This land was given to the people of Kenya after being carved out of our native land. I had said before that no cent has been paid for it. If according to the laws of this country on trust land--- I am not a lawyer, but I can see a very prominent lawyer here whom I have a lot respect for. If the Government feels that they have no use for the land, let the land revert back to the community. I am saying this because, as I said when I talked about Mr. Kibaki's view on land, I said that we should strengthen the local authorities. How do you strengthen the local authorities if they have no revenue at all? How do we strengthen the local authorities when we have agreed that they should be conned?

I support this Bill, as a matter of fact, and that is why I do not want to take too much time on it.

**Mr. Ndicho:** Thank you very much, Mr. Temporary Deputy Speaker, for giving me this opportunity to contribute to this important Bill. Mr. ole Ntimama, who has just concluded his contribution on this Bill, has told us that as we are trying to legislate against corruption and trying to enact a law against corruption, this practice is still going on in his constituency where people are grabbing land belonging to the Masai Mara Game Reserve.

Mr. Temporary Deputy Speaker, Sir, I am taking some offence against my friend the Attorney-General. When I brought a Motion here about amending the Constitution so that whoever is elected as the President by the people, should not represent a constituency, the Attorney-General approached me and told me that such a proposal should go to the Constitution of Kenya Review Commission because there is no point in amending the Constitution in piecemeal. Since the Attorney-General is my good friend, I agreed. But I now feel that I was betrayed because the Attorney-General is now telling this side not to amend the Constitution in piecemeal and yet he is now bringing a piece of legislation to amend the Constitution in piecemeal. That is one reason why I am not amused by this amendment. That is also why I am not going to support it.

Mr. Temporary Deputy Speaker, Sir, now the talk is all about entrenching in the Constitution some form of legislation to curb corruption in this country. There is no miracle that will ever happen, even if we entrenched what the Attorney-General is requesting this House to do to stop the people who are corrupt from engaging themselves in corruption. There is no miracle that can happen. Even if we go into a Division now, and the Attorney gets 148 Votes or 65 per cent of all hon. Members as prescribed by the Constitution, he goes away with the amendments today or even tomorrow, corruption will still persist in this country. I am saying this because there is no miracle about entrenching anything in the sacrosanct document called the Constitution. I am saying so because the Constitution - which I have here - tells us, for example, that the President can only serve a two-term period of five years each. That is already entrenched in this Constitution! Since we have it provided for this Constitution, why are Ministers telling us on weekends that President Moi will continue to serve for a third time, whether there is a Constitution or not? So, we do not trust the Attorney-General; that by entrenching some laws in the Constitution to allow him to arrest the corrupt people, he will put this law into effect.

Mr. Temporary Deputy Speaker, Sir, I do not think that we have deficient laws to deal with corruption. I have come with all my books on law dealing with corruption. I have all of them here. I have the Penal Code. I know that the Attorney-General has also the Penal Code Division Five, which deals with theft and also Sections 267 to 285 of the Penal Code which deal with---

**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it

in order for Mr. Ndicho, who I understand is attending the Parallel Programme in Law at the University, to revise his notes to us under the guise of contributing to the debate?

**Mr. Ndicho:** Mr. Temporary Deputy Speaker, Sir, I beg to dismiss that argument with the contempt it deserves! It does not require me to go to university to be able to talk about the Penal Code because it is here in black and white. This Act is talking about how to deal with thieves. That is covered by Sections 267 to 285. Section 280 deals with cases of theft by persons in the Public Service. What else do we need?

I also came with the Civil Procedure Code, which deals with the procedure on how to catch a thief and take him to the court. What else do we need? There is also Chapter 65 of the Laws of Kenya which talks about corruption. So, I know what the World Bank, the International Monetary Fund and the donors have said. They have come to the President and given him conditions; that unless this issue of KACA is entrenched in the Constitution, they are not going to give him donor money by September.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General is my good friend and he knows that. Let me take this opportunity to tell him that he has failed in his duty because he has not taken these books to the President and told him: "Your Excellency, when these people come, tell them that we have all the books that talk about what you are asking us to put into the Constitution."

Mr. Temporary Deputy Speaker, Sir, this is superfluous! What we are trying to put into the Constitution will not stop the corrupt people from engaging in corrupt activities. In any case, this is gross interference with the work of the Attorney-General. In other words, the Attorney-General is bringing up a new piece of legislation which he has been told to draft. Therefore, this legislation is telling us that as the Attorney-General of the Republic of Kenya he has been unable to discharge his legal duties to prosecute thieves and those people who are corrupt. That is what he is telling us because he has got all the books.

Mr. Temporary Deputy Speaker, Sir, it is also in our knowledge that we had very good draftsmen in the Attorney-General's Chambers, but they were all retrenched. The good ones have gone and the Attorney-General knows that. Now, he has got trainees in his Department. If those good draftsmen were still there, they could not have allowed the Attorney-General to bring this Bill before this House, knowing too well that there are Members in this House who are learned and will go through the Bill, relate it to the existing laws, and reject it! So, all that I am telling the Attorney-General is that I am supporting my colleagues in telling him that we want to help the Government because we are part of this country anyway. We have been in the forefront fighting against corruption. We want to have a country where corruption is reduced, if not to manageable levels, at least, to some levels that we do not feel it. So, all that we are telling the Attorney-General is: According to Section 47 of the Constitution, the Attorney-General has to obtain a 65 per cent majority. I am sorry, but I do not think the Attorney-General will achieve that percentage. That is because majority of the Members are telling you: "Go and bring a better legislation!" When you bring it here, we are going to help you to pass it!

So, when the Attorney-General brings a new piece of legislation, and he wants somebody to be appointed as a Director of Prosecutions, is he telling us that he wants to operate parallel with him? Is he telling us that he has been unable to prosecute all the criminal cases in this country?

Mr. Temporary Deputy Speaker, Sir, I think the Attorney-General should be bold and take up his responsibilities as the Chief Legal Advisor to the Government! We are made to understand that when you are referring to the Government, you mean even the President! As the Constitution stipulates, the Attorney-General is the Legal Advisor to the President. So, he should advise the President to tell the World Bank, International Monetary Fund (IMF) and other donors, that we have a problem; because Members of Parliament are refusing to legislate a law that will bring in another Mwau, and then it will be challenged in a court of law, thrown out and does not work! That will mean spending a lot of time here debating a law that we know is flawed and will not work. It also gives us a bad image in the eyes of the public; that the legislators currently serving in Parliament are people who do not know what they talk about!

Mr. Temporary Deputy Speaker, Sir, I remember we were challenged by Mr. Mwau when the case was taken to court. I remember being asked: "What were you doing to pass something which is unconstitutional?" We do not want to be blamed a second time, Mr. Attorney-General! Even if the President is telling you that the Bill must pass, please advise him correctly and legally about the problems that are arising out of it. Then, when you come with a better drafted document, you will get it within 30 minutes. But the way it is today, we are not willing to pass it. I know that even Members on the other side of the House, like my friend, Mr. Musyoka who is a very good lawyer, his conscience and heart know that there is something wrong with this Bill. But he will not rise and oppose it because of the obvious consequences!

**The Minister for Information and Tourism (Mr. Musyoka):** On a point of order, Mr. Temporary Deputy Speaker, Sir. I was not going to disturb my good friend because it is obvious to me that I heard him refer to the Civil Procedure Code, but I am sure he meant the Criminal Procedure Code; which means that he might probably fail his

Continuous Assessment Tests (CATs) next week!

But is he in order to really delve deep into my conscience? I thought that was my own matter which is clearly protected under the Constitution!

**Mr. Ndicho:** Mr. Temporary Deputy Speaker, Sir, it is a matter of his conscience to pass a legislation that he knows is correct. I just picked on him because he is my good friend. I do not want to pick on somebody who will hit me with a club as we are going out! But I know there are many others in this House who have come purposely to vote for this Bill, knowing very clearly that it is a bad law legally! I also remember that there was a case in Mombasa where a magistrate was arrested by the Criminal Investigations Department (CID) officers for receiving bribes. That is part of corruption. What is this new corruption that the World Bank is prescribing to us that we do not know, and it must go into the Constitution? What is this new type of corruption that the donors are forcing President Moi to have entrenched into the Constitution that we do not know in our law books? What are they? Could the Attorney-General tell us what they are?

In Chapter 30 of the Penal Code, we have various corruption offences defined. For example, we have conspiracy to fraud, cheating, fraud on sale and various others. I believe what the Attorney-General is trying to legislate and bring into the Constitution is nothing new. Unless the Attorney-General has anything new, which is not in our books, what is that one? Could he tell us? So, if you give the Commissioner of Police whom, under the Constitution, you are told to order to arrest and prosecute any criminal--- Unless he is incapacitated by some legislation, the Attorney-General should not tell us to bring new legislation. So, we are opposed to this Bill and we want the Attorney-General to know that and tell His Excellency the President that Members of Parliament have refused to give the necessary 145 votes required to pass the Bill, simply because there is nothing new. He should be open and tell the donors the same. We also take it very unkindly when we hear aspersions being cast on Members on this side of the House; that we are particularly refusing to pass this Bill because we do not want donor money to come and help this country. If there are people who have suffered, it is the people represented by Members on this side of the House since 1992. We would like as much of that money as possible to come quickly. But the problem and the question that everybody is asking is: If we want the money to come, and probably, that is why the donors want you to have a law protecting that money, the money that we have received so far has gone into questionable hands. We cannot see what it has done. Now, somebody is asking: If we give you more money, will it still go the same way? Where are the *El Nino* funds? Those were billions of shillings given by the same donors and they expected to see changes on our roads, from the potholes and deplorable conditions that they are in today, into better roads. When the donors compute the amount of money that they have given and then travel around the country and see that the roads are still in deplorable condition, they are inclined not to give more money. Where is the HIV/AIDS money? Why are we not seeing any effect from the billions of shillings that the Government has received from the donors to help the HIV/AIDS victims? Where is that money? We understand why the donors are insisting that some legislation should be put in place in the Constitution. It is to try to protect their money.

But I would like to tell them, loud and clear, that even if we entrench whatever they want into the Constitution, it is not a guarantee that the money will not be misused. Already, what they have given has gone! Let the Attorney-General stand up, convince this House and tell us the new pieces of legislation that he wants us to entrench into the Constitution.

Mr. Temporary Deputy Speaker, Sir, let the Attorney-General know that, as far as Juja Constituency is concerned, we are not interested in helping him to pass the Bill. The people of Juja have told me: "If you pass that Bill, do not come home here! That is because you want to give those people money to "eat". I do not want to share the sentiments of others who are saying that we desperately want that money because of next year's elections. I am saying that I do not fear that. Possibly, it could be, but I do not know! But all that we are telling the Attorney-General is that we want to help him to make good laws for ourselves and our country. We, as legislators, are more than willing to help the Attorney-General to bring good laws, and also to discharge his duties by advising the Government, arrest and prosecute criminals that have destroyed our country. But we are not ready to give you somebody who is equalling your power; somebody who will be running parallel to your powers. We are not ready to do that. We want only the Attorney-General to do what he is supposed to do as per the Constitution.

With those few remarks, I beg to oppose.

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir, first of all, I want to thank you because I was eager to say something before the day is over. I was eager because, first and foremost, I am the Chairman of the Administration of Justice and Legal Affairs Committee. If this Bill was not a constitutional amendment, it would have come to my Committee. I hope the other one which has been published will come. I am also the Secretary for Legal Affairs for the NDP. So, I must talk for my party. That is why I was a bit anxious that you are giving Ministers time to talk and the NDP was not going to have a voice.

First, I want to say that corruption has a multiplier effect. We used to talk of the multiplier effect in economics

because it adds good things. Corruption seems to add bad things. It has a multiplier effect. It starts with looting of public resources, then the destruction of infrastructure, the destitution of people and eventually, it destroys the looter himself. Sooner or later we will destroy ourselves in that vicious circle of the multiplier effect of corruption. I think the country has realised that, unless we do something about this, we are destroying ourselves. We have been prodded by the help of our friends, the donors whom we now call development partners. I have not seen any development coming from donor money, but they are partners in development. I have listened very carefully to some of our very eloquent friends; Mr. Muite and Mr. Anyona, speak on consensus. I think they were very reasonable in seeking consensus.

I want to remind you of one day when I sat here in this Gallery in 1982, when Mr. Charles Njonjo, the then Attorney-General and "Duke of Kabetshire" stood up here and said: "This Parliament passed this Constitution. This Parliament will this afternoon amend this Constitution." That was the introduction of the infamous Section 2(A). When Mr. Orenge who was sitting there with Messrs. Wamwere and Abuya Abuya, tried to raise their heads and inquire, Mr. Njonjo asked: "Who is that, Mr. Speaker, Sir?" they went under the Benches!

*(Laughter)*

We have come from far. I was a teacher then--

**Mr. Orenge:** On a point of information, Mr. Temporary Deputy Speaker, Sir. Actually Mr. Kajwang is giving very accurate information, except that I did not go under the Bench. I made my point known and he can check in the HANSARD to find out what I said on that day.

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir, I was a teacher of law at the polytechnic then. I had come specifically to oppose that amendment. I did not have any voice here, but I wanted to sit here to be seen to be opposing it. Then Mr. Kibaki supported the amendment and then somebody else talked. When the Mover was then called upon to reply, I said "No!" I was carried out by my belt and thrown out badly!

*(Laughter)*

This is a case of bad law! I have suffered before!

I wanted to say that other Attorney-Generals have not sought consensus. I think this Attorney-General has tried to seek consensus on this matter. There is something seriously wrong with this Bill, which I must say and then I will support it. I must say what I think is wrong and then I will support it for a different reason. I do not, for a while, think that we should create the office of another Attorney-General in this country when the current one is still there. Section 26 gives the Attorney-General powers to prosecute, take over, terminate, enter *nolle prosequi* and so on. That is the job of the Attorney-General. If he does not have those powers then he is not the Attorney-General because there must be somebody in this country who has constitutional powers to say that he has looked at the evidence and he thinks a case must go on or should be terminated. Mr. Temporary Deputy Speaker, Sir, if, as the Attorney-General, you do not have those powers which have been vested in you by Section 26, then you are not the Attorney-General. We will have a figure head of an Attorney-General and another one who seems to be the Attorney-General. I say so because, according to this amendment, this person will be in charge of economic crimes. I was asking the Attorney-General: "Which crimes are not economic?" I also asked him: "Are sexual offences not economic?" He told me they are the most economic. I told him that if he cannot even prosecute sexual offences, then what will he prosecute since he is the Director of Public Prosecutions? Will we live him with domestic violence? Maybe that is also an economic crime because there is war in homes over money. I think the Attorney-General is trying to be a non-Attorney-General.

The World Bank and the IMF sent some people to the Finance Committee and later on they came to our Committee which is the Administration of Justice and Legal Affairs Committee. They were asking us to do what the Attorney-General has done. One of the Committee Members from the other side of the House shouted at me and said: "We cannot create two Attorney-Generals!" I remember his words very well because we will have confusion in this country. I am opposed to what Mr. Murungi said. He said that the Attorney-General has not given the Director-General as much powers as he should be given. I think the office of the Director-General of KACA has been given too much power until now the Attorney-General has no power. You cannot say that this Bill should say that Section 26, which gives the Attorney-General the powers to perform his duties, should be removed so that the Director-General of KACA can operate freely. What are we telling this country? Are we saying that we are passing a vote of no confidence in our Attorney-General? Are we saying that we do not have an Attorney-General? If that is precisely what we are saying then we do not need this Bill. We should just tell the Attorney-General to go home!

**Hon. Members:** Go home!

**Mr. Kajwang:** What annoyed me most is that the Attorney-General himself brought this Bill to the House. I

asked him whether he was serious in bringing this Bill to the House and in effect signing his own death certificate. He is liquidating the office of the Attorney-General and giving it to somebody who is unknown. What are we doing to this country? Are we doing this because we are so poor and hungry that we need money from the World Bank? Mr. Biwott has already referred to this Bill. Immediately we pass this Bill, it will go to court and it will be thrown out. The reason for this is that Cap.109(a), Section 4(a) states that the functions of the Authority include investigation and prosecution of offences. You cannot have those two offices rolled into one. Even the Attorney-General does not prosecute or investigate by himself. At least, he orders the police to carry out the investigations. He looks at the evidence and, if satisfied, he prosecutes. His job is to prosecute public cases. How can we give somebody the powers to investigate and prosecute and then, we come here and refuse to pass this Bill on the basis that he is not powerful enough and independent enough? That is what Mr. Murungi is saying. How can you create such a monster?

Mr. Temporary Deputy Speaker, Sir, the Americans created somebody called the Independent Investigator, and he went to the bedroom of the former President Bill Clinton and caused a lot of noise. He spent money without limit and the Americans themselves said that, that is not why they created such an office. They expressed confidence in Mr. Clinton, because you do not have to create things like these; you destroy a country. But, of course, I am not saying that we are condoning corruption. I have already said that it destroys even the looters in the end because the people who looted and built hotels in the Coast have collapsed because we have no money to go to those hotels. That is how you can loot and then collapse.

*(Laughter)*

This is because we cannot go there. We cannot afford it! I am an hon. Member and I cannot afford to sleep in a good hotel. So, if I cannot, and they say that I am being paid a lot of money, who can? They will collapse! So, corruption destroys even the corrupt!

Of course, I have already said the Bill is donor-driven, it is not indigenous, and it is not home-grown, it is foreign and dangerous. But we are going to pass it.

*(Laughter)*

Let me tell you that when we were first year students at the University of Nairobi, with my friend, Ms Karua, there was a teacher called Mr. Ramamurthi, who was a Mhindi. He did not know how to speak very good English. But Mr. Ramamurthi told us that there was a guy who was a good lawyer and he used to take a lot of whisky before he went to court. When he went to court one day a bit tipsy, he first of all, started to argue against his client. He argued so eloquently until his client told him: "What are you doing?" The lawyer then walked up and said: "What the hell do you think I am doing?" His client replied: "You are jailing me?" He then turned around and said: "Oh, my Lord, that goes for the case of the prosecution. Now, the case for the defence." That is what I am now doing. Now, the case for the Attorney-General!

*(Laughter)*

I listened to Mr. Murungi very well, because he was the Opposition Responder and he took almost one hour. He gave us his good reasons; why he did not think that this Bill is viable. I want to deal with them in my reply. One, he says that this Bill should not come before the other Anti-Corruption Bill because we have to argue and pass that Bill first, so that we entrench it. But you know, we already know that without a constitutional amendment, at least, as interpreted by the court, that other Bill if it becomes law, it is going to be an illegal law. This House cannot even talk about it for one minute. How do we start arguing and debating a Bill which we know for sure, immediately we pass it, will be unconstitutional, illegal and a nullity? We do not want to waste time. So, we must start somewhere.

First of all, we must start by creating an office and then providing how that office will operate. We amend the Constitution first and we create the office and then we work on the structure of that office. That is the use of the other Bill. On that score, Mr. Murungi loses two marks. Then we proceed, and they tell us once again why they do not like this Bill is that, it is not written in the Constitution and that it is a body corporate in this amendment. But where is the word "body corporate" here? This is because we are not creating a body corporate. I said: "No, gentlemen; we are not creating a body corporate in the Constitution. We are creating a constitutional office." It does not become a constitutional creature and a body corporate at the same time. Of course, after you create the constitutional office, then, of course, you can now have a body corporate in terms of the Constitution. So, gentlemen, that is not a flaw; the fact that the word body corporate is not here does not in any way create a flaw. In fact, it should not be there. On that score, Mr. Murungi loses another two marks.

But he is going to lose a little more marks on another point now. He says that this Bill which is a constitutional amendment Bill, does not provide for civil proceedings to recover looted properties. When do we start providing in our Constitution, provisions for civil proceedings to recover looted properties? What kind of Constitution are we going to have? Are we now going to entrench all our laws in the Constitution so that if I want to check the sections of the Constitution, I climb on it with a ladder? This country now has talked about the Constitution and the churches are talking about it. Some NGOs which are ignorant are talking about it and nobody seems to know the difference between a Constitution and a Statute. People just talk aimlessly and the Press writes carelessly. We have to know the difference between a Constitution and an Act of Parliament and a Statute. That is why America has a thin Constitution and that is why it has served them for 200 years with only 23 amendments - 27 pages. You do not put everything in the Constitution. I am sure that they even want to name the Director in the Constitution by name.

Then, they say that the Attorney-General can still take over and terminate or continue with some criminal proceedings in the High Court. Why should the Attorney-General not do that? That is the job of the Attorney-General; to prosecute and determine whether prosecution should go on or be terminated. What is the job of the Attorney-General in other countries? In Britain, America, Japan and Korea, what are the jobs of the other AGs? Their job is to determine whether a case is fit to proceed or be terminated. Are you saying that this Attorney-General should not even care whether a case will go on or be terminated? Then, he is not the Attorney-General. Let us then say that we amend the Constitution, dissolve the office of the Attorney-General and then we create a Director. If that is what we want today, let us then start by saying that we amend the Constitution and remove the office of the Attorney-General and we put there a Director of KACA. This is because that is what we are saying.

Mr. Temporary Deputy Speaker, Sir, for that reason, several marks have been lost there. There is one point on which Mr. Murungi lost even more marks. He says that there are no transitional provisions. I wanted to check what is meant by that-- Then he asks: Who will take over the assets of KACA? I did not know KACA had any assets. I thought that they were Government assets? Then, he talks about the new KACA. What about the old KACA? If something is a nullity, unconstitutional and illegal, it does not exist. That is the law! Something that does not exist, and which is a nullity, is not old, it is not there.

**The Minister for Trade and Industry** (Mr. Biwott): I hope you have got your licence back!

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir, I will get my licence back. I am a good lawyer. That was a small problem.

*(Laughter)*

Mr. Temporary Deputy Speaker, Sir, we want to create an independent body, that is a strong KACA but, at the same time, we cannot create something which is not going to pass this door. It will pass this door and go to court and be brought back to this House. So, Mr. Attorney-General, I suggest that you do something about this thing. You cannot amend a constitutional Bill that is terrible. However, this issue of giving powers to investigate and prosecute to one person is definitely going to give you a problem. This is because the courts are going to say that you cannot be an investigator, prosecutor and a judge. That is how they threw out Justice Ringera, the Judge of the High Court. This is because I said here in the House that there is no one man who can be a judge, a policeman and a prosecutor! It cannot happen, and then he appears with his big office in front of a junior magistrate. Of course, he earns Kshs500,000 and the magistrate earns only Kshs20,000 and he appears there with a lot of force. Which magistrate will refuse to jail?

*(Laughter)*

Mr. Temporary Deputy Speaker, Sir, justice must be seen to be done! That is how Justice Ringera went and it is good for the country that he accepted to leave. Next time we choose somebody, let it be somebody who is not in a position of terror. A judge is in a position of terror. Some of us who have appeared before them, we tremble because you know he can decide whether you are going in or out. That is the position in which Justice Ringera was, in appearing against some fellow before a small magistrate.

With those few remarks, I support.

*(Laughter)*

**Mr. Murathe:** Mr. Temporary Deputy Speaker, Sir, I do not understand how the hon. Kajwang can so articulately tear this Bill to pieces and then beg to support! I think this Parliament will go down in history as the laughing stock of Kenyans; a Parliament which passes laws and Bills and amends the Constitution for political expediency. We oppose but sometimes we are overwhelmed by sycophants. We must agree to do what is good for

Kenya.

Mr. Temporary Deputy Speaker, Sir, the fundamental reasons being brought forth by the Government for us to pass this flawed Bill is about the country's programme; it is about Kenya getting back to the World Bank and IMF programme. You can see the beggar mentality in our heads. We have reached a point where Kenyans must stand up now and agree to move forward as Kenyans for what is good for Kenya.

Mr. Temporary Deputy Speaker, Sir, I want to be enjoined with the sentiments of the Members who have said that the biggest problem in this country is about our implementing agencies. That we have a law - the Criminal Procedure Code - which provides what happens to somebody who steals public property. That, if somebody steals drugs from the Ministry of Health, we know what happens. If somebody misuses or steals public property like land, we know what happens. The law is very clear but we are being told by donors, the World Bank and IMF that, if we do not pass this, there is no assistance coming to us. In a nutshell, the biggest problem is that office of the Attorney-General. Section 26--

**Mr. Michuki:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member on the Floor in order to suggest that we are passing a Bill dealing with corruption by corrupting ourselves? Is he implying that we are passing this Bill because we want money from the World Bank? Are we not then saying that we are corrupting ourselves? is he in order to suggest that?

**Mr. Murathe:** Mr. Temporary Deputy Speaker, Sir, I am very much in order. I wish hon. Michuki paid a little attention. I am saying that the underlying reason that the Government is giving, as to why we must pass this flawed Bill, is so that this country is back on the IMF programme. The Government has not come forth with any justification about the legal framework which can create an advisory body as per this constitutional Bill; that is an advisory body without "teeth" and which cannot prosecute. We have had several advisory bodies. For instance, PAC and PIC, year in, year out, give recommendations to the Attorney-General to prosecute certain persons. For one reason or another, the Attorney-General thinks or finds it not necessary to go by the recommendations of the House advisory bodies. As you can see, it is totally unnecessary to try and bulldoze this House to pass this Bill so that we can beat a certain deadline for the resumption of aid to this country.

Mr. Temporary Deputy Speaker, Sir, this Government does not want this Bill to pass. This point was eloquently put forward by hon. Dr. Kituyi and, for one reason or another, people were downplaying it. This Government wants this Bill to flop so that they can run to the donors and say that they did their best but that the Parliament of the Republic of Kenya rejected it. I went to Brussels where the headquarters of the European Union is situated and they told us: "You can fool Kenyans all of the time but you cannot fool us as donors. You put an anti-corruption body (KACA) in place and then you go to your own courts and declare it unconstitutional". They told us that and I am surprised because I am told they have gone through this Bill together with the Attorney-General and they have now said that it is okay with all its inconsistencies and shortcomings.

Although we are not allowed to anticipate debate, we are here to give the constitutional basis on which we shall then legislate the Economic Crimes Bill which has been published. We have read it and it is in the public domain. Those inconsistencies in this Bill supersede whatever will be in the Economic Crimes Bill so that if the Bill is alright but inconsistent with what we are passing here, there is nothing we can do about this but we would have to change the Economic Crimes Bill to be consistent with what we are passing here now. So, let us agree.

Mr. Temporary Deputy Speaker, Sir, I concur with hon. Kajwang that you cannot have two prosecuting bodies; it does not happen anywhere else in the world. However, in some of the most civilised democracies including our neighbour Uganda, they have a Minister for Ethics and Integrity. In other countries, they have a Minister for Justice. We have a Minister who sits in Cabinet on matters of policy and directing, and then we have an independent prosecuting body which we are preferring to call the Director of Prosecutions or something like that. In our case, we need to tackle Section 26 of the Constitution if we are to tackle the whole business of the Kenya Anti-Corruption Authority (KACA). As you saw yesterday, the Attorney-General (AG) had the temerity to sit in a KANU Parliamentary Group (PG) meeting. The AG, who is supposed to be non-partisan, sat in a KANU PG meeting. I saw the Speaker escort the President up to the door and then he went back. The Speaker is impartial; he belongs to the House. The Office of the AG, as an *ex officio* Member of this House, is equivalent--

**The Assistant Minister for Tourism and Information (Mr. Sankori):** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to say that the AG sat in a KANU PG meeting when we know that the meeting in reference was not a KANU PG meeting but rather a Government meeting chaired by the Head of State?

**Hon. Members:** Aah! That is frivolous!

**The Temporary Deputy Speaker (Mr. Imanyara):** Order! Order!

**Mr. Murathe:** Mr. Temporary Deputy Speaker, Sir, with all due respect to my good friend, Mr. Sankori, unless the KANU Secretary-General says otherwise, that was a joint PG meeting for KANU and the National

Development Party (NDP).

**The Attorney-General** (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. This issue was raised this morning, and I addressed it. The position of the AG was explained when Kenya became a multiparty state. Before then, the AG was an *ex officio* Member of the KANU Executive Council and all the other organs of KANU. So, I used to sit in the meetings of all those organs. However, when Kenya became a multiparty state, I ceased to attend those meetings. The constitution of KANU was amended to reflect that I cannot be a Member of any of the organs of KANU or any political party, because I am non-partisan. Mr. Matiba raised the question of what my position would be in relation to other political parties since my job included drafting Bills and passing them over to Parliament. He wanted to know whether I would be attending PG meetings of the various political parties. I explained to him my position. I issued a Press statement, which I can table here, and explained that the AG is the principal legal advisor to the Government, and that he drafts Bills for the Government of the day in accordance with the policy of the ruling party of the day. I further explained that the AG could be invited by the ruling party to attend its PG meeting if that meeting would be discussing a Bill. He would attend to explain to the Members of Parliament issues in the Bill. I even went further and said that I was prepared attend PG meetings of any political party so long I am invited.

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order! Mr. Wako, since you said that there is a Press statement on what you are explaining, could you table it in the House so that you do not take too much of Mr. Murathe's time? You can table the Press statement tomorrow.

**Mr. Murathe:** Mr. Temporary Deputy Speaker, Sir, you see; I have given him a chance to inform the House and he thinks he has the Floor. You can see that he is a queer animal. He can be in court---

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order, Murathe!

**Mr. Murathe:** Mr. Temporary Deputy Speaker, Sir, I am not referring to the AG as a person; I am referring to his office. The AG can even go to court when the Government is being prosecuted, as a friend of the court.

**The Minister for Tourism and Information** (Mr. Musyoka): On a point of order, Mr. Temporary Deputy Speaker, Sir. Could you, please, rule whether Mr. Murathe should get away with his description of the AG as a "queer animal"? That is unparliamentary language.

**Mr. Murathe:** Mr. Temporary Deputy Speaker, Sir, I would like to clarify that the Office of the AG is a queer animal because it sits in the Cabinet and in Parliament; it can attend court sessions as a friend of the court and attend KANU PG meetings as a friend of the ruling party. The problem is Section 26 of the Constitution.

Let me proceed since this issue has been adequately highlighted. The body this Bill seeks to create will prosecute only public officers who were, for instance, involved in the Goldenberg scandal but it cannot touch Mr. Kamlesh Pattni since he is a private person. Mr. Pattni, who is the principal perpetrator of the Goldenberg scandal, cannot be taken to court by this body over the matter but public officers such as the then Commissioner for Geology and Mines, customs officers and the then Minister for Finance, can be taken to court. That is the constitutional amendment the AG has brought here for us to enact into law.

This morning, the Government side defeated a Motion by the Member of Parliament for Maragwa Constituency. While opposing the Motion, the Minister for Public Health argued very articulately that we cannot bring piecemeal constitutional amendments to this House. Double standards! Because it is convenient for it, the Government wants to have the Constitution of Kenya (Amendment) Bill passed by this House. However, the same Government would not allow hon. Members of this House to bring piecemeal constitutional amendments. I would like to state that we have law in this country but the AG has failed to implement the spirit and the letter of the law.

If the AG wants to form a body like KACA, he should go through the Public Accounts Committee (PAC) and the Public Investments Committee (PIC) recommendations, which are based on the findings of the Controller and Auditor-General and those of the Auditor-General (Corporations). The two Government officers have said that crimes have been committed against Kenyans. The PAC and PIC have recommended certain action to be taken against perpetrators of those crimes. Legal action has been recommended against some people. In some cases, recovery of public funds has been recommended.

Mr. Temporary Deputy Speaker, Sir, the Bill has totally ignored the aspect of corporate governance. Currently, the main area of focus for Transparency International (TI) and other anti-corruption bodies is corporate governance, because corruption is initiated by multinational corporations in Europe. Those multinationals come to Kenya and bribe our public officers. In some countries, facilitation fees is tax deductible.

**Mr. Mbitiru:** On a point of order, Mr. Temporary Deputy Speaker, Sir. It appears that we are now moving round in circles and repeating ourselves. I, therefore, beg to move that the Mover be now called upon to reply, so that we can vote on the Motion.

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



**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Mr. Murathe, I do not think that, that is frivolous.

**Mr. Murathe:** Mr. Temporary Deputy Speaker, Sir, the Mover is not even ready to reply.

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! I am actually satisfied that hon. Members are repeating themselves.

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

*(Loud consultations)*

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members! Mr. Ojode, could you please consult in low tones?

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, first of all, let me thank all those hon. Members who have contributed to this very important Bill. I particularly thank hon. Prof. Saitoti, hon. Murungi, hon. Raila Odinga, hon. Muite, hon. Biwott, hon. Anyona, hon. ole Ntimama, hon. Ndicho, hon. Kajwang and hon. Murathe. I thank them for having made positive contributions to this debate.

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

*[Mr. Speaker resumed the Chair]*

Mr. Speaker, Sir, as I stated earlier, the issue of fighting corruption is extremely important. But even more important and more serious, is the issue of constitutional amendment. It is a serious issue. You may have noted that, when I moved this Bill, I did not touch on the World Bank or the International Monetary Fund (IMF) and the donor community who also - and it is common knowledge - wanted this Bill to be passed. I did not touch on them for very good reasons. I did not touch on them because I do believe that when it comes to the constitutional amendment, it is a matter for the people of Kenya to deal with the amendment. It is not a matter for foreigners to tell us what to do. Although the World Bank, the IMF and the donor community---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! We want to hear the reply. Proceed, Mr. Attorney-General!

**The Attorney-General** (Mr. Wako): Although the World Bank, the IMF and the donor community wanted the enactment of this Bill, it is really for the people of Kenya to agree to amend the Constitution. If this Bill is passed, and other conditionalities are met, Kenya stands to benefit. I would like hon. Members to bear in mind that what is more important is the interest of Kenyans. F

Mr. Speaker, Sir, first and foremost, we want a Constitution that is autochthonous (home-grown). Therefore, when we are debating this Bill, we do not debate it because of the World Bank and IMF; do not vote on it because of the expected aid. I want you to vote on it because it is a Bill that is going to help this country in its war against corruption and because we believe that we must fight corruption. That should be the motivation of voting on this Bill.

Mr. Speaker, Sir, a lot has been said about the building of a consensus and so on. I would like to state very clearly that after the publication of the Bill, I did meet the Shadow Attorney-General, Mr. Murungi, and Mr. Musikari Kombo and through their intervention, I did publish the other two Bills. Although they promised to come and see me about them, they never came. When the Bills were published, what one got was not a desire to engage in constructive dialogue but ultimatums from the so-called "stakeholders" who said they were not prepared to discuss this Bill until the amnesty clause in the Anti-Corruption and Economic Crimes Bill had been deleted. That is not the spirit on which a constructive dialogue can be engaged in.

Mr. Speaker, Sir, it is true that the amnesty clause in the Economic Crimes Bill appears to have coloured the debate on this Bill. But I am asking hon. Members to take into account the fact that this amnesty clause is not part of this Bill and that when the time comes to discuss that Bill, obviously, we must engage in a constructive dialogue.

I have personally made two Press statements asking the country to engage in a constructive dialogue on the issue of amnesty, because however unpalatable it is, it is an issue that must be confronted. But that must not colour our decision on this constitutional amendment which does not have the Amnesty Clause.

Mr. Speaker, Sir, it has been suggested that the Bill be withdrawn and that instead, we publish the "Musikari Kombo Bill" and thereafter, we entrench the constitutional amendment. We brought this Bill to answer a mischief that

a Constitutional Court had made a ruling which I disagreed with, and other hon. Members disagreed with it also. But it is binding and, therefore, we have to take that ruling into account. This Bill is to ensure that although KACA was declared unconstitutional, we now want to establish it as a constitutional body. This is the whole purpose of this Bill. Other details can be taken care of in the legislation of the Anti-Corruption and Economic Crimes Bill.

We cannot proceed the way we did with the Constitution of Kenya Review Commission, by having an Act passed and thereafter, entrenching it. We cannot do that because it is not proper. We had to do it then because the situation demanded it. It is a constitutional amendment that will be a spent force as soon as the constitutional review process is over. There is no encouragement, whatsoever to entrench such legislations in the Constitution. It can only be done under very exceptional circumstances.

Mr. Speaker, Sir, to be able to publish the "Musikari Kombo Bill" before the constitutional amendment has gone through, will in itself, be unconstitutional, particularly if that Bill provides for the KACA to have prosecution powers. The Constitutional Court ruled that KACA was unconstitutional in engaging in prosecution. Therefore, it means that we can only bring that Bill to ensure that it has effective investigative powers.

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! I think the House does realise that we are debating a very important Motion. I think it is right and proper that we, at least, have audience so that we make decisions on what we have heard.

Proceed, Mr. Attorney-General!

**The Attorney-General** (Mr. Wako): So, it will be unconstitutional to bring the "Musikari Kombo Bill" first before we have enacted this constitutional amendment. Therefore, to the extent that you want that Bill to come here, let us pass this constitutional amendment.

Mr. Speaker, Sir, a number of issues have been raised that this constitutional amendment is in conflict with some provisions of the Anti-Corruption and Economic Crimes Bill. That is not true. Even if it is, the constitutional amendment takes preference. If we enact this constitutional amendment, then it is obvious that whatever is in conflict with it in the Bill will have to be amendment so that it is consistent with the Constitution. The powers of the Attorney-General and the Director of KACA will be parallel and each one of them will be independent within his own jurisdiction. There is really no conflict as such.

Mr. Speaker, Sir, there was also the issue of the delegation of powers. There was also the issue of whether the Director of KACA will be truly independent and whether it will be possible for him to be sacked by the Public Service Commission (PSC). On the plain reading of this particular Bill, it is obvious that the Director of KACA will enjoy independence and have security of tenure similar to that enjoyed by the Attorney-General.

There are many other issues that I would have liked to talk about, but let me emphasise that the history of corruption in this country as outlined, shows that the fault did not lie in the office of the Attorney-General, but it lay on the part of the investigations. The Attorney-General can only prosecute what has been investigated. Therefore, the focus has to be to strengthen the investigative powers of whatever agency that will be charged with the responsibility for investigations.

The Attorney-General, indeed, has prosecuted on all those investigations files which have reached his desk, including those of some of his colleagues. I wanted to make it clear that the office of the Attorney-General has at all times been on the forefront of fighting corruption in this country since Independence.

There are many other issues that I would have liked to talk about, but let me assure this House that this Bill is sound and proper; it is a constitutional Bill and you cannot talk about any conflict within it. It has been drafted well and was even approved by the international experts on Bills and I recommend and urge this House to overwhelmingly vote for it.

With those few remarks, I beg to move.

**Mr. Speaker:** Order! Hon. Members, we have come to the end of this debate. As you know, this is a constitutional Bill and, therefore, it shall be handled in accordance with the provisions of the Constitution.

I would like to bring to the attention of the House the provisions of Section 47 of the Constitution, which states as follows:-

1. Subject to this Constitution, Parliament may alter this Constitution.
2. A Bill for an Act of Parliament to alter this Constitution shall not be passed by the National Assembly unless it has been supported on the Second and Third Readings by the votes of not less than 65 per cent of all the Members of the Assembly excluding the *ex-officio* Members.
3. If on taking of a vote for the purpose of Sub-section (2), the Bill is supported by a majority of the Members of the Assembly voting, but not by the number of votes required by that Sub-Section, and

the Bill is not opposed by 35 per cent of all the members of the Assembly or more, then subject to such limitations and conditions as may be prescribed by the Standing Orders of the Assembly, a further vote may be taken."

To the best of my knowledge, the other provision which accords with that Section and which is provided by the National Assembly, is Standing Order No.61, which provides as follows:-

"In every instance where the Constitution lays down that a fixed majority is necessary to decide any question:-

(a) the House shall not proceed to a Division on that question unless and until the number of Members equivalent to such fixed majority is present at the time for directing the division.

(b) If a Division on that question results in a majority of Ayes, but less than such fixed majority and the Noes have not numbered 35 per cent of all the Members of the House or more, Mr. Speaker may direct one further Division on the same question to be held within seven days from the date of that first Division, but if he does not so direct any further Division, or if on such further Division the fixed majority is not obtained, he shall declare that the Motion is negated."

I wish now to bring to your attention the requisite numbers required even for me to order a Division. Two-thirds of this House at 222 hon. Members is 144 Members and a fraction of a Member. So, there being no fraction of a Member, I will round it up to 145 hon. Members. The *ex-officio* Members are excluded. We are all 224 hon. Members, but when you take away the Attorney-General and myself, you are left with 222 hon. Members.

*(Mr. Mbitiru consulted loudly)*

Order! Mr. Mbitiru, you might not vote if you continue that way! Mr. Clerk, how many hon. Members are present?

The hon. Members now seated are 158 which is more than the requisite number. Therefore, we have a quorum for the purposes of ordering the Division. Consequently, I now order that the Division bell be now rung. Before it is rung, 35 per cent of the hon. Members of this House, for the purposes of the Standing Order No.61, is 77.8 Members. So, I will go to 78 Members. So, if for purposes of Standing Order No.61, the Bill is opposed by 78 or more Members, then the possibility of a second division will not arise. That is the position.

Ring the Division Bell!

*(The Division Bell was rung)*

**Mr. Speaker:** Order, hon. Members! I now order that the doors be closed!

I wish to remind hon. Members the rules of Division. I will soon announce the names of the tellers, and thereafter, I will put the Question. Once I put the Question, I will order that you proceed to Division. And when you proceed to Division, the hon. Members for Ayes will proceed to my right and the ones for the Noes will proceed to my left.

Hon. Members will remember that we do have a fixed time for voting, and this is contained in Standing Order No.54. Hon. Members will recall that you are not obligated to vote either Aye or No. If you wish not to vote either way, you have the right to come to the Clerk's table and register your absence.

So, you have no obligation to vote either way. I think the whole process will take 15 minutes. But we will guide you as the time goes by. When it is time for everybody to get into the voting lobby, I will announce. At the end of voting time, we will announce and I will call the House to order. So, it is in your interest as a voter to proceed with due speed and diligence to go and vote within the time prescribed. I had made a little mistake; to change the Constitution, you require 65 per cent translated to 145 hon. Members.

To block a further vote you require 35 per cent, translated to 78 hon. Members. I hope everything is clear. Just for the avoidance of doubt, time does not run in the time of Division except as prescribed by the relevant Standing Order; time taken to vote.

The tellers for the Ayes will be Mr. Sajjad and Mr. Maore. They will be on my right hand side. The tellers for the Noes will be Mr. Too and Dr. Kulundu.

**Hon. Members:** Bw. Dawa!

**Mr. Speaker:** Order! The tellers for the Noes will be on my left hand side. Hon. Members, we have serious business at hand.

**DIVISION**

*(Question put and the House divided)*

*(Question negatived by 61 votes to 112)*

**AYES:** Messrs. Achola, Affey, Dr. Anangwe, Mr. Arap-Kirui, Dr. Awiti, Messrs. Awori, Ayoki, Biwott, Chanzu, Choge, Ekirapa, Dr. Galgalo, G.B., Dr. Godana, Messrs. Gumo, Haji, Hashim, Jirongo, Kajembe, Kajwang, Kalulu, Kalweo, Kamotho, Kanyauchi, Kariuki, Keah, Khaniri, Kiangoi, Kiminza, Col. Kiluta, Mr. Kimkung, Mrs. Kittony, Messrs. Kochalle, Kombe, Kosgey, Koske, Lagat, Lengees, Leshore, Leting, Lomada, Lotodo J.D., Maalim, Maj. Madoka, Mr. Maizs, Eng. Manga, Mr. Marrirmoi, Dr. Masakhalia, Ms. Matano, Messrs. Maundu, Mkalla, Mohamud, Mokku, Morogo W.C., Moroto, Muchilwa, Mudavadi, Mugalla, Mukangu, Musila, Musyoka, Muturi, Ms. Mwachai, Mr. Mwakalu, Mrs. Mwewa, Messrs. Nassir, Ndambuki, Ngala, Ng'eny, Ngure, Ngutu, Nooru, Ntimama, Ntutu, Capt. Ntwiga, Messrs. J. Nyagah, Nyang'wara, Nyenze, Obure, Dr. Oburu, Messrs. Ochillo-Ayacko, Odoyo, Ojode, Okemo, Omamba, Dr. Omamo, Prof. Onger, Messrs. Osundwa, Otita, Dr. Otula, Messrs. Poghio, Raila, Eng. Rotich, Prof. Saitoti, Messrs. Sajjad, Sambu, Samoei, Sang, Sankori, Sasura, Shaaban, Shakombo, Shidiye, Shill, Sirma, Sudi, Sumbeiywo, Sungu, Sunkuli, Too, Dr. Wako, Dr. Wamukoya and Mr. Weyrah.

Tellers of the Ayes: Messrs. Sajjad and Maore

**NOES:** Mr. Angwenyi, Prof. Anyang'-Nyong'o, Messrs. Donde, Imanyara, Kaindi, Kamanda, Kamau, Ms. Karua, Messrs. Kathangu, Katuku, Khamasi, Kibaki, Kibicho, Kihara, Kihoro, Kitonga, Kikuyu, Kimeto, Kiunjuri, Kones, Dr. Kulundu, Messrs. Kuria, Maitha, Maore, Mbitiru, Mboko, Michuki, Muchiri, Mugeke, Muithia, Muiruri, Muite, Munyao, Murathe, Dr. Murungaru, Messrs. Murungi, Mutahi, Mwakiringo, Mwalulu, Mwangi P.K., Mwenje, Ndicho, Ndwiga, Mrs. Ngilu, Messrs. Njakwe, Nyachae, Nyagah N., Obwocha, Dr. Ochuodho, Messrs. Orenge, Omingo, Parpai, Mrs. Seii, Mrs. Sinyo, Messrs. Shitanda, Sifuna, Eng. Toro, Messrs. Waithaka, Wambua, Wamunyinyi and Dr. Wekesa.

Tellers of the Noes: Mr. Too and Dr. Kulundu

**Abstention:** Mr. Anyona.

**Mr. Speaker:** Hon. Members, You have all heard the results of the Division. According to the Constitution, the requisite number for the amendment has not been attained. Further, according to the Constitution, the requisite number to block out a further vote has not been attained. It is 61 instead of 78, and 112 against 145. In accordance with Standing Order No.61, I will exercise my discretion and order a further Division within seven days. I order that it be done on Tuesday.

#### ADJOURNMENT

Hon. Members, it is now time for us to interrupt our business. The House is adjourned until tomorrow, Thursday, 9th August, 2001, at 2.30 p.m.

The House rose at 7.05 p.m.