

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 8th May, 2002

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.263

IMPLEMENTATION OF POVERTY REDUCTION PROGRAMME

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

(a) how much money has been allocated to each district under the Poverty Eradication Programme; and,

(b) what progress has so far been made towards poverty eradication.

Mr. Speaker: Is there anybody here from the Office of the President? We will leave this Question until the end.

Next Question by Mr. Mwakiringo!

Question No.231

OPERATION OF BUSES WITHOUT EMERGENCY DOORS

Mr. Speaker: Mr. Mwakiringo also not here? We will leave his Question until the end.

Next Question by Mr. Musila!

Question No.126

CONSTRUCTION OF MWINGI-KALANGA ROAD

Mr. Speaker: Mr. Musila also not here? We will leave his Question until the end.

Next Question by Mr. Weyrah!

Question No.252

ABOLITION OF VECTOR-BORNE DISEASES DIVISION

Mr. Weyrah asked the Minister for Public Health:-

(a) why the vector-borne diseases division in the Ministry was abolished; and,

(b) what programmes are in place to adequately tackle the spread of vector-borne diseases in this country.

Mr. Speaker: Anybody here from the Ministry of Health? What is happening today?

Next Question by Mr. Mwenje!

Question No.170

REPAIR OF DANDORA/UMOJA ROADS

Mr. Speaker: Mr. Mwenje also not here? We will leave his Question until the end.
Next Question by Mr. P.K. Mwangi!

Question No.213

UTILISATION OF LATF MONEY

Mr. P.K. Mwangi: Mr. P.K. Mwangi also not here? We will leave his Question until the end.
For the second time round, Mr. Mwenda's Question!

*Question No.263*IMPLEMENTATION OF POVERTY
REDUCTION PROGRAMME

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

- (a) how much money has been allocated to each district under the Poverty Eradication Programme;
and,
(b) what progress has so far been made towards poverty eradication.

Mr. Speaker: Still no one here from the Office of the President? I will defer the Question to next week.

(Question deferred)

Next Question by Mr. Mwakiringo!

Question No.231

OPERATION OF BUSES WITHOUT EMERGENCY DOORS

Mr. Mwalulu, on behalf of **Mr. Mwakiringo**, asked the Minister for Transport and Communications:-

- (a) whether he is aware that long distance passenger buses like Coast Bus, Busscar, Akamba, Interstate 2000, *et cetera* have no emergency exit doors;
(b) what action he is taking to ensure that the said buses have emergency exit doors; and,
(c) why these buses were allowed on the road without the said doors.

Mr. Speaker: Still no one here from the Office of the President?

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): On a point of order, Mr. Speaker, Sir. Was the hon. Member who has just asked this Question on behalf of hon. Mwakiringo here when you asked it for the first time?

Mr. Speaker: He was not here. Mr. Mwalulu, will you apologise?

Mr. Mwalulu: I apologise, Mr. Speaker, Sir.

Mr. Speaker: Very well. Any Minister here from the Office of the President? I will defer the Question.

(Question deferred)

Next Question by Mr. Musila!

Question No.126

CONSTRUCTION OF MWINGI-KALANGA ROAD

Mr. Speaker: Mr. Musila still not here? I will drop the Question.

(Question dropped)

Next Question by hon. Weyrah!

Question No.252
ABOLITION OF VECTOR-BORNE
DISEASES DIVISION

Mr. Weyrah asked the Minister for Public Health:-

- (a) why the Vector-borne Diseases Division in the Ministry was abolished; and,
- (b) what programmes are in place to adequately tackle the spread of Vector-borne Diseases in this country.

The Assistant Minister for Health (Dr. Wako): Mr. Speaker, Sir, I beg to apologise for coming late. However, I beg to reply.

(a) The Vector-borne Diseases Divisions in the Ministry of Health has not been abolished.

(b) The Ministry has put in place the following programmes to tackle the spread of vector-borne diseases in the country:

(i) Surveillance and control of parasitic infections.

(ii) Surveillance and control of disease reservoirs.

(iii) Operational research on vector-borne and parasitic diseases, in collaboration with research institutions locally and internationally.

Mr. Weyrah: Mr. Speaker, Sir, I do not agree with the answer given by the Assistant Minister. This was a very important division in the Ministry of Health which used to control diseases like chesomiasis, trypanosomiasis, plague, malaria and other vector-borne diseases. Everybody in my constituency urinates blood, including myself, because of bilharzia.

Mr. Speaker: Mr. Weyrah, please use the microphone!

Mr. Weyrah: Mr. Speaker, Sir, I was saying that this is a very important division in the Ministry of Health which has been abolished because in North Eastern Province there was only one station in Garissa. All the staff in this division have been transferred to clinical laboratories in the Ministry of Health. So, they are not there. This was a very important division which was meant to control---

Mr. Speaker: Mr. Weyrah, this is Question Time and not debate time. Will you put your question?

Mr. Weyrah: Mr. Speaker, Sir, I will put my question. Since the only vector-borne diseases station in North Eastern Province has been closed down, what does the Assistant Minister have to tell us about this?

Dr. Wako: Mr. Speaker, Sir, it is true that this is still a very important division of the Ministry, in trying to eliminate preventable diseases. I am not aware of the closure of the Garissa Station. I am aware that there is a station in Garissa and like any other Ministerial Department, it is experiencing some problems, but it is doing very good work.

Mr. Weyrah: Mr. Speaker, Sir, since the closure of this station, the incidences of bilharzia have risen. Everybody, including schoolchildren, has been infected with bilharzia. What is the Ministry doing about this problem?

Dr. Wako: Mr. Speaker, Sir, since the hon. Member has alleged that there are transfers of staff from Garissa, we will ensure that there will be enough manpower in Garissa to take care of the bilharzia cases which are common because of the Tana River.

Mr. Speaker: Next Question, Mr. Mwenje!

Mr. Mwenje: Mr. Speaker, Sir, I am sorry I was just out there!

Mr. Speaker: Order! What does that mean?

Mr. Mwenje: I said I apologise because when you called the Question for the first time, I was just outside there coming in; just here. I could see you, but I could not get in!

(Laughter)

Mr. Speaker: Order! Well, ask your Question then. Your apology has been taken.

Question No.170
REPAIR OF DANDORA/UMOJA ROADS

Mr. Mwenje asked the Minister for Local Government:-

- (a) since all the roads within Dandora and Umoja estates are in a state of disrepair, when he will arrange to have them repaired; and,
- (c) when the street lights will be repaired.

I have seen all the Ministers around here!

Mr. Speaker: Order! Order! Mr. Mwenje, I run the House! I do not care what happens outside the House. It is the business of Members, including you, to be in the Chamber at 2.30 p.m. as mandated by the Standing Orders. Where is the Minister? What is happening today?

Mr. Mwenje: He has just walked out!

Mr. Muchiri: On a point of order, Mr. Speaker, Sir. Mr. Kenyatta was here. As the Question was being called, he disappeared through the door.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. May I offer to get Mr. Kenyatta to answer this Question?

An hon. Member: Give him permission!

Mr. Speaker: Order! Order!

Mr. Kamolleh: On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to say that the Minister disappeared through the door when, in fact, he left the Chamber?

(Laughter)

Mr. Speaker: Order! Order! I think, Mr. Mwenje, you stand guided. Members leave the Chamber. They do not disappear.

Mr. Mwenje: It is not me who said that, Mr. Speaker, Sir.

Mr. Speaker: I beg your pardon, Mr. Mwenje. It is your neighbour, Mr. Muchiri. So, you stand corrected, Mr. Muchiri.

Mr. Wamae: On a point of order, Mr. Speaker, Sir. The hon. Minister was here and he was aware the Question was coming up. He just decided to leave the Chamber. Is that really in order?

Mr. Kamolleh: Mr. Speaker, Sir, I was sitting with the Minister and he said he was looking for the Assistant Minister who has the answer because he did not come with it. So, he did not disappear. He is looking for the answer to come and answer the Question!

(Laughter)

Mr. Mwenje: On a point of order, Mr. Speaker, Sir. May I request, therefore, because he is just around, while we proceed to Question No.213, that we alert him to come so that he can reply?

Mr. Speaker: Very well! That is a reasonable request, Mr. Mwenje. I will grant it.

Mr. Mwenje: Thank you, Mr. Speaker, Sir.

Mr. Speaker: Next Question, Mr. P.K. Mwangi! Where were you?

Mr. P.K. Mwangi: Mr. Speaker, Sir, I apologise for coming late.

Question No.213

UTILIZATION OF LATF MONEY

Mr. P.K. Mwangi asked the Minister for Local Government:-

(a) whether he could table the breakdown of LATF money allocated to Maragwa and Makuyu Town councils respectively, for the last two years;

(b) whether he could table the list of the projects implemented through these allocations; and,

(c) what steps he has taken to ensure that the funds are properly utilized in all local authorities countrywide.

Mr. Speaker: Where is the Minister?

An hon. Member: It is the same Minister!

Mr. Speaker: So, what do I do in this case?

Mr. Gitonga: Mr. Speaker, Sir, in a situation like we are in now, what do we do since the Minister was here and he just left the Chamber when this Question was about to be called upon to be answered? This is the second Question and he knew that the hon. Questioners are in the Chamber.

Mr. Speaker: Mr. Mkalla, what do we do?

Mr. Mwenje: You are the Chief Whip!

Mr. Mkalla: Mr. Speaker, Sir, Mr. Kenyatta is here. I am bringing him!

*(Mr. Mkalla dashed out to
call Mr. Kenyatta)*

(Laughter)

Mr. Mwenje: On a point of order, Mr. Speaker, Sir. Since the Speaker has a lot of powers, I suggest that he allows one Question by Private Notice to be answered as we wait for the Minister to come---

(Mr. Kenyatta entered the Chamber)

That is fine, he has come!

Mr. Speaker: Well, the Minister has been fetched!

(Laughter)

Mr. Mwenje: That is a bit of the Speaker's powers.

Question No.170

REPAIR OF DANDORA/UMOJA ROADS

Mr. Mwenje asked the Minister for Local Government:-

(a) since all the roads within Dandora and Umoja estates are in a state of disrepair, when he will arrange to have them repaired; and,

(c) when the street lights will be repaired.

The Minister for Local Government (Mr. Kenyatta): Mr. Speaker, Sir, I apologise, but I was trying to get myself organised.

Mr. Speaker, Sir, I beg to reply.

(a) It is not entirely true that all the roads in Dandora and Umoja estates are in a state of disrepair. However, some of these roads are, indeed, in a state of disrepair and we, as a Ministry, are looking for funds to repair them. The Outer Ring Road, and especially the bus routes have already been done.

(b) The Nairobi City Council has been repairing street lights in Dandora and Umoja estates frequently, but shortly after they have been repaired; they are vandalised. In this respect, it is important to educate our City residents in these areas on the importance of street lighting in order to eliminate the evil practice of vandalism.

Mr. Mwenje: Mr. Speaker, Sir, this Question has two parts; about roads and street lights. The roads are completely impassable. We are talking of the small roads entering the estates. It is true the main roads are done, but the small roads in Dandora and Umoja estates are impassable. I would expect the Minister to tell me when they will be done and how much money it will cost. Equally, there is no single street light in Dandora or Umoja which is now working. I would expect the Minister to tell me when they will be repaired---

Mr. Speaker: Order! Order! This is not an interaction between you and the Minister, or the Minister and you! It is the House. You should address the Chair.

Mr. Mwenje: Thank you, Mr. Speaker, Sir. It is true I should address the Chair. I would expect the Minister to tell this House when these street lights will be repaired because not a single street light in Dandora or Umoja is working. How much money is reserved for that, because the residents pay rates to the Nairobi City Council? When will these roads be done and how much money has been set aside for that purpose?

Mr. Kenyatta: Mr. Speaker, Sir, as I have said, these works are underway and their completion is dependent on the availability of funds. So, the roads that will be done have been gazetted and I think this information is available to the hon. Member. With regard to street lighting, the programme has already commenced and we do believe that, in the very near future, even Dandora will be covered. However, the main issue still remains that once the street lights are put up in many areas and estates, they are frequently vandalised immediately. That is the problem that we must deal with because, without dealing with it, we are working to no avail.

Mr. Muchiri: Thank you, Mr. Speaker, Sir. It is not only in Dandora and Umoja estates, but all roads in all estates in Nairobi, including Dagoretti, Kawangware and even Korogocho are impassable. It is also true that there are

no street lights in the whole of Nairobi, especially in the estates. Could the Minister tell this House what action he is going to take, from this moment, so that the Nairobi City Council can act so that the residents of Nairobi can get the services for which they have been paying rates?

Mr. Kenyatta: I repeat and maintain that these works are underway. Resources are limited and the hon. Members should remember that this very same House rejected the idea of the Ministry of Local Government benefiting from the Fuel Levy Fund once the Kenya Roads Board was created. A lot of this funding has also gone to the Members of Parliament---

(Mr. Mwenje stood up in his place)

Mr. Speaker: Order! Order! Order, Mr. Mwenje! You must give the Minister time to say his bit. Once he has finished, you can rise on a point of order. You should not use a point of order, if any at all, as it were, to stop your opposite from saying his bit. Would you proceed, Mr. Minister, or have you finished?

Mr. Kenyatta: The amount of money that the local councils used to receive was 20 per cent of that Local Authority Transfer Fund (LATF). We are no longer receiving that money and hence the slow down in works especially in most of our councils, both rural and urban as well as our municipalities and cities. Consequently, I would request you to reconsider the stand taken by this House vis-a-viz allocation of fuel levy money to the Ministry of Local Government and we will then be in a position to continue with the work that had been started.

Mr. Mwenje: On a point of order, Mr. Speaker, Sir. Is the Minister not out of order when he says that the City Council stopped being an agent of the roads when clearly they still remain agents and receive part of the fuel levy up to now? They are also part of the District Roads Committees (DRC) even in Nairobi. Is he not out of order because they still remain agents?

Mr. Speaker: That is not a procedural issue. It is a question of facts. Is that so?

Mr. Kenyatta: The fact of the matter is that the Ministry of Local Government is no longer an agent of the DRC. The Ministry has only received funding to clear previous commitments made by the Ministry, but we have not received any new money for any new works and those are the facts.

Mr. Ndicho: Mr. Speaker, Sir, we have seen that work on street lighting in this City has commenced. My only worry is that the posts which are being used to instal the street lights are so thin that even a dog might knock them down. Could the Minister ensure that the constructor instals strong posts because after one year they will be gone and his good efforts will be rendered useless by that contractor? What action will the Minister take to ensure that the electric posts are as strong as they were before?

Mr. Kenyatta: Mr. Speaker, Sir, I can assure you that it is not dogs which have been vandalising our street lights. All the same, if the hon. Member has evidence that these posts are indeed of sub-standard quality, he should let us know and action will be taken against the constructors responsible for installing them.

Mr. Mwenje: Mr. Speaker, Sir, I want to request the Minister to be specific and tell this House when the job on the roads and street lights will start. Will it start tomorrow, next week or next year and how much money has been allocated for it?

Mr. Kenyatta: Mr. Speaker, Sir, works on street lighting have already begun and works on City roads will resume as soon as funding is made available.

Mr. Speaker: Next Question!

Mr. P.K. Mwangi: Mr. Speaker, Sir, I would like to inform the Chair that I have not yet received my written answer.

Question No.213

UTILIZATION OF LATF MONEY

Mr. P.K. Mwangi asked the Minister for Local Government:-

- (a) whether he could table the breakdown of LATF money allocated to Maragwa and Makuyu Town Councils respectively, for the last two years;
- (b) whether he could table the list of projects implemented through these allocations; and,
- (c) what steps he has taken to ensure that the funds are properly utilized in all local authorities countrywide.

The Minister for Local Government (Mr. Kenyatta): Mr. Speaker, Sir, I beg to reply.

- (a) The amounts of LATF money allocated to Maragwa and Makuyu Town Councils in the last two years are

as follows: Maragwa Town Council was allocated Kshs5,028,108 and Kshs8,382,110 in 2000/2001 and 2001/2002 respectively while Makuyu Town Council was allocated Kshs3,037,538.03 and Kshs3,312,820 in 2000/2001 and 2001/2002 respectively. The following projects have been undertaken and implemented by Maragwa Town Council for the period under reference; 2000/2001 - Maragwa Water Project, barriers renovation, purchase of tractor trailer, gravelling of roads, construction of market shelters, construction of market toilets, improvement of parking yards and gravelling of stadium.

The projects implemented during the financial year 2001/2002 were: Extension of town hall, purchase of exhaust truck, construction of sledging and drying bed, computerisation of offices, water projects, electrification of offices, purchase of civic vehicle, gravelling of roads, acquisition of land for cemetery and office extension.

(b) Makuyu Town Council, rehabilitation of Makuyu Market, rehabilitation of a land rover, repair of roads, purchase of a motor cycle and installation of telephone facilities. The projects implemented in the financial year 2001/2002 were computerisation of offices, opening and grading of Gakungu Market roads, purchase of motor cycles, purchase of photocopier, rehabilitation and grading---

Mr. Speaker: How long will that take, Mr. Kenyatta?

The Minister for Local Government (Mr. Kenyatta): A short while. I am almost through.

Mr. Speaker: Okay.

The Minister for Local Government (Mr. Kenyatta): Construction of septic tanks and purchase of cavorting making machine.

The Ministry has put in place a monitoring and inspection team which has been visiting local authorities to audit how funds have been utilised. Where cases of misuse have been detected by the Ministry, appropriate action has been taken. Where a criminal offence has been committed, the Ministry has called in the Directorate of Criminal Investigation to carry out further independent investigations and already a number of people have appeared in court facing various charges.

Mr. P.K. Mwangi: Mr. Speaker, Sir, in part "a" of the Question, I had requested the Minister to table the breakdown of LATF allocations for those two respective councils. In part "b" of my Question I had asked for the tabling of the projects that have been implemented, but that has not been done. Although the hon. Minister is my friend, I would like to tell him that he has been given misleading information because there is nothing going on, on the ground. What the Minister mentioned about toilets, upgrading of towns are all lies.

Mr. Speaker: Order! Mr. P.K. Mwangi, could you please withdraw that unparliamentary word?

Mr. P.K. Mwangi: Mr. Speaker, Sir, I withdraw the word "lies". The Minister has been misled because all those projects that he has mentioned are not on the ground. I am a resident of these two particular town councils. I can clearly state that all these millions of shillings have been wasted and they have gone into some individuals' pockets. According to this answer I can see that the Minister is being misled. When will he personally go to verify that these are not facts?

Mr. Speaker: Order! Mr. P.K. Mwangi, this is Question Time. A Question shall never be a pretence for a speech which you are proceeding to do now. You are out of order! Mr. Minister, will you reply to that long statement very briefly?

Mr. Kenyatta: Mr. Speaker, Sir, I am prepared to table these documents to show the situation as it is on the ground. If the hon. Member has any evidence to the contrary. We, as a Ministry, are ready to take action against those concerned.

(Mr. Kenyatta laid the documents on the Table)

Mr. Wamae: Mr. Speaker, Sir, the hon. Minister has been invited to visit the area and see for himself whether these projects are there. The Member of Parliament says they are not there. When will he visit the local authority and confirm whether these projects are there or not?

Mr. Kenyatta: Mr. Speaker, Sir, there are 172 local authorities in this country and it is not possible for the Minister to visit each and every one to confirm whether these projects have been implemented. However, as I stated, and I still maintain so, if the hon. Member has evidence that these projects have not been implemented we, as a Ministry, are ready to take action. So, please let us table the evidence.

Mr. Murathe: The Minister has been requested to table a list of the projects and to give the breakdown of LATF money allocated to Maragwa and Makuyu Town Councils. We need specific details on how much money each one of those projects actually cost so that it is possible to verify whether the information which he got from the ground will tally with what the hon. Member is asking for.

Mr. Kenyatta: Mr. Speaker, Sir, I said that I am ready to table the information. I have already tabled the

information sought. The specific amounts have also been stipulated. This is information which is readily available in the Kenya Gazette. However, we are still ready to table the information sought.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. This Minister is a clean person. Many Ministers have been destroyed by their officers on the ground, who give them false information. Since Maragwa Town is just next to Thika, would I be in order to request that the Minister concedes to Mr. P.K. Mwangi's request to visit the area and certify whether the said projects exist on the ground?

Mr. Speaker: Order, Mr. Ndicho!

Mr. Ndicho: Mr. Speaker, Sir, we are not ready to have Mr. Kenyatta's name tarnished by officers on the ground!

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

Mr. Speaker: Order! Order! I do not expect hon. Members to rise on frivolous points of order. The Minister is capable of answering Questions. Although this is his first time to answer Questions, he has done so wonderfully well. So, I do not think he requires your assistance, Mr. Ndicho!

(Laughter)

Mr. Speaker: Could you ask your last question, Mr. P.K. Mwangi?

Mr. P.K. Mwangi: Mr. Speaker, Sir, as the Minister presented some facts about the projects, which have been carried out by Maragwa Town Council, he mentioned the purchase of a tractor. That is a matter of concern to Maragwa Town Council. The money was taken by a few individuals, who were later on transferred elsewhere. Could he tell us the action he has taken against the two former Town Clerks who had signed for the purchase of an old tractor at a cost of more than Kshs2.3 million?

Mr. Kenyatta: Mr. Speaker, Sir, the particular issue being referred to by the hon. Member is already under investigation. As soon as that investigation is complete, he will be made aware of what action will have been taken against the two former Town Clerks, and whether the position he has given the House will, indeed, be correct.

Mr. Speaker: Very well. Thank you. Let us now proceed to Questions by Private Notice.

QUESTIONS BY PRIVATE NOTICE

CLEMENCY FOR MR. GABRIEL LENGISHILI

Mr. Leshore: Mr. Speaker, Sir, I beg to ask the Vice-President and Minister for Home Affairs the following Question by Private Notice.

(a) Is the Minister aware that there is a disabled prisoner in Naivasha Maximum Prison, a Mr. Gabriel Lengishili?

(b) What action is he taking to ensure that he is pardoned?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports (Mr. Osundwa): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that a Mr. Gabriel Lengishili, who was a disabled prisoner, was jailed at Naivasha Maximum Security Prison but, on appeal, was released on 12th April, 2001.

(b) In view of the aforesaid, the question of pardon does not arise.

Mr. Leshore: Mr. Speaker, Sir, I am pleased with the answer given by the Assistant Minister. However, I would like him to tell us whether prisons countrywide have facilities for disabled people. Why should a disabled person be imprisoned for, say, six years, when there are no proper facilities in our prisons?

Mr. Osundwa: Mr. Speaker, Sir, we will consider installing facilities for disabled prisoners in prisons where they do not exist.

Mr. Muite: Mr. Speaker, Sir, did you hear the Assistant Minister say that the Government is going to instal facilities for disabled prisoners in prisons where they do not exist? Could he tell us which prison in the Republic of Kenya has facilities for disabled people?

Mr. Osundwa: Mr. Speaker, Sir, we will avail the facilities when funds become available.

Capt. Ntwiga: On a point of order, Mr. Speaker, Sir. Mr. Muite asked which prison has facilities for disabled prisoners. So, could the Assistant Minister answer that question?

Mr. Speaker: Mr. Assistant Minister, which prison has facilities for disabled prisoners?

Mr. Osundwa: Mr. Speaker, Sir, I want to say that we do not have facilities for disabled prisoners. However, when funds become available, we will consider availing them.

(Laughter)

Mr. Speaker: Order! Order! Hon. Members, we must take this House very seriously. Mr. Assistant Minister, did I not hear you initially say that there are certain prisons with facilities for disabled prisoners? You now say that there are no prisons with such facilities. Are you not really lowering the dignity of this House? Would you now like to stand by your initial answer or the subsequent one?

Mr. Osundwa: Mr. Speaker, Sir, I stand by my subsequent answer.

Mr. Speaker: Very well!

Mr. Mwenda: Mr. Speaker, Sir, the Assistant Minister, having admitted that facilities for disabled prisoners do not exist in Kenyan prisons, and considering that even disabled persons are human beings who are entitled to certain minimum rights and requirements, what is he going to do, as a matter of urgency, to ensure that essential facilities for disabled prisoners are made available in our prisons?

Mr. Osundwa: Mr. Speaker, Sir, everything has a beginning. Even Parliament started installing facilities for disabled persons only recently. So, we will initiate the process of installing the facilities shortly.

Mr. Anyona: Mr. Speaker, Sir, this is a matter which may require the intervention of the Attorney-General. Would it not be right to require that when courts sentence disabled persons, they take into consideration these requirements and ensure that the prisons authorities do provide these facilities in prisons? How do we expect disabled prisoners to stay in ordinary prisons? Would it be reasonable to expect that?

Mr. Speaker: Could you respond, Mr. Assistant Minister?

Mr. Osundwa: Mr. Speaker, Sir, Mr. Anyona has directed his question to the Attorney-General.

Mr. Speaker: You can consult him at a later stage.

Mr. Osundwa: Mr. Speaker, Sir, I will do so.

Mr. Speaker: Very well. Next Question!

PROVISION OF BURSARIES TO STUDENTS

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

(a) Is the Minister aware that the following students from poor families have problems in paying fees and risk expulsion from school:-

(i) Joseph O. Marindi - Alliance Boys High School (Form Two)

(ii) Gilbert Lekakeny - Mutuini High School (Form Four)

(iii) Jeniffer M. Momanyi - Alliance Girls High School (Form Two)

(b) Could he ensure that these deserving cases are given bursaries from the Ministry of Education and the Boards of Governors of the respective schools, to enable them complete their education?

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

(a) I am aware that the following students from poor families have problems in paying school fees, but they do not risk expulsion from their schools:-

(i) Joseph O. Marindi - Alliance High School (Form Two)

(ii) Gilbert Lekakeny - Mutuini High School (Form Four)

(iii) Jeniffer M. Momanyi - Alliance Girls High School (Form Two)

(b) The Ministry has already disbursed bursary funds to the schools, and all deserving cases are expected to fill in the relevant forms and apply to the principal for consideration for bursary award.

Mr. Anyona: Mr. Speaker, Sir, I am grateful that the Assistant Minister recognises the plight of these children. I am sure that there are many more such cases in our schools. Could he, in fact, give an undertaking to this House that these three students, and any others who may be in the same situation, will not be expelled from school? In spite of what he has said, these students might be at risk of being expelled from school. So, could he make an undertaking which we can then use to require that the schools comply with what he will say?

Mr. Awori: Mr. Speaker, Sir, I can give that undertaking. In fact, in all the cases, the students have not paid any fees. The student in Form Four, for instance, did not pay any fees the whole of last year. We paid for him Kshs20,000 as a personal bursary directly from the Ministry. Secondly, the amounts of bursary we have sent to Alliance Girls High School, Mutuini High School and Alliance Boys High School, should be able to provide for part of the outstanding fees balances for these students. The onus is on the parents or students, who should apply for bursaries.

Regrettably, they are parents, poor as these are, who are being asked to apply for bursaries, and they do not do so at all. For instance, in the case of Mr. Gilbert Lekakeny of Mutuimi High School, it is just the Principal himself who took interest in him. But the child and his parents have not made any application for a bursary award.

Mr. Katuku: Mr. Speaker, Sir, we have so many deserving Kenyan students who deserve these bursaries. Since the Ministry introduced the system of sending bursaries directly to the schools, some principals and headmasters do not even involve the Board of Governors (BOGs) in giving out these bursaries, and they end up giving them to rich students. Could he undertake to ensure that bursaries given to schools are given out by the BOG? Where they are not doing so, could he issue out a directive from this Floor of the House so that, that is ensured?

Mr. Awori: Mr. Speaker, Sir, the instructions to the principals and headmasters are very clear; that, when any bursary is sent to any school, the principal must involve the BOG. The procedure is that the parents of the child should apply for a bursary to the school so that he or she can be awarded. They get information through assistant chiefs and social workers. The school authorities have to ensure that only those who deserve are awarded bursaries. It is the BOG that apportions the amount of money to the various students who have applied in accordance with their circumstances.

Dr. Ali: Mr. Speaker, Sir, could the Assistant Minister tell us what disciplinary measures will be taken against those headmasters who are not following those rules?

Mr. Awori: Mr. Speaker, Sir, at the moment, I have not got any information that there is a headmaster who is not following these instructions. That does not mean that they are not there, but we have not received any. If we receive complaints, we will take the necessary disciplinary action.

Mr. Muchiri: Mr. Speaker, Sir, as we speak now, there are hundreds of children who are at home, having been sent home by secondary school headmasters due to lack of school fees. Could he now issue a directive so that they go back to school in view of what he has stated in this House?

Mr. Awori: Mr. Speaker, Sir, the instructions are very clear. If the hon. Member, for instance, can let me know which of the schools in his constituency, or principals or headmasters, have sent students away because of lack of school fees, I would take the necessary action; I will give the directive.

Mr. Anyona: Mr. Speaker, Sir, again, in fact, I would like to appreciate the fact that in the case of Mr. Lekakeny, the headmaster has been very helpful. In fact, I did meet him; I did not know him. He told me about this case. I think he came to know about the Question. But that does not happen in many other cases. Would I request the Assistant Minister to intercede in the case of Mr. Marindi because he is an orphan in Kisii? The boy is in Alliance High School, and to require that his parents should come to Nairobi and apply for the bursary, it is asking for the impossible. It the school authorities who know which children have a problem. Could I request the Ministry to follow up his case like they have done in the case of Mr. Lekakeny - at least there are two cases - in order to ensure that they get some bursary to assist them?

Mr. Awori: Mr. Speaker, Sir, I can give that undertaking; that, this child will never be sent away from school and, as a matter of fact, the school has already even paid for the registration for the examinations of these students. So, are you asking about the other two? I can give the same undertaking because we are treating them exactly in the same way.

CONSTRUCTION OF NANYUKI-RUMURUTI ROAD

Mr. Kiunjuri: Mr. Speaker, Sir, I beg to ask the Minister for Roads and Public Works the following Question by Private Notice.

(a) Is the Minister aware that a contract worth Kshs148 million was awarded for the construction of Nanyuki-Rumuruti Road in 1998-1999?

(b) Is he further aware that the job was shoddily done and the road is now in a state of disrepair?

(c) Has the contractor been issued with the completion certificate?

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

(a) I am aware that a contract worth Kshs143,858,434.70 was awarded for the construction of Nanyuki-Rumuruti Road in 1998/1999 financial year and not Kshs148 million as mentioned above.

(b) I am not aware that the job was shoddily done and the road is now unmotorable.

(c) The contractor has not been issued with the completion certificate.

Mr. Kiunjuri: Mr. Speaker, Sir, I will lay evidence on the Table to prove that the road is in a desperate situation; it is impassable. This is the road that you use while going home, and you are a witness that this road is completely impassable, having been repaired only two years ago. We also know that the Ministry has a special interest with the contractor, M/S Krishan Behal. We would like the Assistant Minister to tell us which special interest the Ministry has with this contractor. Now that he is admitting that there is no completion certificate issued, could he tell us

when he last visited that road so that he can give the answer? This is because I was there last weekend. When did you last visit the road?

Eng. Rotich: Mr. Speaker, Sir, the last time the Minister visited the road was more than a year ago. I have not visited it of late.

Mr. Kiunjuri: Mr. Speaker, Sir, the Assistant Minister, in his reply, stated that it is not true that the road is in a bad condition; that, it is motorable. Right now, he is telling the House that he visited that road one year back. Is the Assistant Minister now in a position to give the correct answer?

(Loud consultations)

Mr. Speaker: Order, hon. Members! We can hardly communicate. Mr. Assistant Minister, what the hon. Member is asking you is: You were there a year ago; are you talking about the state of the road one year ago, or the state of the road now?

Eng. Rotich: Mr. Speaker, Sir, I am talking the report that I received from the ground - from the officers of my Ministry - as of now, but the visit to that place was more than a year ago.

Mr. Wamae: Mr. Speaker, Sir, Kshs143 million is a lot of money, knowing that it was spent two years ago. If the road is not motorable, then, it means that the job was poorly done. Would he consider visiting the place now and give an answer to this House?

Eng. Rotich: Yes, Mr. Speaker, Sir. There is no problem visiting that place. But the situation is that it was designed for low traffic, but after construction, we discovered that traffic increased by more than 1,000 per cent. So, what we are doing now is that we are re-designing the whole road and we shall reconstruct it again; to carry the capacity of the load that we use on the road.

Mr. Kiunjuri: Mr. Speaker, Sir, is the Assistant Minister telling this House that after using Kshs148 million from taxpayers - public coffers - that the road was not constructed properly? First, is he admitting that it was not properly done? To whom will they award the next contract? Is it the same contractor, or are they going to tender it? What are they going to do with the other contractors?

Eng. Rotich: Mr. Speaker, Sir, I am not admitting anything, but the facts on the ground are that we are re-designing the whole road so that it can carry more vehicles and load. That is true. But we have not paid the whole amount; we still have some balances.

Mr. P.K. Mwangi: On a point of order, Mr. Speaker, Sir. Since the Assistant Minister has said that they had not done a survey on the number of vehicles passing along that road, is he not misleading the House? Is it true that two years ago, they had not surveyed on the number of vehicles passing along that road?

Eng. Rotich: Mr. Speaker, Sir, we have done that survey and the number of vehicles passing along that road per day has risen to 50 vehicles from less than five, when we started it. That increase is more than ten times! We have done the survey and the road is being designed now, for reconstruction.

Mr. Speaker: Order, hon. Members! Obviously, the increase in traffic is because the road was slightly improved. In fact, it was terrible last time! Could I give you up to June to come and answer this Question to the satisfaction of Mr. Kiunjuri?

Eng. Rotich: That is correct. But there were two reasons for this increase; the improvement on the road, and the fact that the distance between the two towns was reduced by 60 kilometres. Those are the two reasons why the volume of traffic increased.

Mr. Speaker: Very well. So, are you coming back to the House or shall I leave it at that?

Eng. Rotich: Mr. Speaker, Sir, I hope you are satisfied with what I am saying.

Mr. Speaker: It is not me, but the House! Mr. Kiunjuri, are you happy?

Mr. Kiunjuri: No, I am not happy! We wanted that road done but the Assistant Minister has not lived up to our expectations! Now that Kshs148 million has already been utilised and yet, that road cannot serve the purpose it was intended for, when is the Assistant Minister coming back with an acceptable answer to this House?

Mr. Speaker: During the first week, when Parliament will reconvene, we will come back to the Question.

(Question deferred)

COMMUNICATION FROM THE CHAIR

CIRCULATION OF SUPPLEMENTARY ORDER PAPER

Mr. Speaker: Before we move to the next business, I would like to bring to the attention of the House the fact that there is a Supplementary Order Paper containing a Procedural Motion, listed as Order No.7 and Committee of the Whole House on the Statute Law (Miscellaneous Amendments) Bill listed as Order No.9. I am aware that not all Members of Parliament have got the Supplementary Order Paper, the reason being that it took some time to get all the amendments slotted in. There are a lot of amendments preferred by hon. Members and a few by the Attorney-General. They had to be redone and prepared in the form of the Order Paper. The Supplementary Order Paper will be available in the next ten minutes to all hon. Members.

In the meantime, we shall proceed with the Procedural Motion which does not require the possession of a Supplementary Order Paper. We hope that we will have got the Supplementary Order Paper by then. We are now proceeding, from this minute, with the business listed under the Supplementary Order Paper as presented. I understand some Members have already received the Supplementary Order Paper. For those who have not received the Supplementary Order Paper, please be patient because you will have it very soon.

POINTS OF ORDER

ELECTION OF CBK DIRECTORS

Mr. Ndwiga: Mr. Speaker, Sir, I would like to seek a Ministerial Statement from the Minister for Agriculture--- I can see that the Minister has just walked in and I would like him to settle down because the matter is rather serious.

Since we passed the Coffee Act in this House and set out rules for elections; elections are due right now and we agreed that coffee factories will elect five members. But what has happened is that management committees are nominating themselves as delegates. This has caused wars all over the country.

Mr. Speaker: Order, Mr. Ndwiga! You are now making a speech! Could you tell him what you want him to do?

Mr. Ndwiga: Mr. Speaker, Sir, I just wanted to give him that background. Perhaps, he did not know what is happening! We want the Minister to clear the air and tell the farmers what procedures are required for those elections and who is eligible to elect delegates. Is it the management committees or the members of the respective coffee factories? I think that will assist.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Could we have absolute attention? Since we passed the Sugar Act, the Coffee Act and even the Tea Act, we are revisiting these issues all the time. In fact, it is taking a lot of time of the House. It is like by passing all the various laws, we created trouble. So, could we have patience so that we can hear the Minister and, hopefully, let the Act operate? I do not think we should make laws and operationalise them from the House! Therefore, let us have audience with this Minister. But let us not make the House the Executive of the laws we make.

The Minister for Agriculture (Dr. Godana): Mr. Speaker, Sir, perhaps, I should respond immediately and if need be, I will follow up even with a more considered opinion. The matter is very simple. The law was passed and an elaborate procedure has been clearly prescribed and I think I have done everything that needed to be done. It is really sad that, as we are getting closer to the election date, in the core coffee-growing region of Central Kenya, the old coffee wars seem to be coming back. I want to make it very clear, as I have done before, that we would want very transparent elections by Kenyan coffee farmers. That is the whole purpose of the reforms. We want to appeal to leaders and, more particularly, Members of Parliament from those zones to go public about this issue.

I was surprised this morning when I read in the papers about a fight which ended up in gunfire to disperse crowds yesterday, because a group of farmers wanted to hold elections in accordance with the law and there were others who think they can dictate a different process which is not in the law. I think the position is very clear and we have no desire to favour anybody. The purpose of the reforms according to our intentions is to ensure that we have men and women of integrity elected. I think the responsibility of educating the Kenyan farmer, to exercise his right, rests not just with the Minister, but with all leaders and, more particularly, the Parliamentary representatives from those areas.

ASSAULT ON DR. ALI

Dr. Ali: Mr. Speaker, Sir, I would like to ask for a Ministerial Statement from the Minister of State, Office of

the President. I was assaulted by somebody a week ago in front of police officers who did nothing about it. When I reported their behaviour to the police officers at Shauri Moyo Police Station, one of them produced his gun, and instead of assisting me, he threatened me. Up to now, no action has been taken. Could the Minister in charge of Internal Security do something about that?

Mr. Speaker: Very well. Next Order!

PROCEDURAL MOTION

AMENDMENT TO RESOLUTION ON EXTENSION OF HOUSE SITTINGS

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Speaker, Sir, I beg to move:-

THAT, this House resolves that the resolution passed by the House on Thursday, 2nd May, 2002 be amended by deleting 8.30 p.m. wherever it appears, and substituting therefor 9.30 p.m.

Mr. Speaker, Sir, the essence of this proposal is that we would like to have certain matters which have been pending for quite some time dealt with before Members break for the Budget recess. We agreed in the meeting of the House Business Committee that it would be important to facilitate this, bearing in mind that today, we will have a fairly substantial amount of business to cover. As hon. Members will notice from the Order Paper, we will have to deal with the Public Officer Ethics Bill. We would like to finish that and immediately embark on the Committee of the Whole House so that we can deal with the Statute Law (Miscellaneous Amendments) Bill. After that, there are several other Bills that are lined up. Bearing in mind that there was consensus in the House Business Committee that we do extend the sitting hours of the House by an additional one hour, we should be able to transact this business today. That is both the Public Officer Ethics Bill and also the Committee of the Whole House on the Statute Law (Miscellaneous Amendments) Bill. Hopefully, tomorrow, we can deal with some of the other Bills and also handle the Motion of Adjournment.

With those few remarks, I beg to move.

The Minister for Finance (Mr. Obure): Mr. Speaker, Sir, I stand to second the amendment moved by the Deputy Leader of Government Business. It is true that we have very serious business ahead of us, which must be completed for the benefit of this nation.

I feel that we, as hon. Members, have demonstrated sufficient goodwill. We are also physically able to continue to work for this nation until 9.30 p.m., and, therefore, I would strongly urge hon. Members to support this Motion, which has been moved by the Deputy Leader of Government Business; to enable us transact important business for the benefit of this nation.

With those few remarks, I second the Motion.

Mr. Speaker: Order, hon. Members! I will dispose of this Question immediately and without further debate.

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

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

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. Why did you put the Question without first proposing it?

Mr. Speaker: I am sorry for that! Order, hon. Members! Thank you, Dr. Kituyi. You are right. We will have to do it the correct way.

*(Question of the first part of the amendment,
that the words to be left out be left out, proposed)*

*(Question of the first part of the amendment, that
the words to be left out be left out, put and agreed to)*

*(Question of the second part of the amendment,
that the words to be inserted in place
thereof be inserted, proposed)*

*(Question of the second part of the amendment,
that the words to be inserted in place thereof)*

be inserted, put and agreed to)

Mr. Speaker: The records of the House will now stand corrected as I have stated.

BILLS

Second Reading

THE PUBLIC OFFICER ETHICS BILL

The Minister of State, Office of the President (Mr. J. Nyagah): Mr. Speaker, Sir, I beg to move that the Public Officer Ethics Bill 2002 be now read the Second Time.

Yesterday, this House discussed, at length, the Corruption Control Bill. During that discussion, we all agreed that corruption is bad, and that it is not good for the country or anybody. There was also an agreement that corruption has penetrated into all levels of our society today. During his presentation, the Attorney-General referred to the fact that there will be other Bills that will be brought to this House in an effort to address this particular problem that the country is facing. One of the Bills that he talked about is the Public Officer Ethics Bill 2002.

Mr. Speaker, Sir, even before we talk about corruption, I want to make it clear that the Government, in an effort to reform the public sector over the last few years, has taken several measures in an attempt to make the Public Service more efficient, accountable and transparent in the manner it delivers services to the public.

(Loud consultations)

Mr. Speaker: Order, hon. Members! May I bring to the attention of the House the fact that the Bill now under consideration, like the one that was considered yesterday, has monumental consequences for the people of Kenya and for yourselves. So, it is only right that you pay attention to what the Minister is saying because the Bill has far-reaching consequences.

Proceed, Mr. J. Nyagah!

The Minister of State Office of the President (Mr. J. Nyagah): Mr. Speaker, Sir, even before the issues that were discussed yesterday were raised, the Government had been working on a programme of the Public Service reforms in an attempt to reshape the way the public sector delivers services to the people. So, I would like to address the issue before us from the point of view of service delivery to the public. This programme has been going on for some time. I recall that early this year, the Head of the Public Service and myself launched, at the Kenya School of Monetary Studies (KSMS), the strategy for performance improvement in the Civil Service. That, among other things, addresses this particular item.

Right from the beginning, I would also like to state that we have had, over the years, a Code of Regulations for Civil Servants. The Code of Regulations for Civil Servants exists and what we have been trying to do in the last few years is to strengthen it and make it effective to ensure that the sector can deliver better services to the public. If the reforms that we initiated a few years ago in the Public Service do not work, we shall be inefficient. We shall also be ineffective if our officers' integrity is questionable. So, we are attempting, in this Bill, to legalise these reforms so that we can hold people accountable and, when and if necessary, take them to court.

Secondly, Kenya needs money and there is no question about that. When we met the International Monetary Fund (IMF) representatives in Mombasa a few weeks ago, the issue of Kenya coming up with home-grown solutions and proposals was raised. This is a move by the Kenya Government to come up with a home-grown solution to address the problem facing our public sector.

Mr. Speaker, Sir, if our public sector continues to behave the way it has behaved sometimes and encourages corruption, it is going to be very difficult for us to make progress in future. So, I want to say that, as a Government, we have taken appropriate actions over the years. But as we started taking those actions, the donor community then made it one of the conditionalities of our negotiations with them. But that came as a second step, after they found what we were doing and they wanted us to formalise such actions. I will make it very clear because there has been some confusion sometimes; it is an impression created. It is always a condition of the International Monetary Fund (IMF) and others. But, in fact, this was an attempt we made because it is only right and fair that Kenyans should now behave in a certain manner.

Mr. Speaker, Sir, Kenya claims to be a Christian and a Muslim society. So, we do not need outsiders to come and tell us how to behave. As Kenyans who are Christians, Muslims and the rest, it is only fair that we should bring the matter forward. I count and hope that this House will support this particular Bill in an attempt at ensuring that our public sector, from now onwards, behaves in a manner that is acceptable to Kenyans. When this Bill becomes law, it will create the right atmosphere in which development can take place. This is because the amount of energy that is wasted by inefficient operations and by corrupt operations is a lot. The methods that we experience these days lead us into being affected very negatively. As it is clearly indicated in the Bill, this new law will affect everybody who wants

to hold a public office.

Mr. Speaker, Sir, if you look at the Schedule of this Bill, you will notice that it will affect every Member of Parliament, from the President, the Vice-President, the Speaker, Ministers, Assistant Ministers and other hon. Members; everybody will be affected by this new law. The new law will give guidelines on how we should behave and handle business in our public positions. The law will also affect not only those big people I have mentioned, but also anybody in the Civil Service, from Job Group "P" and above. I hope it will be extended further down. The new law will affect all the judges right from the Chief Justice, judges, magistrates and the senior officers who work in the courts.

Mr. Speaker, Sir, this law will affect the local authorities, mayors, chairmen of the local authorities and thousands of councillors in this country, and senior officers of the local authorities. It will also affect the teaching community, right from senior people in the Teachers' Service Commission (TSC) to the headmasters of most of our schools in the country. If you want to be a chairman of a co-operative society, you will also be affected because you control the resources of *wananchi* and you hold a public position. So, it will go down to those levels.

This law will affect senior people in the parastatals, universities, our disciplined forces and Accounting Officers. As the Chair can see, we are serious. I hope Kenyans are serious, it is not only in the Government alone that we are serious, but all Kenyans are serious in ensuring that there is high integrity in the jobs, which from now onwards, we are expected to perform for our people. Obviously, it is important for the country to know, that the new law does not only affect the big people in Nairobi but also others all over the country. The emphasis needs to be made that it affects even the chairmen of what people might consider to be low level jobs in this country. The object of this new law is to establish a code of conduct that can be monitored and be enforced by law. This will involve the people whom I have mentioned. They will have to declare their wealth; their assets, liabilities and also their financial operations. That is very clearly shown in Schedule 2, which, I hope, hon. Members will have a chance to look at and comment on appropriately. But it is a very detailed Schedule.

For the sake of Kenyans, not only shall we want to know your personal details; your date of birth, name and contact; where you work and what you earn, but it will also affect you and your wife. If it is a lady, her husband and all the children who are below the age of 18 years. So, it will be a total figure of members of that family unit that the law will be interested in. We will even have to know the name of your wife or husband, the names of your children who are below the age of 18 years, so that you do not play around in future.

Mr. Speaker, Sir, that Schedule goes on to discuss financial statements. You would have to explain; if today you have Kshs1 million as assets and a year later, it becomes Kshs3 million. We will want to know how you moved from Kshs1 million to Kshs3 million. These are the responsibilities of being a public officer in this country in future. This is normal because many countries, including our neighbouring countries, have implemented this law or are in the process of implementing what I am presenting to Parliament today.

Mr. Speaker, Sir, you can see that we are serious. You will then sign that document and it will be witnessed. There are serious penalties if you cheat. If you cheat and you are found to have cheated, there are serious penalties that you will face.

How shall we manage this exercise? Already, there are Commissions in place. There is the Parliamentary Service Commission; it will have a commission that will supervise, monitor and implement this law. There will also be the Public Service Commission itself which will do the same, the Judicial Service Commission, the Teachers Service Commission, the Defence Council and the National Security Intelligence Service and other units, will also do the same. Commissions will clearly be set up in the law with instructions on how to operate. So, that is how we shall make this law operational. Once the law has been passed, within a period of 90 days, those commissions which I have just mentioned must have established formally their codes of conduct and how they will enforce them. The reason why we are talking of 90 days is because we want to be operational as soon as possible. I would like to point out that Kenyans want and demand this law, and we must pass it as quickly as possible. That deals with Part III of the Bill that I am moving this afternoon. I would like to talk about Part III of this Bill because we want Kenyans to know what we are talking about. Part III of this Bill provides guiding principles; that each commission must incorporate in its specific codes principles which they will establish within 90 days. Some of those guiding principles, for the sake of good Kenyans, have to do with the performance of duty. What does the public expect a public officer to do? What are his rights? The ability to complain if a public officer does not behave according to the new law. We expect public officers to be professionals.

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

There are a couple of things I would like to mention here. These things are many. For example, we expect public officers to observe official working hours and not to be absent without proper authorization or reasonable cause. This is by law. The habit of leaving their jackets on the chairs, hopefully, will become a thing of the past. We expect public officers to maintain an appropriate standard of dress and physical hygiene. These things are important. These things may appear small, but are very important because we expect public officers, as we involve ourselves in the Civil Service reform, to become customer-friendly. In this case, our customers are members of the public.

In the guiding principles, we expect the rule of law to be followed. We expect the officers who hold those positions not to improperly enrich themselves. If you are caught enriching yourself improperly, you will be dealt with legally.

Mr. Temporary Deputy Speaker, Sir, in the past, officers have tendered for goods which has led to a lot of conflict of interest. The law is very clear as to why this will not be allowed and how one will be caught and dealt with if he or she does not disclose interest in a company. If your spouse or you have an interest in a company which you are involved in processing or approving tenders to, you must declare your interest and withdraw from participating in it. If it is found out later on that you had an interest, and you did not disclose it, you will be dealt with under the new law.

Mr. Temporary Deputy Speaker, Sir, from now on, when we pass this law, and you hold a public position, you will not be allowed to use your office or place of work to collect Harambee money. So, the idea of circulating Harambee cards in our offices should now be history. This applies to all public officers. These are some of the guiding principles which are included in the law. If you are in charge of Government property, vehicles and co-operative houses, thou shall look after them properly. The Bill says that you will be politically neutral. You should also ensure that there is no nepotism.

Mr. Temporary Deputy Speaker, Sir, a very important aspect in this Bill is that sexual harassment must come to an end. One of the guiding principles deals with sexual harassment. From now on, no man will be harassed by any woman. Any woman, for example, who makes gestures, noise, jokes or comments including innuendoes regarding a man's sexuality will be reported and be punished by the law. Similarly, the reverse is also true. From now on, men, particularly Kenyan men, are warned that if they make gestures, pat a lady sexually, make funny noise, jokes, comments or even imply or even wink in a funny manner, they will be disciplined under sexual harassment section.

I am highlighting these things so that when hon. Members discuss them, they will know that we are serious, as a Government. I started moving this Bill by saying that Kenyans are good Christians and Muslims or claim to be. So, we expect them to maintain these new standards of integrity in all our offices, including our hon. Members of Parliament. I can go on and on, but that gives you an idea of how serious we are. I started by saying that this started a long time ago and it became a conditionality from the International Monetary Fund (IMF) when they realised what we had started doing. All they wanted us to do was to speed up this Bill and pass it into law. So, I am confident that I can count on this House to support this Bill. I am confident that Parliament can count on the support of Kenyans---

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise on a point of order to seek some guidance through the Chair. You have heard the hon. Minister, when he was moving this Bill, state that any form of sexual harassment at the place of work is forbidden. What is the position of this Government?

When we were debating the Domestic Violence (Family Protection) Bill, almost every speaker from the Government side was against the criminalisation of sexual harassment of the wives. Is the position of this Government that they will support this Bill which criminalises sexual harassment at the place of work, but will not criminalise sexual harassment of the wives? What is the position of this Government on sexual harassment?

The Minister of State, Office of the President (Mr. J. Nyagah): Mr. Temporary Deputy Speaker, Sir, our argument at that time was that, traditionally, the relationship between a man and his wife was clearly defined. From this side, we argued from that culturally acceptable point of view. This particular Bill ensures that public officers recognise and respect everybody irrespective of his or her gender. But the one he has referred to has to do with culturally acceptable relationship between ourselves and our wives.

Mr. Temporary Deputy Speaker, Sir, I will be very brief now because I think I have made my points very clear on why we need to support this Bill. But just to briefly talk about the declaration forms. The declaration forms shall be completed quickly. They will need to be completed every year. If it is found that you have made a mistake or you deliberately declared the wrong things, then members of the public have a right to report on things you have not reported. This is covered under this Bill. There will be confidential information within the Commission. If you do not disclose certain things, or if you are caught discussing those details, this will be treated as a serious offence. You can be fined up to Kshs5 million or go to jail up to four or five years for being careless.

Mr. Temporary Deputy Speaker, Sir, I would like to state clearly that we are very much interested in proper integrity and proper behaviour of our public officers in the future.

Mr. Temporary Deputy Speaker, Sir, with those few words, I count on the support of everybody in this House and the country.

I now beg to move.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to second this very important Bill. This Bill follows the one that was passed by Parliament yesterday: The Kenya Anti-Corruption Commission Bill. As you are aware, many developed and developing countries have embarked on a thorough re-evaluation of the role of the government in their societies. This re-evaluation includes governance structures and processes for decision-making, accountability, control and behaviour. Studies have shown a casual relationship between good governance and better development. Consequently, a machinery must be put in place to ensure the integrity of public officials. Integrity, if I may say so again, is not just a matter of enacting correct laws. This Bill will be a correct law when it is enacted, but that will not make it complete in itself. In addition to enacting correct and proper laws, we must also have a programme for the changes in attitudes and long standing practices within the Public Service. I am glad that tomorrow, a book on Public Service Integrity will be launched. It will guide the public servants on how they have to behave in their work place.

Mr. Temporary Deputy Speaker, Sir, the issue of ethics has to be part of an integrated programme to promote integrity in public administration. As you are aware, the Public Officer Code of Ethics Bill was rejected by Parliament last time because it was not consistent with our Constitution. This is because, in that particular Bill, we not only had one code of ethics for all civil servants, but we had also centralised the system as to where the declaration of income, assets and liabilities was going to be.

Mr. Temporary Deputy Speaker, Sir, we have corrected that in this particular Bill. As the Mover of the Bill did state, we have decentralised completely that particular issue. For example, Judges will be dealt with by the Judicial Service Commission, while hon. Members of Parliament will be dealt with through their own Parliamentary Service Commission and so on. Programmes to safeguard the integrity of public officials fall into two broad approaches. The first approach is what we call the compliant approach which focuses on regulation, inspection, sanction and conformity to the prescribed standards. That is what is normally called the moral minimum. The emphasis is on what the public officials should not do.

Mr. Temporary Deputy Speaker, Sir, the other approach is the value-based approach which is concerned with inculcating rules, principles and values through education by cultivating the official's capacity for ethical judgement. That is actually what is called moral maximum. The system we have adopted in this Bill is an integrated system which takes both the compliant approach and value-based approach. It is integrated.

Mr. Temporary Deputy Speaker, Sir, you will see these two approaches everywhere. For example when we talk about the compliant approach, we have Clause 10. It says:- "The public servant shall not use his office to enrich himself." Clauses 11, 12, 13, 16, 18, 19 and 20 prescribe what a public officer must not do. Clauses 7, 8, 9 and 17 are examples of what we call the value approach. These clauses are setting out standards which the public servants must adhere to in delivery of service. So, we have an integrated approach.

Mr. Temporary Deputy Speaker, Sir, the major point I want to make about this Bill is that it supplements the Bill on the Anti-Corruption Commission. Yesterday, I did mention that the Bill on Anti-Corruption Commission would not stand on its own, but will be supported by many other Bills, including this particular Bill. As you are aware, on the issues of corruption, for example, it has been identified that one of the corruption drivers is the Ndegwa Commission Report of 1972 which allowed civil servants to engage in private business while holding office. It will be recalled that even the Parliamentary Select Committee on Anti-Corruption, chaired by Mr. Kombo, did state that the Ndegwa Report, in allowing civil servants to engage in private businesses, escalated corruption within Kenya. How do we deal with this? One way of dealing with this is through the Public Officer Ethics Bill. In this Bill, you will see that there is a clear prohibition against public servants acting in a manner which exposes them to conflict of interests. In Clause 11(1) a public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with official duties. That is now clearly set out.

Mr. Temporary Deputy Speaker, Sir, another way of dealing with that again in this Bill is where it is now compulsory for all public officers to fill in and submit to their relevant commissions a declaration form indicating all their income, assets and liabilities. That is not enough. Both provisions under this Bill, combined with the Bill that went through the Second Reading yesterday, now create offenses on the part of public officers who do not adhere strictly to the procedure laid down on the issue of conflict of interests.

Clause 38 of the Bill clearly states the principles contained in the issue of conflict of interest must be observed. Clause 41 says those who fail to comply with that commit an offence. So, when we are talking about corruption this Public Officer Ethics Bill is dealing with that problem, in so far as it is stating in clear terms that conflict of interest is prohibited, and in the requirement to fill, on an annual basis, the declaration of income, assets and liabilities.

Mr. Temporary Deputy Speaker, Sir, the other one is the issue of Harambee. It was identified--

(Loud consultations)

The Assistant Minister for Education, Science and Technology (Mr. Karauri): On a point of order, Mr. Temporary Deputy Speaker, Sir. Sometimes I feel it is better when there is no quorum than when there is no quorum and we cannot hear what is being said! There are loud consultations in the House to the extent that we cannot even hear what the Attorney-General is saying.

The Temporary Deputy Speaker (Mr. Muturi): Order, hon. Members! I agree with what Mr. Karauri is saying. There is very loud consultation in the House, that the Chair is not able to understand the cause of that excitement; maybe it is the heavy lunch that you might have taken before walking into the Chamber. Could you consult in low tones?

Proceed, Mr. Wako!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I was just saying that this Bill addresses one of the issues which were identified as those which have caused an escalation of corruption in this country, and that is the Ndegwa Commission Report, which sanctioned civil servants to engage in private businesses. I had stated that this Bill in so far as it now imposes a positive duty on civil servants not to engage in situations where there is a conflict of interest or affinity to disclose them, is a step in the right direction. This Bill makes it mandatory for civil servants to fill in the declaration of forms on assets and liabilities and so on. This is also a step in the right direction. I went on to say that, this, in fact, supplements the Bill that was passed yesterday, which creates an offence where these principles are not adhered to.

Mr. Temporary Deputy Speaker, Sir, the other issue that was identified as an issue which contributes to corruption in this country is Harambee. The misuse of Harambee mentioned both in the Kombo Report and in the Report by the experts who came here, has clearly stated that the misuse of Harambee has led to escalation of corruption in this country. This Bill touches on that issue in Clause 12 where it states---

Mr. Kihoro: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Attorney-General has made some reference to a report by the experts who came to this country to investigate and report on corruption, a report which has not been tabled in this House. Could the Attorney-General clarify whether he is going to table the report for hon. Members to peruse, or whether he is just going to speak and refer to it and not allow hon. Members to look at it?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I am sure, and I gave directives that the report be distributed to all hon. Members of Parliament--- I have been informed that copies of the report were duly distributed. If any hon. Member does not have a copy of the Report, we shall make it available. In the meantime, I will lay this Report on the Table.

(Mr. Wako laid the document on the Table)

Mr. Temporary Deputy Speaker, Sir, the issue of Harambee as a contributor to corruption in this country has been identified by the Kombo Report and has also been identified in this Report, particularly on page 23. I do not want to read what they stated there, because of the limited time we have, but that is an issue which has been dealt with in this Bill under Clause 12, which states that:-

"A public officer shall not use his office or place of work as a venue for soliciting or collecting Harambee".

Mr. Temporary Deputy Speaker, Sir, another issue which has been touched on, when talking about corruption, integrity issues and so on, is the issue of the declining professional standards in the quality of services given to members of the public. On this issue, it has also been stated that just as ethnicity is a negative factor in our political system today, it has also been a negative factor in the public system today.

This Bill deals with that issue in Clause 21, where it states that:-

"A public officer shall practise and promote the principle that, unless they are elected, public officers shall be selected on the basis of competence and suitability."

Competence and suitability will now be the focus in the appointment of public officers, and no other criteria.

Mr. Temporary Deputy Speaker, Sir, consequently, I would like to second this Bill as a Bill which is part of the overall programme by the Government to improve the quality of services being rendered by the public officers in the Government, to implement its zero tolerance policy towards corruption.

I beg to second.

(Question proposed)

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I wish to support this Bill. As you will recollect, or read

from the HANSARD, our objection to the last Bill which the office of the Attorney-General had brought here was because of its conflict with the Constitution. But I am pleased to see that some of those concerns which we raised in this House have been addressed. Perhaps one would like to thank the Attorney-General and Mr. J. Nyagah for going out of this country to bring foreign experts to come and assist in the drafting of this Bill.

I have got some small reservations, as to whether having received that assistance from our foreign masters, is it not overstating the parameters of the assistance when they come and sit on the Bench which is reserved for civil servants?

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not know whether it is in order for Mr. Muite to refer to some people as "our foreign masters". Do we have foreign masters in this country? I am getting concerned. Could he substantiate?

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I am happy to substantiate. What is the white man doing on the Bench reserved for civil servants? That is one of the foreign masters of the KANU Government. What is he doing there?

The Minister for Public Health (Prof. Ongeri): On a point of order, Mr. Temporary Deputy Speaker, Sir. I hate to interrupt Mr. Muite, but is he in order to allude to a friendly national in a discriminating fashion, bearing in mind that Kenya is a multiracial society? Is he in order to raise that tirade by singularly pointing out at somebody within the multiracial system of Kenya?

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

[Mr. Speaker took the Chair]

Mr. Muite: Mr. Speaker, Sir, you can see the stamina with which various hon. Members of the Cabinet are rising to defend the truth. I know truth somewhat hurts, and they are being economical. Is he suggesting that they have employed another white man in the Civil Service after sacking Mr. Leakey?

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Muite to allude to the Government as having a foreign master when we are an independent country?

Mr. Speaker: Order! I think we want to debate this Bill. It is not being legislated for a particular person, or a group of persons. It is being legislated for all Kenyans. So, could Mr. Muite proceed on that line? I know all of us, at one stage or another, have crossed swords with some other people, but please, do not bring it here. So, will you please forget about your own internal problems with other individuals and deal with the Bill?

Mr. Muite: Mr. Speaker, Sir, through you, my hon. colleagues are actually applauding! I understood the Speaker to be talking about internal problems within KANU and not internal problems---

Mr. Speaker: Order! Mr. Muite, be serious and proceed! There is time for everything! There is time for gestures and time for serious work. Go back to serious work!

Mr. Muite: Mr. Speaker, Sir, I was commending the Attorney-General for having addressed some of the concerns which we raised. But he has not addressed all of them.

One concern which the Attorney-General has not addressed is the following. When you look at Clause 2 which defines a public officer, it includes the Government or any department of the Government. In part (b), it goes on to talk about the National Assembly or the Parliamentary Service Commission. I have got some concerns here. Was it the intention of the Attorney-General, when he was drafting this Bill, to bring the President of the Republic of Kenya, who is also the Chief Executive, within the ambit of this Bill? Is he covered or not? Is there an intention to cover him or not? That is an issue that requires to be clarified in this Bill. I point this out to the Attorney-General so that, during the Committee Stage, he can clarify that position.

As you know, the President is the Chief Executive. One can interpret Clause 2 to mean that he is actually covered as the Chief Executive because he is part of the Government. In the alternative, the President of the Republic of Kenya is a Member of the National Assembly. The National Assembly is specifically included in part (b). There is a grey area there. Is part (b) intended to cover the President in his capacity as the Chief Executive or as a Member of the National Assembly, or is it the intention to exclude him? That is an issue that calls for clarification.

The reason for asking for that clarification is because if Clause 2 does, indeed, cover the President, then, there would arise a conflict with Section 14 of the Constitution of Kenya, that specifically regulates the situation of the President. So, that is a matter that requires clarification. I point that out because we do not want to enact this Bill, which will then receive Presidential assent and become law, only for one John Harun Mwau to go to court the

following day to say that the law as enacted, conflicts with Section 14 of the Kenya Constitution! There is a possibility of creating a window for the entire Act being declared unconstitutional. So, I am saying that the Attorney-General needs to make up his mind. Do we want to cover the President or do we want to exempt the President from the operations of this Bill?

Mr. Speaker, Sir, speaking for myself as the Member for Kabete, I would say that the starting point for anything to do with conduct and ethics is with the office of the Chief Executive. If it is desired to cover him separately, then have separate clauses in this Bill that deal specifically, with the President. If, in terms of protocol and according respect to the institution of the presidency, we want to give separate treatment to that institution, then bring specific provisions to regulate and govern how the Head of State will, himself, be required to comply with the provisions of this Bill. When we do that, I do want to make one important point.

It is very important for us that as a nation, if we are going to create a nation, we must begin to respect institutions. We must begin to draw a distinction between the incumbent and the office. We may have our own private views about Mr. Francis ole Kaparo. But irrespective of those views, we should continue to respect the Office of the Speaker, which is separate and distinct from the person who, for the time being, is occupying that position. So, when we make such proposals, they are not directed at the individual. We have the office in mind. We want a Bill that is going to regulate, not just the presidency as we know it today, but tomorrow and the day after, irrespective of who is occupying the position of the presidency.

Mr. Speaker, Sir, to summarise what I am saying, I would like to say that before we pass this Bill, it is an issue of some importance that we make up our minds on whether we want the President to be covered or not. I am saying that he should be covered. I am recommending that in order to accord dignity to the institution of the presidency, separate clauses should be drawn to regulate how the President will be required to comply with the provisions of this Bill, as distinct from Members of Parliament and other civil servants. That is something that the Attorney-General should give serious consideration to. If he is going to come up with those amendments, then he should attempt to harmonise those provisions with Section 14 of the Kenya Constitution.

The second lot of concerns that I have is that it is all very well to require compliance in terms of notifying and everything. But when you look at the entire Bill, the issue of enforcement in the event of breach--- We must really address breaches. When you go to Italy or Ireland where they are 90 per cent Catholic, the Catholics preach against certain practices within marriage. But their birth rates are going down. If we were all good Christians, then what is happening even in Kenya would not be happening. So, the issue of enforcement is very important. This Bill is very casual, indeed, when it comes to enforcement in respect of breaches. The Bill talks in a very casual manner about breaches, and says that they will be punished by the relevant Commissions. In the case of Members of Parliament, breaches are left to a Committee to deal with them. In the case of Judges, breaches are left to the Judicial Service Commission. In the case of civil servants, the issue of enforcement in respect of breaches is actually left to the Public Service Commission. Now, leaving it to the respective commissions, without this House enacting regulations prescribing penalties; that to me, is a major weakness of this Bill. If we are being so elaborate on what is to be done, we should be equally elaborate on what is to be done in respect of breaches. This Bill should prescribe, either in its own provisions or regulations, specific penalties and sentences. That is what will give "teeth" to the contents of this Bill. Now, that is a matter that requires a serious thought to be given to it because when you look at Clause 35(1) for example, it states as follows:-

"(1) If an investigation discloses that the public officer has contravened the Code of Conduct and Ethics, the

Commission shall, within the time period prescribed by subsection (2)-

(a) take whatever disciplinary action it considers appropriate; or

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

This is what I am pointing out as an example of casual treatment in respect of enforcement for breaches. This is a Bill that should prescribe what sentences, punishment and forfeitures have to be visited on the person who is in breach.

Mr. Speaker, Sir, the other issue for the civil servants, although Parliamentarians and Judges are equally important, is that this Bill should be accompanied by some appropriate constitutional amendments to return or restore the security of tenure and the mode of appointment of members of the Public Service Commission. If the Public Service Commission is now going to be charged with the important duty of overseeing the implementation of this Bill, in respect of civil servants, two major things must happen to the Civil Service. One is that the Chairman and the members of the Public Service Commission, whose duty is being described here, should now be de-linked from the Executive. It should not be one individual who should appoint the Chairman and the members of the Public Service Commission because then their independence becomes purely theoretical.

Mr. Speaker, Sir, appropriate amendments to the legal provision including the Constitution must be brought so that the Chairman of the Public Service Commission and the members of the Public Service Commission will be

appointed by a two-thirds majority of this House so that their security of tenure can be guaranteed and their appointment can be on merit and for no other reason or other basis. That is something that needs to be done if implementation of this Bill with regard to the civil servants is going to have any meaning. We must go further and restore the Civil Service in this country to the 1963 constitutional position where they were insulated from political manipulation; where they served the public and the Government of the day without being liable to be fired.

Mr. Speaker, Sir, this Section 24 of the Constitution that says that civil servants from the lowest one to the Head of the Civil Service hold office at the pleasure of the President has got to be amended. They have got to hold office in a situation of security of their tenure. It is only the Public Service Commission that should be responsible for the hiring, firing and disciplining of the civil servants. The Chief Executive must have nothing to do with it because as long as that is the position, then even implementation of this Bill will be meaningless and it will not happen. So, these are matters that need to be got into. We need to take a more holistic approach. Even when the World Bank, IMF and the donors are telling this Government that "you must enact this piece of Bill or that Bill", then they are taking a very narrow view of the matter. We cannot address these problems in isolation. We have got to take a holistic approach and see what other amendments to the Constitution and to other laws we need to bring in order for this Bill to operate. For example, the issue that I am mentioning, that all Public Service officers here in Kenya today, hold office at the pleasure of one person, who is an elected person, makes them totally dependent on that person. They will serve the political interests of their appointor because as we know, everybody gets to know which side of their bread is buttered.

Mr. Speaker, Sir, I do wish to support this Bill and also really plead with the Attorney-General and the Minister to take into consideration the shortfalls, pitfalls and points on which this Bill can be improved so that when we enact it, we do so for the good of Kenya. We know that at the moment, this Bill has been presented and we are sitting up to 9.30 p.m. without supper although some of our hon. Members are elderly or even are diabetic and as the hon. Minister for Public Health will know, they will need to eat before 8 o'clock, but we have to sit until 9.30 p.m. so that this Government can be given money before June.

I beg to support.

(Laughter)

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Thank you very much, Mr. Speaker, Sir, for giving me an opportunity to contribute to this Bill. On the face of it, this Bill is very good but if you look through it, clause by clause, you will see that it prescribes what is wrong and what should be stopped but I have not seen any penalty. I do not know which law will prescribe penalties for those who do not go by what is said in the Bill.

Mr. Speaker, Sir, if you look at Clause 9, it states as follows:-

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

(2) In carrying out his duties, a public officer shall not violate rights and freedoms of any person under part V of the Constitution."

The Bill is replete with "do not do" but it does not say if you do not do, what will happen to you. Punishment and rewards are the only reasons why a society can have discipline. If you reward honesty and punish dishonesty, you are instilling honesty in people. If you reward dishonesty or corruption, you are increasing that vice.

Mr. Speaker, Sir, we are fighting to have tools to fight corruption. We will form commissions. We will invite people to come and advise us on how to stop corruption. The only way we can stop corruption tomorrow is for us to punish corrupt people and reward the incorrupt people. As long as we continue glorifying corruption by rewarding a corrupt person with a job in a bigger parastatal and yet he has been accused of wrongdoing in a previous parastatal and he has also been discussed by the Controller and Auditor-General, then we are teaching Kenyans to continue being corrupt because that is the only way. I stand to be told later who will prescribe punishment for all the things we are saying should not be done because without punishment we have done nothing.

(A mobile phone rang)

Mr. Speaker: Order! Where is that mobile phone ringing from now? What punishment can I give to the owner of that mobile phone? Mr. Karauri, can you prescribe the punishment I should give to that person?

The Assistant Minister for Education, Science and Technology (Mr. Karauri): The usual punishment, Mr. Speaker, Sir.

Mr. Speaker: Where is it so that I can give punishment now? Is it on a stranger?

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Mr. Speaker, Sir, it is certainly not mine.

An hon. Member: It came from near hon. Sajjad!

Mr. Sajjad: Not me!

(Laughter)

Mr. Speaker: Where is that thing?

Hon. Members: Maybe up there!

Mr. Speaker: Will my officers make sure that, that stranger is taken out?

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Mr. Speaker, Sir, I was saying that it is important to have punishment and reward without which we shall talk forever and achieve nothing.

Mr. Temporary Deputy Speaker, Sir, on the question of Harambee, on page 495, Clause 10 (4) says that a public officer shall not accept or request for gifts, or favours from a person. Again, there is no punishment that is prescribed there for those who contravene this provision. I wish there would be something like, if a public officer has committed this crime, then they are arrested, prosecuted and barred from holding public office. But without prescribing punishment, although this law is good; it is toothless. It will not bite anybody and so people will continue doing bad things with impunity.

Mr. Speaker, Sir, something that I found a bit interesting on page 500 is Clause 21 which states that:-

"A public officer shall practise and promote the principle that, unless they are elected, public officers should be selected on the basis of competence and suitability."

I do not know who we are exempting here. We are saying that somebody like a mayor, or the chairman of a county council, or the President of Kenya who will be elected, are exempted from choosing people who are competent and suitable. What are we talking about? Are we saying that there are people who are exempted from appointing competent and suitable people; that they look for the corrupt and dishonest people, because they are elected? That the Mayor of Nairobi, if he is elected, then he can only choose corrupt and dishonest people? Why are we exempting an elected officer, who has authority to appoint, from appointing suitable and competent people?

I do not know why that should be there? I protest that this kind of thing should not have been inserted there. That clause in commas, "unless they are elected", should be deleted, because it makes nonsense of what we are saying. That we allow our elected people; the President, the mayor, the county council chairman, or the chairman of a co-operative society to elect dishonest, incompetent and corrupt people? Is that what we are saying?

(Dr. Kituyi stood up in his place)

Mr. Speaker: Would you like to take information?

The Assistant Minister for Education, Science and Technology (Mr. Karauri): No, I do not want!

Mr. Speaker: I think you had better do because your understanding of it could be totally wrong!

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

Speaker, Sir. I would like to inform Mr. Karauri that, actually, he is having a false interpretation of the provisions in the Bill. Public officers cannot ensure the probity of persons who are elected. They are only saying that except for those positions which have not been filled through elections, ensure that people get the positions because of competence and suitability.

Mr. Speaker: I think that is the correct interpretation. In other words, it means that if the people of Tigania East can elect you in the way they feel free, that is not the same thing as hiring an officer, as a District Officer for Tigania East. You must be competent and suitable for the job. But the electorate can elect you even when you are not suitable.

Proceed!

(Laughter)

The Assistant Minister for Education, Science and Technology (Mr. Karauri): If that is the case, Mr. Speaker, Sir, although it is not as straightforward as it sounds, because I thought law should be clear so that it is not be misused, that is fine.

Mr. Speaker: That is why lawyers are trained for a long time and they are paid to interpret.

Proceed!

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Mr. Speaker, Sir, I wish people who are elected can appoint competent and suitable people in any position. I have said here before that Africa

has one problem; that is, misuse of human resource. Where we have gold or diamonds, these minerals cannot develop a country. But proper human resource can develop a country. Switzerland does not have those minerals but it is properly developed. There are many countries which have properly utilised their human resource and they are developed. That is why my attention was drawn there, suitability and competence of people appointed to carry out duties.

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

Ms. Karua: Thank you, Mr. Speaker, Sir. I rise in support of the Bill. I am also suggesting, like the Member who has just sat, that certain sections need to be redrafted to be more clearer. One of those clauses is Clause 21, so that even a lay person reading the Bill should not be left with an impression that the Bill is condoning any incompetence or elevation of unsuitable persons. I have also noticed that no penalties are prescribed and I think that, if the Bill is serious, we ought to prescribe penalties for certain acts. I was looking at Clause 29(5) which has a very high penalty for a person who discloses or allows access to information collected under this Bill. In Clause 29(5), it is said that any person who contravenes that clause of confidentiality is guilty of an offence and is liable, on conviction, to a fine not exceeding Kshs5 million, or to imprisonment for a term not exceeding five years, or both. So, this Bill is criminalising divulging of information on people's assets. It is not criminalising unethical behaviour. So what are we trying to promote here? Are we trying to help those who have amassed wealth in dubious manner to go scot-free, or are we promoting ethics? If we are promoting ethics, this Bill should have clear and specific penalties for contravening ethical rules and standards. The penalty for disclosing information collected under this Bill should be light because the object of the Bill is not to help people hide their wealth. It is to put them in the public domain for scrutiny so that if you amass wealth when you are in a position of trust and in unexplained circumstances, we are able to ask you to explain how you came by that wealth. Which brings me to the next issue that there must be a direct link between this Bill and the Anti-Corruption Bill. Unless we link the Public Officer Ethics Bill to the Anti-Corruption Bill, then, really we are not serious about ethics. After the relevant commission has the information from the officers, if there is any suspicion, it must be spelt out in black and white, and the information should be forwarded to the Anti-Corruption Authority under that Act. Under the Corruption Control Bill, there is a Clause that says: "The Authority can require any person to explain how they acquired any wealth that the Authority thinks has been amassed in suspicious circumstances". Let the Attorney-General burn his midnight oil and think of a clause that will put a direct link between this Bill and the Corruption Control Bill.

I am happy about Clause 12 which outlaws Harambees so that public officers do not use their offices to collect Harambees. I think we should go a little bit further. If we want to stop having Harambees as a conduit for corruption, we will have to be bold enough to actually regulate Harambees, if not ban them altogether. We could begin by outlawing the collection of public funds by supposed guests of honour. If somebody is invited to a fundraising, they must be able to give what is within their means and the rest of the public can be invited generally to also give what they have so that we stop having people peddling cards in offices. These days even members of the Judiciary have Harambee cards. Everybody has Harambee cards. The Permanent Secretaries are the greatest contributors. All these are people who wield power and the fact that they are contributing hefty sums leaves one wondering whether it is not clear evidence of abuse of office, not to mention the vast riches that some of these officers have amassed.

We need to be a little bolder concerning Harambees and to also prohibit public officers from collecting public funds under the guise of Harambee. Let them take what they can afford, but let them not collect from the public. Even if we tell them not to use their office to collect funds, they will still meet people who have an interest in services from their offices outside office hours and they will coerce the money out of them. I also applaud Clause 15 which talks about political neutrality.

Mr. Speaker, Sir, we have raised the issue many times in this House about top civil servants accompanying the President and Ministers to partisan political functions such that many public officers were present even in the merger between KANU and the NDP.

This clause on political neutrality appears to be half-hearted. Where are the penalties? This is something that civil servants are doing with impunity from the Assistant Chief in the village to the Chief Secretary. They are all playing partisan politics in the view of very Kenyan. We need to strengthen this clause by indicating penalties so that these officers can be taken through the court process and penalised. We do need regulation by their employers only because what they are doing is retarding this country. What do we do to the officer at KBC who keeps on promoting propaganda as news? We need penalties. The law enjoins them to give a fair and balanced reporting, but they are not doing that because there are no penalties. Let us make what is unethical, if it so happens to the nation, to be also criminal so that we are able to enforce a higher standard of ethics and professionalism in our work.

I am happy to note that sexual harassment has been recognised as unethical behaviour. Previously, those who complained were the ones who were victimised by being sacked instead of the matter being investigated. Once again there is no penalty suggested. The only penalties that are being suggested in this Bill are for divulging information on

the assets of civil servants. To that extent, this proposed Bill is designed to take care of the interests of a few people who have amassed vast wealth in a short period and who would not want Kenyans to know how much they are worth because they know they cannot explain how they came by such vast amounts of wealth. Why are we taking so much care to protect them with penalties of Kshs5 million or five years imprisonment when we cannot introduce penalties against a person who is sexually harassing the public or colleagues in the office? Why can we not penalise public officers who play partisan politics? Let us introduce penalties that are realistic. How many people in Kenya can raise Kshs5 million as a fine? Let us have fines that actually reflect the state of our economy and which have the ordinary Kenyan in mind.

I have also seen Clause 38 and I think that, rather than exempt constitutional office holders from the operations of Clause 34, we should make this "in addition to" because the Constitution does not prohibit constitutional office holders from being subjected to a code of conduct at their place of work. Clause 38 should read that this is in addition to whatever is provided in the Constitution as the procedure for their removal. The misconduct may not amount to anything that can prompt a removal, yet they may need to be disciplined. Are we going to say that, because there is a procedure for their removal, we should turn a blind eye to their misbehaviour? I think that rather than exempt them, let us make Clause 38 additional.

I have also looked at the First Schedule to the Act and I would like to comment on No.6 which talks of the teaching service. I have no quarrel with officers who are asked to come under the provisions of this code, but could we have a specific provision targeting headteachers of all public schools whether primary or secondary, irrespective of their job groups? This is because they have been put in charge of managing funds on behalf of parents and the boards. Let us include headteachers and principals under the code. I am glad to note that in Clause 7 of the First Schedule, we have included co-operative societies. Here we are talking of the director-manager. In fact, they are called "secretary-manager" and not "director-manager". There is also the assistant manager. I think that is not enough. The secretary-manager has a lot of powers, but even wielding more powers are the committee members elected under the Co-operative Societies Act. So, let us have the committee members also come under Clause 7. If we do not do so, we shall not be rendering any help to co-operative societies. Currently, members' money is siphoned off by committee members. Some committee members will amass huge amounts of money upon being elected to hold office in co-operative societies. Let us include them under Clause 7, so that we may be able to protect co-operative societies.

Mr. Speaker, Sir, I would like to end there in order to give other hon. Members a chance to contribute to this debate. Otherwise, this is a good Bill, which deserves support.

Mr. Wamae: Mr. Speaker, Sir, I rise to very strongly support this Bill. I think this Bill is important in our fight against corruption. The fight against corruption is long over due.

Mr. Speaker, Sir, while contributing to this Bill, Mr. Muite raised an issue here, but he did not say whether the President is also included in the provisions of Clause 7. However, when I looked at the First Schedule, I realised that the President is included under Parliament and the Executive. Including the President in these provisions is contrary to Section 14 of the Constitution. We are going to have another "Mwau" coming up to raise the issue in court, which will declare the resultant Act of this Bill unconstitutional. So, I would like the Attorney-General to very closely look at this aspect and correct it.

As it has been said by other hon. Members, very heavy penalties have been proposed against anybody who will divulge information on the assets of public officers. The Kshs5 million fine or five years imprisonment provision is a very heavy penalty. What interest do we intend to protect by imposing this kind of penalty? If somebody owns 1,000 acres of land, what is secret about declaring that he owns that amount of land? Why should we protect such a person in this regard if we really want to be transparent? If we want to do away with corruption, why should we keep secret the assets that people have? In fact, we should make such property public.

Public officers must know that the property they own is no longer going to be a secret, but it will be known by the public. That will be one of the strongest deterrent against misuse of office. By keeping secret the property which public officers own, we will be over-protecting them. Nobody will know that they have assets which they have not declared. If one declares his wealth, the public should be allowed to know about it. Let the people know what public officers have. That will serve as one of the deterrents against misuse of office by public officers. If you have hidden money abroad, what is wrong with, say, the United States of America (USA), saying that you have US\$5 million abroad? Such a disclosure will be a deterrent, because people will be scared of having their property disclosed.

So, the Attorney-General needs to look into this issue very closely. Probably, he should exclude the President from the First Schedule, and do away with this heavy penalty against persons who may disclose the wealth of public officers to the public. In fact, the penalties should be put the other way round. People who fail to disclose what they own should be the ones to be punished.

An hon. Member: Correct!

Mr. Wamae: Ironically, the Attorney-General has not prescribed in this Bill any punishment for people who

fail to disclose their wealth. He only proposes that such persons should be left to the responsible commission to deal with them. Since the Bill does not provide for any penalties to be imposed on persons who fail to give information to the commissions, what will we do? So, I think we have to deal with this issue in this Bill. The commissions should be given certain prescriptions of penalties to be imposed on persons who do not divulge information to them. We should add a clause for use by all the commissions. Otherwise, we will be doing nothing. This is a matter which needs to be looked at very closely.

I agree with the previous speaker that the real power in co-operative societies is not with the managers but rather with members of the management committees. In most co-operative societies the membership of the management committees comprise of nine persons. The chairman is elected from amongst themselves. The power in co-operative societies rests with the management committees. So, we should bring the management committees of every co-operative society under this provision. Members of the management committees are the ones who have the authority. So, they control the managers. A manager of a co-operative society does not have executive authority. Some committee members are executive in their functions.

Mr. Speaker, Sir, this Bill has a clause which talks about the competence and suitability of public officers. This is an area which is very important. Kenya has remained poor partly because we have given some people responsibilities they are not competent to execute. We have promoted people and given them duties which they are not capable of performing, purely because of tribal considerations and favouritism. The measures proposed here are not enough. So, the Attorney-General should add to Clause 21 "merit", "competence", "suitability" and many other qualities which will make everybody feel that we are now starting afresh in Kenya, and that we are going to rely on merit. In order to ensure that future public officers will be responsible for the welfare of others, we need to look into this aspect.

Clause 15 prohibits public officers from taking part in politics. It says: "A public officer shall not in or in connection with the performance of his duties as such, act as a agent for or so as to further the interests of a political party." This is already happening all over the country. In my constituency, assistant chiefs, chiefs and District Officers (DOs) call public meetings, where they invite prospective candidates for the ruling party to address the people. Provincial Administration officials are being used by KANU politicians to call public meetings for them, so that they can do politicking. So, this Clause should also be strengthened, so that even Cabinet Ministers and Members of Parliament may not use civil servants for political activities. So, I think we should add part (c) to this clause, to bar politicians from using civil servants for political activities.

Mr. Speaker, Sir, for the first time, we seem to be moving in the right direction. In order to address the question of corruption seriously, we need to particularly preach to Kenyans about the evils of corruption. We should probably create another body within this Bill, which will be responsible for educating Kenyans on corruption evils and their impact on the development of the country. Our people need some civic education on this issue. It is not stated in this Bill who will conduct civic education, so that our people can know what having corrupt civil servants, Ministers, revenue officers and corrupt police officers has cost them.

Do we really know how much corrupt traffic police officers cost this country? If the police demand Kshs100 from the crew of a *matatu*, the transport cost of every passenger who is going to board that vehicle goes up by Kshs5. Our people do not know that. Who is going to educate them? We have nobody in this country who is responsible for that kind of job. So, I would like the Attorney-General to look into this Bill again with a view to providing for the creation of a body, which will be responsible for educating Kenyans on the dangers of corruption. Kenyans will have to be educated on the envisaged results of the entire Act that is going to be enacted from this Bill, so that they can assist us and the Government in ensuring that corruption is reduced. You cannot reduce corruption if you do not educate the citizens on these issues. The people should be made to know where to report cases of corruption and ask for remedial action. If the people remain ignorant about this Bill, they will not help the Government. So, we should look into this issue and see how we can provide for civic education for our people.

Mr. Speaker, Sir, I would also like another clause to be included in the Bill with regard to students in the country. We have talked about merit in appointments. What about intake of students in public institutions? Have we said anywhere in the Bill that they should also be selected on merit? We have not! I think, Mr. Minister, you need to look at the students who are admitted to public institutions. We already know that, for instance, the Kenya Medical Training Centre (KMTTC) is one of the corrupt institutions. Even at the Kiganjo Police Training College, police recruits pay between Kshs40,000 and Kshs50,000 to be admitted there. How is that one taken into account in this Bill? I hope that is considered in the Bill. Penalties should also be provided for such offenses, if procedures are not followed.

The Minister for Public Health (Prof. Ogeri): On a point of order, Mr. Speaker, Sir. Mr. Wamae has made a very serious allegation; that, the KMTTC is very corrupt. Could he substantiate?

Mr. Wamae: Mr. Speaker, Sir, that is common knowledge. It has happened, and it has been reported in the Press. The Minister did not come out to deny it. There have been serious accusations which you, as the Ministry, have

not denied.

The Minister for Public Health (Prof. Onger): On a point of information, Mr. Speaker, Sir. For Mr. Wamae to just stand here on the Floor of this House and say that there have been accusations against KMTC means nothing to me. He has made very serious allegations. Could he table before this House those allegations before we take them very seriously?

Dr. Kituyi: How can you "table" allegations?

Mr. Speaker: Order! Mr. Wamae, let us address the Bill. If it goes through, then, what you are probably worried about will be the past. Could we concentrate on this Bill?

Mr. Wamae: Mr. Speaker, Sir, I accept your advice, and I hope that, that is one area which should also be looked at by this Bill when it comes into law. My friend does not have to be so agitated.

The Minister for Public Health (Prof. Onger): I am not!

Mr. Wamae: Mr. Speaker, Sir, I was concluding by saying that this is a good Bill, and a good beginning. As I said, we should also have a body responsible for supervising this Bill and sensitizing Kenyans about the evils of corruption. This is because we need an organ. We are not leaving it in the air. Let us have an organ which can be responsible for making sure that Kenyans know when corruption is being done, where to report, whom to report to and so forth.

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

Dr. Kituyi: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for also giving me a chance to speak. At one level, when you look at this Bill, it says very simple and banal things; that, public officers must obey the law. Three-quarters of what is said here already exists on our statute books, and there is totally nothing new. In a way, it is acceptable - in the sense negatively - that the Government is saying: "We now want to obey the law." Most of the things it says that public officers should do, they are supposed to be done by them; that, people should be recruited because of their qualifications, they should work during working hours and be in their places of work when they are supposed to be there. These are things which were supposed to be part of the daily life of the country. So, donors are telling the Government: "You are not doing what you are supposed to do; could you now create another law which tells you to do what you are supposed to do?" That comes true.

At another level, the Government is promising donors what it is not capable of doing. The ethos of society cannot be a product of legislation. You do not change the values that people carry in their heads; the world views they carry and the way they define respectability on the basis of legislation. Punishing crime is more important than creating new laws in order to stigmatize crime in the fight against criminal conduct. So, if the Government was attempting to fight crimes; to make people do what they are paid to do, punishing those who deviate would have been much more important than some spurious legislation which purports to regulate people's conduct and normative resistance.

It is bad enough if a Government wanted people to change their conduct through legislations. It is much worse if donors want to make a Government change the behaviour of people through legislations. There is something very shameful here. A Government has the audacity to present itself before a National Assembly; to declare that "the donors have asked us to put up good manners so that they give us money." This is because that is what it says and it is all about. What is there in these two pieces of legislations; the Corruption Control Bill and the Public Officer Ethics Bills? We are under pressure from donors; that, before we present the Budget, we must have brought here the legislation which promises that we would put up good manners and senior officers would stop stealing. Let me warn you KANU; Some of the things that you are promising today are very detrimental to your own habits! You are saying that Ministers of the Government would stop owning petroleum companies which enters fictitious partnerships with Government parastatal petroleum companies and strange and mysterious contracts for bulk delivery of petroleum to airports would stop being given to companies owned by Ministers. You are now saying that Ministers like in the Ministry of Energy, would stop applying for licences to the Independent Power Producers (IPPs).

You see, you are about to turn off your own taps of financing your political machine. Are you ready for it? Or, do you want to assuage the worries of the donors? You are telling us that you are so reformed that you want to erase the main spots we have been complaining about on your bodies. Do you have the appetite and ability to change your spots? You as Ministers, are you ready that after this is legislated, you would get out of doing business with your Ministries? Or would you now register the names of your mothers-in-law; the companies through which you do that business? It is either that you do not understand what you are bringing here or you are being dishonest with the donors; that, you will do what you are promising to do.

I intend to come back to this issue, but let me just take a little trip through what is written here. Because this is not new law, it is promising to do what the law already obliges you to do. A lot of the statements are very strange generalities. You could see that this was a very hurried legislation; so hurried that it is even contravening the Constitution of Kenya. I hope the Attorney-General will now advise the Government carefully; that, you are criminalising conduct by President; in the First Schedule, the first name is that of the President. This is in direct

contravention of Section 14 of the Constitution of Kenya. You are so hurried by the donors that you did not bring that amendment first before bringing this Bill to the House. So, what you end up with---

The Attorney-General (Mr. Wako): On a point of information, Mr. Speaker, Sir.

Dr. Kituyi: Why do you look at the Speaker, if you want to give information?

The Attorney-General (Mr. Wako): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Have you changed your mind?

Dr. Kituyi: Are you looking for information, or for a point of order?

Mr. Speaker: What is it?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I did not want to rise on a point of order, but I must do so because this is the third speaker who has said that, because the President's name is there, it contravenes Section 14 of the Constitution. All that Section 14 states is that, for as long as he or she is the President, he or she cannot be prosecuted for any offence. So, I do not see any contradiction in there.

Dr. Kituyi: Thank you very much!

Mr. Speaker: Order, Dr. Kituyi! Please, I am the one chairing the House! He has not finished.

Dr. Kituyi: He has finished!

Mr. Speaker: Order! And you must sit down! Mr. Wako, have you finished before you were interrupted?

The Attorney-General (Mr. Wako): No, Mr. Speaker, Sir. He is getting very excited. Section 14---

Dr. Kituyi: I know the details!

Mr. Speaker: Order, Dr. Kituyi! I am the one in charge, and I have given him the Floor! Let him finish his point of order. I will rule him out, if he is out of order; I will rule him in order, if he is in order.

*(Mr. Wako asked for a copy of the
Constitution from the Clerk-at-the-Table)*

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, the inclusion of the President in the Schedule---

Mr. Muite: Do you want to borrow mine?

*(Mr. Muite gave his copy of the
Constitution to Mr. Wako)*

The Attorney-General (Mr. Wako): Yes. Thank you very much. The inclusion of the President in the Schedule is to oblige the President to comply with the provisions of the Bill, if it is enacted. The compliance with the provisions when they are enacted is not a criminal offence. If the President does not comply with the provisions of the Bill when enacted, it is the same thing as the President committing an offence under the Penal Code or under any legislation under the laws of Kenya. Section 14 says that the President, while still he or she is the President, cannot be prosecuted or cannot be sued in civil proceedings. This applies not just to this Act; it applies to all Acts where penalties have been prescribed.

Mr. Speaker: Order, Mr. Attorney-General! You were right when you first stood on a point of information. But you were wrong when you changed your mind and stood on a point of order. That is not a point of order! It would have really helped the House, of course, if the hon. Member gave way. Hon. Members, one other procedural issue which this Parliament and the last one never used, is to seek for a Member to give way so that another Member of Parliament can make a contribution that he thinks is relevant. So, you should have asked him either to give way so that you can enlighten him on what you think is wrong or inform him. So, you are out of order!

Proceed, Dr. Kituyi.

Dr. Kituyi: Mr. Speaker, Sir, Mr. Karauri mentioned something very important here. You can only criminalise conduct if you can also punish crime. If you say the President is bound by a certain law and you have no recourse to punishment when the President breaks the law, then there was no point in introducing the name of the Office of the President in this clause. What is the restraint for the President? He can plunder, pilfer in his own name or the names of his sons, but there is nothing that is going to be done because of Section 14 of the Constitution. Your intervention has absolutely done nothing to reverse that position. It is has only clarified that in fact, it is a spurious inclusion meant to hoodwink the donors. But it is of no consequence whatsoever, even for purposes of practice in the country.

Mr. Speaker, Sir, there are a number of interesting provisions of literature that have very little relevance to the regulation of public conduct. Clause 10(1) which deals with improper enrichment states as follows:-

"A public officer shall not use his office to improperly enrich himself or others."

That means absolutely nothing! There are provisions under our laws on how to punish people for that kind of abuse of office. If you are just writing new things just because donors want something called "code of ethics", and you start writing there things like: "A public officer shall carry out his duties in accordance with the law." Was there any law that allowed public officers to carry out their duties outside the provisions of the law? There was nothing like that! Look at Clause 10(2)(b) which states as follows:-

"Without limiting the generality of subsection (1), a public officer shall not improperly use his office to acquire land or other property for himself or another person---."

Mr. Speaker, Sir, if the Attorney-General is telling us that "improperly acquiring land" is such a stigma to Kenyan society and it is such a terrible thing for public officers to do, he should have told us what immediate action the Government is going to take to stem this! Three-quarters of Government land has been used like personal aegis of the Head of State or has been very strangely dished out by among others, the man who has been charged with murder. There has been abuse of trust in the management of trust lands, group ranches, urban lands, coastal lands and so on. It is the hallmark of this Government. Will you be able to clean out your spots? Will you have the capacity, even if we passed this law, to walk to those people and tell them to remove all the petrol stations they have built on road reserves? Do we have the political muscle to do that? Why are you asking us to indulge in an exercise in futility?

But in addressing your rather wild rapporteur on matters to deal with pastoralists, there is a matter here which I find very interesting. Clause 10(3), states as follows:-

"A public officer may accept a gift given to him in his official capacity but, unless the gift is a souvenir or ornament that does not exceed the value prescribed by regulation, such a gift shall be deemed to be a gift to the public officer's organisation."

We all go to various parts of the country to conduct Harambees. If you go to North Horr and they like you so much because you have given them so much money, they give you a camel. Will you make that camel the property of the National Assembly of Kenya?

Mr. Speaker: And you give me a holding ground?

(Laughter)

Dr. Kituyi: Mr. Speaker, Sir, what capacity do we have to receive all the goats and cattle that hon. Members receive at Harambees, since they are not souvenirs? How shall we practically, start surrendering goats, sheep, cows and camels to the National Assembly of Kenya? Otherwise, we will be contravening the provisions of the law we are trying to create! That is what is here! They are not souvenirs or ornaments! So long as they are not souvenirs or ornaments, we are going to surrender them to the organisations that we belong to. Mr. Mudavadi is going to conduct a Harambee in my constituency in two weeks time and if he will be given a goat. Will that become the property of the Ministry of Transport and Communications or the National Assembly of Kenya? Are we starting to redefine the value of what can be acceptable gifts? In the process of defining, are we sure that this vague provision is adequate? How can we legislate and create a law which we will be breaching this weekend when go to Harambees and we will be given goats which we will take to our houses and slaughter them instead of surrendering them to the Ministries which we come from or to the National Assembly of Kenya? That is what this provision is all about! But there is even a more interesting one in Clause 10(4)(2)(a) which states as follows:-

"Subsection 2(a) does not prevent a public officer from accepting a gift from a relative or friend given on a special occasion recognised by custom."

In the age-old tradition of pastoralists and agro-pastoralists, there is the rich institution of stock associateship; that by recognised custom, large numbers of livestock are transferred from certain persons to others in creating friendship, sustaining friendship or signifying solidarity. Under the law we are creating, how can you forestal a corrupt transfer of livestock from a Samburu to a Rendile if he can have a traditional recourse of stock associateship between the Samburu and the Rendile? When do you define this as a continuation of a customary exercise, as opposed to abuse of office or breach of public ethics? If some societies have a habit like the Pokot, that you rise to the top through your military heroism and that if you have killed from the wrong clan, your clan has to collect cattle to go and pay for the head in the other clan, how do we define the repugnance of certain components of that cultural practice, which involves massive movement of valued goods? If our ethics have to be manufactured, courtesy of the World Bank and the International Monetary Fund, are they consistent with the ethics on the ground? As we have them today, can it stem abuse of the law under the disguise of following traditional ethics? This is alien to the concept being presented by the Attorney-General.

Mr. Speaker, Sir, there is an interesting section in this Bill. That is Clause No.20, on sexual harassment. I support all public attempts, legislative or otherwise, to stem the monster of sexual harassment in public life; specifically the harassment of women in public offices by their superiors. But there are problems sometimes with the overenthusiastic creation of legislation. Some of that is evident in what we have today. On Page 500 at the top, Clause

20(2) states as follows:-

"Sexual harassment includes any of the following, if the person doing it knows or ought to know that it is unwelcome---"

This means that if you think it is welcome, it is not sexual harassment. But in part (c), it says:-

"Making gestures, noises, jokes or comments, including innuendos regarding another persons sexuality."

Mr. Speaker, Sir, I have problems interpreting how to make noises regarding another person's sexuality.

(Laughter)

Our good Attorney-General could, perhaps, help me understand one issue here. I can understand that it is an offence to make intentional or careless physical contact. This is possible. It is also possible for a person to make gestures, jokes or comments that are targeted at a person's sexuality, but I do not understand how a person can make noises regarding another person's sexuality.

Mr. Speaker, Sir, in the Attorney-General's fertile imagination, he might have a phenomenal capacity to interpret noises, which are not innuendos or jokes, but just noises which can be targeted at another person's sexuality in a way that can be criminalised.

Mr. Speaker: Dr. Kituyi, could he be referring, for example, to the noises made by he-goats?

Dr. Kituyi: Mr. Speaker, Sir, that would be very interesting, but then I thought the Attorney-General was not writing a Bill on the ethics of he-goats but on the ethics of public officers.

Mr. Speaker, Sir, in trying to round up, I just have two or three things that I want to say. We have a major problem, indeed, and the more practical thing that this Bill is intended to do is to acknowledge that we cannot continue behaving as we have been behaving. There has to be a certain change in the conduct of our public officers. If that is a domestic value that we embrace, we must start by making the people of this country know that crime cannot be rewarded. That is the most important thing. If we want people not to abuse offices by making ill-gotten wealth, we should punish those who have ill-gotten wealth. But if we treat as national heroes the people who on weekends flaunt ill-gotten wealth, and display that they have much more than they could properly have earned, and make them national heroes and at the same time pretend that by this legislation we will now have better ethics, we are just deluding ourselves.

So, I would have liked the Attorney-General to say that in response to the donors, who are insisting that we have to change the way we do things, we have decided that we will sacrifice some heads. We should be committed to good governance that if you are facing a criminal charge over abuse of public office, whether it involves stolen money or pilfered goods, you are actually suspended from holding that office until your name has been cleared. But we have Ministers being escorted by uniformed policemen in cars flying the national flag, driving to the High Court of Kenya to be charged with theft, and we still talk about ethics. You must be living on Mars to assume that this is the Government that will fight against this kind of stigma. I agree that we have a collective challenge, but I also believe that the other side of the House is setting for itself a very tall order. It has to start finding new values of legitimising leadership other than the value that "we are the men of wealth; forget about the poor Opposition".

There is a little matter that concerns me. If values of not being corrupt or not stealing are a driving force in the new-found love for good governance in Kenya, the ruling party will do a lot of good by renouncing its claim to a public building, namely, the Kenyatta International Conference Centre (KICC). The ruling party should have changed its ways and shown that it does not want anybody to steal what is not his and return to the taxpayer a major public investment that it has taken by force. You cannot tell us that you now want to stop us from receiving goats and kitten, when you can actually grab the tallest building in the country with impunity, try to keep it and appropriate the rent from it. You cannot be the same person.

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

Mr. Ochilo-Ayacko: Thank you, Mr. Speaker, Sir, for giving me an opportunity to make my contribution.

This Bill is certainly not intended to work. I think the purpose that it is intended to serve is probably to please certain people so that it becomes their pleasure to do what they intend to do to us. But, certainly, it is not intended to make us ethical and honest. If it were intended to make us honest or ethical, then the provision that enjoins us to declare our wealth should be made public. This way a person who knows that we did not say the truth with regard to our wealth, can controvert our claim and say that we own much more than we declared. Otherwise, if, for instance, somebody declares that he owns one vehicle and that declaration is hidden somewhere, and it is criminal to make it known to people who might controvert it, then it will never come to be known as to whether that person was truthful or not.

Mr. Speaker, Sir, you can see from the outset that what we are doing here is an academic exercise. We are

merely trying to please the donors, but at the end of it all, when we will be called upon to take stock of our achievements, we will find that the legislation was not useful in the first place. I believe that if holders of public offices were to be what they claim to be, then they should confess it in church that they own this amount of money, write it in newspapers and put it in the internet, so that all and sundry are aware that our people, Ministers, President, Members of Parliament, councillors and Permanent Secretaries are people of integrity. But to say that they declared their wealth and hide the declaration in files that will never be accessed, is like trying to give with one hand and then robbing that very hand using the other hand. So, today the House is engaged in doing something that is self-defeating in as far as declarations are concerned.

[Mr. Speaker left the Chair]

*[The Temporary Deputy Speaker
(Dr. Anangwe) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, you will find that the President is enjoined as an officer who should also make declarations under these provisions. If you imagine that the President is not complying with the law and you want to investigate him, how will you proceed? All hon. Members of this House are aware that there was an attempt at serving a petition on the President, which could not be realised because of the presidential security. So, I am trying to imagine how you can investigate the President. How would you access him and get him to record a statement, or to tell you what he must tell you in order for you to appear to be conducting investigations?

We have included the President here for academic reasons. I do not know if there are other reasons for which this inclusion is necessary. I am trying to imagine how somebody, for instance, can get a hostile appointment to be hosted by the Head of State to try and find out personal issues regarding that office. When referring to the Head of State, I do not mean the current President, but I am talking about that institution. When we pass legislations here, we do not pass them for or against any particular individual, but we pass them for posterity of the country and as patriots. So, again, that inclusion is an academic exercise. I know that it will please some donors that it is done, but as a serious person, I believe that this House should not engage itself in things that are not meaningful in terms of implementation.

We also know that a lot of our Ministers who are seated here today are also enjoined to comply with this legislation. It has not been possible to investigate them even in other spheres. I do not see anything in this Bill that will buttress the investigation agencies in such a manner that they will investigate hon. Members of the Front Bench. In fact, many hon. Members of the Front Bench may be under suspicion in the Public Investments Committee (PIC) Reports, but they have not been investigated because their very security and system of operation thwart such investigations. So, the fact that is included in this Bill, is even trying to add to our list of statutes that are inapplicable; those which cannot be realised. So, until we put up a commission that can summon a Minister---

In this country, I remember, it was only once when there was that notorious KANU Disciplinary Committee; when Mr. Amayo summoned the late Okondo. I have never heard of any investigating body that is able to summon a Minister and get direct and proper answers from that Minister, regarding something that is being hidden or something that should be opened up. I do not see any authority or commission in this Bill that will be able to change what has been obtaining generally. So, even in so far as we are seeking compliance from Ministers, and the Minister who has moved this Bill is a very able Minister, I do not know how he intends to have this legislation realised because nothing has strengthened investigations in respect of this particular legislation.

Mr. Temporary Deputy Speaker, Sir, in fact, there is a very interesting phrase in this Bill which says that "a lot of these things are not intended to have the force of law." So, you can see that we are seated here extending sitting hours, debating in a hurry in order to do a lot of things which will not have "the force of law." I think we have been a serious House, and the Attorney-General should know that we intend to carry on with that seriousness for as long as this House continues carrying out its business. But what we are doing today is not an act of seriousness because there will be several other offices that will not respond to this law. The fact that you can put a lie or mislead your commission and that lie will remain undiscovered for 30 years, will encourage people who do not speak the truth to say what they want and nobody will discover them after they are long dead. So, there is need to make these findings public. I am sure hon. Members from either side of the House, who are aware that God is seeing what they are doing, will confidently stand up and say that they own 10,000 acres of land somewhere in Laikipia. Others will say the little they own, and people should be honest. I think that is the underlying principle in having declarations.

Mr. Temporary Deputy Speaker, Sir, when you look at the Bill that we are trying to pass today, you will find that, for instance, if there is misconduct on the part of a person and there is no provision on how that person should be dealt with, for instance, the office of the President--- We know very well the powers that the office of the President wields, and the powers that our Ministers have, and, I believe, if the law confers upon you such enormous powers and

responsibilities, then the same law should make you seriously liable for abuse of such office. If we do not curtail the likelihood of abuse of authority by the highest office, then basically we are trying to handle the common malpractice by the common person, yet we are leaving the office that is responsible for a lot of things, free to disregard what it has been disregarding.

Mr. Temporary Deputy Speaker, Sir, basically, what I am saying as I conclude, is that, the Attorney-General should sit down and reflect on this Bill. If the Attorney-General and the Government really want this Bill to be useful to Kenyans, then everybody must be made to comply with this law, and non-compliance must be punishable under some known law. If that does not happen, then what we are involved in is an academic exercise that will not serve this country well.

Thank you.

Mr. Muithia: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving the opportunity to contribute to this Bill.

First, I would like to thank the so-called foreign masters, who have been castigated in this House for pushing for this Bill to be debated in this House. Much as we have tried before to give checks and balances to the Government, the Government has flatly refused and denied Kenyans the right to speak their minds. They have not given us this opportunity because they have better brains but because they have the carrot and the stick. I would like them to hold on to their carrot and stick for a little while, after we have gone through this Bill, to see whether the Government is going to take it seriously and implement the law as will be passed.

Mr. Temporary Deputy Speaker, Sir, to understand the problems of corruption in this country, we need to understand the root cause of corruption. The root cause of corruption did not come to this country yesterday. It started immediately after Independence, when the President banned political opposition activities in this country and replaced them with Harambees which were supposed to give checks and balances of who is a good and a perfect leader and who is a useless leader.

Mr. Temporary Deputy Speaker, Sir, both the late President Kenyatta and the incumbent President are on record for standing on platforms and urging the electorate to refuse to give votes to those hon. Members who are non-conforming. Therefore, many Kenyans; Ministers, Assistant Ministers and even Backbenchers were turned into robots. Those who were not able to give out huge amounts in Harambees were relegated to the periphery.

Mr. Temporary Deputy Speaker, Sir, Clause 12, which deals with Harambees needs to be addressed fully. This is because all these hon. Members have been to their constituencies, they have contributed to Harambees; but their constituents have not come out of poverty. Many people fear talking about Harambees because they will be unpopular. I know that a good leader is not the one who gives money to his constituents; it is the leader who will stand in this Parliament formulate good laws and have them executed by the Executive for the benefit of the small man in the constituency. In the first Government, we were told by the then President that, "you can steal or you can plunder as long as you are not caught". That is what the first President of this country told us.

But the second Government told us that we were going to follow the foot steps of the first Government. The first Government told us to "*kula kidogo*"; the current one is telling us to "*kula yote*"! This is what is happening in this country! Therefore, everybody, wherever he or she is, if he or she is in the office; whenever an officer is appointed into the office, he buys a magnifying glass to go through the files to look for a place where he can plunder. This is the right time, and I think we have to be honest. The Government should be honest because we will give consent to the establishment of this body to bring some sanity back to Kenya. Earlier on, I saw one of the Ministers rise to defend his Ministry. When one of my constituents, who is a lady and is darker than Mr. Ekirapa and has a very bright child wanted him to go to the university to do medicine, he was denied the opportunity. When he could not be accepted at the university, the mother walked to the Kenya Medical Training College at Kenyatta Hospital, and because of her colour and white teeth, the officers who were there said: "You appear to have come from the correct community and, therefore, you have got a chance." What does that mean? It means that corruption has permeated into every institution in this country, and people have no integrity. I would like to say that integrity will not be brought back by a simple legislation. I would also like to say that integrity will be brought back to this country if we go deep into each individual's resources. In order for this country to believe in its leaders, this must start from this House. The President is the Head of all the hon. Members of Parliament and, therefore, we should start with the Office of the President. He should declare his assets and give in to audit. This is because, if we have good leaders in this House, all the other officers will follow suit.

I hope that by the time we are through with this Bill, all the Senior Magistrates and Judges will give way to scrutiny. I am not saying that they should be sacked, but they should give themselves up for scrutiny. Those who will be found to be corrupt and are not of good morals should go home. So, that is where we should start from.

Mr. Temporary Deputy Speaker, Sir, the appointment of Government officers above the position of the Under-Secretary should be vetted by the House that has cleansed itself. I would like to request my colleagues to be the

first example. We should show that we can give a different alternative. This is because the small men and women, poor as they are, have suffered in silence when the wealth of this country is plundered by the so-called leaders. This is a very good opportunity, and I do not want to go clause by clause. But the most important thing is that we must start from Parliament immediately.

When we go to the Civil Service, the civil servants should be adequately remunerated. Some of the corruption we come across is out of sheer necessity for survival. This is because the clerk, the sweeper, the messenger and even the professional who is employed by the Government has children who go to the same school with the children of the Managing Directors in this country. These poor civil servants take their children to the same hospitals where the cost of medicine is the same. When you pay a civil servant Kshs10,000 or less, what do you mean? He will have the right to look for extras in any manner. This is because you cannot allow yourself to die of hunger. Therefore, we must set minimum wages which can sustain the workers. That is the only way they can do the job they are supposed to do.

We have lost family values in this country. You have seen many families breaking up. These families do not break up because the husband hates the wife, or the wife is a loose woman. Many families break up because the husband goes home and cannot afford a bale of *unga*. Therefore, the wife thinks that this is a useless man and, therefore,

she can give herself for sex to get that extra penny. I implore the Government to look into the minimum wages. Let us give every officer minimum wages which can sustain them in order for them to reform.

Mr. Temporary Deputy Speaker, Sir, I would like to give other people an opportunity to contribute to this Bill. Therefore, I support the introduction of this Bill.

Thank you.

The Minister for Energy (Mr. Raila): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill. I am aware that time is precious today because we have some other important matters coming before this House. I, therefore, do not intend to take a very long time over what appears to be a very straightforward Bill.

This Bill is long overdue. It is a Bill which will help us to create some kind of discipline within our Public Service. It is now recognised that it is because of the introduction of the Ndegwa Commission Report that we have had the escalation of corruption within our Public Service. This Bill will help us to create a mechanism of trying to re-introduce discipline within our Public Service. It applies to several sections of our public service, including the Civil Service, the local authority and Members of Parliament.

I would like to say that this Bill is fairly comprehensive when it begins to talk about the guiding provisions and the performance of duties of civil servants in general. That is in Part III, Sections 6,7 and 8. Section 8(a) says:

"A public officer shall-

- (a) carry out his duties in a way that maintains public confidence in the integrity of his office;
- (b) treat the public and his fellow public officers with courtesy and respect;
- (c) to the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation."

Mr. Temporary Deputy Speaker, Sir, these are attributes which completely lack in our Civil Service today. This is because we have no standards of measuring service and as a result of this, we actually deal with nothing but mediocrity.

Mr. Temporary Deputy Speaker, Sir, Clause 10 (3) says:-

"A public officer may accept a gift given to him in his official capacity but, unless the gift is a souvenir or ornament that does not exceed the value prescribed by the regulations, such a gift shall be deemed to be a gift to the public officer's organisation."

This particular clause used to exist in the Code of Conduct of Public Servants, but it was repealed by the Ndegwa Commission Report. Therefore, what has happened to public servants is that, with impunity, they convert a gift that is given to them in their official duty to their personal use instead of taking it to their organisations. I think it is time now that we addressed the issue of one person, one job. The time has come for somebody to make a choice whether he wants to be a public servant or a busy businessman or businesswoman. You cannot be both and expect to conduct yourself in a manner that is not corrupt. There will be a conflict of interest, whether you like it or not. You cannot devote your time to the service of the public and, at the same time, you have time to do personal business. This is the issue that we must address now. Our civil servants must know that they are on notice; that very soon they will be required to choose whether they want to remain public servants or businessmen.

Mr. Temporary Deputy Speaker, Sir, this House is full of former civil servants, who served from 1972 to the time they retired and the Ndegwa Commission was in operation. Many of them used their positions then to get involved in businesses and enrich themselves. How else do you account for the civil servant who is a millionaire when

we know very well how much the salary of a civil servant is? In this House, there are hon. Members who are former civil servants who, these days, prefer to stand on the roof talking about corruption. They accuse the Government of being corrupt and dirty when we know that these very same people enriched themselves when they were civil servants. They used to award tenders to their companies and enrich themselves. We know these people. If you take the salaries and you assume that when they were working they were not eating, paying school fees, house rents and they never fell sick or bought dresses for their wives, we can quantify the net income in the years when they were serving. When we compare that income with the kind of wealth that they amassed during that period, there is a big gap. We know that the difference was acquired corruptly.

Mr. Temporary Deputy Speaker, Sir, this country needs some kind of cleansing. We want to know whether we will say that if wealth acquired corruptly when it was allowed by a law that was corrupt in itself should be retained. Alternatively, we could look at that kind of wealth also and say, although the Ndegwa Commission allowed civil servants to involve themselves in business, they used their positions to enrich themselves. Therefore, this kind of wealth should revert back to the public. Mr. Temporary Deputy Speaker, Sir, the Corruption Control Bill will be tabled in this House. That will be the time when we shall have an opportunity to open up those cupboards so that Kenyans can see the skeletons that exist in them. So, I want to put those hon. Members on notice that, when that time comes, we will open those cupboards and we will prove, with evidence, that some hon. Members in this House acquired their wealth corruptly. Therefore, they have no business or right to lecture Kenyans on the issue of corruption.

Mr. Temporary Deputy Speaker, Sir, this Bill will only achieve its objectives when we finally accompany it with the declaration that you must not only declare your wealth, but you must also make a declaration that you will do one job only. If you choose to be a public servant, then you remain a public servant and not a businessman or a businesswoman. If you choose to be in business, then be one and not a public servant.

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

Mr. Kibicho: Mr. Temporary Deputy Speaker, Sir, it is a fact that, in this country, some civil servants and people in authority, enriched themselves unfairly through either outright theft, corruption or misuse of office. With that background, it is, therefore, important that we should have a code of conduct for all civil servants.

However, this Bill does not provide that code of conduct. If you look at Clause 6 of this Bill, which many hon. Members have referred to, and which they thought prescribes those standards, it is sad that it does not provide the code of conduct of public servants. It says:-

"This Part sets out guiding provisions for the Codes of Conduct and Ethics established by Commissions under Part II."

Mr. Temporary Deputy Speaker, Sir, what will matter is the code of conduct which will be prescribed by the body as provided for under Section 3. But going by experience in this country, civil servants had their own code of conduct. The teachers have also their own code of conduct as well as the Judicial Service Commission. All this Bill is seeking to do is to ensure that those bodies embrace its guiding principles.

If you look at Clause 2 on definition, it says:- "'Commission' means a commission, committee or other body having function under this Act by virtue of Section 3."

If you look at Section 3, it does prescribe bodies which may establish code of conduct. If you look at the whole of Section 3, you do not see any code of conduct for the Presidency. If you look at the First Schedule, you will see that the President must also make a declaration. That declaration is hanging in the air. There is no guiding factor as to how the President will make a declaration.

Mr. Temporary Deputy Speaker, Sir, one of the setbacks in this country, since we got Independence, is the institution of the Presidency. Parliament did not sit down to design a code of conduct for this office. It evolves by itself. If there is one office which requires to be examined either by an Act of Parliament or by the Constitution, it is this office. If this office is not tackled properly, all that we are doing here will be in vain. This is because corrupt civil servants, or people who misuse offices as we would like to believe, do not involve themselves in corrupt dealings without the blessing of this office. Therefore, unless we address that office, we will not be able to achieve much. This is because this office is an important institution of running our affairs.

This Bill will not achieve what it purports to achieve, if we do not address this office. If the Attorney-General argues that the Office of the President is a constitutional office, and therefore, this Bill cannot prescribe how that office should be conducted, then we require a commitment by the Government that, when the new Constitution is put in place, the conduct of that office should be prescribed. On my part, I see nothing unconstitutional in prescribing the conduct of this office.

Mr. Temporary Deputy Speaker, Sir, even if we were to change this particular section, which purports to be merely giving guidelines, then we should put a provision in it, and say that: "Every code of conduct shall contain the following", so that it becomes mandatory. If what we are reading in Part III of this Bill, as the guiding provisions or the code of conduct and ethics, which people think are very good, are to come to fruition, then we must change the

wording of this Bill. We should state that, "every code of conduct shall contain the following mandatory provisions". Even if we were to do so without making penal provisions for those people who breach these provisions, the situation will still remain the same.

If you look at this Bill and address it from the legal point of view, you will conclude that this is a Bill which has been drafted with no intention of punishing those people who breach the code of conduct outlined in the Bill.

Mr. Temporary Deputy Speaker, Sir, this is a Bill which has been drafted with the intention of punishing only those who reveal information given to them.

Clause 29 of the Bill states as follows:-

(2) "No person shall disclose, allow access to, or acquire information collected under this Part and held by a commission, except in accordance with this Section.

(3) "No person shall disclose information that was disclosed or acquired in contravention of this Section if the person knows, or has reasonable grounds to believe, that the information was discussed or acquired in contravention of this Section".

"Information collected under this Part and held by a Commission may be disclosed to and accessed or acquired by-

- (a) authorised staff of the commission;
- (b) a person authorised by an order of the Judge of the High Court; or
- (c) the person who provided the information or his representative.

This information is going to be in the domain of very few people. It can only be accessed by a court order or with the authority of the person who gave it. Unless this information is allowed to be in the public domain, so that if, for example, an individual is a millionaire and we know that his or her salary was only Kshs10,000, that will be declared ill-gotten wealth and therefore, the person would not be worth the respect which he or she is demanding. We should come to a situation where crime does not pay. Alternatively, unless we say that anybody who fails to do A,B,C,D, shall have committed an offence, and then make penal provisions to back it, then this Bill is an exercise in futility.

Mr. Temporary Deputy Speaker, Sir, you will notice that this Bill is just a few pages bound together, and that those people who are not lawyers think that it is very beautiful, although it is really saying nothing. Part I of the Bill is merely a definition section, Part II provides for organizations which can make the code of conduct. What is important is the input of those organizations. Part III, which could have been the section prescribing, merely contains guiding provisions for the code of conduct and ethics. Part IV is about declaration of income, assets and liabilities.

The Minister for Vocational Training (Mr. Ruto): Mr. Temporary Deputy Speaker, Sir, now that we have discussed the Bill exhaustively, would it not be in order to call upon the Mover to reply?

Mr. Kibicho: Mr. Temporary Deputy Speaker, Sir, because there are deficiencies in this Bill, that is why the Minister does not want us to debate the Bill.

The Temporary Deputy Speaker (Dr. Anangwe): Order! I will give Mr. Kibicho the opportunity to finish, then I will put the Question.

Mr. Kibicho: Mr. Temporary Deputy Speaker, Sir, in conclusion, this country requires a code of conduct for the President. We should be allowed to prescribe penalties for people who breach the code of conduct. I will also go further and say that the wording in Part III of the Bill must be changed, so that instead of it being merely a guiding part, we prescribe and say that, every code of conduct shall have these mandatory provisions as provided by this section. These are very crucial sections which have been coated in a manner that has rendered them useless because most Kenyans are laymen.

With those few words, I beg to support.

The Temporary Deputy Speaker (Dr. Anangwe): Mr. Ruto rose on a point of order to call upon the Mover to reply. According to the Standing Orders, it is required that we put the Question.

Hon. Members: Which Standing Order?

The Temporary Deputy Speaker (Dr. Anangwe): That is obvious!

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

The Minister of State, Office of the President (Mr. J. Nyagah): Mr. Temporary Deputy Speaker, Sir, let me start by thanking the House for the support that it has given to this Bill. Every person who spoke supported this Bill. I would like to also thank them for the suggestions and the proposals that they have made.

Mr. Kihoro: On a point of order, Mr. Temporary Deputy Speaker, Sir. I stand to demand that this House continues to debate this Bill in accordance with the Standing Orders. There was no Standing Order cited as facilitating

the Mover to be called upon to reply. There are very many hon. Members who would like to contribute to it, considering that this is debate that started this afternoon, and we have not debated it even for two hours.

The Temporary Deputy Speaker (Dr. Anangwe): Order! Since we had already put the Question, we cannot go into the reverse gear. The situation stands!

*[The Temporary Deputy Speaker
(Dr. Anangwe) left the Chair]
[Mr. Speaker took the Chair]*

The Minister of State, Office of the President (Mr. J. Nyagah): Mr. Temporary Deputy Speaker, Sir, I would like to thank hon. Members who have contributed to this Bill. Many suggestions that have been made will be taken into account and incorporated in the Bill, because they are good and well-meaning. One thing we have noticed is that, the Corruption Control Bill went through the Second Reading yesterday, and it took into account a lot of comments that have been made by hon. Members today. For example, there was the question of training Kenyans on the effects of corruption. That Bill clearly says that one of the responsibilities of the Commission will be to educate Kenyans on the effects of corruption.

Mr. Speaker, Sir, I just want to highlight that many points that have been made on the Corruption Control Bill were discussed yesterday and, quite conveniently, they also relate to what we have been discussing today.

For example, the suggestion made by hon. Members on the additions to the Schedule are acceptable and will be taken into account. For example, several Members said that in the co-operative movement, the people with real power are the management committees and that they should be included. We will do that. We also think it would make sense, as suggested, to include headteachers or principals in the Schedule, so that they too can be accountable. That is because they control substantial public resources.

Mr. Speaker, Sir, on the issue of penalties, I think there was some confusion. Many existing Commissions have codes of conduct. What we are asking them through this Bill is to strengthen, prepare and have them gazetted, so that they can now become law and effective. The responsibility of those commissions will be to discipline the staff. It already happens, but they will be strengthened. Their job will be to discipline staff through the regulations that are going to be established. They will be able to take action internally. That applies to the commissions and parastatals. But there will be cases that will require to be sent to other authorities.

In many sections, we have referred to appropriate and relevant authorities. That will be in cases where the commissions' systems or regulations are not able to take action. For example, they can send them to the Attorney-General or the Anti-Corruption Police Unit. That is clearly taken care of in the Bill that is in front of us.

Mr. Speaker, Sir, to summarise, there is internal discipline through the regulations that are going to be set up. For example, if they have to recover money and the person has no money, they will go to the police or the Attorney-General. That applies to cases that cannot be handled internally. I hope that is clear. Elsewhere, the reference to penalties is everywhere. There are fines of Kshs5 million and five-year imprisonment. I think what was not clear was that, in fact, the commissions do have the power, within their regulations, to discipline.

Mr. Speaker, Sir, finally, I would like to thank you and everybody who participated in the debate. With those few remarks, I beg to move.

(Question put and agreed to)

COMMUNICATION FROM THE CHAIR
MEMBERS CANNOT MOVE AMENDMENTS TO ACTS
NOT INCLUDED IN THE SCHEDULE OF BILL

Mr. Speaker: Order, hon. Members! Before we get to the next Order, I would like to bring to your attention certain issues relating to the amendments to the Statute Law (Miscellaneous Amendments) Bill. In the course of the week, certain Members sent to my office, intended amendments to the Statute Law (Miscellaneous Amendments) Bill, to Acts which are not included as part of the Schedule to be amended. They brought amendments to totally new Acts. I have rejected those amendments on the basis that, those are not amendments to the Statute Law (Miscellaneous Amendments) Bill. It is an introduction of a new Bill altogether. Those amendments that I have allowed are only those amendments relating to Acts which are already listed in the Schedule.

Those hon. Members interested to follow the history of that kind of ruling will find a very interesting exchange and ruling by the Speaker of the House on 6th May, 1971, which I do reinstate. I just wish to add one or two other things to the ruling of 1971; which is as follows:-

If you wish to prefer an amendment to an Act which is not listed in that Schedule forming part of the Bill to be amended, in effect, what you are trying to do is to introduce a Bill, if you are a private Member, without the authority of the House!

Secondly, you would also be bringing to the House, a Bill to be considered without having been published, and also without the requisite 14 days. For those reasons, those Members who will find that the amendments they have preferred on various Acts not listed on the Schedule, will find that is the reason why it was done so.

I would also wish to make the following observation; directed to the Government and specifically to the Attorney-General. Miscellaneous amendments are usually brought to the House to make minor amendments to the Statute Law and not for major amendments. I will expect in the future that we do not have, as a Statute Law (Miscellaneous Amendments) Bill, a huge volume containing as it were, myriads of amendments to myriads of statutes, which the House may not have the time and the attention to attend to. I hope the Attorney-General, if he deems it necessary to amend certain laws by minor amendments, he can introduce to the House, miscellaneous amendments as and when he deems it fit. I hope the Attorney-General will not wait again for two or three years and produce a thick booklet of miscellaneous amendments. That can actually have drastic effects on hon. Members because it is not possible to go through all of them and through all those Acts to ensure that we are doing the right thing. I hope the Attorney-General does understand this. I am saying that in the interest of the House and of all of us knowing that we are doing the right thing. I hope it is clear.

The Attorney-General (Mr. Wako): Thank you, Mr. Speaker, Sir. I think your ruling is very clear. I just wanted hon. Members to know that we need to reorganise our business in such a way as was the practice every year before we had a Statute Law (Miscellaneous Amendments) Bill. The problem with this one and that is why it is bulky is that it has lapsed three times and each time it lapses, in the following year, more amendments are added. So, I agree with you that, at least, every year we must have this Statute Law (Miscellaneous Amendments) Bill. I would just urge the House that it somehow will be organised that the Bill is actually debated and enacted in that year. So, this year we have a culmination of three years' amendments.

Mr. Speaker: Very well. Thank you. Finally again, like I am now receiving an amendment from an hon. Member which I cannot circulate. It is against the Standing Orders and I will proceed to reject it. This amendment is from Mr. Anyona and I have rejected it.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

(Clause 2 agreed to)

Clause 3

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

THAT, the Bill be amended in Clause 3 (1) by deleting the proposed paragraph (a) and substituting therefor the following new paragraph -

(a) section 12, 13(1)(d) and 81 of the Advocates Act; and

(Question of the amendment proposed)

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

*(Question, that the words to be inserted
in place thereof be inserted, put and agreed to)
(Clause 3 as amended agreed to)*

The Temporary Deputy Chairman (Mr. Musila): Order! Hon. Members, I would like to explain how we are going to go about the Schedule. We are going to deal with each law until we finish. For example, when we come to the Schedule on the written law which like the National Assembly Remuneration Act (Cap.5), we will deal with it, and the amendments related to it, until we finish with all of them before we go to the next one. So, if we are dealing with the Attorney-General, for example, we will finish with him first. If there is a Member who has proposed some amendments to that particular Act, we will move to it until we exhaust it before we proceed to the next written law.

Mr. Temporary Deputy Chairman, Sir, I would like to request hon. Members to be very clear, attentive and look at this Bill very carefully so that at the end we will be together.

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Chairman, Sir. If I want to raise something that was not particularly mentioned in the Statute Law (Miscellaneous Amendments) Bill and I feel it should have been included there, am I in order to do that? Is there anything wrong with that?

The Temporary Deputy Chairman (Mr. Musila): No, Mr. Mwenje. You should have followed what Mr. Speaker said. For example, let me put it very simply. The proposed amendments are being made to an Act that had already gone through the First Reading. All its contents are contained in this Bill. So, if it is not contained in this Bill, it means that you are introducing something new that cannot be allowed. So, all amendments must be on Acts which we have already dealt with.

The Minister for Agriculture (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir. For the avoidance of doubt, I will need your guidance because I also understood that Mr. Speaker said that a Member cannot raise amendments to a statute which is not listed in the Schedules.

Where, in fact, there is a provision there and we want to make a further amendment, which has been omitted or you want to enhance the penalty, would it be in order for me to object? I think there should be no objection and, indeed, this is how we proceeded even on the Sugar Bill where all those amendments that had caused problems were raised in this House in this manner.

The Temporary Deputy Chairman (Mr. Musila): Dr. Godana, but the practice is that the amendments should be circulated so that hon. Members would have them. This is, indeed, why we delayed even starting with these amendments.

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Chairman, Sir. If it is something that you feel was possibly omitted and you have it here, you should read it on the Floor so that it is accepted. Is there anything wrong with that? I do not know if Mr. Speaker made any ruling on any particular issue. If it is not here, the best thing to do is to read it on the Floor of the House.

The Temporary Deputy Chairman (Mr. Musila): Indeed, we have had an amendment by Mr. Anyona and it has been rejected on the basis that it came well after the Order Paper had come out. Therefore, we will proceed in the manner that I have stated. I now want to move on to the Schedule; the National Assembly Remuneration Act, Cap.5.

*Schedule Relating to the National
Assembly Remuneration Act*

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Schedule to the Bill be amended -

(a) by deleting the amendments specified in relation to the National Assembly Remuneration Act and substituting therefor the following amendments -

The National Assembly Remuneration Act, (Cap.5) therefor the	First Schedule	Delete the expression "£9,720" appearing against the entry entitled "The Speaker" and expression "£15,000".	substitute
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Delete the expression "£5,400" appearing in the third column against the entry entitled "The Deputy Speaker" and substitute therefor the expression of "£10,000."

Delete the expression "£4,680" appearing in the third column entitled "Member of the Chairmen's Panel" and substitute therefor the expression "£7,500".

Insert the following new entry:-

Member of the Parliamentary Service	Attendance allowance of £250 for each Member
--	---

Commission £375 for Vice-Chairman and
£500 for the Chairman

Delete the expression "twenty eight"
appearing in the second column in subparagraph (ii) of the proviso
under item A and substitute therefor the expression "fifty-two".

(Question of the amendment proposed)

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I just have two issues that I would like the Attorney-General to clarify. The first one is the principle of the ruling by the late Humphrey Slade in 1971 about the kind of amendments to do to the Statute Law (Miscellaneous Amendments) Bill; the principle that has governed proposed the amendments that many of us had brought and they had to be dropped because they were not amendments to the proposals already in the Bill. Mr. Temporary Deputy Chairman, Sir, could the Attorney-General show us that this amendment is an amendment of the provisions already in the Bill, or it is an introduction of another amendment to the law? Two, could he tell us why this matter cannot be dealt with together with other remuneration considerations currently under a tribunal?

(Applause)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, if you look at page 516, we had proposed amendments to the National Assembly Remuneration Act, but they were confined to the Members of the Chairman's Panel. As I indicated to this august House, this is the third time the Statute Law (Miscellaneous Amendments) Bill has been republished. The figures that were mentioned in the Bill were submitted more than two years ago. Therefore, I did receive proposals from the National Assembly to upgrade those figures to the ones suggested.

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I do not think the Attorney-General has addressed the issue. These are substantial amendments, and even if you look at the figures themselves, as far as I am concerned, they are frightening. In any case, he has not even explained what they are.

Mr. Temporary Deputy Chairman, Sir, of course, the Speaker, the Deputy Speaker and the Members of Parliament are included in the current tribunal deliberations. Can these amendments not wait? What is the hurry about this? He has not even told us what they are. This figure of £15,000 is equivalent to Kshs300,000!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, the Statute Law (Miscellaneous Amendments) Bill contains miscellaneous amendments which have been submitted from the various Ministries, Departments and institutions. As far as this is concerned, the first submission was made more than two years ago, and that is reflected in the original Bill.

As I stated, it confined itself to the Members of the Chairman's Panel. Because it was two years ago that they submitted those figures, had we debated this Bill at that time, even before the Speaker's Committee was formed; then those are the figures that may have been enacted as at that time.

Mr. Temporary Deputy Chairman, Sir, I believe the National Assembly felt that in the two-year lapse, these figures that were in the original Bill needed to be upgraded and also have to take care of the Speaker, the Deputy Speaker and Members of the Parliamentary Service Commission. So, they are not my proposals. They are proposals that came from the institution.

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, if you notice, this amendment is only affecting Members of the Parliamentary Service Commission. I wonder whether we had created the Parliamentary Service Commission for the Commissioners to award themselves these hefty allowances before they considered the Membership that had elected them. I thought that this would wait for the Remuneration Tribunal to submit its report before they are brought to the Floor so that they are considered along with others. Otherwise, I do not even understand why they did not consider sitting allowance for Members of Parliament in the various committees, and also sitting allowance for hon. Members in the House who are paid sitting allowance of Kshs3,000 for a whole a month. I do not find this amendment appropriate at this time.

(Applause)

Ms. Karua: Thank you, Mr. Temporary Deputy Chairman, Sir. It may be that when the Attorney-General first proposed these amendments, they were appropriate. Now, they are not, for the simple reason that there is a

tribunal that is reviewing the remuneration of Members of Parliament, and the proposal here refers to Members of this House.

I would suggest that we drop this proposal and await the outcome of the tribunal which is not very far off.

(Applause)

Mr. Wamae: Mr. Temporary Deputy Chairman, Sir, in the original published Bill, the Attorney-General did not introduce any changes to the remuneration for the Speaker and the Deputy Speaker. So, these are new items and he should not introduce new amendments. We are not introducing new items either and we are not going to introduce, neither should he introduce new amendments which were not in the original Bill.

Mr. Oloo-Aringo: Mr. Temporary Deputy Chairman, Sir, I also support the view of my colleagues. It is true that Members of the Parliamentary Service Commission have not been receiving any form of allowances. But it is only proper that we do it in a comprehensive review which the tribunal is undertaking.

Hon. Members: No rigging! Withdraw it!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I am exercising a bit of discretion here. First of all, to answer Mr. Wamae, the fact that we had already made proposals in the original Bill, to make alterations regarding Members of the Chairman's Panel, I think these are within the ambit because it is part of the National Assembly. But I did not want to say anything, but in view of what the Vice-Chairman of the Parliamentary Service Commission has said; because I had assumed that these proposals came from them to me to include them here,

Mr. Temporary Deputy Chairman, Sir, I am now in a dilemma as to how to guide this House. Maybe, the best thing is to defer this amendment for further consultations. I withdraw the amendment.

The Temporary Deputy Chairman (Mr. Musila): Then Mr. Attorney-General, do you now withdraw up to page 53, that is the Second Schedule?

The Attorney-General (Mr. Wako): No, I think the best thing is just to withdraw the entire part "a". Let it be considered afresh.

The Temporary Deputy Chairman (Mr. Musila): Mr. Attorney-General, if you look at page two it is under the same National Assembly Remuneration Act.

The Attorney-General (Mr. Wako): I am withdrawing the entire part "a" which I read when I was moving the amendment.

The Temporary Deputy Chairman (Mr. Musila): You did not read it.

The Attorney-General (Wako): No, I mean up to part "a". We are now coming to part "b" on which I will propose amendments.

The Temporary Deputy Chairman (Mr. Musila): But Mr. Attorney-General, that is part "a" and it comes up to the second page.

Hon. Members: No!

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Mr. Chairman, as we proceed, let us talk about clauses and not pages. If we talk about pages we will confuse ourselves and we will not know what we have rejected or accepted. The Attorney-General was dealing with part "a" and not pages!

The Temporary Deputy Chairman (Mr. Musila): Exactly. Clause A goes up to the next page. Therefore, the Attorney-General has withdrawn--- Proceed to the Second Schedule.

The Attorney-General (Mr. Wako): Part "b" is on magistrates.

The Temporary Deputy Chairman (Mr. Musila): No, we have not reached part "b". Very well. I think we all understand one another now. Part "b", of course, starts after "a". Therefore, the Attorney-General has withdrawn part "a" including mileage, that is the Second Schedule.

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I was under the impression that---

An hon. Member: No!

Mr. Obwocha: Please, could you defend me from that?

The Temporary Deputy Chairman (Mr. Musila): Order! Mr. Obwocha, go on!

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I was under the impression that the Attorney-General has withdrawn "a" as it stands on the First Schedule, but it seems you were going to discuss part "b" on the Second Schedule separately as it stands on page 153.

The Temporary Deputy Chairman (Mr. Musila): No we are dealing with the National Assembly Remuneration Act.

Mr. Obwocha: No, there is the First Schedule and then the Second Schedule on page 153. I am talking about the First Schedule, part "a".

The Temporary Deputy Chairman (Mr. Musila): No. The proposed amendment reads: "Delete the proposed paragraph (a) and substitute therefor, the following new paragraph". That will take us to the end of part "a".

Mr. Attorney-General, could you clarify what you are withdrawing? If necessary, could you read what you are withdrawing?

The Attorney-General (Mr. Wako): I am withdrawing the entirety of "a" which I read from the beginning, including the phrase "52", in the Second Schedule.

Mr. Angwenyi: No!

The Temporary Deputy Chairman (Mr. Musila): Order! Mr. Angwenyi, the Attorney-General is the one who brought the amendment and he has withdrawn it. So, be it.

(Amendment withdrawn)

(Loud consultations)

Order! Hon. Members! I want you to understand. This is an amendment that has been withdrawn, but we still remain with the Act as it is. That is exactly what I am saying.

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I stand to seek clarification.

The Temporary Deputy Chairman (Mr. Musila): Let me clarify, Mr. Obwocha. If you find the necessity for clarification then I will give you a chance. What I am saying is that I will put the Question that the amendment remains as it is here relating to the National Assembly Remuneration Act because the Attorney-General has withdrawn the amendment he had proposed. Now Mr. Obwocha, do you need any clarification?

Mr. Angwenyi: Mr. Temporary Deputy Chairman, what we are addressing at this juncture is the First Schedule. The Second Schedule is where the 52 weeks will be introduced.

The Temporary Deputy Chairman (Mr. Musila): Mr. Angwenyi, I have asked the Attorney-General to read what he has withdrawn. Are you suggesting that he should not withdraw what he wants to withdraw? He has withdrawn the amendment!

Mr. Donde: Could the Attorney-General take us back to where we were so that we know how to proceed?

The Temporary Deputy Chairman (Mr. Musila): No! The Attorney-General has withdrawn the amendment and I am putting the Question.

Hon. Members: No!

Mr. Donde: Mr. Temporary Deputy Chairman, Sir, I would like to request the Attorney-General to---

The Temporary Deputy Chairman (Mr. Musila): Order! The Attorney-General has withdrawn the amendment and we are not going back to it. That is the ruling of the Chair. Let us proceed. Hon. Members, the original proposed amendment relating to the National Assembly Remuneration Act will remain as it is.

*(Schedule relating to National Assembly
Remuneration Act agreed to)*

*Schedule relating to National Assembly
and Presidential Elections Act*

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, I would like you to cool down. We have a lot of work to do. Take it easy.

We shall now consider the National Assembly and Presidential Elections Act. Hon. Members, we have a proposal for the amendment of the National Assembly and Presidential Elections Act by Mr. Murungi. We are referring to page 155 of the Order Paper and page 519 of the Bill.

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in the Schedule as follows:-

- (a) in the item relating to the National Assembly and Presidential Elections Act, by inserting the words "birth certificate" immediately after the words "identify card" appearing in the proposed subsection 4A(2);
- (b) in the item relating to the Law of Contract Act, by deleting the proposed sub-paragraph 3(a)(ii);
- (c) in the item relating to the Agriculture Act, by deleting the proposed sub-section 192(IA) and substituting therefor the following new sub-section:-
(IA) Eighty per cent of all monies collected as cess under Sub-section (1) shall be paid directly to the farmers through their primary producers' organisations and shall be used in

maintaining roads and other services of the Council related to the crops in respect of which it is levied, and the remaining twenty per cent shall be credited to the general account of the Council.

- (d) in the item relating to the Constitutional Offices Remuneration Act, by deleting the expressions "Band A2" and "Band A3" appearing in the proposed Schedule against the words "Judge of Appeal" and "Puisne Judge" respectively, and substituting therefor the expression "Band A1" and "Band A2" respectively.

Mr. Temporary Deputy Chairman, Sir, Clause 4A(2) partly reads as follows:-

"Any citizen of Kenya who has attained the age of majority as evidenced by either a national identity card or a Kenyan passport and whose name is not in principal register shall be registered as an elector---"

I propose to amend this clause in this manner, so that there can be three documents by which one can prove his age, namely, a birth certificate, a Kenyan passport and a national identity card. I believe that the ideal document for proving your age is your birth certificate. I would like a birth certificate to be accepted for the purpose of issuing somebody with an elector's card.

(Question of the amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I consulted the Electoral Commission of Kenya on this matter. Its opinion is that we should not accept this amendment, because the birth certificate itself can be a subject of gross abuse. This idea has not worked elsewhere before. Secondly, one cannot know whether the person holding a birth certificate is the real owner of the document. Apparently, in many countries where the birth certificate has been accepted on its own as proof of age, it has caused confusion. So, the ECK does not support this amendment.

The Minister of State, Office of the President (Mr. ole Ntimama): Mr. Temporary Deputy Chairman, Sir, I would like to raise the issue of a doctor's fees being charged in some of our areas for the assessment of the age of would-be identity card applicants. My friend, the Attorney-General, knows the law does not provide for this fee. Would-be applicants are charged up to Kshs350, so that their ages can be assessed. They are also asked to produce baptismal certificates, most of whom do not have them because they probably have never been part of any faith at all. I am raising the issue of the doctor's fees, so that the Attorney-General can ensure that ages of applicants for identity cards are determined by chiefs and elders.

Mr. Ochilo-Ayacko: On a point of order, Mr. Temporary Deputy Chairman, Sir, I have always thought that Mr. ole Ntimama is a Government Minister. Is he in order to depart from the rule on collective responsibility?

An hon. Member: But he is only giving an opinion!

The Temporary Deputy Chairman (Mr. Musila): Mr. ole Ntimama is quite in order. Please, proceed!

The Minister of State, Office of the President (Mr. ole Ntimama): Mr. Temporary Deputy Chairman, Sir, I am raising this issue because it is very difficult for pastoralists, who are already receiving famine relief food supplies, to raise Kshs350 for the assessment of their ages. Sometimes a mother of three children is also asked to pay Kshs350 for her age to be assessed. That is definitely strange. When a woman has three children she is expected to be at least above 18 years old. I am raising this issue so that the doctor's fees that identity card applicants are being charged, especially in Narok District, are completely waived.

The Temporary Deputy Chairman (Mr. Musila): Mr. ole Ntimama, that is fine, but I thought that we were talking about the amendment proposed by Mr. Murungi.

Could we hear Mr. Mwenje?

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, I rise to support Mr. Murungi's proposed amendment. Everybody knows that it has become very difficult for our youths to acquire identity cards. We have been complaining about this problem but, up to now, some of our youths have not been issued with identity cards. Birth certificates are literally issued at the Office of the Attorney-General. So, he cannot now stand here and tell us that birth certificates can be misused since they are issued by his own office. All that he needs to do is put some machinery in place to ensure that they are not misused, and ensure that every Kenyan gets the document. Once we adopt this amendment, the question of us complaining here that the youth are not being issued with identity cards, or that there is a delay in issuing them with identity cards, will be a thing of the past. In fact, what the Chairman of the ECK said about this proposed amendment was that if Parliament approves it, he will not have a problem. The question is that birth certificates are not recognised by the law as documents which can be used for the purpose of registration of people as voters. So, we should support this amendment, so that every Kenyan can be registered as a voter using a birth certificate.

The Temporary Deputy Chairman (Mr. Musila): Mr. Mwenje, your point has been noted. Could you proceed, Dr. Ali?

Dr. Ali: Mr. Temporary Deputy Chairman, Sir, I rise to oppose the proposed amendment. In the North Eastern Province, we already have enough problems. Our people are not being issued with identity cards or birth certificates.

Dr. Murungaru: On a point of information, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Musila): Order, Dr. Ali! What is your point of information, Dr. Murungaru?

Dr. Murungaru: Mr. Temporary Deputy Chairman, Sir, the Attorney-General does not even seem to be aware that it is clearly noted on the birth certificate that a birth certificate is not proof of nationality. A *Mzungu* woman can come to the country and give birth. Her child will be issued with a birth certificate, but that does not mean that, that child is a Kenyan.

The Temporary Deputy Chairman (Mr. Musila): Dr. Ali, could you continue?

Dr. Ali: Mr. Temporary Deputy Chairman, Sir, I was saying that in the North Eastern Province we already have a problem with issuance of birth certificates. Most of our people do not have identity cards. Introducing the use of birth certificates will ensure that we do not vote anywhere in this country. So, the amendment should be opposed. Let us ensure that every Kenyan is issued with an identity card before we talk about birth certificates.

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, the Attorney-General said that he got advice from the ECK that we should not use birth certificates. The ECK should not make decisions for this House. This House should consider, on its own, whether we should have an additional document for getting an elector's card, because identity cards are becoming impossible to get because of the delays involved in getting them. The Attorney-General further said that the ECK told him that it is not aware of any country where birth certificates have been used for voting purposes.

Mr. Temporary Deputy Chairman, Sir, I was one of the Commonwealth observers in the elections of Sierra Leone in 1996, and we used birth certificates. We used birth certificates to get electors cards in that country. So, why all this opposition? If they have not travelled, they should go and see what is happening in the other countries.

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Chairman, Sir, both the national ID card and birth certificate are issued by the Office of the President. I can confirm here that there are enough security measures which have been placed in the production of an ID card. But there are not such enough security measures as yet that have been put in place in order to produce a birth certificate. But more important is what Dr. Murungaru has just said; that, in order to register as a voter in Kenya, you have to be a citizen. Proof of citizenship is the ID card. The birth certificate is not such a proof. So, this will contravene our laws.

I oppose the amendment.

The Minister for Energy (Mr. Raila): Mr. Temporary Deputy Chairman, Sir, the other additional point that I wanted to add to what Mr. ole Sunkuli has just said is the issue of facial identification. Whereas on passports and ID cards you have a photograph, we do not have a photograph on the birth certificates. This can be subject to a lot of abuse.

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

Mr. Wamunyinyi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in the Schedule as follows:-

(a) in the item relating to the National Assembly and Presidential Elections Act -

(i) by deleting the definition of "register of electors abroad" appearing in the proposed amendment to section 2;

(ii) by deleting the words "the registers of electors abroad" appearing in paragraph (c) of subsection (1) of the proposed section 4.

Mr. Temporary Deputy Chairman, Sir, the reason for bringing these amendments is that we have obviously tested situations, particularly when we are dealing with elections, where there have been a lot of rigging. Voting by proxy - by post - by the people out of the country is very likely to be abused. I do not know if any provisions had been put in place to ensure that there is proper verification of those voters out of the country. During the last General Elections, one of the hon. Members here was declared the winner after the ballot boxes - when they were attempting to cross some river - sunk into the water after the canoe capsized. Then, he was declared the winner.

I am trying to say that one of the hon. Members---

The Temporary Deputy Chairman (Mr. Musila): It is enough!

Mr. Wamunyinyi: Mr. Temporary Deputy Chairman, Sir, we are not ready for these kind of people to vote from abroad. I propose that the sections be deleted.

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

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! You have to follow the procedures. I have to propose the Question so that I give it to you.

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I support the proposed amendments.

(Applause)

In the wisdom of this House, after the 1974 elections, voting by post was abolished after it was heavily abused. To say that voters registers be opened all over the globe is likely to fall into the same problems that we had with voting by post. A very good example is that people would know how many people have registered here locally. But we are unlikely to know who is registering in Siberia or in any other foreign country. This is just opening the floodgates. One would be told - after he or she has won - that he or she has to wait because some other votes are coming. He or she would told:" People have been voting for you from Libya, Siberia and such like places."

I support the proposed amendments.

Mr. Munyao: Mr. Temporary Deputy Chairman, Sir, this is the easiest amendment which all of us have to accept. If this kind of privilege was abused in America - such an advanced country - when they had to wait for such votes to come, what will happen if this floodgate is opened in Kenya? For example, in Mwingi South, in the middle of counting, one would be told that votes cast locally are between 15,000 and 20,000, but one has to wait for other votes from abroad. Then, one would get 500 votes from Europe, Australia and Malawi to fill in the required number of votes of 20,000. I am sure the KANU hawks know these kind of things. We need to get support in order to refuse these amendments.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I think there is the principle that every Kenyan has a right to vote.

Hon. Members: They will come here!

The Minister for Trade and Industry (Mr. Biwott): We should, therefore, not deny those Kenyans the opportunity to vote. Yet, their counterparts, in terms of other nationalities who live in Kenya, are given that opportunity. I think the fear is, as has been said by the Secretary-General of DP, that of rigging. As far as we are concerned in KANU, we do not have any rigging.

The Minister for Trade and Industry (Mr. Biwott): But if that is a reflection of what the Opposition will do, then, I think it might be unfounded. So, I think we should give those Kenyans hope. We should be thinking in terms of promoting Kenyans in diaspora, who will help develop this country.

Mr. Wanjala: On a point of order, Mr. Temporary Deputy Chairman, Sir. You know very well that even the Member who has just been on the Floor received more votes, which were more than the registered voters in his constituency at one time during the general election. How about if we allowed people to vote from outside the country?

The Minister for Trade and Industry (Mr. Biwott): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Member in order to impute improper motives on me, and to be reckless enough to say something which is not true? I challenge him to table evidence to that effect. Let him repeat that outside this House and I will take him to court!

(Several hon. Members stood up in their places)

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! Let us have some decorum in the House. Mr. Wanjala was on the Floor before Mr. Biwott stood on a point of order. Have you finished Mr. Wanjala?

Mr. Wanjala: Mr. Temporary Deputy Chairman, Sir, I beg to support the amendment.

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Mr. Temporary Deputy Chairman, Sir, I would like to give a practical experience on this matter. I stood for elections in 1974 and, up to 1974,

the law allowed Kenyans to vote by post. Those constituents who were not there to vote at the time of elections would post their votes, and indicate whom they wanted to vote for. The Returning Officer counted all the votes cast during that election in the constituency and announced the winner. If the Returning Officer wanted the person who had less votes to win, he would have come to the counting hall and said: "We have received votes by post, and the candidate who had 10,000 votes has received votes from Nairobi, Mombasa, Kisumu and---"

The Temporary Deputy Chairman (Mr. Musila): I thought you were giving us your experience. Is that your experience?

The Assistant Minister for Education, Science and Technology (Mr. Karauri): That is what I am doing! So, the person who had 10,000 votes would receive another 10,000 votes by post, hence he will be declared the winner with 20,000 votes. The person who had 12,000 votes from the constituency, loses that election. What happened to me in 1974 is that the incumbent Member of Parliament got 6,000 votes and I got 9,000 votes. The Returning Officer then brought another 6,000 votes by post for the incumbent Member of Parliament. So, I lost. You can see that the person who is popular in the constituency may not get a single vote from outside the country. I advise hon. Members that, even if they have children abroad, they should get votes from people who are here. Let them be satisfied that other people voted well.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, the Electoral Commission of Kenya, in bringing this particular proposal, meant well. Kenyans have got the right to vote, irrespective of where they reside in the world. But since we have charged the Electoral Commission of Kenya to bring a comprehensive law on all these issues related to elections, we can accept the proposed amendment by hon. Wamunyinyi so that the Electoral Commission of Kenya can come up with a comprehensive law which will take into account, interests of Kenyans abroad.

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

(Schedule relating to National Assembly and Presidential Elections Act as amended agreed to)

The Temporary Deputy Chairman (Mr. Musila): Let us now move to Mr. Gatabaki's amendment.

Mr. Gatabaki: Mr. Temporary Deputy Chairman, Sir, I have done considerable consultations and I wish to withdraw the amendment.

(Amendment withdrawn)

Schedule relating to the Magistrates Courts Act, Cap. 10

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

THAT, in the amendments specified in the Magistrate's Courts Act, be amended by deleting the proviso to the proposed subsection 5(1) and substituting therefor the following new proviso-

Provided that the Chief Justice may by notice, in the Gazette, increase the limit of jurisdiction of:-

- (i) a Chief Magistrate to a sum not exceeding three million shillings;
- (ii) a senior principal magistrate to a sum not exceeding two million shillings
- (iii) a principal magistrate to a sum not exceeding one million shillings;
- (iv) a senior resident magistrate to a sum not exceeding eight hundred thousand shillings;
- (v) a resident magistrate to a sum not exceeding five hundred thousand shillings.

Mr. Temporary Deputy Chairman, Sir, we had given amendments which were lower than the amounts that we are proposing now, to increase the jurisdiction of the magistracy. As you all know, the High Court is really inundated with many civil cases of various amounts and they cannot be dealt with at the resident magistrates level because of the limited financial jurisdiction that the magistrates currently have. So, about two years ago, the Judicial Service Commission, after careful study, felt that by increasing the amount as proposed in the original Bill would suffice. But two years later, we have felt that the amounts be increased to this level to reduce the backlog of the cases pending in the High Court. It is felt that the magistrates right now, with the value of the money the way it is, are capable of handling sums of this nature. I must also say that this amendment was moved by the shadow Attorney-General who sought to increase the jurisdiction to very high sums. Those sums have been considered by the Judiciary and it has come to the figures stated.

(Question of the amendment proposed)

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, I want to support the proposed amendment and say that it relates to the civil jurisdiction of the courts. All it means is that Kenyans with claims of up to Kshs500,000 can go to a Resident Magistrate. Similarly, Kenyans with claims of up to Kshs800,000 can go to a Senior Resident Magistrate. This means also that Kenyans with claims of Kshs3 million should go to the High Court. The amendment is timely in view of inflation and the fact that our money has really lost value. Small claims may amount to over Kshs1 million and all of them cannot be taken to the High Court.

With those few remarks, I beg to support.

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, please be brief.

Mr. Ochilo-Ayacko: Mr. Temporary Deputy Chairman, Sir, I would like to support this amendment by the Attorney-General. I would also like him to also consider remunerating the Magistrates properly and also improving their working conditions, so that they can dispense justice more effectively and efficiently.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, I support the proposed amendment, but I would like to make a comment for the benefit of the Attorney-General. Even this jurisdiction is truly not enough. Magistrates should have powers to try civil claims worth even more than this amount of money, for the simple reason that the Magistrate whom we are limiting to claims of Kshs3 million, if you are arrested tomorrow and charged with the offence of robbery with violence, will try you and send you to the gallows. Are we equating the life of a Kenyan to Kshs3 million?

Mr. Temporary Deputy Chairman, Sir, if we trust him to try a suspect for a capital offence and sentence him to the gallows, why can we not allow him to hear a civil claim worth Kshs6 million or even Kshs10 million? So, the Attorney-General should, in fact, consider increasing that jurisdiction.

Mr. Murungi: On a point of order, Mr. Temporary Deputy Chairman, Sir. I had proposed amendments to this section to increase the jurisdiction of the Chief Magistrate to Kshs10 million, and that of the Resident Magistrate to Kshs1 million. I do not understand where my proposed amendments were lost in the process.

The Temporary Deputy Chairman (Mr. Musila): Mr. Murungi, your proposed amendments were not lost. You are at liberty to propose an amendment to a proposed amendment. So, if you wish, you are free to do so, but you should do so to only this amendment.

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, I am saying that I drafted some amendments and forwarded them to the Clerk of the National Assembly. I expected them to be on the Supplementary Order Paper. Was there a deal between the Clerk of the National Assembly and the Attorney-General to have my amendments not put on the Supplementary Order Paper?

The Temporary Deputy Chairman (Mr. Musila): Mr. Murungi, the information I have is that since you were intending to amend what the Attorney-General had already proposed to amend--- In fact, I had been briefed earlier that you are entitled to the opportunity now if you wish, to move an amendment before I put the Question. So, if you wish to move any amendment to this amendment, you can do it.

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, I am saying that I was entitled, as an hon. Member of this House, to have my amendments published on the Supplementary Order Paper and they should not have been treated as casually as they have.

I am making this point for the record, and for the time being, I will agree with the amendments proposed by the Attorney-General. But I think hon. Members should have a right to have their amendments put on the Order Paper.

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

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

*(Schedule relating to the Magistrates Courts
Act as amended agreed to)*

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, we now move on to the Advocates Act.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, the Schedule to the Bill be amended in the amendments specified in relation to the Advocates Act, by inserting the following provisions in proper sequence-

s.81(1) Insert the following new paragraphs immediately after paragraph (e) -

- (f) the establishment of a compensation fund for the benefit of clients;
- (g) indemnity for clients against loss or damage arising from claims in respect of any civil liability incurred by an advocate or his employee, or from breach of trust by the advocate or his employee;
- (h) continuing professional education for all advocates for all advocates practising in Kenya.

Re-number paragraph (f) as paragraph (I).

Mr. Temporary Deputy Chairman, Sir, if this amendment is passed, it will empower the Council of the Law Society of Kenya (LSK) to, with the approval of the Chief Justice, make rules with regard to those issues that have been specified. It is not automatic that as soon as we enact this amendment, rules will be there, but this will empower the Council of the LSK to make them.

Mr. Temporary Deputy Chairman, Sir, this has been debated by the LSK and arose out of a series of meetings that have been held in Nairobi, Kisumu, Mombasa and the Rift Valley Province, with a view to strengthening, as it were, the image of the legal profession in this country by having those funds in place so that members of the public are protected from that advocate who may fall below the standard required.

(Question of the amendment proposed)

Mr. Muite: Mr. Temporary Deputy Chairman Sir, I would like to support the proposed amendment wholly. I want to suggest to the Attorney-General that in the same manner in which he has permitted lawyers to regulate themselves, which is correct, he should do the same to the media to enable it regulate itself in a similar manner.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I am ready, able and willing at any time, to help the media to bring a Bill to this House to regulate itself.

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

(Schedule relating to the Advocates Act as amended agreed to)

The Temporary Deputy Chairman (Mr. Musila): I now draw the attention of hon. Members to page 159 of the Order Paper.

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Schedule of the Bill be amended by deleting Sections 48, 71 and 77, and 85(1) of the Advocates Act, Cap.16.

What I mean by this proposed amendment is that, when an advocate goes for taxation and he is granted his figures in taxation, what is happening is that the advocate can now go and even start attaching his client without---

The Minister for Agriculture (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir. Would I be in order to ask Mr. Mwenje to declare his interest in this matter?

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, I have no interest in this matter at all! I am not an advocate! I will soon be bringing an amendment to the Advocates Act, but I am not an advocate. I may have been a victim of court cases, but that is certainly not an interest. I am even citing that particular case. If I had not gone to the High Court, and there was that ruling that--- First of all, there should have been a case filed by the advocate, then I would have lost more than Kshs1.1 million. That is why it is important for an advocate to first file a case, giving a chance to his client to know that this advocate is demanding so much from the client. This is because if you do not have the file, then you do not even know what is happening. Somebody could go straight to your account and use orders and you might find---

That is why I feel that this amendment is necessary and I hope the Attorney-General understands what I am trying to get at in this proposed amendment.

(Question of the amendment proposed)

Mr. Maitha: Mr. Temporary Deputy Chairman, Sir, may I support my friend here, hon. Mwenje.

I have witnessed a case where my constituent was awarded Kshs2.5 million by the court, and a magistrate just walked to a company and said: "You just pay me Kshs1 million because the other person does not need the money." When that client knew of the matter, he could not do anything; he could not even go and complain to the High Court because that advocate was a greedy man and he took Kshs1 million.

The Temporary Deputy Chairman (Mr. Musila): What is your debate?

Mr. Maitha: Mr. Temporary Deputy Chairman, Sir, let me support Mr. Mwenje on this amendment.

The Temporary Deputy Chairman (Mr. Musila): Mr. Attorney-General, do you have anything to say before I put a Question?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I just want to say that I oppose the amendment. In fact, the amendment is in the interest of Messrs Mwenje and Maitha.

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

Schedule relating to The Law of Contract

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, we can now proceed to the Law of Contract, Page 532.

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, these are thieves!

The Temporary Deputy Chairman (Mr. Musila): Order! Order, Mr. Mwenje! We are in the National Assembly. Let us proceed to Mr. Murungi's proposed amendment on the Law of Contract Act, Cap.23.

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in the Schedule as follows:-

by deleting the following sub-paragraph

3(a) the contract in the sale of land;

(iii) incorporates all terms which the parties have expressly agreed upon in one document.

Mr. Temporary Deputy Chairman, Sir, this provision is contrary to the basic law of contracts. All that is required for a valid contract is that, there will be "offer" and "acceptance". The offer can be contained in one document, letter, and acceptance in another document.

So, in a country like ours, we are going to invalidate a lot of contracts by requiring that the offer and the acceptance be contained in the same document. So, I do not see any sense in this, and I would urge the House to delete this particular sub-paragraph.

(Question of the amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, because of the reasons given by my Shadow Attorney-General, I support the amendment.

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

*(Schedule relating to The Law of Contract
(Cap.23) as amended agreed to)*

*(Schedule relating to the Bills of
Exchange Act (Cap.27) agreed to)*

*(Schedule relating to Cheques Act
(Cap.35) agreed to)*

*(Schedule relating to the Extradition
(Contiguous and Foreign Countries
Act (Cap.76) agreed to)*

*(Schedule relating to the Police Act
(Cap.84) agreed to)*

*(Schedule relating to the College
of Arms (Cap.98) agreed to)*

*(Schedule relating to the Registration
of Persons Act (Cap.107) agreed to)*

Schedule relating to The Books and Newspapers Act (Cap.111)

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in the Schedule as follows:-

(a) In the item relating to the Books and Newspapers Act-

(i) by deleting the proposed amendment to section 9.

Mr. Temporary Deputy Chairman, Sir, we may have problems with publishers of newspapers, who may have breached the law as proposed in earlier sections. But it will be harsh and against our responsibility as legislators to criminalise vendors who have no reasonable way of knowing whether the publisher of a newspaper, for example, has executed the necessary bond or adhered to the law. His is to go, collect the newspapers and sell them. To punish the vendor by ordering him to pay Kshs20,000 because somebody who published the newspaper that he is vending forgot to pay the necessary bond, for example--- That is the main import of the proposed amendment number one.

(ii) by deleting the expression

"one million" appearing in the proposed amendment to section 11(1) and substituting therefor the expression "one hundred thousand";

Mr. Temporary Deputy Chairman, Sir, we can understand the outrage that is caused by something called the "gutter Press". This is an irritant to all of us, but there are two problems to this. The first one is that we should not wield a mallet to kill a flea. There will be good initiatives, particularly in rural areas; to have initiatives of publishing which we might destroy simply because we are irritated by the so-called gutter Press. The gutter Press has a criminal phenomenon which is fuelled by we, the politicians, who want to besmirch each other. We cannot afford to destroy future initiatives of people without too much money to enter the print media purely for the purpose of wanting to destroy the gutter Press. There should be better methods of doing this.

(iii) by deleting all the words immediately after the words "five years" appearing in paragraph (b) of the proposed amendment to section 14.

Mr. Temporary Deputy Chairman, Sir, the import of this is that many major media houses are major employers or destinations of peoples' savings as investment in shares. There can be recklessness or oversight by current managers which can cause a mistake by publishing something contrary to the law. It is okay for the law to target the people who have either been irresponsible, reckless or did not behave as reasonable gentlemen. But to have the harsh provision, that you can shut down the Nation Media Group because of irresponsible conduct by a sub-editor at that time, is overwhelming punishment and is explicitly against the public interest.

We have some problems and there is no doubt about this. We have some problems with some conduct of the media, but the way to deal with this is to encourage, as much as possible, a hurried production of self-regulation, as the Attorney-General suggested earlier on in his contribution.

(Question of the amendment proposed)

Mr. Mutiso: Mr. Temporary Deputy Speaker, Sir, much as I would like to agree with Dr. Kituyi's sentiments, it is high time that this country took a very bold step and stamped out "yellow" journalism in this country.

(Applause)

For the last few years, this country has witnessed the gutter Press lower the confidence of people in this country to the extent that it has affected this economy greatly. I would like to propose that stiffer penalties should be passed. We are not against the standards of professionalism in journalism and objective reporting, but we are supposed to stamp out "yellow" journalism in this country. I propose this amendment to the amendment proposed by Dr. Kituyi that item (a)(i)---

The Temporary Deputy Chairman (Mr. Musila): Order, Mr. Mutiso! You cannot do that! That is

completely un-procedural. Let me put it to you that you cannot introduce an amendment to this one because you have not yet given us any notice!

Mr. Mutiso: Mr. Temporary Deputy Chairman, Sir, I oppose this amendment.

Mr. Kihoro: Temporary Deputy Chairman, I do support the amendment that has been moved very ably by Dr. Kituyi. The media, like the lawyers and other professions in this country, should regulate itself. We should not over burden the Attorney-General with the mantle of regulating the media. A long time ago, we used to publish our own newspapers in the toilets and bedrooms. But in the last ten years we have had an opportunity of publishing what we believe in. If somebody is offended by the gutter Press, he should stop reading it and believing in it. Let everybody publish in this country what he believes in. There is no other way. Surely, it is not a job for the Attorney-General to regulate the media because he has a lot of work to do.

The Temporary Deputy Chairman (Mr. Musila): Order! Mr. Kihoro, I want you to limit your contribution because we are in the Committee Stage.

Mr. Kihoro: Mr. Temporary Deputy Chairman, Sir, this Bill has been pending for the last two years. We have not seen any good reason to regulate the media. There has never been urgency to bring in this amendment. For two years we have lived without them since they were proposed and we have never seen the damage that has been caused.

Members are still alive. They have not been killed by the gutter Press.

The Minister for Information and Tourism (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, as the Minister responsible for Information, I am aware of the amount of concern generated by this Bill. In fact, even this afternoon, some scribes accosted me at the Mbagathi District Hospital and they wanted me to comment on this issue. But I told them the matter is before the House and I cannot comment on it. The truth of the matter is that it is the intention of the Government to target specifically the gutter Press, commonly referred to as the Yellow Press. There is no intention, on the part of the Government, to use the words "muzzling of the Press," for this is a matter that is contained in our own Constitution. For every right you enjoy, there must be some responsibility. We have held wide consultations with the media owners led by Mr. Kiboro. In fact, the other day, they came to see me and the Attorney-General. We fully support their attempt to self-regulate. The only thing we said was that they should be backed by the relevant legislation.

Therefore, I do oppose this amendment by Dr. Kituyi.

The Temporary Deputy Chairman (Mr. Musila): Very well. I have received a proposed amendment to this amendment by Ms. Karua. Ms. Karua, please, move your amendment to this amendment.

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, I am supporting the amendment subject to an amendment to the proposed amendment to Clause 14(b) which is "iii" on Dr. Kituyi's amendment. I would like to suggest an alternative to imprisoning a person who has failed to comply with the law for five years, which is too draconian because already, the person will be barred from printing newspapers. Therefore, the jail term should not exceed one year.

The Temporary Deputy Chairman (Mr. Musila): Order! The amendment proposed by Dr. Kituyi is a five-year jail term.

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, Dr. Kituyi is proposing to delete all the words appearing after five years. I agree with that, but also I propose a further amendment to that amendment that we substitute the word "one" in place of "five".

The Temporary Deputy Chairman (Mr. Musila): I do not see it.

Ms. Karua: It is on Clause 14(b).

The Temporary Deputy Chairman (Mr. Musila): Fine. I see it on the Order Paper, but where is it on the Bill?

Ms. Karua: Mr. Temporary Deputy Chairman, I propose that we insert the word "one" in place of the word "five." It is not true to say that all the publishers who are not in the main publishing houses are not doing a good job. Some of them research, give facts and note matters that are not in the public domain.

I think we should balance our interests as citizens, to our privacy, with the need to inform the public. I think that the proposed amendment will be good. The media can be given time to regulate itself and I hope the Attorney-General will bring the appropriate Bill. We shall be going back on democratic gains, if we criminalise business activities like vending newspapers. Those are innocent people who do not know whether the publishers have complied with the law; neither do they have any other means of livelihood in this era of joblessness.

I beg to support the amendment by Dr. Kituyi, subject to the amendment I have proposed.

The Temporary Deputy Chairman (Mr. Musila): Hon. Member, I want us to look at what we are doing because Dr. Kituyi's proposal is to delete all the words immediately after five years. Ms. Karua says with insert the word "one" instead of the word "five."

(Question of the amendment,

to the amendment, proposed)

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, let me begin by echoing what Dr. Kituyi said---

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Chairman, Sir. Would I be in order to ask Mr. Biwott to declare his interest in this matter?

The Temporary Deputy Chairman (Mr. Musila): Order! Mr. Biwott, continue!

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I have no interest whatsoever in this matter, but I would like to see a Press which is responsible.

Let me echo what Dr. Kituyi said. The problem in the media may be caused by reckless individuals and not media houses. But the most important aspect of this issue is to ask ourselves what is the role of the Press in this country. Its role is to inform members of the public. I think the media houses have every right to do so and shape opinion, if necessary. But I do not think that they should use this freedom to damage others. So, it is necessary to have a recourse where if somebody deliberately causes injury, you are paid. I think he should be paid handsomely in order to repair the grievous damage done to his personality and reputation. I think everybody has a right, and the end of somebody's right is where the rights of the others begin, and that time it becomes their obligation. I am one of those who have gone to court and have been awarded for damages. But it is not the money that I went to court for, but for remedy for malicious damage. After giving the Press the correct information, why should anybody disregard the truth and continue to persist on something which he cannot sustain in court? When they are penalised to pay for the damages, they then come and cry foul. The Press or the publishers should accept responsibility for their own actions, because nobody puts them in trouble, they are the ones who put themselves in trouble.

With those few remarks, I oppose the amendment. If anything, we should enhance the penalty.

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Chairman, Sir. Would I be in order if I asked Mr. Biwott to tell us how to mint money from the Press, so that we can use it for our campaigns?

The Temporary Deputy Chairman (Mr. Musila): Order! Hon. Members, let us be clear on how we are going to proceed. We are going to dispose of Ms. Karua's amendment to the amendment first, and then we move on to the further amendment.

Dr. Kituyi: On a point of order, Mr. Temporary Deputy Chairman, Sir. With all due respect, the three amendments have very different targets. The opposition to the amendment has been about destroying the gutter Press, but Item (iii) has nothing to do with the gutter Press. So, the reasons that may block the amendment of item (i) may not make sense to the amendment on item (iii). So, I would like to propose that you dispose of the items one by one. You should only introduce the amendment by Ms. Karua when you come to Item (iii).

The Temporary Deputy Chairman (Mr. Musila): I agree with what you are saying; when it comes to putting Questions on your amendments, I will go Item by item. But let us first of all deal with Ms. Karua's amendment, because it is a very minor one which relates to substituting five years with one year. In any case, that does not even interfere with Dr. Kituyi's amendment.

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

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

(Clause 14(b) as amended agreed to)

The Temporary Deputy Chairman (Mr. Musila): I still have an amendment to Dr. Kituyi's amendment, by Mr. Mkalla.

Mr. Mkalla: Mr. Temporary Deputy Chairman, Sir, in order to instil discipline and professionalism in the media, I am suggesting an amendment to the proposed amendment by Dr. Kituyi, to delete item a(i).

The Temporary Deputy Chairman (Mr. Musila): Order, Mr. Mkalla! You do not have to suggest that it be deleted, because it will have to be put to the vote, and if it is approved, it will be okay, but if it is not, it will almost be as good as having been deleted.

Proceed!

Mr. Mkalla: Mr. Temporary Deputy Chairman, Sir, I beg to move an amendment to item a(ii) to replace "Kshs100,000" with "Kshs5 million".

Dr. Kituyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. According to our Standing Orders, an amendment to a Motion cannot negate the spirit and the urging of the original Motion. He cannot reverse to increase a penalty on which my Motion is urging a reduction of. That is not an amendment to my amendment.

The Temporary Deputy Chairman (Mr. Musila): It is quite in order!

Mr. Mkalla: Mr. Temporary Deputy Chairman, Sir, I moved that amendment because we would like to instil discipline and make sure there is professionalism in the media. We have no problem with anybody who reports good or bad news objectively. The punishment should, therefore, be raised from Kshs100,000 to Kshs5 million.

Dr. Kituyi: On a point of order, Mr. Temporary Deputy Chairman, Sir. Standing Order No.48(2) states that:- "No amendment shall be permitted if, in the opinion of Mr. Speaker, it will present a direct negative of the Question proposed".

He can, therefore, not negate my amendment by moving an amendment to my amendment.

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! I would like to refer to the Standing Order that Dr. Kituyi has just drawn the Chair's attention to. That is Standing Order No.48(2) which reads as follows:-

"No amendment shall be submitted if, in the opinion of Mr. Speaker, it will represent a direct negative of the Question proposed".

Now, in the opinion of the Chair, this proposal by Mr. Mkalla negates the Question proposed and, therefore, I do not accept it.

The Assistant Minister, Office of the President (Mr. Samoei): On a point of order, Mr. Temporary Deputy Chairman, Sir. I think, by allowing Mr. Mkalla to reach the stage he had reached by moving the amendment, it was with your knowledge. By you allowing Mr. Mkalla to move the amendment, you had already formed an opinion that it was in order. Are you, therefore, changing your mind?

The Temporary Deputy Chairman (Mr. Musila): Mr. Samoei, in the first place, I have not even proposed the Question, therefore, the amendment is not before the House for debate. So, it has not yet been accepted. Your argument is, therefore, not valid.

Mr. Maore: Mr. Temporary Deputy Chairman, Sir, just for only one minute, I would wish to express my view on the amendment by Dr. Kituyi. I am also abhorring the amount of violence that is meted out by the media on innocent characters, through character-assassination or libel. However, it is not wise, at this time and age, to go back to the dark ages of censoring the media; of trying to criminalise freedom of expression and opinion, when there are avenues of expressing it. It is not fair to burn the house in order to get rid of rats. It is not fair to throw away the baby with the bath water. I want to plead with the Attorney-General to guide the other side, so that it is not obsessed with politics to fight these amendments and see the sense in them. They should also encourage the efforts by the Attorney-General to initiate dialogue with the Media Owners Association, so that these amendments can go through. That way, we can have a free country in the 21st Century, rather than going back to the 1989 era of banning newspapers.

The Temporary Deputy Chairman (Mr. Musila): Very well, Mr. Maore! You have made your point. I will now put the Question. As we agreed earlier, I will deal with these amendments one by one.

The Minister for Tourism and Information (Mr. Musyoka): On a point of order, Mr. Temporary Deputy Chairman, Sir. When Dr. Kituyi moved this amendment, he did it as one. I think it is in order to put the Question together.

The Temporary Deputy Chairman (Mr. Musila): Order! I had already said that I will deal with them one by one. In any case, they relate to different sections.

The Minister of State, Office of the President (Mr. ole Sunkuli): On a point of order, Mr. Temporary Deputy Chairman, Sir. The decision you are going to make has a lot of repercussions in future. Is it not important for you to ask yourself, and the House, how many amendments Dr. Kituyi has moved? The answer is that he has moved one amendment. It is important that, because he moved one amendment, you will only put one Question, so that we can vote once!

The Temporary Deputy Chairman (Mr. Musila): No! If you look at the Order Paper, it says:- "Notice has been received of intention to move the following amendment." Now, the first amendment relates to Section 9. The second amendment relates to Section 11(i). The third amendment relates to Section 14. Therefore, I think it is fair - I do not see anything wrong - to go section by section!

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

(Several hon. Members stood up in their places)

Hon. Members: Division! Division!

The Temporary Deputy Chairman (Mr. Musila): We have the requisite number for Division and I, therefore, allow it. Ring the Division Bell!

(The Division Bell was rung)

DIVISION

(Question put and House divided)

(Question negatived by votes 71 to 36)

AYES: Messrs. Donde, Gatabaki, Gitonga, Kariuki, Ms. Karua, Messrs. Katuku, Keriri, Khamasi, Kibicho, Kihara, Kihoro, Kitonga, Dr. Kituyi, Messrs. Kiunjuri, Kuria, Maitha, Maore, Mbitiru, Muihia, Murathe, Dr. Murungaru, Messrs. Murungi, Munyao, Mwangi P.K., Mwenje, Mwiraria, Ndwiga, Njakwe, Njuki, Nyang'wara, Omingo, Opore, Parpai, Shitanda, Thirikwa and Wamae.

Tellers of the Ayes: Messrs. E.T. Morogo and Mwenje.

NOES: Messrs. Achola, Angwenyi, Arap-Kirui, Dr. Awiti, Messrs. Ayoki, Biwott, Chanzu, Choge, Ekirapa, Dr. Godana, Messrs. Haji, Hashim, Kajembe, Kajwang, Kamolleh, Kamotho, Keah, Kenyatta, Khaniri, Kiangoi, Col. Kiluta, Messrs. Kimeto, Kitur, Kochalle, Kofa, Kombe, Kosgey, Lengees, Leting, Lomada, Marrirmoi, Dr. Masakhalia, Messrs. Maundu, Mkalla, E.T. Morogo, W.C. Morogo, Moroto, Mudavadi, Mukangu, Munyasia, Musila, Musyoka, Mutiso, Muturi, Ms. Mwachai, Messrs. Ndambuki, Ngala, Ng'eny, Nyenze, Obure, Ochilo-Ayacko, Ojode, Oloo-Aringo, Dr. Omamo, Messrs. Omamba, Prof. Ongeru, Messrs. Osundwa, Poghio, Raila, Ruto, Samoei, Sang, Sankori, Sasura, Shambaro, Shidiye, Sirma, Sumbeiywo, Sunkuli, Dr. Wako and Dr. Wamukoya.

Tellers of the Noes: Messrs. Muihia and Mutiso.

ABSENCES: Two

Mr. Khamasi: On a point of order, Mr. Temporary Deputy Chairman, Sir. As you were conducting the business of the House, hon. Achola came in improperly dressed and did vote. He was hiding in the Lobby behind here. Now that you have read out the results, are you satisfied that the results should stand after a stranger has voted?

The Temporary Deputy Chairman (Mr. Musila): Order! Order! Where is Mr. Achola? I will have to check whether Mr. Achola actually voted. Where is Mr. Achola? Is he here?

Hon. Members: He was seated here! He is hiding somewhere!

The Temporary Deputy Chairman (Mr. Musila): Order! Is Mr. Achola here?

Hon. Members: No!

The Temporary Deputy Chairman (Mr. Musila): Order! Indeed, Mr. Achola did vote. Therefore, we will invalidate his vote. His vote is not valid. It is shown here that he had voted "No". Therefore, we will reduce the number of Noes to 70. The Chair rules as follows in relation to this matter: Obviously, Mr. Achola has not behaved properly by voting and yet we cannot see him in the House at the moment. Therefore, the matter will be reported to the Speaker and will be dealt with tomorrow.

(Question negatived by 70 votes to 36)

Therefore, we will proceed to the second amendment. By the way I know the Chair had ruled that we could deal with the amendments one by one, but in view of time, could the House allow that we vote on the two together now?

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, while I appreciate that there is need for us to move quickly, there is just a little problem. Provision No.2 is a matter of opinion; whether we are saying we are publishing a book or not. Provision No.3 in the Bill as presented by the Attorney-General, contravenes Section 84 of the Constitution of Kenya; that any statutory provision which contravenes the right to property as provided for in Section 75 of the Constitution should not be acceptable for legislation. You cannot combine a non-constitutional matter, which is No.3, and a matter of opinion which is Section 2. If we want to vote unconstitutionally, let us deal with No.3 separately.

The Minister for Information and Tourism (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I do not think you are in a position to make a ruling on whether the matter that is before the House is unconstitutional or not. In any event, Dr. Kituyi is quoting two sections of the Constitution. Could we leave that interpretation to the courts and dispose of the business before the House?

Hon. Members: No!

An hon. Member: You are supposed to be a lawyer!

The Temporary Deputy Chairman (Mr. Musila): Order! Hon. Members, the Chair wanted to gauge the mood of the House. I know that I had previously said we should deal with them one by one. But now, in view of the time, could we deal with the two together?

Hon. Members: No!

The Temporary Deputy Chairman (Mr. Musila): I think the mood is that we deal with them together.

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

Hon. Members: Division!

The Temporary Deputy Chairman (Mr. Musila): Order! You are 18, you are not 20!

Ms. Karua: No, we are 21!

The Temporary Deputy Chairman (Mr. Musila): Order! You can stand, but when I say you are not 20, then you are not 20!

Hon. Members: No!

END MM

Ms. Karua: We have raised the required number to support a Division!

The Temporary Deputy Chairman (Mr. Musila): Order! Order! Ms. Karua, I saw you literally try to lift up Mr. Wamae!

Hon. Members: We have raised the required number!

The Temporary Deputy Chairman (Mr. Musila): Order! Order! I will have you counted right away since you are insisting it.

(A count of the standing hon. Members was taken)

The Temporary Deputy Chairman (Mr. Musila): Very well. You have now raised the number. So, you can have the Division. Could the Division Bell be rung?

(The Division Bell was rang)

DIVISION

(Question put and the House divided)

(Question negated by 65 votes to 33)

Ayes: Messrs. Donde, Gatabaki, Gitonga, Kariuki, Ms. Karua; Messrs. Kathangu, Katuku, Khamasi, Kibicho, Kihara, Kihoro, Kitonga, Dr. Kituyi, Messrs. Kiunjuri, Kuria, Maore, Mbitiru, Muihia, Munyao, Murathe, Dr. Murungaru, Messrs. Murungi, P.K. Mwangi, Mwenje, Ndwiga, Njakwe, Obwocha, Omingo, Parpai, Shitanda, Thirikwa and Wamae

Tellers of the Ayes: Messrs. E.T. Morogo and Mwenje

Noes: Dr. Awiti, Messrs. Biwott, Chanzu, Choge, Ekirapa, Dr. Godana, Messrs. Haji, Hashim, Kajembe, Kajwang', Kamolleh, Kamotho, Keah, Kenyatta, Khaniri, Kiangoi, Col. Kiluta, Messrs. Kimeto, Kiminza, Kirui, Kitur, Kochalle, Kofa, Kosgey, Lengees, Leting, Lomada, Marrirmoi, Dr. Masakhalia, Messrs. Maundu, Mkalla, E.T. Morogo, W.C. Morogo, Mudavadi, Mukangu, Munyasia, Musila, Musyoka, Mutiso, Muturi, Ms. Mwachai, Messrs. Ndambuki, Ngala, Ng'eny, J. Nyagah, Nyenze, Obure, Ochilo-Ayacko, Ojode, Omamba, Dr. Omamo, Prof. Onger, Messrs. Osundwa, Poghismo, Raila, Ruto, Samoei, Sang, Sankori, Sasura, Shaaban, Shambaro, Shidiye, Sirma, Sumbeiywo, ole Sunkuli, Dr. Wako and Dr. Wamukoya

Tellers of the Noes: Messrs. Mutiso and Muihia.

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, in accordance with the Standing Order No.107, I beg to move that the Committee of the whole House do report progress in the consideration of The Statute Law (Miscellaneous Amendments) Bill and seek leave to sit again.

(Question proposed)

(Question put and agreed to)

[The House resumed]

[Mr. Speaker in the Chair]

PROGRESS REPORTED

THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL

Mr. Musila: Mr. Speaker, Sir, I beg to report progress on the consideration of the Statute Law (Miscellaneous Amendments) Bill, and seek leave to sit again.

(Question proposed)

(Question put and agreed to)

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

Mr. Speaker: Well, you have only four Members demanding a Division. So, you did not make the requisite numbers! The House sought leave, it has been granted, and we still have five minutes left. Do you want more time?

Hon. Members: Yes!

Mr. Speaker: Do you want half an hour or one hour?

Hon. Members: One hour!

*(Question, that the Sitting of the House
be extended by one hour, put and agreed to)*

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL

*(Resumption of consideration interrupted
in the Committee at 9.20 p.m.)*

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! We have only one hour to finish the business! So, we have to move faster!

(Schedule relating to the Firearms Act agreed to)

*(Schedule relating to the Service Commissions Act,
Cap. 185, Agreed to)*

Schedule to Parliamentary Pensions Act, Cap. 196

The Temporary Deputy Chairman (Mr. Musila): I have proposed amendments by the Attorney-General, which are on page 154 of the Supplementary Order Paper.

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

THAT, the Schedule to the Bill be amended-

(d) in amendments specified in relation to Parliamentary Pensions Act, by inserting the following provisions in proper sequence-

s.3(1)delete the word "commuted mileage allowance" from the definition of "pensionable emoluments".

s.7(1) insert the word "two times" immediately after the word "refund";

Delete the words "ten years" and substitute therefor the words "one term of Parliament".

s.9(a) Delete the word "fifty" and substitute therefor the expression "forty five".

(e)by inserting the following amendments immediately after the amendments relating to the

Parliamentary Pensions Act:- s.1 Delete the expression "1st July, 1994" and substitute therefor the expression "1st January, 001".

Mr. Temporary Deputy Chairman, Sir, these are the amendments that were proposed by the Parliamentary Pensions Committee, after consultations with the hon. Members. I understand that there is a consensus on the issue. A definition of the pensions emoluments excludes now the commuted mileage allowance. The amendment to Section 7(1) provides for a refund of two times the amount of contributions accumulated with interest to hon. Members who serve one term or less. Section 8 has modalities on payment of pension to hon. Members whose term of service is more than one term, but less than ten years. The earlier proposal to reduce the interest on refund, from 15 per cent to 10 per cent, was rejected by hon. Members at a meeting held on 20th April, 2002. In other words, there had been two proposals, and this other proposal has been rejected and consequently, what is reflected here is what was accepted.

There is an amendment to Section 9(a) to reflect 45 years as the qualifying age. There is also an amendment to the Parliamentary Pensions (Amendment) Act 1999 to change the commencement date to 1st January, 2001. Although the operation of the Act should have commenced on 1st January 2000, the Director of Pensions explained that the hon. Members actually started contributing at the enhanced rates on 1st January, 2001.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Musila): Mr. Obwocha, and please be very brief!

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I just want to get a clarification from the Attorney-General. Please, do not frighten me!

I want to get three clarifications. The Attorney-General has proposed, in Section 9(a), to delete the word "fifty" and substitute therefor the expression "forty-five". I thought that we had changed this to "forty" and, therefore, I would have expected the Attorney-General to delete the word "forty" and substitute therefor the expression "forty-five". Instead he has brought back the provision of the old Bill. I need a clarification on this issue because the word "fifty" was in the original Act whose commencement date was 1st July, 1994. Then, we amended this provision to "forty" and there was an outcry. So, I would have expected him to amend it from 40 years to 45 years. That is the first clarification I am seeking.

I am also seeking the second clarification on the 10 years and "two terms". Why is the Attorney-General substituting 10 years rather than saying two terms? This is because you can be here for two terms but not finish the ten years. Those of us who were here from 1993 to 1997, I believe, we actually went home in October. So, we did not actually finish exactly five years; we were short by two months.

The last clarification is with regard to the effective dates. The Act that we amended was effective from 1st January, 2000. The Attorney-General is now saying that it should be effective from 1st January, 2001. So, what happens during that one year? If my arithmetic is correct, I believe, we started contributing from 1st January, 2000. So, really, the enhanced deductions were from 1st January, 2000! So, I would like the Attorney-General to give that clarification.

The Temporary Deputy Chairman (Mr. Musila): I think the Attorney-General is not ready. Mr. Attorney-General, continue taking notes while I give this chance to Mr. Khamasi.

Mr. Khamasi, the Floor is yours!

Mr. Khamasi: Thank you, Mr. Temporary Deputy Chairman, Sir. Whereas I agree with the Attorney-General, I would like him to clarify, on the first amendment, about deleting the words "commuted mileage allowance". This has got a very significant impact on the sort of pension an hon. Member is likely to go home with. We are going back to Kshs10,000 per month, which is a salary that a Member of Parliament gets. If you calculate his pension, even after serving in this House for two terms, the sort of pension an hon. Member takes home is very little. We want clarification on what replaces this amount. This actually means that we are going back to where a Member of Parliament will be earning only about Kshs10,000 a month, as pension after serving two terms in Parliament. What replaces that?

Mr. Munyao: Mr. Temporary Deputy Chairman, Sir, I am only seeking a quick and very simple clarification on the Pensions Act, because those of us, like Mr. Kamotho and other hon. Members who have served in this House even for the third term, there was a requirement that if you go out, you could opt to pay whatever was staggering to complete the two terms. Now, some of us have paid for all these terms we have been here. What will happen? Will it affect the two terms or what would be the position because we have already paid out to form a continuous serving period?

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, I want to object to the entire amendment because the agreement that the Attorney-General is purporting was made was not made by the whole Membership of this House and, probably, we need to scrutinise those proposals in greater detail before they become law.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, as I said, these are the proposals that came from the Parliamentary Pensions Committee, after very extensive consultations and meetings. I am aware

that members of that Committee met a number of times; they met with our actuaries, and went into these proposals in great detail. They even called hon. Members for a consultative meeting, at which, I am told, and I was given, that these are the amendments that were agreed upon. These are the amendments that are placed very accurately, according to what I was given. So, I find it very difficult even to amend what the Committee itself has said was agreed on.

Mr. Temporary Deputy Chairman, Sir, with regard to the question of two terms, hon. Members should not look into the amendments. The question of two terms is already in the Act itself. If you look at page 544 of the Bill, you will see that, whereas the current law was on one term, it is now two terms of Parliament; and that is what was agreed on, and it is reflected in the Bill. The "two times" referred here is the amount of money, I believe, an hon. Member is supposed to get. It is an amendment to Section 7(1) of the Bill. It is not "terms" but "times". So, it is an amendment to Section 7(1) to provide for a refund of two times the amount of the contribution. So, let that not confuse hon. Members with the terms which are already reflected.

Mr. Temporary Deputy Chairman, Sir, on the issue of 50 years, I think this was an error. The correct figure should be 45 years. We should delete the word "forty" and substitute therefor the expression "forty-five". The ultimate figure that we are now agreeing on is 45 years.

Mr. Munyao: Mr. Temporary Deputy Chairman, Sir, I talked about the requirement at that time, that those who might have been here for two five-year terms but did not continue have to pay back all the money that was there now. Some of us have paid. Does that one affect the interpretation?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, it does not appear to affect the interpretation the way I see it because, under Section 8 the modalities of payment of pensions to hon. Members whose terms of service is more than one term but less than ten years is provided for.

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, the Attorney-General has not explained the date. It should be 1st January, 2001 rather than 1st January, 2000.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I thought I had explained that at the very beginning, and this must have been verified by the Committee. I am sure it was verified in the sense that although it had been stated that the date of operation was 1st January, 2001, they began contributing at the enhanced rate on 1st January, 2001. I am quite sure that must have been verified by the Committee before they met to change.

The Assistant Minister for Transport and Communications (Mr. Keah): Mr. Temporary Deputy Chairman, Sir, briefly, could we get a clarification as to when the refund will be made?

The Temporary Deputy Chairman (Mr. Musila): Order! I thought you rose to clarify the issue. I thought you were going to assist him!

Hon. Members: That is very important!

The Temporary Deputy Chairman (Mr. Musila): It is important and I am not saying it is not!

The Assistant Minister for Transport and Communication (Mr. Keah): Mr. Temporary Deputy Chairman, Sir, I may have been misunderstood. I merely wanted to find out from the Attorney-General, once we pass this amendment, when would the refund be made? That is the clarification I sought from the Attorney-General.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, the hon. Member knows the duty of the Attorney-General, which is to be the principal legal Government advisor. We are here discussing amendments to the Bill, and the Attorney-General's responsibility will end when the House passes this Bill. I will take it to the President for assent and it becomes law. Thereafter, the person in the organisation of Government responsible for payment takes over, and not the Attorney-General.

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, before I put the question, I would like to clarify---

*(Mr. Maundu stood up in his place
and murmured something)*

Order, Mr. Maundu! You are completely out of order to stand there and address hon. Members across! I would like to explain, and you have heard that Section 7(1) on page 154 talks about "two terms" and not "two times". Therefore, that was a typographical error. In Section 9(a) it is two times.

On Mr. Obwocha's clarification, it should be "forty" and not "fifty". So, that is agreed.

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

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

(Schedule relating to the Parliamentary

Pensions Act, Cap.196, as amended agreed to)

(Schedule relating to the Armed Forces Act, Cap.199, agreed to)

(Schedule relating to the Moi University Act, Cap.210, agreed to)

(Schedule relating to the Teachers Service Commission, Cap.212, agreed to)

(Schedule relating to the Antiquities and Monuments Act, Cap. 215, agreed to)

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, since there are no proposed amendments on page 546, we should move quite fast. Therefore, I propose the question to following schedules relating to the following Acts:

(Schedule relating to the Trade Unions Act, Cap 233, agreed to)

(Schedule relating to the Workmen's Compensation Act, Cap. 236, agreed to)

(Schedule relating to the Industrial Training Act, Cap. 237, agreed to)

(Schedule relating to the Public Health Act, Cap. 242, agreed to)

(Schedule relating to the Pharmacy and Poisons Act, Cap. 244, agreed to)

(Schedule relating to the Food, Drug and Chemical Substances Act, Cap. 254, agreed to)

(Schedule relating to the Nurses Act, Cap. 257, agreed to)

(Schedule relating to the Registered Land Act, Cap. 300, agreed to)

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, let us turn to page 553 of this Bill. There are two proposed amendments by Messrs. Murungi and Murathe.

The Agriculture Act (Cap.318)

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, after looking at my amendment and the one proposed by Mr. Murathe, I would like to withdraw mine and support Mr. Murathe's amendment.

(Amendment withdrawn)

Mr. Murathe: Mr. Temporary Deputy, Chairman, Sir, I beg to move the following amendment:- THAT, the Schedule of the Bill be amended by inserting the following proviso under Agriculture Act, S.192A (Cap.318).

"Provided that the 80 per cent of the coffee and tea cess shall go to the respective District Roads Committees (DRCs)"

The Minister for Agriculture and the Attorney-General have indicated their consent to this amendment.

The Minister for Agriculture (Dr. Godana): I have no objection, Mr. Temporary Deputy Chairman, Sir.

(Question of the amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, Mr. Murathe supported me earlier on, on the issue of birth certificates. So, I think I should support him on this proposal. It is a good proposal.

*(Question, that the words to be inserted,
be inserted, proposed)*

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

*(Schedule relating to the Agriculture
Act Cap.118 as amended agreed to)*

The Seeds and Plant Varieties Act, Cap.326

The Temporary Deputy Chairman (Mr. Musila): Hon. Members the Attorney-General had submitted an amendment which the Chair approved, though it is not on the Order Paper, in relation to the Seeds and Plant Varieties Act. He has given it to the Minister for Agriculture to move.

The Minister for Agriculture (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Seeds and Plant Varieties Act, Cap.326 be amended by -

s.20(1)(a) deleting the word "propagating" and inserting "reproductive".

s.30(7) renumbering paragraph (b) s paragraph (c) and inserting the following new paragraph (b) -

(b) gives a statement under that subsection which is false in any material particular; or

s.33 deleting the words "three thousand" and "three months" and substituting therefor the words "twenty thousand" and "six months" respectively.

Fourth Placing a fullstop immediately after words

Schedule "each cycle" appearing in paragraph 1(1) of Part II thereof and deleting the rest of the paragraph.

Deleting the proviso to paragraph 2(2) and substituting therefor the following proviso-

"Provided that the restriction imposed by this sub-paragraph shall not apply to sales or offers for sale made outside Kenya during the period of six years in the case of trees and vines, and four years in the case of others, ending with the date of application."

Mr. Temporary Deputy Speaker, Sir, this is a very simple proposal to amend the provisions on page 553. We are proposing further amendments to the amendment by providing that the Seeds and Plant Varieties Act, Cap.326 be amended in Subsection 7, Section 30, by deleting the fullstop after the word "offence" and inserting the following additional words:-

"and liable to a fine of not less than Kshs50,000 or to imprisonment for a period not exceeding one year, or both such fine and such imprisonment".

I think hon. Members are familiar with the menace of people trading in fake seeds. The penalties which have been existing in the law were imposed many years ago, and now money has lost value. The maximum penalty of a few thousand shillings, which has been the case, has not been deterrent enough. We are, therefore, enhancing the penalty by inserting a higher figure, and raising the term of imprisonment to make anybody intending to deal in fake seeds to think twice.

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, first of all, before I propose the Question, I want to put on record that this amendment was brought to the Chair late, under Standing Order 106(2). It was brought by the Attorney-General because he is in charge of the Bill we are dealing with, and the Standing Order allows him to do so. Then he delegated some of his rights to the Minister to move.

(Question of the amendment proposed)

Mr. Ndwiga: Mr. Temporary Deputy Chairman, Sir, while supporting the amendment, I regret that the fine proposed is still too low. The Kshs50,000 payable is still very low given the amount of damage they cause. I would

have expected the Attorney-General to impose a fine of about Kshs500,000 or Kshs1 million.

I, therefore, propose an amendment to that amendment to increase the fine to Kshs500,000.

The Temporary Deputy Chairman (Mr. Musila): That is unprocedural! We will go by this amendment.

Mr. Murathe: On a point of order, Mr. Temporary Deputy Chairman, Sir. Under the same Standing Order, where you said the Attorney-General has the discretion to delegate to the Minister, it appears that he now has no objection to a further amendment to that amendment. Would it be in order for us to request the Attorney-General to accept it to be enhanced?

The Temporary Deputy Chairman (Mr. Musila): No! Mr. Murathe, if we proceed like that, it will not work. The Attorney-General has already brought the signed amendment in writing. So, your point of order is overruled.

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

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

*(Schedule relating to the Seeds and Plant
Varieties Act, Cap.326 as amended agreed to)*

*(Schedule relating to Wildlife and Conservation
Management Act, Cap.376, agreed to)*

*(Schedule relating to Tourist Industry
Licensing Act, Cap.381, agreed to)*

The Kenya Airports Authority Act, Cap.395

Mr. Temporary Deputy Chairman (Mr. Musila): We have an amendment by Mr. Muturi. We are on page 555 and page 156 on the Order Paper. Mr. Muturi, what you are proposing here is to delete parts (i), (ii), (iii) and (iv). He is proposing to delete the proposed Section 6A, the proposed amendment to Section 7, the proposed amendment to Section 10 and proposed amendment to Section 31 and except for that one, there is a substitution. So, essentially, what you are doing is opposing what is here! So, you could oppose and then we vote on it. Mr. Muturi, you can oppose the amendments.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I want to state the reasons.

The Temporary Deputy Chairman (Mr. Musila): Okay! Go ahead!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I oppose the proposed amendment that incorporates a new Section 6A in its entirety. That is because, among other things, it seeks to give the Managing Director of the Kenya Airports Authority and his Board, discretion to do virtually anything they would want with the Authority's funds. One, the Board and the Managing Director will be the ones to approve recurrent expenditure within limits determined by themselves and not by any other arm of Government. Two, they will also approve emergency individual capital works of which the estimated cost does not exceed Kshs7 million.

Mr. Temporary Deputy Chairman, Sir, in this, I see the opening of floodgates to a lot of shoddy deals that we have witnessed as Members of the PIC. Individual capital works today will be approved by the Board and the Managing Director; of Kshs7 million. Tomorrow, they will come up with another one and at the end of year, we will be seeing expenditures of so-called individual capital works of emergency nature which will be in excess of Kshs100 million. My objection is, therefore, to protect public funds from being looted by a small clique of people who will not be answerable as, under the present Act, to the Minister. So, that is my first objection with regard to that new section.

Mr. Temporary Deputy Chairman, Sir, Section 7 states as follows:-

"The Authority shall pay to the directors remuneration fees or allowances for expenses out of the general fund of the Authority according to the scales of remuneration from time to time as specified by the Board."

Once again, what are we doing? We are amending Section 7 which bound the Board to seek approval of the Minister responsible for the Authority who would then in turn, set remuneration fees and allowances after consulting with the Minister for Finance. By this amendment, we are telling the Kenya Airports Authority Board: "Pay yourselves whatever you want." We are paying even as we enter the airports. We are telling them: "You collect this and pay yourselves". Whether this is called by the Attorney-General liberalisation or greater democratic space within the Board,

in my opinion, I see it as giving a blank cheque to an organisation which, in any event, has not been known to be efficient.

Mr. Temporary Deputy Chairman, Sir, Section 6 (c) states as follows:-

"The Managing Director may, subject to the direction of the Board, approve any minor alterations in the salaries, wages or other terms and conditions of service of employees of the Authority not involving expenditure in excess of the limits determined by the Board."

Section 6(b) states as follows:-

"The Managing Director may, subject to the direction of the Board -approve emergency capital works for the purpose of the Authority not included within the programme of works approved by the Minister of which the estimated cost does not exceed Kshs10 million or such other sum as the Minister may from time to time by order determine."

Why are we removing that part which was such a good check? The Ministry had a way of checking on what the Authority was about to do with public resources that came to its disposal. The amendments that the Attorney-General proposes, we are seeking to give the Kenya Airports Authority a blank cheque like I have said earlier.

The Temporary Deputy Chairman (Mr. Musila): Very well. Could you now summarise?

Mr. Muturi: Mr. Temporary Deputy Chairman, with regard to the amendment proposed in Section 31, I propose to delete what was included there and instead replace it with the words "The Board with the approval of the Minister." I am trying to make sure that the Board does not become a rogue like several other boards of State Corporations become rogues when you give them a blank cheque to determine what they should do, what they should pay themselves and what works they should approve to be done by themselves.

Mr. Temporary Deputy Chairman, Sir, that is my position.

The Temporary Deputy Chairman (Mr. Musila): Mr. Muturi, you had gone up to the Schedule on page 557?

Mr. Muturi: No, Mr. Temporary Deputy Chairman, Sir. Part "(b)" is different. It relates to the State Corporations Act.

The Temporary Deputy Chairman (Mr. Musila): No, that is different.

(Question of the amendment proposed)

Mr. Ochilo-Ayacko: Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to support the proposed amendments by Mr. Muturi. We have been doing our work at the Public Investments Committee (PIC) and we have noticed that State Corporations that are wholly-owned by the State, if they are not regulated by the Government Minister, they are susceptible to abuse by the officers charged with running them. For instance, if you look at how the Electricity Regulatory Board awarded themselves allowances without the control of the Minister; that is the kind of abuse that Mr. Muturi seeks to control in this amendment.

Secondly, we know that the Kenya Airports Authority has not been privatised. It is still owned 100 per cent by the State and the Government must continue to have a say and a hand in the running of the affairs of the KAA.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I have been in consultation with the Minister responsible for the KAA and he has instructed me that he would prefer to have further consultation on this whole issue. Therefore, consequently, we agree with the amendment.

(Applause)

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

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

*(Schedule relating to the Kenya Airports
Authority Cap.395 as amended agreed to)*

*(Schedule relating to the Transport
Licensing Act Cap.404 agreed to)*

Schedule relating to the Exchequer and Audit Act (Cap.412)

Mr. Ochilo-Ayacko: Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, the Bill be amended in the Schedule as follows:-

(a) in the item relating to the Exchequer and Audit Act, by deleting the proposed amendments to Sections 2, 29, 30A and 31.

(b) in the item relating to the Constitutional Offices (Remuneration) Act, by deleting the expression "1st July 2001" appearing in the proposed subsection (1) and substituting therefor the expression "1st July 2002".

There is an attempt by the Attorney-General to have the Office of the Auditor-General (Corporations) and the Office of the Controller and Auditor-General merged into one office. That is not a bad proposal except that you heard when the Speaker advised the Minister that such a constitutional issue may not be sufficiently debated in this limited time, and in the context of the Statute Law (Miscellaneous Amendments) Bill that we are debating, there are constitutional issues that arise from the merger that require elaborate debate for more than one day. The first reason is that we may not adequately debate it and get the implication.

Two, Mr. Temporary Deputy Chairman, Sir, yesterday, the Attorney-General, and I have also consulted with him, said that the best way of merging these offices is by coming up with a National Audit Office Bill, which will consolidate these views. That National Audit Office Bill is the one that will consolidate and spell out this Bill. The Attorney-General said yesterday that, that Bill is in the offing and may be introduced this time. If we do not defeat or delete the proposed amendments by the Attorney-General, then we will consolidate the offices, but we will not have done so in the context of the National Audit Bill. We need a lot of time to look at these reforms and we also need to support the Attorney-General when he does the proper thing.

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, the effect of Mr. Ochilo-Ayacko's proposal is that the whole Schedule be deleted.

(Question of the amendment proposed)

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I understand the spirit of Mr. Ochilo-Ayacko, but you will recall that, last December, a similar proposal was made through the Finance Bill. This is because for quite some time there has been a desire for the office of the Controller and Auditor-General and that of the Auditor-General (Corporations) to be merged. The desire arises from the need to have independent audits carried out. The Controller and Auditor-General has a tenure of office provided under the Constitution while the office of the Auditor-General (Corporations) does not. There is experience and evidence that, occasionally, the Auditor-General (Corporations) does not have the independence he requires. That is why there has been a desire to strengthen this office by placing the entire audit function under the Controller and Auditor-General.

When we came here in December with that proposal, we were advised that it was better to do it under the Statute Law (Miscellaneous Amendments) Bill rather than the Finance Bill. That is why it was brought under this Act. I feel that the spirit of Mr. Ochilo-Ayacko is right. There is need and consensus here to merge the two offices in order to make auditing more effective. If there is that desire and we feel we are doing the right thing, why do we not do it now rather than later?

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, I am even embarrassed to stand up and oppose the proposed amendment by Mr. Ochilo-Ayacko whom I like a lot. We want an independent auditor who works without fear or favour. The Controller and Auditor-General is an independent auditor because that is a constitutional office. He has got the independence and security of tenure. The Auditor-General (Corporations) is just like any other civil servant. There is a lot of corruption in the parastatals now because the Auditor-General (Corporations) is being threatened by big shots like Mr. Angwenyi who want to do wrong things with impunity.

The Temporary Deputy Chairman (Mr. Musila): Mr. Angwenyi, make your point so that we proceed.

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, I am trying to say that this country is going backwards because we are siphoning funds from our parastatals. I oppose the amendment by Mr. Ochilo-Ayacko.

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

(Schedule relating to the Exchequer and Audit Act, Cap.412 agreed to)

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, there is another amendment by Prof.

Anyang'-Nyong'o, but it is similar to the one we have just dealt with. So, we shall proceed to the Constitutional Offices Remuneration Act, Cap. 412.

The Constitutional Offices Remuneration Act, Cap. 423

The Temporary Deputy Chairman (Mr. Musila): We proposed amendments by Messrs. Ochilo-Ayacko and Mr. Murungi.

Mr. Ochilo-Ayacko: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Schedule relating to the Constitutional Offices Remuneration Act be amended by deleting the words "1st July, 2001" and substituting therefor the words "1st July, 2002".

Mr. Temporary Deputy Speaker, Sir, although the Attorney-General has proposed that the salary increase for holders of constitutional office holders be back-dated to 1st July, 2001, I would like to differ with him slightly. However, I wish it to be understood that I am not opposed to proper remuneration of people who are charged with monumental public responsibility. Of late, we have had several groups of professionals in the country who have wished to be awarded salary increases, but that has not been possible due to the fact that the Exchequer does not have sufficient funds. So, for this House to approve a back-dating of salary increases for one group of professionals for a period exceeding one year would be selective and unkind to other professionals whom we have declined to award salary increases. So, although I am not opposed to constitutional office holders getting their salaries increases, I think we should treat all our professionals equally. We all deserve better salaries.

The Temporary Deputy Chairman (Mr. Musila): Very well, Mr. Ochilo-Ayacko; you have made your point.

(Question of the amendment proposed)

Mr. Kihoro: Mr. Temporary Deputy Chairman, Sir, I support the amendment proposed by Mr. Ochilo-Ayacko that the back-dating of the salary increase for holders of constitutional offices should take effect in the next financial year. The Attorney-General's proposal to back-date these salary increases by nearly 18 months is improper. It appears as if this is being done because it is our "Lords" who have asked for this kind of back-dating. Ministers have answered Parliamentary Questions here and talked about problems in collecting enough revenue. So, it would be most improper to back-date the salary increase for these officers by so many months.

The Temporary Deputy Chairman (Mr. Speaker): You have made your point, Mr. Kihoro. Let us now hear the Attorney-General.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose the proposed amendment on two grounds. Firstly, it is not true that we have proposed to back-date these salary increases to a previous financial year. On the contrary, the back-dating that we have proposed falls within the current financial year.

Secondly, the delay in the passage of this Bill was not caused by holders of constitutional offices. This was published last year, and if it had been passed last year, 1st July, 2001 would have been the effective date for the salary increases. So, the effective date ought to be the date when the Bill was published.

Therefore, I oppose the amendment.

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

The Temporary Deputy Speaker (Mr. Musila): Hon. Members, there was a proposed amendment by Mr. Murungi on the same Act, but I have received a written note to the effect that he has withdrawn it.

So, let us proceed to the State Corporations Act, Cap.446. Please, refer to page 569 of the Bill.

Schedule relating to the State Corporations Act Cap.446

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, in view of the decision taken on the Exchequer and Audit Act, I now withdraw my proposed amendments to the State Corporations Act.

The Temporary Deputy Chairman (Mr. Musila): Very well, that is withdrawn.

(Amendments withdrawn)

The Temporary Deputy Chairman (Mr. Musila): I know that Prof. Anyang'-Nyong'o had given notice of an amendment, but he is not here.

(Schedule relating to the State Corporations Act.446 agreed to)

(Schedule relating to the Capital Markets Authority Act agreed to)

Schedule relating to the Companies Act Cap.486

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in the Schedule as follows:-

(c) in the item relating to the Companies Act, by deleting the proposed amendment to section 20(2).

My proposal is to delete the proposed amendments because, in my view, to remove the Registrar of Companies from being a party to any litigation that may arise from similarities in any two, or more company names, is to encourage the officer to be careless and negligent.

The Temporary Deputy Chairman (Mr. Musila): Order, Mr. Muturi! You have made your point.

(Question of the amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I support the proposed amendment.

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

(Schedule relating to the Companies Act as amended agreed to)

The Temporary Deputy Chairman (Mr. Musila): I will put the question to the Schedules relating to the following Acts:

(Schedule relating to the Building Societies Act Cap.489 agreed to)

(Schedule relating to the Standards Act Cap.496 agreed to)

(Schedule relating to the Trade Descriptions Act Cap.459 agreed to)

(Schedule relating to the Weights and Measures Act Cap.513 agreed to)

(Schedule relating to the Accountants Act.531 agreed to)

(Schedule relating to the Certified Public Secretaries of Kenya Act Cap.534 agreed to)

(Schedule relating to the Narcotic Drugs and Psychotropic Substances Act No.4 of 1994 and the Auctioneers Act No.5 of 1996 agreed to)

Schedule relating to the Electric Power Act No.11 of 1997

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in the Schedule as follows:-

(d) in the item relating to the Electric Power Act, by deleting the proposed amendment to section 125.

On page 590, there is an amendment that proposes that a Minister may depute a special officer or in his discretion establish a special committee to be known as the Licensing Officer or Licensing Committee as the case may be for the purposes of issuing generation, transmission, distribution, licences, examining, certifying, licensing, registering, controlling electrical contractors, wiremen, electricians and operators. My reason for wanting to delete the proposed amendment is that the Electricity Regulatory Board is in existence and its purpose is to do exactly what this amendment is proposing to do. So, we are duplicating the work of the Electricity Regulatory Board, which as you know, has had problems operationalising itself.

(Question of the amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I have done the necessary consultations with those familiar with the Electric Power Act and I support the amendment by Mr. Muturi.

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

*(Schedule relating to The Electric Power
Act as amended, agreed to)*

*(Schedules relating to The Finance Act No.5 of 1998,
the National Security Intelligence Service Act,
the Bukura Agricultural College Act, The Central
Depositories Act and the Industrial Property
Act agreed to)*

(Title Agreed to)

(Clause 1 agreed to)

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

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Speaker in the Chair]

REPORT AND THIRD READING

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Mr. Musila: Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill and approved the same with amendments.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Finance (Mr. Obure) seconded.

(Question proposed)

(Question put and agreed to)

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

The Minister for Transport and Communications (Mr. Mudavadi) seconded.

(Question proposed)

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Speaker, Sir, it is just to say-

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Mr. Speaker: By the way, Mr. ole Sunkuli, I will not allow you to make any comments. I only have the time to put the Question. I am sorry for that.

(Question put and agreed to)

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

ADJOURNMENT

Mr. Speaker: Thank you very much, hon. Members. The House can now see, why I said we do not need a Statute Law (Miscellaneous Amendments) Bill of that size. Anyhow, congratulations for sitting this late. It is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, 9th May, at 2.30 p.m.

The House rose at 10.30 p.m.