

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 9th April, 2002**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

## COMMUNICATION FROM THE CHAIR

ASSENT TO BILLS

**Mr. Speaker:** Order, hon. Members! Hon. Members, pursuant to Section 46(2) of the Constitution of Kenya, His Excellency the President has assented to the following Bills, which were passed by the National Assembly during the Fifth Session of the Eighth Parliament:

<u>Title</u>	<u>Passed Third</u>	<u>Date</u> <u>Assent</u>	<u>Reading of</u>
The Supplementary Appropriation Act, 2001	3.5.2000	16.5.2001	
The Constitution of Kenya Review (Amendment) Act, 2001	8.5.2001	16.5.2001	
The Industrial Property Act, 2001	13.6.2001	27.7.2001	
The Appropriation Act, 2001	3.11.2001	20.11.2001	
The Kenya Water Institute Act, 2001	28.11.2001	31.12.2001	
The Children Act, 2001	29.11.2001	31.12.2001	
The Finance Act, 2001	5.12.2001	31.12.2001	
The Banking (Amendment) Act, 2001	5.12.2001	31.12.2001	
The Coffee Act, 2001	6.12.2001	31.12.2001	
The Copyright Act, 2001	11.12.2001	31.12.2001	
The Sugar Act, 2000	11.12.2001	31.12.2001	

Thank you.

## NOTICE OF MOTION

APPOINTMENT OF COMMISSION TO REVIEW  
MEDICAL WORKERS' SALARIES

**Mrs. Mugo:** Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, while appreciating the critical role played by the nurses and doctors in the provision of medical services to *wananchi*, aware of the difficult and poor working conditions prevailing in all public health institutions, noting with concern that salaries of those health workers have not been reviewed for the last ten years, and cognisant of the fact that those officers are almost living below the poverty line; this House urges the Government to appoint a Salary Review Commission to review the salaries, allowances and other benefits for the nurses and doctors, and that, the findings and report thereon, be tabled before this House within three months after the appointment of the

Commission.

## ORAL ANSWERS TO QUESTIONS

### *Question No.086*

#### LIST OF RETRENCHED CIVIL SERVANTS

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

- (a) whether he could table the list of all civil servants who have been retrenched by the Government, local authorities, universities and parastatals, indicating the reasons for retrenchment, age of the employee and how much each of them was paid as retrenchment benefits; and,  
 (b) whether he could table the list as per "a" above of all civil servants whose retrenchment is in consideration.

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

(a) Lists of all civil servants who were retrenched by the Government, all public universities and parastatal bodies which are funded by the

Government in undertaking the retrenchment exercise, are hereby provided for your perusal. It was a big carton and I was instructed by the Documentation Office to give it to them, so that they could ensure that it forms part of the record. That is why I did not carry it. It would have been a security risk for me to carry it.

The parastatals include the Kenya Revenue Authority, Catering Levy Trustees, Kenya Trypanosomiasis Research Institute, National Irrigation Board and the Numerical Machining Complex Limited. I wish to inform the Member that retrenchment has not yet taken place in the local authorities. The lists provided contain information on the reasons why the staff in the various institutions mentioned above had to be retrenched. In most cases, the reasons for retrenchment were arrived at after a thorough re-organisation, restructuring and abolition of offices and rationalising of staffing in the different institutions. The lists also contain details on ages of the retrenched employees and how much each of them was paid as retrenchment benefits.

(b) I wish to inform the Member that the Government does not have a list of civil servants, whose retrenchment is under consideration.

Thank you, Sir.

**Mr. Muchiri:** Mr. Speaker, Sir, I have seen the lists but I have not perused them. Could you give me time to peruse the lists, so that I can be able to ask supplementary questions?

**Mr. Speaker:** Sure! But are you looking for any particular person?

**Mr. Muchiri:** I am not looking for one particular person. According to the list, there are various reasons given for the retrenchment. One is listed as abolition of office---

**Mr. Speaker:** I will give you time on Tuesday, next week! That is enough time for you, or any other Member who is interested, to peruse the lists.

*(Question deferred)*

Let us move on to the next Question.

### *Question No.119*

#### PROVISION OF SPEED BOATS TO PROTECT FISHERMEN IN BUSIA

**Mr. Speaker:** Is Mr. Wanjala not here? We will leave his Question until the end. We have to be serious. Let us move on to the next Question.

### *Question No.019*

#### REVIVAL OF CHEPALUNGU WATER SUPPLY

**Mr. Speaker:** Mr. Kimeto called me and wanted his Question to be deferred to Thursday. It is so deferred!

(Question deferred)

Let us move on to the next Question.

Question No.101

DESILTING OF DAMS IN MBOONI

**Bw. Kalulu** alimuuliza Waziri wa Ustawi wa Maji:-

- (a) ikiwa anaelewa kuwa aliahidi Bungeni mwaka wa 1998 kuwa, mabwawa yaliotengenezwa na wakoloni katika mwaka wa 1954, ambayo yamefunikwa na udongo katika tarafa za Mbooni, Kalawa na Tulimani, yatatengewa pesa na kutengenezwa mara moja; na,  
 (b) ni lini mabwawa hayo yatarekebishwa.

**The Assistant Minister for Environment and Natural Resources** (Mr. Kofa): Bw. Spika, naomba kujibu.

(a) Ndiyo, mnamo mwaka wa 1998/99 wa makadirio ya pesa, Wizara yangu ilikuwa imetayarisha mipango kabambe ya kurekebisha baadhi ya mabwawa ya zamani katika tarafa za Mbooni, Kalawa na Tulimani. Nyingi za fedha za kurekebisha mabwawa hayo zilitegemewa kutoka kwa wafadhili wetu kama vile European Economic Commission (EEC), *El Nino* Emergency Programme na Belgium Administration Development Corporation (BADCO).

Bw. Spika, kutokana na sababu ambazo hazijulikani, baadhi ya hao wadhamini walizuia misaada hiyo ya kifedha na hivyo basi, kufanya mipango yetu kusita kidogo. Hata hivyo, Wizara yangu, kupitia kwa wafadhili ambao hawakukata misaada, ilifanikiwa kutoa mchanga katika mabwawa ya Kwa Mukuu, Mwambe na Kya Makuthi. Wakati huo huo, bwawa moja jipya la Ndauni lilichimbwa na kukamilika. Pia, mabwawa ya Maua na Kalooi yalitolwa mchanga.

(b) Bw. Spika, Wizara yangu imetenga Kshs3.7 milioni kwa Wilaya ya Makueni kwa ajili ya kurekebisha mabwawa mwaka huu wa fedha (2001/2002). Pamoja na hayo, Wizara yangu, ikishirikiana na wafadhili, inashughulikia mabwawa matano kwa sasa. Hayo mabwawa ni kama yafuatayo:-

- i) Kalawa Division - Bwawa jipya
- ii) Tulimani Division - Marekebisho ya bwawa
- iii) Mbooni Division - Urekebishaji
- iv) Tulimani Division - Bwawa jipya
- v) Kalawa Division - Bwawa jipya

Bw. Spika, Wizara yangu itaendelea kurekebisha mabwawa zaidi kulingana na vile fedha zitakapopatikana.

**Mr. Kalulu:** Bw. Spika, jibu la Waziri Msaidizi si la kuridhisha kwa sababu ametaja mabwawa ambayo hayako Mbooni. Mabwawa ya Kya Makuthi na Ndauni yako Kibwezi. Inaonekana Bw. Waziri Msaidizi hajawahi kutembelea upande wa Mbooni kwa sababu anazungumza juu ya sehemu nyingine na huku ninauliza Swali kuhusu mabwawa ya Mbooni.

**Mr. Kofa:** Bw. Spika, nitatembelea huko Mbooni.

**Mr. Speaker:** Bw. Kalulu, inafaa uchunguze sheria za Bunge ili ujue vile unastahili kuuliza maswali.

**Mr. Mwakiringo:** Bw. Spika, Waziri Msaidizi amesema kwamba mradi huo haukufadhiliwa kwa sababu ya ukosefu wa fedha kutoka kwa wafadhili. Kwa sasa amesema kwamba Kshs3.7 milioni zimetengwa kutumiwa katika Wilaya ya Makueni. Bunge hili lingependa kujua ikiwa pesa hizo ziko na kama zimewekwa na Serikali ya Kenya au kama zinatoka kwenye wafadhili na baadaye tutaambiwa kuwa hawakuleta pesa ndio mradi huo haukuendelezwa.

**Mr. Kofa:** Bw. Spika, niliposoma jawabu langu, nilisema kwamba Wizara yangu imetenga Kshs3.7 milioni katika makadirio ya mwaka jana na mwaka huu wa kifedha. Kwa hivyo, pesa hizo ziko.

**Mr. Kamolleh:** Bw. Spika, Waziri Msaidizi ametuambia mambo ambayo yanafaa kusahihishwa. Haiwezekani Jamhuri ya Kenya itengeneze makadirio yake ikiwa inangojea pesa za watu wengine. Kuna kifungu fulani ambacho Serikali ya Kenya inatafikana kusaidia. Kwa mfano, kama tunahitaji Kshs10 milioni inatafikana Serikali itoe Kshs3 milioni au Kshs4 milioni. Waziri Msaidizi amesema kuwa wafadhili wote hawakulipa na hii ndio sababu mabwawa haya hayakujengwa. Ni haki Waziri Msaidizi kutoa maelezo ambayo si sawa? Waziri Msaidizi huyu aliwezaje kukadiria pesa za wadhamini pekee bila ya kuweka pesa za Jamhuri ya Kenya?

**Mr. Kofa:** Nilisema kwamba baadhi ya wafadhili walizuia misaada yao. Lakini Serikali ya Kenya ilikadiria Kshs3.7 milioni

**Mr. Khamasi:** On a point of order, Mr. Speaker, Sir. Is Prof. Anyang'-Nyong'o properly dressed for this

House?

**Mr. Speaker:** Could you stand up so that I can see you?

*(Prof. Anyang'-Nyong'o stood up in his place)*

What do the Standing Orders say about attire to be worn in the House?

**Hon. Member:** He is improperly dressed! He is out of order!

**Mr. Speaker:** Order! You may sit down. I observed the other day that the hon. professor said that the Speaker is improperly dressed in foreign attire and that he should be dressed in an African attire. Let me make an observation. At least the professor is not dressed in an African attire; it is a foreign dress. I do not know of an African community that makes that kind of attire. It is for the House to decide whether he is properly dressed or not.

**Mr. Sungu:** On a point of order, Mr. Speaker, Sir. Some time back our forefathers used to dress in that fashion. Therefore, I think it is right and proper that he dresses that way.

**Mr. Speaker:** I think it is a modern adaptation of what the community wore at that time, which was likely to be some form of skins. One thing I would like to tell this House, and Prof. Anyang'-Nyong'o, is that the Speaker will never wear skins.

**Mr. Muite:** On a point of order, Mr. Speaker, Sir. I hear that, that mode of dress is absolutely comfortable in this weather. Through you, could we ask that whoever wears that mode of dress assures the House that he is wearing something else inside it?

*(Laughter)*

**Mr. Speaker:** Order! You would probably be asking too much from the Chair and the Chair will not stoop that low. I hope next time hon. Members come to this House, they will dress properly for the sake of the dignity of the House. I know for sure that we do not have a national dress. Kenya has not as yet - maybe to our shame - developed a national dress. The best I can say is that whatever you wear must be decent. You can call it any name so long as it is not offensive to the House.

**The Minister for Energy (Mr. Raila):** Mr. Speaker, Sir, I do not wish to challenge what you have said, but this kind of dress is very common in West Africa. In the Senegalese Parliament all Members dress that way. The same thing applies to the Nigerian Parliament. There is nothing indecent about dressing like other Africans. We should not say that we can only be properly attired if we dress the way they do in the House of Commons. I think we need to be also nationalistic and--

**Mr. Speaker:** I think the House has already said that, that attire is not offensive. I have made an observation which I will stand by for the rest of the balance of my term, and which is that he is dressed in a foreign attire. You are telling me that it is Nigerian attire and anything Nigerian is foreign to Kenya. You are just confirming what I said.

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

**Mr. Speaker:** Forget it! Order! I have heard enough about dressing for now.

Next Question!

*Question No.108*

MEASURES TO RESOLVE TEA CRISIS IN GUSII

**Mr. Anyona** asked the Minister for Agriculture:-

(a) whether he is aware that the crisis between the tea farmers and the directors of Kebirigo, Nyankoba, Nyasiongo and Tombe Tea factories in Nyamira District; Kiamokama Tea Factory in Kisii District; and Nyamache and Ogembo Tea Factories in Gucha District because of astronomical operational costs and poor second payment for the year 2000/2001, has not been resolved;

(b) whether he is further aware that the directors of all the said factories have not held any annual general meetings and laid before the farmers Income and Expenditure Accounts, in contravention of the provisions of Section 131(1) and (5) and Section 148(1),(2) and (3) of the Companies Act, Cap.486 of the Laws of Kenya; and,

(c) what remedial measures he will take in order to resolve the crisis in the tea sub-sector in Gusii as proposed in the Memorandum, Ref.No.KM/04/02, dated 10th January, 2002.

**The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo):** Mr. Speaker, Sir, I

beg to reply.

(a) I am not aware.

(b) I am aware that the said tea factories have held their annual general meetings except Kiamokama and Ogembo which are scheduled to hold their annual general meetings before 31st May, 2002.

(c) In view of the action taken in "b", there is no need for any further intervention.

**Mr. Anyona:** Mr. Speaker, Sir, this is just like the previous Question we had here, where the Assistant Minister gave an answer and when the hon. Member said this is in Kibwezi he said that he had not been there. This Assistant Minister is misleading the House when he says that the meetings were held. Could he produce proof to the effect that these meetings were held? The meetings have not been held because there is so much bad blood between the farmers and directors. They cannot sit down together. Could he produce minutes of these meetings to prove that they were held?

**Mr. Sumbeiywo:** Yes, Mr. Speaker, Sir. I would like to give the following information: The following factories in Gucha, Kisii and Nyamira districts held their annual general meetings as indicated: Kebirigo, 11th March, 2002; Nyamache, 12th March, 2002; Nyankoba, 13th March, 2002; Sanganyi, 15th March, 2002; Tombe, 18th March, 2002 and Nyansiongo, 19th March, 2002.

**Mr. Anyona:** Mr. Speaker, Sir, I really do not know what is wrong with this Assistant Minister. I have a letter from the substantive Minister, dated 14th March, 2002. In his letter, in anticipation, the Minister told me:- "With regard to the issue you raised on governance of the tea factories, I am informed that the tea factories in question are due to hold their annual general meetings as follows:-".

The Minister then goes on to give a schedule which this Assistant Minister has given us. The Minister was saying that he had been informed that meetings would be held. I am saying that the meetings have not been held in spite of the information given by the Assistant Minister. Could the Assistant Minister produce evidence because I already have what he is reading from the Minister?

**Mr. Sumbeiywo:** Mr. Speaker, Sir, unless we look for the minutes of the meetings--- I have given the dates when the meetings were held and there is no other evidence that I can give beyond that.

**Mr. Anyona:** Mr. Speaker, Sir, the tea industry, at least, in that part of the country is in dire straits because the farmers and the directors cannot see eye to eye. The directors have run away from the farmers. Now, the farmers have been advised to seek redress under the Companies Act. They went to court and the directors won. This is a serious problem! Could the Assistant Minister now go and confirm whether these meetings were held and produce minutes? Secondly, if not, which is the case, could he now ensure that these meetings are held so that the complaints of these victims are legal? In which case, I would really beg for this Question to be deferred so that the Assistant Minister can go and bring correct information. The tea industry is in trouble there!

**Mr. Speaker:** Mr. Assistant Minister, have the meetings been held?

**Mr. Sumbeiywo:** Mr. Speaker, Sir, the meetings were held and we will look for the minutes and produce them before this House. I would like to say that the Government handed over the management of the tea sub-sector to the farmers on 30th July, 2002 hence the Government could not interfere in the stand-off between the farmers and their directors. However, we are assured that the meetings were held between the tea farmers and the Board members and they decided on the payment of green tea leaf per kilogramme.

**Mr. Kamolleh:** Mr. Speaker, Sir, I am once again appalled by the answer given by this Assistant Minister. The word "government" means actually controlling every affair of the State. When the farmers and directors cannot see eye to eye and we are looking forward to some kind of solution, we must go back to our Government. Why is this Assistant Minister saying that meetings were held but the Government does not have the minutes? Secondly, why is he saying that the Government cannot intervene in this case involving the farmers and the directors? Could he actually go back and make sure that the farmers and directors do hold these meetings because they are the Government?

**Mr. Speaker:** Mr. Sumbeiywo, would you like to govern?

**Mr. Sumbeiywo:** Yes, Mr. Speaker, Sir. I would like to govern, but my hands are tied because the Minister has no powers to order for elections of directors in these tea factories. These are limited liability companies governed by the provisions of the Companies Act, Cap.486 of the Laws of Kenya.

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. The very provision of the law the Assistant Minister is quoting has been violated by the directors. The Companies Act requires that annual general meetings be held. They have not been held and the laws are administered by the Government. They think they cannot interfere! This Parliament is capable of doing something if this Government cannot do it!

**Mr. Sumbeiywo:** Mr. Speaker, Sir, I have said earlier on that the meetings were held. We do not have the minutes here, but I have promised to produce them later on.

**Mr. Speaker:** Could you produce them on Thursday afternoon?

**Mr. Sumbeiywo:** Mr. Speaker, Sir, it takes some time to go all the way to Kisii. So, give me until next week to produce the minutes.

**Mr. Speaker:** Then produce them on Tuesday afternoon, next week. The Question is deferred to the extent of you producing the minutes.

*(Question deferred)*

Next Question, hon. Sungu!

*Question No.002*

CONSTRUCTION OF TOILETS IN KISUMU CITY

**Mr. Sungu** asked the Minister for Local Government:-

(a) when the Kisumu Municipal Council will construct toilets/ablution blocks in the following public markets within the Municipality: Kibuye; Mamboleo; Manyatta; Nyamasaria; Kowino; Angola; Chiga and Kosawo; and,

(b) in view of the absence of public utilities within these markets, what justification the Council has of charging levies to traders in these markets.

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

(a) Kisumu Municipal Council has already provided toilet facilities in some of the public markets under reference and is in the process of providing similar facilities in the remaining markets in collaboration with stakeholders and development partners.

At Kibuye Market, nine pit latrines and a block of six toilets, using septic tanks, have already been constructed, while at Manyatta, Kowino and Kosawo markets, toilet facilities which had been provided were abandoned after doors and iron sheets were removed by vandals. In Chiga, Nyamasaria, Angola and Mamboleo markets, the Ministry has instructed the Council to put up toilet facilities using the Local Authority Transfer Funds (LATF). Additional toilet facilities will also be constructed in other markets using LATF funds and other council revenue.

(b) The revenue generated from public markets by local authorities is not meant for provision of toilet facilities alone. It forms part of the general revenue which is used to finance other urban services such as maintenance of infrastructure, market stalls, garbage collection, street lighting, education facilities and others. The Council, therefore, cannot be able to provide other essential services without revenue being collected from the markets.

**Mr. Sungu:** Mr. Speaker, Sir, Kisumu is now a City. Is the Assistant Minister aware that, in fact, the LATF funds that he is talking about have been used to pay electricity bills and there are no more funds available? Secondly, therefore, what did he use to construct these toilet facilities that he is talking about?

**Mr. Sirma:** Mr. Speaker, Sir, the LATF funds which were set aside for paying electricity bills have been used. The Council has been requested to use its other funds because we give it funds every month which it has budgeted for. These funds should be used to construct these toilet facilities.

**Mr. Sungu:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to indicate that LATF funds have been used for paying Recurrent Expenditure when they are meant for Development Expenditure?

*(Loud consultations)*

**Mr. Speaker:** Order! Who is shouting there?

**Hon. Members:** It is hon. Wanjala!

**Mr. Speaker:** Hon. Wanjala and company, could we have the proceedings of the House conducted in an orderly manner! Are you excited by the Professor's mode of dressing?

*(Laughter)*

Proceed!

**Mr. Sungu:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House that LATF funds fall under the Recurrent Expenditure? LATF funds are meant for Development Expenditure. Here, we are talking about Development Expenditure.

**Mr. Sirma:** Mr. Speaker, Sir, LATF requirements include reduction of debts and electricity bills which were

some of the debts.

**Mrs. Mugo:** Mr. Speaker, Sir, there has been hue and cry from the residents of Pangani about a public toilet in that area which is so insecure. Women are being raped in that toilet, thieves are stealing from the residents and even murderers are roaming there. What is the Ministry doing to make this facility safe and to keep rapists out of it?

**Mr. Sirma:** Mr. Speaker, Sir, that is a very specific case of Pangani and I think the hon. Member should file a specific Question so that we may look at it. We are giving the neighbourhood associations the chance to manage those facilities.

**Mr. Ngure:** Mr. Speaker, Sir, the Assistant Minister has just said that the toilets in Angola, Chiga and Kosawo have been vandalised. What is the Ministry considering doing so that they can use materials, that would not be vandalised, to construct public toilets?

**Mr. Sirma:** Mr. Speaker, Sir, the only method which we are using is to involve the people themselves. For example, in Kibuye, we have given the Kibuye Traders Association the opportunity to manage the toilets which are there. We are going to do the same for those other areas.

**Mr. Sungu:** Mr. Speaker, Sir, in view of the fact that we are all not born equal, some of us are born big and others small, would the Assistant Minister assure this House that they will construct proper toilets and not pit latrines in these markets? Some of us cannot use such facilities.

**An hon. Member:** They will collapse!

*(Laughter)*

**Mr. Sirma:** Mr. Speaker, Sir, those facilities are going to be put in place as per their request.

**Mr. Speaker:** Mr. Muihia's Question!

*Question No.024*

NON-APPEARANCE OF A-G  
BEFORE COMESA COURT

**Mr. Speaker:** Mr. Muihia not here? His Question has been deferred until Thursday afternoon.

*(Question deferred)*

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, I had already informed Parliament that I would not be in for the rest of the week. In fact, from this afternoon, I will be out of the country on official duties. I would request you to defer it to any day next week.

**Mr. Speaker:** The Question is deferred until Tuesday next week!

**The Attorney-General (Mr. Wako):** Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Very well! Thank you. Mr. Wanjala's Question for the second time!

**Mr. Wanjala:** Mr. Speaker, Sir, I apologise for coming late.

*Question No.119*

PROVISION OF SPEED BOATS TO  
PROTECT FISHERMEN IN BUSIA

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

(a) how many vehicles were bought by Lake Victoria Environmental Management Programme since its inception and how they were distributed;

(b) how many speed boats were bought under the Programme during the same period; and,

(c) what urgent measures he is taking to ensure that speed boats are sent to Busia District to be used by security officers in protecting Kenyan fishermen against Ugandan security officers in the lake.

**The Assistant Minister for Environment and Natural Resources (Mr. Kofa):** Mr. Speaker, Sir, I would like to request for more time until next week because the Minister is out of the country and the Assistant Minister is in a meeting elsewhere. In any case, the reply is not ready.

**Mr. Wanjala:** Thank you, Mr. Speaker, Sir. This Question was on the Order Paper last week and it was not answered. It was deferred to today. But I want to raise the following: Today---

**Mr. Speaker:** The Question is not before us yet!

**Mr. Wanjala:** But, Mr. Speaker, Sir, as a matter of urgency, the people of Busia, Bondo and Suba districts cannot go to the lake to fish. The Government is dilly-dallying here and the Ugandan security officers are impounding Kenyan fishing gears, boats and even the fishermen. What urgent steps is the Minister taking to answer this Question?

**Mr. Speaker:** Order! Order, Mr. Wanjala! If the Question is not there, it is not there. What day would you prefer?

**Mr. Wanjala:** Mr. Speaker, Sir, I would prefer tomorrow afternoon!

**Mr. Speaker:** Will the Minister be there or will you be ready to answer the Question?

**The Assistant Minister for Environment and Natural Resources (Mr. Kofa):** The Managing Director is already in those areas trying to get the answer for this Question. I would request that it be deferred until next week.

**Mr. Speaker:** Mr. Wanjala, have you heard that?

**Mr. Wanjala:** Mr. Speaker, Sir, I am aware that we are dealing with an insensitive Government; I accept.

**Mr. Speaker:** Very well! The Question is deferred to Tuesday next week!

*(Question deferred)*

### QUESTIONS BY PRIVATE NOTICE

#### ARREST OF KENYAN FISHERMEN BY UGANDAN FORCES

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

(a) Is the Minister aware that Ugandan security forces impounded 20 fishing boats and arrested several fishermen around Wichlum, Wagusu and Rusinga Island beaches on 20th March, 2002, and detained them at Wayasi Island?

(b) Is he further aware that this action has completely paralyzed fishing activities in the area?

(c) What urgent steps is he taking to ensure security of Kenyan fishermen and the restoration of fishing activities in the area?

**The Minister of State, Office of the President (Mr. J. Nyagah):** Mr. Speaker, Sir, I would like to request for the understanding of the hon. Member that the answer has been prepared and on behalf of the Minister in charge of this docket in the Office of the President, I will be able to answer it tomorrow.

**Mr. Speaker:** Is that okay with you, Dr. Oburu?

**Dr. Oburu:** Mr. Speaker, Sir, I hope it will be tomorrow because this is a serious matter. Fishermen are not fishing and that is the only important economic activity in my area. I accept and hope that it will not be postponed again.

**Mr. Speaker:** Very well! I hope, Mr. J. Nyagah, you will be prepared to answer it tomorrow afternoon. Next Question, Mr. Kaindi!

#### PROVISION OF BASIC SECURITY TO MPS

**(Mr. Kaindi)** to ask the Minister of State, Office of the President the following Question:-

(a) Is the Minister aware that no arrangements have been made to provide Members of Parliament with basic security?

(b) What measures is he taking to ensure that all Members of Parliament are provided with basic security apparatus or are provided with security?

**Mr. Speaker:** This Question was deferred by me, generally, at Mr. Kaindi's request. So, it will remain deferred until he asks for a specific date.

*(Question deferred)*

Next Question, Mr. Kariuki!

#### ENHANCEMENT OF SECURITY AT AERODROMES



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

Mr. Speaker, Sir, on realisation that the level of security systems at all aerodromes is far below the current international standards and the apparent exposure to terrorism, what is the Government doing to address this very serious matter?

**The Minister of State, Office of the President (Mr. J. Nyagah):** Similarly, Mr. Speaker, Sir, on behalf of the Minister in charge of internal security, I would like to request Parliament to be understanding and I will answer this Question tomorrow.

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. Some of us are getting very worried. There are very important Questions on the Floor of the House and the Ministers keep asking that they be deferred. How are we going to help this country, especially with regard to the problem that the air traffic controllers are facing? Could the Government undertake to stop the sacking and persecution?

**Mr. Speaker:** Order! Dr. Ochuodho, please, be serious with the House.

**Dr. Ochuodho:** Mr. Speaker, Sir---

**Mr. Speaker:** Please, Order! Just Sit down! Mr. Kariuki, what time do you prefer?

**Mr. Kariuki:** Tomorrow afternoon.

**Mr. Speaker:** Very well! The Question is deferred until tomorrow afternoon.

*(Question deferred)*

Next Question, Mr. Mbela!

HARDSHIP ALLOWANCE FOR TEACHERS  
IN TAITA-TAVETA

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

(a) When will the Minister implement the recommendation of the Taita-Taveta DDC that teachers in the arid and semi-arid parts of the district be paid hardship allowance?

(b) When will he address the shortage of 100 teachers in the district?

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

(a) The Ministry cannot implement the recommendations of the Taita-Taveta DDC that teachers in the arid and semi-arid parts of the district be paid hardship allowance since the Directorate of Personnel Management (DPM) has not issued a circular to that effect.

(b) The district has only a shortage of 28 teachers and not 100. This shortage will be addressed during the 2002/2003 Financial Year.

**Mr. Mbela:** Mr. Speaker, Sir, I do not understand how we can compel the Directorate of Personnel Management (DPM) to issue a circular, instructing the Ministry of Education, Science and Technology to pay. In any case, I am very surprised that the Assistant Minister says that the district has a shortage of only 28 teachers. Some two weeks ago, I was informed that the district has a shortage of 100 teachers. Has the Assistant Minister checked with the District Education Officer (DEO) to verify the actual figure?

**Mr. Ojode:** Mr. Speaker, Sir, the procedure has been that recommendations from the District Development Committees (DDCs), on payment of hardship allowances, are forwarded to the DPM, which then issues a circular, directing the Ministry to pay hardship allowance to teachers if it is convinced by the reasons given by the DDC. As of now, the Ministry cannot pay teachers in that district a hardship allowance until the DPM authorises the payment.

**Mr. Mwakiringo:** Mr. Speaker, Sir, has the Ministry tried to find out how far the DPM has gone in terms of considering the recommendations of the DDC, Taita-Taveta?

**Mr. Ojode:** Mr. Speaker, Sir, that is a good question. Indeed, we asked the DPM to liaise with the DDC, Taita-Taveta, and then provide us with the minutes, so that we can take action.

**Mr. Nguni:** Mr. Speaker, Sir, I realise that shortage of teachers in this country has become "an epidemic". Bondo District has only 998 teachers. Has the Ministry written to the DPM to seek authority to replace the teachers who have died or retired?

**Mr. Ojode:** Mr. Speaker, Sir, the question of replacing teachers will be addressed once we start the new financial year.

**Mr. Speaker:** Ask the last question, Mr. Mbela!

**Mr. Mbela:** Mr. Speaker, Sir, would I be in order to table the minutes of the DDC, so that the Assistant Minister can take action instead of waiting endlessly for a circular from the DPM?

**Mr. Ojode:** Mr. Speaker, Sir, it is not the Ministry of Education, Science and Technology which is supposed to table the minutes but rather the DPM, which falls under the Office of the President.

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

### POINTS OF ORDER

#### HANDLING OF AIR TRAFFIC

#### CRISIS BY GOVERNMENT

**Mr. Muite:** On a point of order, Mr. Speaker, Sir. I rise to request the Minister for Transport and Communications to issue a Ministerial Statement to clarify his Ministry's handling of the air traffic crisis, and inform the House whether, in view of the publication of the Bill which seeks to delink the Directorate of Civil Aviation from the Civil Service, the Ministry will reinstate in employment all the officers it has sacked and negotiate with them appropriate terms and conditions of service.

**Mr. Speaker:** Very well.

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

**Mr. Speaker:** Order! The Minister will issue the Ministerial Statement that has been sought. We are not supposed to debate the issue now.

Hon. Members, this morning, I received a letter from Dr. Godana; he is out on a very urgent matter in Marsabit. So, he could not be here to complete the Ministerial Statements he was issuing last Thursday. Hopefully, he will be back tomorrow. As soon as he comes back, he will continue issuing his Ministerial Statement on the coffee sector and, subsequently, issue another one on the sugar sector.

So, let us proceed to the next Order!

#### ALTERATION OF COURT DECREE

**Mr. Donde:** On a point of order, Mr. Speaker, Sir. I had requested for a Ministerial Statement from the Attorney-General, and I was asked by the Deputy Speaker to table here today a copy of the judgement in the case concerning the Central Bank of Kenya (Amendment) Act, 2000. I have here with me that ruling, signed by the two judges who presided over the case. I also have a copy the decree which was issued by the Registrar. At that point, I did mention that the decree does not reflect the judgement. I would now like to table these two documents to prove that the decree has been altered to read different from the judgement that was given by the two judges. I would like to table the documents, so that the House can have a look at them.

**Mr. Speaker:** Go ahead! I think that was the mistake of the Attorney-General.

*(Mr. Donde passed the documents over to  
Mr. Mwakiringo, who laid them on the Table)*

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, since I will be away for the rest of this week, I would like to deal with the matter right away.

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. Is it procedural for Mr. Donde to give the documents to another hon. Member to lay them on the Table for him? Is he not supposed to personally lay them on the Table?

**Mr. Speaker:** Very well. Mr. Donde conveyed his intention to lay the documents on the Table; he did not table them. I have no problem if the documents are conveyed to somebody else provided they reach their destination.

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. If you look at the Votes and Proceedings on a matter like this one, you will realise that they actually indicate that an hon. Member did lay the documents on the Table. In this case, I do not know how the tabling is going to be indicated in the Votes and Proceedings.

**Mr. Speaker:** Very well; the hon. Member attempted to lay the documents on the Table. He is a little lazy. So, he must improve on this. Next time, he must actually table the documents personally. So, the Chair will not countenance any laziness.

Let us proceed to the next Order.

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

**Mr. Speaker:** Mr. Attorney-General, are you ready to issue a response to the issue?

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I will respond to the issue right away because I want to co-operate with this House. Since I will be away for the rest of this week, I thought that this matter should not take any longer.

Mr. Speaker, Sir, the position is that M/s Lumumba & Muma Advocates, who acted for the Kenya Bankers Association, forwarded to my office a draft decree seeking our approval of it, before it was sent to court, so that the Registrar of the High Court could issue an appropriate decree. The draft decree was forwarded to my office by a letter, which was received on 11th February, 2002. We replied to M/s Lumumba & Muma Advocates that we could not approve the draft decree. Part of our reply reads as follows:-

"Unfortunately, our understanding of the entire judgement, and particularly the *ratio decidendi*, renders declaration No.3 unsustainable. The same is not supported by any pronouncements, reasoning and observations by the judges. From the foregoing, we are, therefore, unable to approve the draft decree and hereby return the same to you for an amendment by omitting declaration No.3."

Mr. Speaker, Sir, my office did advise the advocates correctly. We said that we could not approve the decree as it was, because it included declaration No.3. We said so because, if you read the judgement, particularly towards the very end, you will realise that it is quite clear that it was the retrospective operation of the Act that was being declared unconstitutional. In their judgement, the judges said: "To that extent, then the Act is unconstitutional." The words "To that extent" are in the judgement. So, my officers advised the advocates correctly on this matter. So, if the decree includes declaration No.3 without any limitation, then it is not reflective of the judgement of the High Court.

**Mr. Speaker:** Very well. Let us proceed to the next Order.

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

**Mr. Speaker:** By the way, I have not even seen the document being referred to as a "decree". If the document is a nullity, then you cannot get clarification of a nullity. Could I have a look at it?

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

**Mr. Speaker:** Mr. Muite, would you like to say something?

**Mr. Muite:** Mr. Speaker, Sir, I would like to seek a little clarification from the Attorney-General. I commend him because he acted very appropriately in pointing out to the advocates of the Kenya Bankers Association that the decree drawn by them did not agree with the judgement. But, having realised that the decree did not agree with the judgement, and now that he knows that the High Court proceeded to issue the final decree, which does not agree with the judgement, what steps is he taking to ensure that the High Court sets aside that decree and issues another one which conforms with the judgement?

**Mr. Speaker:** Very well. Let us have that clarification from the Attorney-General. Could I get a clarification from the Attorney-General regarding the judgement that did not agree with the decree? Is it the one that was laid on the Table; which, ultimately, has been signed? How did it get signed if it does not reflect the judgement?

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, maybe, to complete the record, let me lay the correspondence exchange on the Table, which I referred to.

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

**Mr. Speaker:** Is it, therefore, your stand, as the Attorney-General, that the decree signed does not reflect the judgement? Is that your stand?

**The Attorney-General** (Mr. Wako): Yes, Mr. Speaker, Sir. I think I have said that. The decree which has been laid on the Table, as the one issued by the Court, does not reflect the judgement that was given. We indicated that in very clear terms in our letter dated 13th February, 2001 to M/S Lumumba and Muma Advocates.

**Mr. Speaker:** Is that not strange?

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir. In view of that contradiction, which is very serious, could the Attorney-General tell us what the remedy is? This is because we cannot live in a sea like this.

**The Attorney-General** (Wako): Mr. Speaker, Sir, the remedy is that, under Section 90 of the Civil Procedure Rules, we cannot ask for a review of that decree. I have indicated that to Mr. Donde, and I believe they came to the office and said that this thing can be done by consent.

**Mr. Speaker:** But much more important, if, indeed, the lawyers for the banks knew that you did not agree with the terms of the proposed decree as sent to you, and you told them as much, and they went further to obtain that decree and executed in the absence of the Attorney-General, are you satisfied that it was done properly?

**The Attorney-General (Wako):** Mr. Speaker, Sir, I have not investigated to find out what happened thereafter. It may very well be that the lawyers of the banks do not agree with the Attorney-General. They may have convinced the Registrar that their position is the right one. That is why the Registrar issued that, but here I am talking about my opinion as the Attorney-General, which was duly communicated.

**Mr. Speaker:** Well, I suppose I will not hear the last of this. I will give you time to choose as to when you will respond. Will Wednesday next week be okay? Just tell the House, ultimately, what happened.

## MINISTERIAL STATEMENT

### GOVERNMENT POSITION ON AIR NAVIGATION STRIKE

**The Minister for Transport and Communications (Mr. Mudavadi):** Mr. Speaker, Sir, I wish to issue a Ministerial Statement on the air navigation services strike that has been on.

Following the strike by the technical officers in the air navigation services of the Directorate of Civil Aviation (DCA), I would like to inform this House as follows. In early March this year, the DCA received anonymous letters threatening that the technical officers would stage a go-slow on 1st June, this year. A letter received later in the month indicated that the go-slow would take place on 20th April, 2002, instead of June, 2002. On Friday, 29th March 2002, operations at all airports started normally. However, later during the day, reports from Mombasa and Malindi indicated that there was a go-slow by the staff, resulting in delayed landings and take-offs. On Saturday, 30th March, 2002, the staff at Jomo Kenyatta International Airport also staged a go-slow. A meeting involving senior officers of my Ministry and DCA was convened, and after discussions on the issues raised, the technical officers in the afternoon accepted to go back to work, only to walk away later. Subsequent shifts did not report for work, resulting in a full-scale strike. The workers main grievances were: The delayed delinking of DCA from the mainstream Civil Service, and; two, the recovery of house rent arrears.

The following steps were taken as a result of the strike. On the 31st March, 2002, the Minister for Labour, Mr. Nguvu, issued an order under Section 28 of the Trade Disputes Act, Cap.234 of the laws of Kenya, declaring the strike illegal because air navigation services are classified as essential services. Two, the Permanent Secretary (PS), Ministry of Transport and Communications made two appeals to the workers to resume duty by 8.00 a.m. on 2nd April, 2002. He further extended his appeal to 8.00 a.m. on 3rd April. The PS sought further dialogue and held a meeting with 18 officials of their welfare association on 3rd April, 2002. These deliberations were cordial as the officials were briefed and understood the actions being taken by the Government. They were fully convinced that the Government was doing everything possible to address their grievances. Although it was agreed with the officials that they would facilitate a meeting at the East African School of Aviation between the PS, their striking colleagues on 4th April, 2002, this did not materialise as only 74 members of staff attended.

At that meeting, it was agreed that a task force comprising of senior Ministry's staff, Directorate of Personnel Management, DCA staff and four representatives of the technical officers would be appointed to look into their grievances. While this meeting was going on, the striking staff were holding a parallel meeting at Uhuru Park, and they also refused to nominate any representatives to the task force and rejected any discussions with the Government. The categories of those who were affected were Air Traffic Controllers who were 115, Aeronautical Information Officers who were 43, Aeronautical Engineers and Technicians numbered 45 and Aeronautical Communications Officers who were 66. We are talking of a total of 269 workers.

I would also want to state that I personally made an appeal to the striking workers on 5th April, and I enumerated the steps being taken to address their grievances and asked them to report back on duty by 6th April, 2002 at 12.00 noon. I made it clear that those who will not comply may face disciplinary action in accordance with the Civil Service regulations.

On the delinking of the DCA, the staff were assured that all efforts were being made to have the Draft Bill published. This was, subsequently, published on 8th April, 2002 by the Attorney-General, and I would appeal to hon. Members to give their necessary support in the passage of the Bill into law.

As regards recovery of house rent arrears, the staff were assured that the recoveries would be spread out so that they will not be adversely affected. Despite these assurances, the staff ignored all appeals. It should be noted that the strike by the technical officers was illegal. The staff in question were performing essential services, and this prohibited them from indulging in industrial action. By engaging in this strike, the staff deserted their duties, which is a

serious breach of the Civil Service Code. These officers are, however, free to appeal to the Public Service Commission against their dismissals. Owing to the above action, the Government has appealed to retirees and other persons with the necessary professional qualifications to apply for the vacancies created by those who are facing disciplinary action. This exercise is going on.

I would also like to assure the House that despite the strike, services in all the airports in the country have continued to be provided satisfactorily. We had, however, to scale-down services at the domestic airports of Kisumu, Malindi and Lokichoggio. The scaled-down services are being provided from Jomo Kenyatta International Airport and the scaling down of services does not constitute closure of airports nor does it constitute a breach of safety at the airports and in our airspace. This action is not new as it is taken periodically, internationally, when the need arises.

Due to the strike, my Ministry has had to deploy relevant instructors from the East African School of Aviation and managerial staff from the DCA to perform air navigation services. The deployed instructors and managers are qualified and competent. Where validation of their competence has been necessary, this has been done by the Director of the DCA as provided by law.

Finally, let me assure hon. Members and Kenyans and the international community that despite the strike, our airports and airspace remain safe and secure.

Thank you.

**Mr. Speaker:** Mr. Muite! Be brief!

**Mr. Muite:** Mr. Speaker, Sir, the Air Traffic Controllers are a very specialised group. Could we get a clarification from the Minister about the Air Traffic Controllers who are being locked up at the Airport Police Station? I saw them this morning, and they include a breast-feeding mother who is locked up there. They have been agitating for this Bill for the last 15 years. Now that it has been published, could the Minister stop the strong arm tactics? The Air Traffic Controllers are prepared to sit down with the Government and appoint a Committee to discuss this matter. Is the Government prepared to negotiate and reinstate them or give instructions for them to be released from the police station, so that we can resolve this matter in an amicable way? We do not have to rely on some Air Traffic Controllers who worked last in 1982, during the attempted coup! Why is the Government taking them to man air traffic controls?

**Mr. Mwenje:** Mr. Speaker, Sir, the country continues to lose a lot because night flights have been cancelled. The Air Traffic Controllers did not start their negotiations yesterday. They have been trying to push the Government for a very long time; to consider de-linking their department from the Civil Service. They have tried to enter into negotiations with the Government but the Government has remained adamant. Today, the Air Traffic Controllers are being thrown out of their houses. Some of them who live in the Civil Aviation houses in Embakasi have now been thrown out. Could the Minister agree to enter into negotiations with them? Bringing in retirees will not help the Government much because airline operators will not have any confidence in them. Could the Minister consider reinstating them so that they can negotiate when they are working?

**Mr. Speaker:** Order, Mr. Mwenje! You are just repeating what Mr. Muite has said. I will not encourage any hon. Member to repeat!

**Mr. Sungu:** Mr. Speaker, Sir, as a former airline worker, I am very concerned about the plight of the Air Traffic Controllers. Industrial action should never be equated with an illegality. Every worker must have a right to agitate for better terms of service. I know that my good friend, the Minister for Transport and Communications, must be feeling in his heart because the workers who have been summarily dismissed and evicted from their houses have children who go to school and suffer from the common problems facing everyone in this country. I appeal to the Government to reconsider their decision in view of those facts and in view of the fact that, it would be absurd to go looking for retirees and foreigners who will probably earn more money, when we have highly qualified people in this country.

**The Minister for Transport and Communications (Mr. Mudavadi):** Mr. Speaker, Sir, I have stated that the Government will be ready, after receiving letters through the Civil Service Procedure, if they appeal through the Public Service Commission, they will be looked into and considered according to each individual case. I would also like to assure this House that we made serious attempts at initiating dialogue. For a whole one week, we were sending messages directly, through the Permanent Secretary, that we wanted to talk and have the issue resolved but the pleas were completely disregarded by the staff. It was only after this action has been taken that they are now saying they are ready to talk. But as things stand, I would like to assure the House that we are not going to be hostile when looking at each individual case systematically, in accordance with the Civil Service Code of Regulations.

## BILL

### *Second Reading*

THE KENYA NATIONAL COMMISSION  
ON HUMAN RIGHTS BILL

*(The Attorney-General on 3.4.2002)*

*(Resumption of Debate interrupted on 3.4.2002)*

**Mr. Speaker:** Mr. Murungi was on the Floor. Mr. Murungi, you have 28 minutes left!

**Mr. Murungi:** Mr. Speaker, Sir, let me congratulate the Attorney-General for introducing this important Bill before this House. This Bill is historic in the sense that it is the first time, in the history of this country, that we are having a State-sponsored and State-funded human rights body for the promotion and protection of human rights.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

Mr. Deputy Speaker, Sir, this Bill could not have come at a more opportune time than now. Kenya has almost become the black sheep in the commonwealth of nations because of the gross abuses of human rights. The first duty of this Commission, once it is set up, should be to pressurise the President to make public the findings of the Akiwumi Commission on Tribal Clashes. The tribal clashes perpetrated by politicians in this country in 1992 and 1997 were the worst violation of human rights that this country has ever experienced. It is a great shame that, after a lot of public funds and time were expended in taking evidence and trying to identify the perpetrators of tribal clashes, that Report is gathering dust somewhere and we have refused to disclose the people behind that massive violation of human rights. The first duty of this Commission should be to insist on the publication of the Akiwumi Report and also to seek compensation for the victims of tribal clashes both in 1992 and 1997. Unless the Commission does that, Kenyans will dismiss it as another bogus statute.

Mr. Deputy Speaker, Sir, Kenya has now become famous for the demolition of kiosks. When we talk of economic and social rights, people do not seem to understand that deprivation of the livelihoods of poor people in this country constitute a violation of human rights. So, when the Commission is set up, we would like it to take stern action against people like Mr. Nassir who supervised the demolition of kiosks in Mombasa and the Nairobi City Council for violating the rights of poor people like hawkers in this City and other parts of the country. Kenya has also become famous, or infamous, because of its routine and systematic torture of prisoners by the police. We do not want to talk very much about the case in Nyeri because it is before the court. But that is the way forward. Every policeman who tortures somebody should be arrested and charged because it is a crime of assault or causing grievous harm. Recently, we signed the United Nations (UN) Convention against torture. It appears as if the training course at Kiganjo teaches the police nothing about the UN Convention against torture. So, we are appealing to the Police Commandant at Kiganjo to make sure that, every person who graduates to be a police officer in this country knows about that convention by heart. We are also famous for discriminating against women and for violations against the rights of women. We have heard a Member of Parliament stand up in this House and say that a divorced woman should not be appointed a judge. The question is: What about male divorcees? We should not allow such statements to be made in this House. We should not forget it, and coming from an hon. Member of Parliament, it is a disgrace to this House.

**Mr. Deputy Speaker:** It is not a statement in Parliament because it was ruled out of order and, therefore, expunged from our records.

**Mr. Murungi:** Thank you, Mr. Deputy Speaker, Sir. The point I am trying to make is that, when this Commission is in place, it should also educate Members of Parliament so that they become agents for protection and promotion of human rights instead of participating in gross violation of human rights.

We feel that this Bill is an important step in the struggle for creating a human rights culture in this country. In the 1980s, if you uttered the words "human rights" in this country, you were considered subversive, or a dissident, and hon. Members of Parliament who have been in detention, such as Mr. Odinga, Mr. Anyona and Mr. Kihoro, were foot soldiers for human rights in this country. They had to pay dearly with their lives for the words "human rights" to be accepted as decent words in the political vocabulary of Kenya. So, we pay tribute to those heroes, and the others who died, for bringing human rights into the national map. We hope that when the new Constitution is written, the proposed Kenya National Commission on Human Rights will be entrenched in it.

**Mr. Munyasia:** On a point of order, Mr. Deputy Speaker, Sir. You have heard Mr. Murungi say that hon. Members such as Mr. Odinga and Mr. Kihoro paid with their lives for the protection of human rights while they are still around. Is he not misleading this House?

**Mr. Deputy Speaker:** No, I think the House understood perfectly what he meant!

**Mr. Murungi:** Mr. Deputy Speaker, Sir, paying for something with your life does not merely mean that you die. Even the quality of life is captured in that concept, and I think the former teacher should know better.

The long title of the Bill reads: "A Bill to provide for the establishment of the Kenya National Commission on Human Rights for the better promotion and protection of human rights and for connected purposes". The title deals with the conceptual framework of the Bill. We are trying to establish a State-funded institution for promotion of human rights in this country. So, the question which arises is: What are these human rights that the proposed Commission will protect and promote? In the old days, we used to talk about natural rights or, during the French Revolution, the rights of man and citizen. Today, we have gone miles ahead of that, and we are now talking about human rights, women's rights, the rights of the child and the rights of the workers and so on. So, the vocabulary has changed over time, but the concept is basically the same; that human rights are those rights which naturally attach to a human being by the very fact that, that person is a human being. You do not need any other qualification. The whole idea is to protect human worth and dignity.

There is an assumption which is core to human rights, that human beings are special and they are clothed with a certain worth and dignity which is absent from other living things, animals and plants. Therefore, there are certain ways of treating a human being which are inconsistent with that dignity. So, the purpose of human rights is purely to delineate the dos and the don'ts of the decent treatment that a human being should be given. So, human rights is a merely a language. It is merely a concept of protecting human worth and dignity, and all the catalogues that we have, both internationally and locally, for the protection of human rights are merely legal expressions of things that should be done to protect human dignity. So, we should not be intimidated by these terms. We can replace the term "human worth and dignity" with the term "human rights".

Mr. Deputy Speaker, Sir, in the old days, we used to talk about what are now called "classical rights", such as the freedom of expression, freedom of assembly, freedom of association and the right to vote. But these are now considered among the first kind of generation of human rights. We have the second generation of human rights which are economic, social and cultural rights. These include the rights to work, to leisure and to practise cultural beliefs. We have also the rights to shelter, food and education. These were also rights about which debate came up during the Cold War, and they were not treated as rights. But now, with the disappearance of Cold War systems, it is increasingly being accepted that the right to food and shelter is equal to the right to expression. In fact, these rights are interdependent because you cannot exercise the right to food without being accorded the right to say that you are hungry. So, the two rights go together.

Right now, we have a new generation of human rights such as the rights to peace and to sustainable development, which deal with the environment in which the human species finds itself. We are supporting this new generation of rights because it promotes a better environment for the human species to flourish. We are also talking about the right to development so that our children will also find some trees around because we protect our environment.

Mr. Deputy Speaker, Sir, I must say that we are very happy with Clause 17 of the Bill because it recognises the equality and interdependence of these rights. Clause 17(c) reads as follows:-

"In the performance of its functions under the Act, the Commission shall have regard to all applicable international human rights standards, and in particular to the fact that human rights are indivisible, interdependence, interrelated and of equal importance for the dignity of human beings".

This is a very appropriate clause to have in the Bill because it gives the Commission a very broad mandate to protect and promote human rights in the broadest sense of the words. So, we have no quarrel with the definition of human rights both in Clauses 2 and 17. It is the best definition that can be given.

Mr. Deputy Speaker, Sir, as for the characteristics of this Commission, there is a bit of history to it. The assumption in creating a National Commission for Protection of Human Rights is that the State itself is the principal guarantor and protector of human rights. But the reality on the ground is different. On the ground, we all know that governments all over the world, are the worst violators of human rights. So, how can we trust a government which is the worst violator of human rights to be the protector and guarantor of human rights?

When these commissions were set up in early 1980s, they were being recognised. The first countries which set up commissions were countries which had come from worst cases of violations of human rights. The commissions were set up as public relations exercises.

The basic purpose of setting up a commission by the state is to clean up its human rights image. No developing country can afford to ignore human rights these days because in foreign affairs matters and, especially when we come to negotiations for foreign aid, countries which have good governance records and which protect human rights, benefits more from foreign aid programmes from the West, while countries which are gross violators of human rights are punished. So, the reason why the Kenyan Government is taking interest in the protection of human rights is not because of any genuine commitment but, only to impress the donor community that Kenya is among the

countries which protect human rights and have good governance records and, therefore, qualify for foreign aid. We hope that those who will be appointed to this Commission will go beyond that public relations exercise.

In 1992, the UN Commission for Human Rights established guidelines for the National Commission on Human Rights to make them more effective and more genuine. Those principles which are called the Paris Principles require that a commission of human rights be independent of the Executive and should have its own separate funding and that it plays an advisory, educative and investigatory function.

Mr. Deputy Speaker, Sir, normally we do not thank the Attorney-General, but we would like to thank him in this case because this Bill, to a large extent, complies with the Paris Principles, both in terms of its mandate and structure. There are only a few areas in which we have a quarrel and which I am going to highlight on. The major weakness in this, otherwise, good Bill, is in its appointment and removal of commissioners. There is no doubt that the efficacy of this Commission depends very much on the quality of individuals whom we appoint to man the Commission. If we create a commission and appoint Mr. Mulu Mutisya and other people of that calibre, then there is no commission. We would rather not have it. So, we must insist on very high standards, independence of character and qualifications; people who understand what human rights are, servicing this Commission. If you appoint semi-illiterate people who have never heard of human rights, then there is no commission that you have created.

Mr. Deputy Speaker, Sir, Clause 4 has what we call the "Wako virus"; a disease which all Bills prepared by Mr. Amos Wako suffer from; that is, weaknesses in appointment procedures. The Attorney-General has been so much captured in his mind by the President that he cannot think independently. He cannot create any position without saying: "The President appoints this or be given leeway to appoint", even after Kenyans have made it very clear that they want to have independent institutions. We would like to remind the Attorney-General that President Moi is just about to leave office and he should not tie the future of this country to the destiny of one man!

Clause 4 states as follows:-

"The Commission shall consist of a chairperson and seven commissioners nominated by the National Assembly and appointed by the President."

This is a very good provision because it is Parliament itself which should nominate the chairperson and the seven commissioners and then the President should, ordinarily, gazette these names; like we did in the Constitution of Kenya Review Commission. But if you look at Clause 6 of the Bill, the Attorney-General has forgotten what he has said in Clause 4. So, in Clause 6(3), he says that:-

"After receiving applications, the Attorney-General shall, within seven days of the expiry of the period prescribed under Subsection(2), convene a meeting comprising of:-

- (a) The Speaker of the National Assembly;
- (b) The Chief Justice---

**Mr. Muite:** On a point of order, Mr. Deputy Speaker, Sir. The Chair will notice that the Attorney-General is not present and there are very important fundamental issues being raised by Mr. Murungi about apparent contradiction in this Clause. Who is going to take notes so that these issues can be responded to?

**Mr. Deputy Speaker:** Mr. Muite, I can see the Deputy Leader of Government Business is sitting there, he can take note of that!

**Mr. Muite:** Is he a lawyer and is he going to follow these legal issues?

**The Minister for Transport and Communications (Mr. Mudavadi):** Mr. Deputy Speaker, Sir, I am taking note of what is being said and, I am sure appropriate responses will be developed.

**Mr. Muite:** Tunahitaji wakili hapa!

**Mr. Deputy Speaker:** Well, the HANSARD will also include everything that Mr. Murungi is saying. Proceed!

**Mr. Murungi:** Mr. Deputy Speaker, Sir, there should be a Deputy Attorney-General who should be coming to Parliament when the Attorney-General is not here.

Mr. Deputy Speaker, Sir, Clause 6(3) stipulates that, the nominating committee should be made up of the Speaker of the National Assembly, the Chief Justice or his nominee and the Attorney-General or his nominee. For the purpose of considering applications and nominating persons suitably qualified for appointment as commissioners, it does not require you to be a lawyer or to have much intelligence to know that the National Assembly is not made up of the Speaker, the Chief Justice and the Attorney-General. So, if the intention is to get the National Assembly to do the nominations, then it has to be done either on the Floor of this House or through an appropriate Committee of Parliament. So, we are recommending that Clause 6 be amended so that the nominations should come to Parliament for Parliament to shortlist the chairperson and seven names, who will be taken to the President for appointment.

**An hon. Member:** Who will do that?

**Mr. Murungi:** This should be implemented either by the Departmental Committee on Administration of Justice and Legal Affairs or, as we normally do it, through the House Business Committee. So, there is a major



weakness in that Clause and we hope, when the Attorney-General comes back, he will be duly informed about the sentiments of this House.

Mr. Deputy Speaker, Sir, we must, therefore, insist on that. Clause 6 says that the Speaker, the Chief Justice and the Attorney-General nominate 12 persons whose names should be forwarded to the President and then the President would pick seven people out of the 12 nominees plus the chairperson. If we want a commission of seven people, why should we nominate 12 persons? This is because from a list of 12 persons, five are to be eliminated, the seven who are going to be appointment by the President, would feel forever obliged to the President because he was not duty-bound to appoint them.

Mr. Deputy Speaker, Sir, if we want psychological liberation of this Commission, the President must be given seven names from this Parliament so that he appoints them. We should not give him this discretion because it is the one which is normally used to weaken the Commission.

Mr. Deputy Speaker, Sir, the Chairperson of the Commission should not be appointed by the President, the way the Attorney-General's Bill says. We believe that the Commissioners who will be nominated through this House will be fairly intelligent people and can participate in a simple election to elect their Chairman or Chairperson. So, we would like to recommend that the Chairperson should not be appointed by the President, but should be elected by the Commissioners. I think this is the modern trend.

In May, 1998, I and the Chairman of the Standing Committee on Human Rights, Prof. Mutungi, went to Belfast in Northern Ireland to attend an international seminar on National Commissions of Human Rights which was held there. Each country presented its Commission. Of all the Commissions which made presentation at the Belfast seminar, the South African Commission was rated number one. The Russian and the Kenyan Commissions were rated among the last. It was very embarrassing for Prof. Mutungi to listen to what happened there because he knew what happened in his Committee. The problem with the Kenyan and the Russian Commissions was that the President was considered the principal guarantor of human rights. That is why the Mutungi Committee Reports are not made public. They go round the country and we know they receive many complaints, but when they compile the reports, they are presented to the President. Kenyans do not know anything about the reports that the Mutungi Committee has come up with or what their findings are. They do not know what advice the President was given. This was found to be a major weakness. I too, as a Member of the Kenyan delegation, felt very embarrassed and since we came back, I have been on Prof. Mutungi's back. I have asked him: "Professor, how can you continue heading this bogus institution, and yet, you know how Commissions like this one should run in the world?" We took notes and we were given handouts. I am very happy that some of the things we learnt there have found their way into this Bill. But there is still that major weakness which treats the President as the principal guarantor and protector of human rights.

We cannot have reports like the Akiwumi Report, which are so important, being sat on by one person. Kenyans should know its contents. This is our country. All of us are born equal and naked. No single individual should deny other Kenyans the basic right; the right to know. We are very happy that, once we establish this Commission under this Act, its reports will not only be given to the President, but will also be submitted to Parliament. I believe that they will be submitted to Parliament because we are representatives of the people of Kenya and any document laid on the Table of this House becomes a public document. So, the reports of this Commission will be public documents. This is a great improvement, and I hope that Prof. Mutungi will not be bound by customs to pick the report and give it to President Moi or any other President and stop there. We also demand to be given copies of the report.

Mr. Deputy Speaker, Sir, Clauses 16 and 18 outline the powers and functions of the Commission. The functions of the Commission under Clause 16 are fairly comprehensive. I would like, for record purposes, to go through Clause 16. It states:-

"The functions of the Commission shall be:-

- (a) to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any human right;
- (b) to visit prisons and places of detention and related facilities with a view to assessing and inspecting the conditions under which inmates are held and make appropriate recommendations thereon;
- (c) to inform and educate the public as to human rights for the purpose of enhancing respect for such rights by means of continuing programme of research, publication, lectures and symposia and by such other means as the Commission may deem fit;
- (d) to recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights or their families."

We think this particular provision should be made retroactive so that all those people who have lost their property, lives and land, especially during the tribal clashes, get opportunity to be compensated because they have suffered massive losses.

Clause 16(1)(e) says:-

"to formulate, implement and oversee programmes intended to inculcate in the citizens of and other persons resident in Kenya, awareness of their civic responsibilities and an appreciation of their rights and obligations as free people."

Somebody was telling us about the chicken that is taken to Bama Market from Machakos District. He was saying that when the chicken are brought to the market, they are tied with ropes and put on top of a bus. Sometimes, these chicken are captured a day before they are taken to the market. When they are transported to Nairobi, the ropes are untied and they are set free, but they continue squatting as if they are still tied. This is because they are used to squatting and do not know whether they have been set free. So, somebody has to go round kicking them so that they can discover that they are free and start to move around.

The biggest problem we have in this country is psychological bondage. Although this country became independent in 1963, so many people still mentally live under colonialism. Although there has been multiparty democracy since 1992, many people still live mentally under the one-party rule. Even when we freed Kenyans from tyranny and dictatorship by chiefs, many of them still mentally live under colonialism by the chiefs. Why is this so? It is because of the culture of fear. I think one of the biggest jobs that this Commission will do is to carry out education. It should remind Kenyans, on a daily basis, that they are free people, have nothing to fear and this is their country. Every day, every hour, the Christians have been fighting against the devil, as far as we know, for the last 2000 years now. The struggle for human rights must also be fought with the same tenacity and determination.

Mr. Deputy Speaker, that is the work of this Commission. They must remind Kenyans, on a daily basis, that this a free country, and that Kenyans, irrespective of their political, social and economic status, are equal as human beings. They are entitled to the same worth and dignity. No title, whether of policeman, judge or Member of Parliament, entitles you to deprive others of their rights. This is the biggest job which I think this Commission will do.

Mr. Deputy Speaker, Sir, the Commission is also supposed to monitor Government's compliance with its obligations under international treaties and conventions on human rights. I did a research on human rights treaties which this country has entered into since we became independent. It was easy to discover that Kenya is a signatory to the UN Declaration on Human Rights, 1948; the UN Covenant on Civil and Political Rights, 1946; the UN Covenant on Economic, Social and Cultural Rights, 1956, and recently, the African Convention on Human and Peoples Rights, the UN Rights Against Torture and the Rights of the Child, among others. If you look at the record, you would think that Kenya is a heaven and that all these human rights are respected and enjoyed in this country. But when you go to the ground, the story is different.

One time, I remember talking to the Assistant Chief in my constituency. I asked him whether he had read the Constitution of Kenya and he told me he has never seen it. Then I asked him whether he knows about human rights, especially whether he knows our people have freedom of movement and to confide in some people. He said every Kenyan has freedom of movement, the only fear they have is of hyenas and, therefore, they cannot walk around at night. The level of understanding of human rights in this country is extremely low. We are supposed to write about the success and obstacles we are finding in implementing human rights. Almost every convention uses the reporting procedure as one of its enforcement mechanisms. But you find that Kenya is always in arrears; in one of the conventions we were not reported. I think it was on the UN Convention Against All Forms of Discriminations Against Women. For 10 years, Kenya had not sent a report. When you ask them what is happening, they say they do not have lawyers and officers in the Ministry to do so. Now they will not have an excuse because we expect this Commission to be manned by people who understand human rights, who know a bit of law, and who can write the report which the Government has been unable to write in the last 20 years.

Mr. Deputy Speaker, Sir, this Commission will also investigate and conciliate complaints on its own initiative. So, we do not have to wait for people to make noise about demolition of kiosks; the Commission should move in fast.

Mr. Deputy Speaker, Sir, for us, if this Commission works, it will be the greatest thing to happen in this country on the human rights front. Kenya always does its own things in its own ways. This is not the first time that the Attorney-General is building castles in the air. We hope that this time round, we will match our words with our actions. We hope that what we say in this House, through this Bill, will be done and it will happen.

Mr. Deputy Speaker, Sir, a good example is the UN Convention Against Torture which was signed less than two years ago. You can see what the police are doing. They are killing people in the cells and dumping them on the streets. We hope that this Commission will be creative and innovative in the promotion and protection of human rights in this country. It should also see what other commissions around the world are doing, like the National Indian Commission on Human Rights. Recently, in India, children from 250 families died of manipulation starvation. The Indian Commission ordered the Government to pay each of those families 652,000 rupees. In South Africa, the South African National Commission on Human Rights discovered that it cannot enforce economic and social rights without

tackling poverty. So, they have prepared a national master plan for fighting poverty in South Africa. They are negotiating with the Government on how that master plan will be implemented. These are the kind of things that we expect this Commission to do when it becomes operational. Its job will not merely be to tell the international community that Kenya is very good at the protection of human rights. We want to see it on the ground. We want the Commission to be bold in its actions, especially against the Government.

Mr. Deputy Speaker, Sir, we also hope that the Commission will work hand in hand with NGOs. This is because the NGOs have, single-handedly achieved a lot so far in this country in the area of human rights. We hope that we are not creating an organ which will give the Government a pretext for deregistering NGOs, saying that now they have a Government body to protect human rights and, therefore, NGOs are irrelevant.

Mr. Deputy Speaker, Sir, we also hope that this Commission will scrutinise, especially, the Budget to ensure that the basic needs of Kenyans are given priority in the Budget. Last year we spent Kshs5 billion on security and Kshs5 billion on agriculture. We hope this will not happen with this Commission. It will be able to direct funds towards promotion and protection of human rights.

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

**Dr. Anangwe:** Mr. Deputy Speaker, Sir, thank you for giving me the opportunity to make my contribution to this important debate on the Kenya National Commission on Human Rights Bill. Let me state at the outset that I support it. However, there are a number of questions and issues which the Attorney-General needs to clarify in order to deepen our understanding of this particular Bill and its ramifications.

Mr. Deputy Speaker, Sir, the proposed Kenya National Commission on Human Rights is a successor entity to the Standing Committee on Human Rights that was set up on 21st June, 1996. What the Attorney-General is attempting to do is to upgrade that particular Committee into a full-fledged Commission. So, the exercise of upgrading is like a promotion of the Standing Committee to a full-fledged Commission.

Mr. Deputy Speaker, Sir, in any attempts to upgrade, there is one presupposition that the previous entity performed well, and that given its previous performance, it needs to be upgraded to a higher level of operation in order to register its performance. There is the assumption that this particular Bill is not being created as a result of the performance of the Standing Committee on Human Rights that has existed for years. The good Committee headed by Prof. Mutungi has had dismal performance and that is a fact. It has been low-keyed and a lacklustre body. Of course, explanations are bound to arise. When you look at this Bill, the explanation that is implied by this particular Bill is that, first, that Committee did not have adequate legal status. Secondly, there was no provision of resources for it to be able to dispense its services. But I believe this is just one part of the explanation.

Mr. Deputy Speaker, Sir, there are more fundamental explanations as to why the Standing Committee on Human Rights did not perform well. First, it is quite possible that the Committee did not have adequate work. This is based on - as Mr. Murungi stated - the level of understanding of human rights in this country which is very low. Indeed, the Constitution of Kenya provides for fundamental human rights, and the Kenya Government has signed many treaties with other international organizations, so much so that when you look at the documents, they are rich on human rights. Beyond what is in Government documents and probably beyond Government offices, the understanding of human rights in this country is very low. Unless that understanding is widespread, it is as if those rights do not exist. If you are not aware of your rights; if you are ignorant, the *de facto* situation is that they do not exist. And if they do not exist, even if they are abused, we will not be able to pursue or seek redress. I believe this is one reason why the Standing Committee on Human Rights has not performed well. It did not have adequate work, and so Kenyans did not go to it, because they were not aware of what their rights were. Even if those rights were being abused, they thought that, that was the normal practice. Secondly, one other explanation why the Standing Committee on Human Rights in Kenya did not perform well is that there are also other competing agencies that have been performing a similar role. For instance, the High Court has unlimited jurisdiction, so it is most likely that a Kenyan whose rights have been infringed will naturally feel that the right place to go and seek redress is the High Court or a court of law. The idea of going to the Standing Committee in order to seek redress does not seem to feature.

In addition, we also have NGOs or civil society organizations like the Kenya Human Rights Commission and others dealing with the release of prisoners, FIDA and the Kenya Law Society. These agencies have been more vocal, and so they have stolen the show from the Standing Committee. The reason why they have been stealing the show is probably because they have performed a lot better than what the Standing Committee has been able to do.

The third reason, in my view, as to why the Standing Committee on Human Rights has performed badly is to do with the nature of litigation process in this country. The process itself is very expensive. Before you can go to the courts, you must ensure that you have adequate resources to pay the lawyers, to pay the court fees and to be able to move about in order to meet court costs in the event that judgement goes against you. So, the fear is still engrained in Kenyans; that if you are going to pursue a court case or a legal matter that has to do with human rights, you risk losing and meeting the court costs. So, that can be an inhibition in itself.

My final explanation why the Standing Committee on Human Rights has failed is because it has been a Government agency. Probably, Government agencies are ill-suited for the kind of responsibility that we are bestowing on them in relation to human rights. I know an explanation has been given here that it is a practice in the developed world to develop a national human rights commission. But any set-up of structure is always conditioned by the context under which it is set up. A national human rights commission may be set up in the Western World, because the way organizations behave there, in relation to their mandate, may be totally different. Here it is a diffused system, where in law, there may be a separation of roles, but beyond what the law says, there are always extra-legal and extra-constitutional ways of influencing across the board, so much so that a Government agency would be ill-suited for this kind of responsibility.

In any case, agencies which are being accused of having abused human rights are Government agencies; whether it is the police, the Judiciary and the provincial administration. Naturally, when an agency is set up in this kind of context, and its responsibility is to protect the image of the Government, it would be hard put to go full-throttle to maximise on human rights. All we are trying to say is that, in Western societies a national commission set up within the public sector performs, because there is division of labour which has been rationalised and is accepted as a norm. But here, such agencies would undergo the same experience that the Standing Committee has suffered.

Mr. Deputy Speaker, Sir, given the kind of remarks, issues and conclusions I have made in relation to the Standing Committee, I fear that the fate of the proposed Kenya National Commission on Human Rights will be no more different from the fate or the plight that the Standing Committee has faced. During the presentation by the Attorney-General, I expected him to give adequate justification in terms of what gap this particular agency was going to perform. We should not just be creating organizations and institutions because it is fashionable in the West; we must find a niche for them within the local context. In my view, given the performance of the Standing Committee on Human Rights, there is no niche market for these particular institutions unless we are able to justify them. Agencies of this nature are a charge on the taxpayers, and so, if we are going to create an institution like the Kenya National Commission on Human Rights, it must be adding value to the lives of Kenyans instead of it just being a burden, for that matter.

Mr. Deputy Speaker, Sir, with regard to this document, let me begin with Clause 18. This particular Clause---

**Mr. Deputy Speaker:** Which document are you referring to?

**Dr. Anangwe:** The Kenya National Commission on Human Rights Bill.

Mr. Deputy Speaker, Sir, Clause 18 gives powers of the Commission, and specifically, it states:-

"The Commission shall have all the powers necessary or experience for the proper performance of its functions under this Act, and shall not be subject to the direction or control of any other persons or authorities."

We understand what is being achieved here is that, that particular Commission ought to be autonomous and independent; the assumption being that, without that autonomy and independence, it would be interfered with. That is understandable, but there is a general trend that is developing in this country towards independent and autonomous institutions which are independent from Parliament, Executive and Judiciary. From my point of view, whereas the logic has to do with the fear of interference from the existing agencies, those institutions must be rationalised and put in the right context. The whole purpose of having separation of powers amongst the branches of the Government and to build in checks and balances is largely because, without institutions having to check on one another--- Yes, on one occasion, those particular organisations and independent agencies may be under the superintendence of well-meaning people. But it is equally possible that we may be creating monsters; organisations that may fall in the hands of people with ill intentions.

In a mature democracy, the whole purpose of creating three branches, and particularly, with relation to the Executive, is that, that particular agency is under democratic leadership and whoever is elected for a specific term has a mandate from the electorate. That mandate must be seen to have been discharged at the end of that period. So, if you are elected as a head of the Executive branch, it is expected that you will be able to marshal the requisite resources and have public institutions at your disposal, so that you do not have an excuse for not having delivered. Now, in a democracy, here you are elected as the head of the Executive branch and here, on the other hand, are institutions that are independent from you! At the end of the day, who is to be blamed for their performance? If those kind of institutions become the norm, so that everywhere, we are creating institutions that are independent from the Executive branch, Parliament and the Judiciary, to whom are they accountable? Accountability is requisite in any public institution, and the best way to create that accountability is, first of all, to be democratic, and secondly, to have that institution to be answerable to an elected authority. Now, a Commission of this kind and many others that we have been attempting to create are not accountable to elected people. Those are the genesis of authoritarian action that we may live to regret at some stage in future.

Mr. Deputy Speaker, Sir, Clause 16 provides for functions. I need not go through the functions. But I have

just a question to ask. Many of the functions are being performed by existing institutions. If an issue is to do with investigating on its own upon complaint made by any person or groups of persons of any violation of human rights--- Human rights have been defined under the Constitution. What would stop the Criminal Investigations Department (CID) to perform the same? Probably, it would do it better because it has the institutional infrastructure covering the entire country. Here is a Commission upon which we are bestowing that particular responsibility, and yet, it will require to build its own infrastructure. Where is the comparative advantage of creating a separate Commission? Why can we not inculcate human rights attitudes amongst the existing agencies and persons, whether it is in the police, so that they are more sensitive and responsive when an issue of violation of human rights arises? Probably, they can be faster and act expeditiously. But the way it is, it is going to take a long time, during which process, we will have demoralised those existing ones. The police will begin to say: "Your human rights have been abused; go and look for the Kenya National Human Rights Commission to help you to seek redress." So, what I am trying to say is that, in the transitional period--- This transition can be very long. It can take years! My plea would be: As much as there is need for us to create a separate institution called the Kenya National Human Rights Commission, let us also inculcate and train the existing agencies, so that they can be able to perform those functions related to human rights.

The second function has to do with visits to prisons, places of detention or related facilities, with a view to assessing and inspecting the conditions under which the inmates are held and make appropriate recommendations thereon. I know that under the current arrangement, judges also visit those institutions. Now, why are we duplicating efforts? Here are prisons and places of detention, and we are creating a second layer of institution to be an oversight institution, when we could have solved the same problem by inculcating human rights attitudes amongst prison officers and those in charge of detention and related facilities. It would save the taxpayers a lot of money. We have places of detention and prisons with officers who are supposed to be discharging those duties. Again, we are creating an oversight institution which is going to supervise other agencies in relation to human rights, when we could have solved that problem by training prison officers, warders and those in charge of those institutions, so that they are more sensitive to human rights. This trend, where we feel that only one agency will be the custodian of human rights, may end up undermining human rights in this country.

Mr. Deputy Speaker, Sir, function (c) has something to do with informing and educating the public on human rights for the purpose of enhancing respect. That would be arrived at by means of continuing programmes of research, publication, lectures and symposia, and by such other means as the Commission may deem fit. Again, that is centralising an important function, which should be a function of schools, the education system and civil society. There are things which the civil society does better. From the experience that we have had, issues to do with human rights were brought onto our agenda not through Government agencies, but through Non-Governmental Organisations (NGOs), which kept on hammering that particular message until it sunk. Why are we now taking over that particular responsibility from them?

Mr. Deputy Speaker, Sir, function number (d) reads: "To recommend to Parliament effective measures to promote human rights." I think that is unconstitutional. We have the supreme legislative responsibility and in our exercise of that responsibility, we are not under the direction of any agency. Whether it has to do with human rights, we deserve the right to take our own standpoint, so that we can maximise on the human rights of our people. But, of course, that is not to say that the document should not come. But when we stipulate it in law, a person can readily say it is the law, and the Kenya National Human Rights Commission is mandated to recommend. So, once it recommends, what choice do you have, other than to just accept what it has recommended, whether we agree or not?

Mr. Deputy Speaker, Sir, Clause 5 gives the qualifications of Commissioners. But in Sub-Clause 2, it says: "No person shall be qualified for appointment as a Commissioner, if such a person is:-

- (a) A Member of Parliament (MP).
- (b) A member of a local authority.
- (c) A member of the executive body of a political party.

Are they suggesting that these are the abusers of human rights and, therefore, they are unqualified to participate in this particular Commission? I just want the Attorney-General to give us the rationale behind this. Maybe, it is his understanding that we are normally partisan in our views and the way we approach issues. Who is better qualified to articulate the rights of his people than a person who has been elected either as a Member of Parliament, member of the local council or a party because these are intermediary organisations? A political party is an intermediary organisation in the sense it is a means of transmitting public demands from the society to the State. I do not understand the rationale for selecting the best qualified people to be in this Commission in terms of skills. For instance, the Attorney-General, Mr. Murungi or Mr. Kihoro may be the best qualified people to serve in this Commission. Why are we excluding them from participating in this commission? I know there exists a tendency only in Kenya where Members of Parliament always end up being discriminated against. You cannot teach in the university because you are a Member of Parliament whereas in other countries people are liberal about it. My guess is that this is

an effort by the civil servants to edge us out from participating in this kind of set-up.

The same Clause 5(8) says: "The Chairperson and Commissioners shall, upon appointment, hold office on a full-time basis and shall enjoy a certain tenure." In the case of the Chairperson he shall enjoy the status of a Judge of appeal and for Commissioners a judge of the High Court. Probably there might not be enough work. As I have already said the Standing Committee on Human Rights performed dismally and I have given due explanations. What is the justification of having fulltime commissioners so that they end up exacting public resources at the expense of the taxpayer? Given the scenario I have already portrayed, these Commissioners should work on part time basis so that they only sit when there is adequate work. They should be invited by the secretary so that when they turn up, they just get allowances for the work they have done, instead of them being full-time public servants in this particular regard. Even if we say they should meet three times in a year, I doubt whether there will be enough work for them to do. The idea of saying that they will be full-time members is not justified and the Attorney-General may wish to revisit that issue in his response so that he gives adequate justification.

Clause 19 gives this Commission the powers of the court. I am particularly keen on Sub-Clause 2 which says that the Commission may, if satisfied that there has been an infringement of any human rights or freedom, order:-

- (a) The release of any detained or restricted person.
- (b) The payment of compensation.
- (c) Any other lawful remedy or redress.

Supposing the order detaining these people is from the courts, are we trying to say that this particular Commission is superior to the court in relation to human rights? I need an explanation so that I may be able to understand. If it is the prison authorities who have said so in exercise of the law, then what are we simply saying? Are we saying that we are subjugating the Prisons Department to this particular Commission? How do we reconcile such a provision in relation to the existing laws under which the Prisons Department functions? These are the issues that I wish to raise.

With those remarks, I beg to support.

**Mr. Ndicho:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to contribute to this Bill. First and foremost I want to congratulate the Attorney-General for bringing this all important Bill to address the issue of human rights in this country. Though this Bill is long overdue, we believe that "better late than never". For many years other countries both in the developing and developed world have focused on the issue of human rights abuse. In our country, the rights of our people have been abused ever since the advent of the white man without any remedy or anybody bothering to compensate them or stop the abuses. This Bill has come rather late in the day, in 2002. One wonders what has been happening ever since we attained Independence.

The issue of human rights is also recognised worldwide by various international bodies such as the United Nations. Kenya ought to have set up this Commission a long time ago especially when the issue of human rights abuses was so pertinent in this country. Going through the whole of this Bill I noted the Attorney-General has tried to cover as many areas as possible. There are some areas that the Attorney-General either deliberately or inadvertently left out. These are issues which Parliament should be pointing out, either with an aim to amend them, or to ensure that they are included in the Bill before it is enacted. There are issues in this Bill over which I wish to commend the Attorney-General. For example, he has focused on areas such as our prisons, the police cells and other detention camps, including some cells that are erected by chiefs. These are areas where Kenyans are really tortured without anybody knowing what is happening to them. A good example is the case in Nyeri where policemen locked up a person in their cells and beat him until he died. They then took him out at night and dumped him in the streets. In the morning, they passed by there and pretended that they had just discovered a body.

That is one case amongst millions of others. This case was only highlighted because there are some people in Nyeri who were sharp enough to recognise and follow up this matter to its logical conclusion. I thank the Government for taking action against those five officers who are now behind bars, charged with murder. We hope this case will be pursued to its logical end. It is a pity that a place where Kenyans are supposed to seek refuge and protection is the same place where you will come out either lame or dead.

So, though we are making a lot of noise about that, we thank the Attorney-General for taking quick action on that particular case in Nyeri.

Mr. Deputy Speaker, Sir, a case arose in Thika last year where about seven people were also locked up in the police cells, but to date, nothing has happened. No compensation has been awarded to these people, and nobody is talking about it although innocent Kenyans died. The issue of having congested prisons and police cells is an example of abuse of human rights. This is because it is the right of every person whether restricted, imprisoned or detained, to live in an environment that is conducive to human living. The sheer fact that a person has been arrested for committing a certain crime, does not reduce his status from being a human being.

These are the issues we feel the Attorney-General must also include in this Bill, that our prisons and cells should be investigated. I am happy to note that this Commission will be visiting police cells and prisons, first and

foremost, to see the areas where people are locked up. We know that some of these prisons and police cells that we have were built by the colonial masters before the population of this country increased. It is an abuse that after 40 years down the line, when the population has risen or trebled to 30 million people, the same prison and police cells are still being used. So, we take some relief because this Commission is going to visit these areas with a view to making recommendations so that people who are locked up there may also enjoy themselves as human beings.

Mr. Deputy Speaker, Sir, I have gone through this Bill, but the Attorney-General has left out a very important issue which I consider to be very close to my heart. This is landlessness which is a big issue in Kenya and is another form of abuse of human rights. There is no section in our laws which provides that some people should own large chunks of land, whereas others own nothing, and yet the Government is not addressing that issue. It is the responsibility of the Government to make sure that its citizens have a right to own land. When one is denied the right to own land, it is nothing short of abuse of human rights, and this issue should be addressed so that Kenyans are equal before the "eyes" of the law as they are before the eyes of God.

Mr. Deputy Speaker, Sir, I thought it is also the responsibility of the Government to visit the slums where the poor people of this country live. These are slums like Mathare Valley, Mukuru kwa Njenga, Kibera, Kiandutu in Thika and such other pathetic areas where our people live. Who says that our people should live in such pathetic areas? It is an abuse of human rights for the Government to be so irresponsible to the extent that it does not know where its citizens or populace live. If you visit South Africa, you will see that the Government of the whiteman had even elevated the so-called Soweto slums. If you visit these slums, you will find that the so-called boxes where the Africans were confined were provided with toilets, garbage collection facilities and cleaning services. Go to Harare and visit the areas which they call the high density areas - here we call such areas slums; you will find that it is the responsibility of the Government to ensure that life there is affordable and conducive. So, in due course, I am going to bring some amendments to this Bill before we enact it into law so that such issues are also addressed.

Mr. Deputy Speaker, Sir, I thank the leaders of the National Alliance for Change (NAC) for coming came out yesterday with a very impressive blueprint of what the Opposition will do upon taking over the Government in a few months time. However, I will be consulting them and tell them that they have left out a very important area and this is the fate of the people living in the slums. Although they are providing 2,000 budgets for Kenyans, they must include that item in their blueprint, because the Government has been unable to provide it here. The biggest chunk of Kenyans who vote for Members of Parliament to come here have been ignored by the Government since it does not bother to know where they live or where they come from. A responsible Government should concentrate in developing areas where its people live because these are people who voted for it. This must be captured in this Bill. It is one of the most important aspects because our people must live as free people. They should be going around with "*kifua mbele*" to show that they are free Kenyans and they are leading better lives. So, I look forward to seeing all these aspects being captured in the Bill.

Mr. Deputy Speaker, Sir, I am also happy to note that the independence of the Commissioner is being enshrined in this document. We have seen many commissions being created here to investigate various things, but as long as they are under the pressure of somebody else, they end up doing a very, very shoddy job. It is also commendable to note that this Commission will have a tenure of office. We hope they are not going to be summoned and forced to drop certain lines of pursuit. That independence gives us some hope because we believe that the Commissioners will be investigating issues to their logical conclusion and then take appropriate action against the perpetrators of certain crimes.

Mr. Deputy Speaker, Sir, I do not know whether I will be opening old wounds if I recommend that the Commission we are about to create should be mandated to investigate issues which happened way back before we even attained our Independence; that is, during colonial days when our people were killed and subjected to inhuman treatment. When dealing with the Government in existence, the Commission should be mandated to go back to 1963 and then come step by step and tell us the names of the people who perpetrated certain atrocities against Kenyans, including killing others. Up to today, some murders have never been resolved. People have been asking how Tom Mboya, J.M. Kariuki and Robert Ouko died, but nobody has offered the answers. We take pleasure because we now have a body that will come up with the answers. This is because the Commission will be independent and have a tenure of office. When it comes with a report as to who killed J.M. Kariuki, Tom Mboya, Gama Pinto and so on, there will be no fear because it will say: "It was Kamau, Jerome and so on". We hope that this Commission will be mandated to come up with such a report so that the people who perpetrated those crimes will be appropriately punished, because we shall allow the law to take its own course. If that will be done, the Government should compensate the people who were wronged or who suffered those atrocities.

So, it is in this Commission that we hope to get some consolation. Many questions have been asked in this Parliament by the previous and present Members of Parliament, and the answers that have been given have been completely inadequate and improper. Should we raise our hands up and look at Heaven and say: "We thank you God

for giving us the answer in the latter part of our time?" I think we should.

Mr. Deputy Speaker, Sir, it is also inhuman

for the Government to displace people who have lived in certain habitats and are so much accustomed to them without giving them an alternative that is conducive to their living. The Ogiek and Dorobos of the Rift Valley Province have been living in the areas that they occupy today since time immemorial. Today, there is a court case because the Government has displaced them from their natural habitat. Is that not an abuse of the rights of those people?

*[Mr. Deputy Speaker left the Chair]*

*[The Temporary Deputy Speaker*

*(Mr. Muturi) took the Chair]*

**The Assistant Minister for Foreign Affairs and International Co-operation** (Mr. Odoyo): On a point of order, Mr. Temporary Deputy Speaker, Sir. The Member for Juja is misleading the House that the Government has displaced the Ogiek without giving them an alternative habitat. The dispute in court is on the compensation aspect. They feel that the level of compensation is not adequate. That is completely different from the accusations being levelled against the Government, that it is mistreating and totally removing the Ogiek from their natural habitat. We love the Ogiek and this country has put in place proper channels of recognising them.

**Mr. Ndicho:** Mr. Temporary Deputy Speaker, Sir, the Assistant Minister is newly appointed to the Government and he seems to be protecting it. But he should be doing that in his portfolio; Foreign Affairs and International Co-operation. These issues are too pertinent and he does not understand them!

**Mr. Orengo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. You just realised how much time the Assistant Minister took from the hon. Member for Juja on a point which is not a point of order. Could the Chair just sit and let him get away with it? I think that is very unfair.

*(Mr. Orengo spoke from the Dispatch Box)*

**The Temporary Deputy Speaker** (Mr. Muturi): I think it is important that when Members rise on points of order, they strictly must raise them and not engage in arguments or further discussions.

**Mr. Munyasia:** On a point of order, Mr. Temporary Deputy Speaker, Sir. You saw Mr. Orengo address the House from the Dispatch Box. Not being a Government Minister, was he in order to do that?

**The Temporary Deputy Speaker** (Mr. Muturi): He was not in order to speak from the Dispatch Box!

Proceed, Mr. Ndicho!

**Mr. Ndicho:** Mr. Temporary Deputy Speaker, Sir, I was just about to say that we recognise that my friend, Mr. Odoyo, is an active Member of this House. Before he was appointed an Assistant Minister, he used to ask many questions. He used to be active in the House. The problem now is that he has been confined to the Government side and he has been given a portfolio which is not busy. Members do not ask Questions about that Ministry. So, it is a boring Ministry for such an active Member of Parliament, who is my friend.

**The Assistant Minister for Foreign Affairs and International Co-operation** (Mr. Odoyo): Mr. Temporary Deputy Speaker, Sir, I would like to take this opportunity to state that my colleague has failed to recognise--

**The Temporary Deputy Speaker** (Mr. Muturi): Mr. Odoyo, are you rising on a point of order or what?

**The Assistant Minister for Foreign Affairs and International Co-operation** (Mr. Odoyo): Yes, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member for Juja to say that the Ministry of Foreign Affairs and International Co-operation is not busy and that we are idle and lazy, whereas the totality of the foreign policy of this country is in the hands of that particular Ministry? Is it in order for him to mislead this House?

**The Temporary Deputy Speaker** (Mr. Muturi): He is entitled to his own opinion about Government Ministries!

**Mr. Ndicho:** Mr. Temporary Deputy Speaker, Sir, it is good to give the hon. Member time to talk in the House so that his people can know that he spoke in the House.

Mr. Temporary Deputy Speaker, Sir, I think it is an abuse of human rights for anybody to displace people from their natural habitat, where they have lived since time immemorial and then relocate them. It is like taking Mr. Odoyo's constituents from Kisumu and settling them in Central Province where they will be expected to weed and pluck coffee and tea, or taking the people of Central Province to Kisumu where they will be expected to fish. Many of them will die in the lake. It will be a disservice to the people.

**The Assistant Minister for Foreign Affairs and International Co-operation** (Mr. Odoyo): On a point of order, Mr. Speaker, Sir. Is it in order for the Member for Juja to mislead this House when he knows very well that



under the Laws of Kenya, the Government can compensate you with adequate land or similar land? It is very much in order. There is nothing wrong when the Government takes your portion of land as long as it compensates you.

**The Temporary Deputy Speaker** (Mr. Muturi): Mr. Odoyo, I think it is important that you observe the rules of the House. If you want to raise a point of order, let it be a point of order. If you want occasion to expound all those ideas which you seem to have, you really must get an opportunity to contribute.

**Mr. Ndicho:** Mr. Temporary Deputy Speaker, Sir, I think he has not captured the gist of my argument about the Ogiek. This is the only place where we can talk for the Ogiek. I do not know whether there is any Member of Parliament from the Ogiek community. It is our responsibility in the House to speak for them.

**An hon. Member:** Mr. ole Ntimama is their cousin!

**Mr. Ndicho:** Mr. Temporary Deputy Speaker, Sir, it is, therefore, important for the Government and the Commission to note--- We hope that when this Commission is established, it will collect and collate views from the members of the public with regard to issues relating to human rights abuses. There should be a provision in this Bill which states clearly that the Commission should hold sessions with members of the public. Take the incident of Nyeri; it was reported because of the proximity of the area to the media houses and Parliament. There are areas far away from Nairobi where Kenyans are subjected to torture and inhuman treatment by Government forces, but because they have no access to the media or Nairobi, they continue to live in that helplessness. It is important that this Commission holds sessions with members of the public.

As one Member observed, one wonders what the Commission will be doing from January to December. I think there should be a provision in the Bill for open sessions where Kenyans can present their views on the various abuses taking place all over this country. I also believe that Kenyans have a right to good infrastructure. Denying Kenyans good infrastructure is also an abuse of their rights as human beings.

Mr. Temporary Deputy Speaker, Sir, all the roads leading from Nairobi to upcountry are in a terrible condition. People who travel on those poor roads are often subjected to accidents. Many Kenyans have lost their lives on those roads; that is denying them their right to life. It is the right of every Kenyan travelling upcountry to reach his/her destination safely. As I speak, one of our colleagues, Mr. Ochilo-Ayacko, is not here with us. He is hospitalised at the Aga Khan Hospital, Kisumu, having been involved in a very serious road accident on his way to Kisumu. If an hon. Member can get hurt in road accidents, what about the ordinary people? The Press only reported Mr. Ochilo-Ayacko's case because of his status. What about the many thousands of Kenyans who have been killed and maimed in road accidents because of bad infrastructure? I believe that it is the right of every Kenyan to enjoy safe road transport.

Sometime back, I travelled from Mai Mahiu to Narok; that is a disgusting road. I travelled there on Saturday to see a friend of mine out there. I was appalled by the pathetic condition of that road. The area around Narok Town is a very important farming area. The road leading to that area is completely worn out but nobody is bothered about it. Even the District Roads Engineer, Narok, is not concerned. What is the Government doing about that road? So, we should not restrict the issue of human rights to the abuse that is perpetrated to the person. It should be broadened to cover all the areas within which the human being operates.

I believe that it is also inhuman to subject Kenyans to what I call "foreign investment abuse". Kenyans today live at the mercy of mobile phone providers. I believe that Kenyans' right to communication is being violated. Although the prices of mobile phone handsets have reduced significantly, for you to remain connected to the rest of the world and your people locally, you are subjected to a lot of inhuman treatment. Nobody knows who controls mobile phone tariffs. Kenyans pay the highest mobile phone tariffs in East Africa. In Uganda and Tanzania, mobile phone tariffs are very low. I was in Harare recently; their tariffs are not high. In South Africa the situation is not like that in Kenya.

Even in Europe, where the mobile phone service providers come from, the situation is not like that in Kenya. But because nobody questions their exorbitant tariffs, they do whatever they please to exploit Kenyans, because we have a Government which is very insensitive to the plight of its people. Is it not a violation of human rights for Kenyans not to be protected from such foreign investors' exploitation? Should such violation not be captured in the law we are about to approve, so that Kenyans can be protected against foreign investors' exploitation? This Bill should also cover labour.

Mr. Temporary Deputy Speaker, Sir, it is only in Kenya where the so-called "investors" have a free hand to come here and set up factories or industries. Although we have explicit labour laws, foreign investors go ahead and exploit our people as far as labour issues are concerned. Should we not also address the issue of exploitation of labourers for our people? All Kenyans are equal. Kenyans are being treated badly in this country. Do you know that there are places in this country, and within Nairobi, where a certain category of Kenyans cannot visit?

I am sure that if somebody goes to the Grand Regency Hotel in shaggy clothes, he will be stopped at the entrance by an *askari* and subjected to a lot of questions: "Who are you?" "Where are you going?" "Where do you come from?" "How much money do you have in your pocket?" The same applies to access to hospitals. Many people

cannot access hospitals to be treated for simple diseases just because they are poor people. Government hospitals such as Kenyatta National Hospital, provincial and district hospitals do not have medical facilities. Medical facilities are available in hospitals where only rich people can be attended to.

Is it not a human right violation not to provide Kenyans with free medical services, so that every patient can access medicines for the condition he may be suffering from? So, you can see that this Bill has left out very many areas it ought to have captured in terms of human rights. I would, therefore, like to ask my lawyer colleagues in this House to keenly go through this Bill with a view to introducing appropriate amendments, so that Kenyans can live enjoyable lives.

Mr. Temporary Deputy Speaker, Sir, finally, I would like to refer to Clause 19(2), to which my friend, Dr. Anangwe, has referred, which provides that the Commission, may, if satisfied that there has been an infringement of any human right or freedom, order the release of any detained person. This provision should be inclusive of detained, jailed or mistreated persons because, today, three-quarters of the inmates at Kamiti and Industrial Area Prisons, as well as those in police cells within Nairobi, are innocent. The police arrest somebody and ask him to bribe them with Kshs200. If the poor person happens not to have the money, he is locked in and a trumped-up charge preferred against him.

Therefore, I support this very important Bill. Once it is passed and the Commission formed, I would like everybody whose relative may have been detained, jailed or mistreated without a reasonable cause to go to the Commission and present the facts of the case. The Commission should be given powers to order the release of such a person from prison. We really look forward to the Bill we are about to enact becoming operational. When the Act becomes operational, you will see more than three-quarters of the inmates at Kamiti and Industrial Area Prisons walking freely in Githurai 44 Estate and in town, and if you ask them: "Where are you going?", they will reply: "We have been released." So, we really look forward to this particular Bill being enacted into law and becoming operational.

With those very many words, I beg to support.

**The Minister of State, Office of the President** (Mr. ole Ntimama): Mr. Temporary Deputy Speaker, Sir, thank you for giving me the opportunity to contribute to debate on this Bill.

This country has been a signatory to international conventions and treaties for many years since Independence and, probably, before Independence. These, of course, include the Universal Declaration on Human Rights of the United Nations, which was formulated and signed in 1948. That is why I would like to thank the Attorney-General for bringing here this Bill, which will enable us to create a Commission to oversee the rights of the people of this country. I think this is a re-affirmation of the fact that this country is serious about protecting and preserving the rights of its people.

As some of my colleagues, including the Member for Juja, have said, it is true that we have some basic and fundamental rights, which include the right to life and the right to equality before God and before the law.

The other basic and fundamental ones are the freedoms of speech, assembly and association, and the right to be informed, probably by an independent media; not a media that will give the population censored and slanted news.

There is also the right for development; it is a human right. There is the right for education and to be able to access, in an easy way, an affordable health-care facility. There are other array of rights; right of women and the child. Let me say, again, that, definitely, certain communities in this country have not been enjoying their human rights. I can specifically point out that, the pastoralists and the hunters-gatherers, like the Ogiek, who my friend mentioned, have always been eluded by the rights which should be enjoyed by everybody in this country. In fact, these people and other communities have been discriminated and pushed to the periphery. In fact, some people call them the "peripheral tribes," and they have not been able to enjoy their human rights. I think, in terms of development, we have not been able to enjoy our human rights as pastoralists, hunters-gatherers and other marginalised communities. I can say truly that development in some of these areas has only been token, minimal, if any at all. You can look at the infrastructure and system of communications; the postal and telephone services, the roads, schools and health-care facilities. These are all human rights, as I said. There is the right to be informed. People travel hundreds of miles in order to get a health centre.

As I said, some of these communities have not been enjoying these basic human rights like everybody else in this country. In terms of all these developments, we lost the 20th century. We hope that we are going to be included in the mainstream of development in Kenya, so that we join our other brothers in enjoying those rights. Some wise people of this world said that if you lose money, you have lost nothing, but if you lose time, you have lost something, and if you lose hope, you have lost everything. I believe we have not lost hope, although for many years we have not been part of the development of this country. I hope, then, that the 21st Century, again, is going to be our century, together with the rest of Kenyans.

The other most important human right is the right for education. It is a basic and fundamental right. It is true

that all the way from colonialism up to today, some of these communities have never had the benefit of being provided with the right facilities for education of their children. It is true that we came at the wrong time, when the Government does not build schools. Some of the missionaries were told not to go to our land because we are not good people. Apart from the little that we are doing in our little Harambees, we have not done much in the development of our schools. Most of the time, all these communities have been short of teachers when other people have surplus teachers in some of these areas. We do not get textbooks like everybody else; we do not get other facilities, maybe from the Government and donors.

It is true that there is a general air of neglect and discrimination, and that shows that we have not been allowed to enjoy human rights. For example, education is the key to social, economic and political development because when you are ignorant, you are easily manipulated; people can sit on you and you even elect people who are not supposed to represent you. It is said that when you have no education, you are like a person locked in a dark house without a window, door or any system of escape at all. You are condemned, of course, to darkness. You are not supposed to see the light of day. That is what uneducated man is all about. In this case, we are trapped below deck in the ship of state.

So, education is very important. I believe that when I talk about one or two other things later, the wrongs and inequities that have been committed must be rightened, if we have to enjoy human rights like everybody else. We must correct those inequities and close the gaps of development. Without that, we will continue to be a backward people, who are not supposed to take part in the development of many things in this nation.

I have just mentioned health-care facilities. This is another very important one. We should not travel hundreds of miles in order to look for health-care facilities. Another most important thing is - I think it is the Second Article on the United Nations International Development on Human Rights - equality before the eyes of men and God. If there is equality, then, we must have equity; fair distribution of national resources. That is what has been happening. It cannot be denied that certain groups and communities have enjoyed more resources while others have been starved. This is serious! If we are serious in passing this Bill, and it becomes an Act, then, first and foremost, we must start establishing equity, so that the resources of this country, financial and human, are equally distributed, however, thin it might be. This is because that is the only way we can say that we have done something to everybody else.

Mr. Temporary Deputy Speaker, Sir, the other important thing that I will mention is that the Budget is supposed to be a financial plan. It is an important subject that cannot be left to the Executive alone. Parliament, which is a very important arm and branch of the Government, must be involved in some of these activities so that we have a Select Committee of Parliament progressively looking at the planning of the Budget and all the resources that are coming out of the Treasury, along with the people of the Treasury, in order to make sure that nobody gulps everything else, and leaves the others hungry and without any development at all.

Mr. Temporary Deputy Speaker, Sir, we have got Parliament, the Judiciary and the Executive. We are a Republic because we went to Lancaster House and brought in a Republican Constitution. What the Constitution of Kenya Review Commission is doing, I believe, is a Republican Constitution. Whether it is going to generate into regionalism, federalism or something else, it should be noted that it is first and foremost, a Republican Constitution, with the three arms of Government which are supposed to interact and balance one another, so that we can create a proper democracy in this country. Parliament must be involved in some things like formulating the Budget, so that the distribution of resources is seen to go to every corner of the country.

Mr. Temporary Deputy Speaker, Sir, the other important thing is that we must start getting out of personalities. We must get out of---

**Mr. Gatabaki:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I hate to interrupt, the Minister but we need some clarification from him because he is not an ordinary Minister. He is a senior Minister in Moi's Government, and he is proposing fundamental changes. Is it in order for this distinguished, Minister whom we respect, to propose changes without the authority of His Excellency our beloved President?

**The Minister of State, Office of the President (Mr. ole Ntimama):** Mr. Temporary Deputy Speaker, Sir, I did not even hear what he said. I did not follow what he said. I do not think that was a point of order. It was another mass of frivolity!

Mr. Temporary Deputy Speaker, Sir, let me say that it is time this country got away from individualism and personalities. We must try to govern this country through institutions because that is the only way we can ensure that democracy is taking root. I am saying that because on all these appointments, I would have loved to see everything being done by institutions like the Public Service Commission, the Judicial Service Commission, the Armed Forces Service Commission, the Police Service Commission and leave some little space for somebody else to go and endorse those appointments. Unless we institutionalise governance in this country, we shall invite authoritarianism and even despotism as a matter of fact. I am saying this because Parliament should be involved in making these decisions.

The other day, a Judge of the High Court in this country suggested that all the judges should be vetted, interviewed and investigated by Parliament. I saw that with my own eyes. Time has come for the members of these commissions to be interviewed, vetted and investigated by a Committee of Parliament, maybe, with the help of live coverage of television broadcast, so that everybody in Kenya will see who the Commissioners are going to be in any Commission that is going to be put in place. I am saying this because Clause 5(1)(a) states as follows:-

" A person shall be qualified for appointment as a Commissioner if such a person is a citizen of Kenya; a person of high moral character, proven integrity and has knowledge and experience in matters relating to human rights."

Mr. Temporary Deputy Speaker, Sir, I definitely support the nominating Committee which consists of the Chief Justice, the Speaker and the Attorney-General. These, I am sure, are people of high integrity, moral standing and probity. But we have had experience of some of these people called Commissioners whose moral standing and probity is questionable. I can say without any hesitation that if all the Commissioners in the Constitution of Kenya Review Commission were vetted, interviewed and investigated, half of them would have been disqualified. You can see that they spent weeks, if not months, quarrelling over cellphones, what posh cars they were going to have and what hefty salaries and allowances they were going to get. I do not know whether there is probity or high moral standing in that. Most of the first group of Commissioners - and I hope somebody can challenge me on this - appointed by the Parliamentary Select Committee had god-fathers. Most of them were lawyers or business associates of certain people. Does that bring in any moral standing or probity? That is why--

**Mr. Munyasia:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I participated in interviewing the first lot of Commissioners that hon. ole Ntimama is talking about. I did not see any of them who had god-fathers or were personal lawyers of other people. Having made that allegation, could he be asked to substantiate his remarks against the otherwise well vetted ladies and gentlemen we interviewed?

**The Minister of State, Office of the President** (Mr. ole Ntimama): Mr. Temporary Deputy Speaker, Sir, lawyer Keriako Tobiko was lawyer to hon. Sunkuli in that famous rape case. Can that be denied? Mr. Wambua is a business associate of Mr. Kalonzo Musyoka! The list can go on and on! Those people could not have been appointed. That is why I am saying Parliament must be involved, so that such people can be vetted for us to get the right people to lead our country in doing some of these things.

Mr. Temporary Deputy Speaker, Sir, it is true that if you look at Clause 16(b) the Commission can visit places of detention or related facilities with a view to assessing and inspecting the conditions under which the inmates are held and make appropriate recommendations thereof. This is good, but the police stations must be mentioned. It is in these police stations that people have been tortured and killed. It is in that short period of time that many bad things happen. So, apart from visiting prisons, an amendment should be brought so that the police stations are also included here. Under Clause 16(f), the Commission will have the power to monitor Government compliance with respect to its obligations under international treaties and conventions on human rights.

This is true. This proposed Commission must be courageous to monitor whether the Government will really be complying with the system of human rights. I can say here very frankly that I am inclined not to blame the Government as an institution. But some of the people working in the Government are real criminals and they give the Government a bad name. In this case, these rotten eggs must be removed from the Government.

It is interesting to note that we still have situations where Provincial Commissioners make pronouncements, almost decrees, which are not compatible with the law of the land, and you wonder where they get that authority from. This also happens with District Commissioners. In Narok District, we have a District Commissioner (DC) who has divided the leadership of that district into his friends, whom he calls "politically-correct", and his enemies, who are probably politically-incorrect, according to him. In many cases, he has harassed people and interrupted even church functions. When he does not support a function, he takes policemen there. In many cases, he has used administration policemen (APs) as his private army. These are people who must be removed from the Government because they abuse human rights. They violate the rights of the people. It is not necessarily the Government to blame, but the Government must also be courageous to pluck these people out because unless this done, we will continue to have problems in this country.

Mr. Temporary Deputy Speaker, Sir, Clause 6 states that also the Commission must have the initiative to investigate cases. This is good. The Commission must also be courageous to have the initiative to investigate cases. But this is why I have gone back to institutionalised governance. This is why I have said that Parliament must be involved in the appointment of the Commissioners in order to appoint the right Commissioners. If your livelihood is dependent on somebody, definitely you will follow what he says. If he calls you and says: "I appointed you and made sure that you get a salary", you will definitely follow the whims of an individual. This is why we must get the Commissioners appointed by Parliament and not by individuals.

I want to touch on Clause 18 and say that just like Clause 6, it is very important. The most important thing is

that these Commissioners must be independent, honourable and of high moral character. If you are appointed by somebody and your livelihood again is dependent on him, definitely you will obey his orders. We must be courageous and change some of these things so that our children and the people who will come after us will find a good democratic country, and the Commissions we are setting up will be instruments and tools of governance.

The other thing that I want to talk about before I finish my contribution is the rights of women. There is talk these days in this country that after all, there is nothing to do for women because they have developed, are well-educated, and can compete with men anywhere. Maybe, that scenario exists in certain provinces and districts, but it does not exist in some of our areas. Again, in pastoral areas, girl education has been lagging far behind. So, we must reach out to women and the young girls and bring them out into the light where everybody else is. It cannot be said that because they need an affirmative action, they should be left to compete with men.

We have also got the rights of the child, which is very important. It is our responsibility to protect and look after our children so that they are not molested and mistreated. This is why, again, we need the Judiciary to help in ensuring that those who molest and abuse children are punished properly. Without this, it can go on and on and we will be failing in our duties if we did not protect the young children. We have very many cases of rape of young girls in primary schools. We have an area in this country where this has been going on, but those children, because of the ignorance of their parents, their own ignorance, poverty and marginalisation, do not get justice. These are the kinds of things that we must try and bring to justice so that our children are protected and have their rights.

It is important that from now on, we follow the system of separation of powers, where the arms of the Government can interact and act as checks on one another. Unless we do that, some arms of the Government will interfere with others, and we will have a lopsided kind of Government. We really want to have a proper democratic Government, run through institutions and respected by everybody. We must establish the proposed Commission immediately.

This is why I support Prof. Ghai's Commission. We already have the three arms of the Government, but there is a lot of confusion between them. It happens that one arm gets a little bit too powerful, runs amok and starts destabilising the other arms of the Government. That is exactly what should not happen. We need the Judiciary to be firm and independent.

With those few remarks, I beg to support.

**Mr. Kibaki:** Thank you, Mr. Temporary Deputy Speaker, Sir. In supporting this Bill, I wish to say that I am very pleased that it has eventually been brought to the House and we shall now have an organisation capable of sorting out the problems of the citizens of this country.

But while this Bill will be very meaningful and helpful, one thing is known, that the ordinary Kenya citizen will not have access to its functions unless the proposed Commission will have offices throughout the country. Many people will hear that there is a Kenya National Commission on Human Rights in Nairobi, but in the rural areas, the ordinary person will not even have the means to access the Commission. He is not even able to pay for transport. He does not have the means to reach where this service can be made available to him. So, the first thing that I would request is that when we pass this Bill, the Attorney-General, and whoever else will be involved in the establishment of the Commission, should ensure that the Kenya National Commission on Human Rights will have offices in every part of the country, so that the ordinary poor person will have some place to go to; an office within his reach.

Otherwise, we shall not fulfil what we are hoping to fulfil by passing this Bill into law, yet it is those poorer people who are really punished for lack of access to justice. The first thing that must be done, therefore, is to open offices in every district and have people in those offices who can help protect human rights at the local level.

Mr. Temporary Deputy Speaker, Sir, the second thing that must be done is civic education; although it has been started now in a small way in relation to the Constitution of Kenya Review Commission, but what is provided in this Bill must come to be known countrywide. It is necessary for us to use the radio and other means of communication to propagate this information to ordinary Kenyans so that they are made aware that there is a new channel to put right what they are being subjected to; where they are suffering and are being denied their rights. It should be broadcast on radio and there should be common programmes which should feature regularly in educating all Kenyans wherever they are. That is in addition to the offices I have talked about. If we do not do so, then we are not helping the ordinary person.

Thirdly, it is surprising that the Government has now brought a Bill before this House which talks about human rights; the rights of our citizens. It is known that today, while we are talking about this Bill, the incumbent Government denies hon. Members, who are elected by the people; a right to hold meetings in their own constituencies. Can the Government not have a serious mind or is it acting as if they were two persons? Is the Government divided within itself, one part wanting to be a suppressive kind of institution, while the other one tries to catch up with the rest of the world and promote human rights? If the Government wants to promote human rights, it should give people the right to choose who will be their councillor, Member of Parliament and who will represent them in wherever they

want. Once such a person has been chosen, he should enjoy total freedom to interact with his own constituents.

Mr. Temporary Deputy Speaker, Sir, as I speak here, there are Members of Parliament who, for the last four years, have not had an opportunity to hold any Harambee in their own constituencies because they are denied permission by the Government; which without any shame, would rally 200 to 300 policemen to go and stop an hon. Member from conducting an Harambee in his own constituency! It is so shameful and criminal! It is unimaginable! Does the Government think or does the people who do this thing think? Do they seriously want to be respected because that is the image which goes to the international world that, that Government does not allow an elected Member to interact with his own constituents. Therefore, this is destroying the very basis of democracy.

On the other hand, the Government wants to say: "Here we are and we are promoting human rights." It is okay to pass this Bill into law, but how about that other behaviour? Why can the Government not show this through action, by stopping that behaviour of preventing hon. Members from enjoying the freedom of interacting with their own electorates; those people who have chosen them to be their representatives in Parliament? It is really very criminal to deny a Member of Parliament freedom of association, assembly and that of consulting with his constituents. So, that is the first thing which should be removed, then we shall know that we are moving on the right tract; not just to have a Government which says one thing while on the other hand it does not do so.

Fourthly, the issue of human rights; you know that this Government announced in this House, through its Ministry of Education about seven years ago, that parents will be responsible for building classrooms, laboratories, teachers' houses in both primary and secondary school. It was upon the parent to raise money through Harambee to build those structures. Since that time and in, at least, 30 districts in this country, there has been neither new classrooms, laboratories, nor teachers' houses because parents of those particular areas, through no fault of their own, are not able to meet their Members of Parliament in order to raise monies through Harambee. These parents are very poor and they live below the poverty line, yet in the Sessional Paper, which the Government published recently and, which talks about eradication of poverty, they own up and even tabulate about areas where people are living below the poverty line. In other words, these people are unable to sustain themselves, leave alone keeping themselves alive. In the same breath, the same Government publishes Papers to show the world that the children in those districts will be educated through the effort of their parents building classrooms. Is this a Government that thinks or is it a Government that is lead by the devil? It cannot be otherwise! How can the Government produce a Paper giving details on how to deal with poverty reduction and yet it talks about the reality of our people living below poverty line? In the same districts the Government says: "If any school is to be built, it is the parents who will build it." A person who says so must be a person who does not think because every fellow must use his own brains, and everybody has a brain which God gave him. If he does not use that brain well, obviously it is a sin! How can we have a Government which speaks in two voices and how can it be taken seriously?

Mr. Temporary Deputy Speaker, Sir, in those districts I am talking about, and it can be seen, children are no longer going to school. The Government, in its report, cheats us that there has been heavy dropouts of children from schools in those districts. We talk about school dropouts when a child has been enroled and has gone into one or two classes, and then he or she drops out of school. But in these areas that we are talking about, the children have not even started going to Standard One! They have not started the process of education because of poverty! Therefore, they are totally denied their right to education. There is no other way we can tackle that problem except for the Government to change its policy on education and say: "Education of children shall be the responsibility of the Central Government"; not just the parent, but the Central Government! The Central Government will, indeed, build classrooms, pay teachers and do everything else that needs to be done to provide education to children. Children should not be asked to pay school fees. Those three aspects must become part of Government policy. We know that is what the Government should be doing, but for some peculiar reasons; whereas this Government knows that it can afford to educate the children and give every one of them free primary education, it is totally hesitant. Every year we do appeal for free primary education, but the Government is not willing to come out with that policy.

Mr. Temporary Deputy Speaker, Sir, we hope during this year's Budget, although it may never happen, they can come out and say: "From now onwards, let the children be given free education." After all, if you look at the total cost of education in this country, which takes 42 per cent of our budget today; the proportion that is financed by school fees is less than 1 per cent. Therefore, 99 per cent of the education budget is coming from taxpayers' money; from the Central Government. So, you can take the other 1 per cent and give free primary education. It is very simple, you only have to drop some of the useless services which the Government finances and reduce corruption that eats away taxpayer's money. The Government is capable of doing that and that could be a major thing because we have almost 6.5 million children who should all be going to school, if they enjoyed that right. That is one of the most fundamental human rights.

Some hon. Member was referring to the conventions that we have signed. One of the conventions that we have signed is the right to the child's education.

The right of a child to education is not the responsibility of the parents alone, but the whole nation. I do not know why they do not consider this aspect. You can hear them talk about poor children. Can you have a poor child? A child of five years cannot be poor. The child has just been born, and he or she belongs to the nation. When did you judge that he is poor? When did he try to earn a livelihood and failed? When did he try to do this? He has not had a chance. What you should do is to give him a chance by taking him to school. Let us stop this lousy language in the papers written by the Ministry of Education, Science and Technology and other people about children being poor. There is no such thing as poor children. You can have poor parents, but you cannot have poor children.

I would like to point out that children have not had a chance to be exposed to doing anything. So, they should be given the first opportunity. Later on, they will have a chance to earn or not to earn, or behave in the manner in which they will behave. But from the time they are born, the convention of the United Nations and other conventions are very clear; it is the responsibility of the whole nation to educate children. So, I plead that we make this decision. Let us say that there is free education from Standard One to Standard Eight. This will enable many children to go to school. Indeed, this is the only way to raise the standard of this nation; it is the only way to improve the very wealth of this nation. That is one of the things that we can do straightaway.

Mr. Temporary Deputy Speaker, Sir, the other point I would like to raise has got to do with corruption. Every one of us here has experienced this vice. If you go round the country, you will find that justice is not accessible to the poor people. You will also find that any Kenyan who has money today will get what he wants. I know a case of a fellow who is known to have shot dead another, but the case has not been heard for the last seven years, and it will never be heard. The case is adjourned whenever the date for hearing comes. This person is paying some money and eventually, he will not pay anything. The Chair knows that some of the cases filed in court, because of corruption, will be ruled that the witnesses, who are available, are no longer available. This is the case even when they have recorded statements with the police. In the middle of the case, you will hear that so-and-so has been freed for lack of evidence. This is the case, and yet the person is known to have stolen something or committed a certain crime. The culprit will be set free because he has paid some money.

Equally, we know that in the rural areas, the police officers make themselves the judges and they are bribed. You will find an OCS in any place in Kenya rounding up 10 people in an evening using his Land Rover, locking them up in a police station and telling them that they should pay him or her Kshs1,000 so that he can set them free. The OCS will not tell you why he had arrested you. You know that he found you taking a beer with your friend when it was not late, and you had not committed a crime, but by the following day, he will come up with a story. The OCS will be believed and the people he had arrested will not be believed. This is exploitation of the highest order. The man is poor, and he is asked to pay Kshs1,000, having committed no crime. You are not issued with a receipt or any record to show that you had been arrested. After bribing the officer this amount of money, you are told to go home, and since you do not want to be arrested again, you go away. After this has happened, nobody can pursue the case.

Mr. Temporary Deputy Speaker, Sir, again, this happens along the road to Meru, Nyeri or any other place. You will pass through 13 police roadblocks in one evening. After every few kilometres, you will find a roadblock. Along the side of the road, you will see people holding conversations. In all the cases, it is money which is being demanded. One of the motorists will ask: "What am I paying for?" The police will tell him to park his vehicle along the road if he is not willing to talk. You will stay there for some time. Since you know that you will waste a lot of time, you will pay whatever amount of money that is being demanded by the police officer. Corruption is the worst crime against human rights. This is because you have a right or freedom to move freely in your vehicle wherever you want, transact your business or improve on your income. But because you make a small profit, somebody else decides that he should share with you the profit. This person uses the police to achieve his goal. The police agree to be used because they also share the money. Actually, this is why we would like to tackle corruption so that we can see a difference.

We were told by one of the senior persons in the Government that the Anti-Corruption Police Unit was going to start its work in the transport sector. Action was taken for one or two days and that was the end. I would like to point out that today, every evening and morning, the police must collect money from people. That is corruption. It is denying people their right to free movement and access to their money. Actually, this is robbing them by intimidation! You are robbed because the policeman intimidates you, and if you do not agree to be "robbed", you will not go wherever you want to go and do what you want to do.

Finally, I would like to say that this Bill is welcome, but in its administration, we will require men of high integrity. We will require people who are willing to implement it. Today, we had a case in court which is very serious. Because this case has not been completed, I do not want to comment on it. But everybody heard about a judgement that was made in the High Court but which was changed by the top people who administer justice. The words that were uttered in the judgement were changed and different words recorded to give a different meaning. This did not happen by accident; money was paid. That is the reason why corruption is the worst thing. I would like to say that corruption prevails at every level. There was no other reason why that judgement was changed and a different one entered, and

then it was said to be a mistake. Every person who was in court heard what the judges said. This was changed by other people in the record office because they were paid some money. So, corruption is the first thing that we should fight if we have to enjoy the freedom or the human rights which are promised by this Bill.

**Mr. Munyasia:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. Let me start by making a statement against the vilification of a number of Commissioners that the Parliamentary Select Committee had appointed. It has been mentioned here that a number of Commissioners were of questionable morality. Examples were given. I had risen on a point of order to ask that substantiation be made, but instead, what was given was merely a mention that Mr. Tobiko was Sunkuli's lawyer and Mr. Wambua was Mr. Musyoka's partner. Those cannot justify the imputation of the improper motive that these two good gentlemen who appeared before us, whom I know to be very brilliant lawyers, were people of questionable morality.

I think if we conduct our debates in this manner, we will be misdirecting ourselves.

Mr. Temporary Deputy Speaker, Sir, I wish to support what the Shadow Attorney-General said earlier, that the hope of many of us from areas where there were the so-called tribal clashes is that the Akiwumi Commission Report be made public when this Commission starts its work. Many of our people suffered and they would wish to know what exactly happened. We do not want to be told by the Government that we should forget about those clashes because it was a "bad wind" that started blowing at one time and we merely got ourselves in it. It was not a "bad wind" because those clashes were started by certain people, and I believe those people are in this Government. Maybe, that is why the Akiwumi Commission Report has never been made public. But one day, we will know who instigated those clashes. Our people who suffered have the right to claim compensation from this Government. In particular, the people of Sirisia suffered even longer because, after the tribal clashes, there was another organisation concocted by this Government. They said there was a movement called FERA. So many of my people were suspected to be members of that organisation.

I did say here, and I will still repeat, that there was no organisation called FERA in which people of Sirisia were members. If it existed, it cannot have been active at the time I was serving my constituency as its Member of Parliament in 1995. But people were being arrested in the wee hours of the morning. Some of them were as old as 80 years. For instance, there was a retired senior chief Jonathan Barasa, who was a senior chief in the colonial days. He was arrested at the age of 80 years and taken to areas in this country where they kept him naked in the cold for many days until we went to demand that he be produced in court. That old man was said to be a leader of that particular organisation. That person was respected so much by my people and we did not ever expect him to be engaged in those activities. That old man is no longer alive. He died and I believe his death was as a result of poor conditions he suffered in police cells. There were many other people who were arrested and taken not to prisons in Western Province, but to Kodiaga Prison in Nyanza, which is one of the dirtiest prisons in this country. They were taken there deliberately so that they could suffer under those particular injustices. We tried sometimes to take soap to them, but we could not be allowed entry.

Mr. Temporary Deputy Speaker, Sir, those people who suffered for a long period were later produced in court when we demanded. They were charged with some spurious charges that they were responsible for certain murders. Then after sometime, the Government dropped those cases. So, I think those people who suffered under FERA also deserve compensation. We will demand that this Commission helps them to be compensated by this Government.

Mr. Temporary Deputy Speaker, Sir, the abuses of human rights in this country are mostly committed by the police force. Mr. Kibaki has already talked about how they do it in some cases. For example, here in Nairobi, especially in the evening, the police go round arresting people they come across and they do not even give them a chance to explain who they are. So, it is their freedom of movement that is being interfered with. Then they are bundled into lorries and taken to Kamukunji or Central police stations. Those who are able to pay their way out are released. This happens, not only in Nairobi, but also in other parts of the country. Mr. Temporary Deputy Speaker, Sir, we raised this issue here sometime back, and the Attorney-General did promise that they had already completed writing a manual to retrain the police force. Unless we retrain them so that they can know how to better deal with our people, they will continue in their old bad ways. We have been asking what happened to that programme. When will this Government begin to retrain these officers? It is not good or realistic to only train young men at Kiganjo Police Training College on issues of human rights because they will come and serve under seniors who have not been retrained. So, the likelihood is that those young trainees from Kiganjo will copy the bad ways of their seniors. It is urgent that we retrain our police officers. If the Government really wants to fight the abuse of human rights in this country, then they must come up with a programme to retrain the whole police force. If they are unable to do so, then when the National Alliance for Change (NAC) forms the Government, we will undertake that training.

Mr. Temporary Deputy Speaker, Sir, the Commission will also visit prisons, police cells and other areas of custody. I do not even know why they should visit those places because they are overcrowded. This is the truth. If the Government is unable to expand them, then the Commission should recommend that our prisons be privatised. The



Government should allow individuals who have means and money to put up decent private prisons so that the Government will pay them for taking care of their prisoners. Maybe, that way, the conditions of our prisons will be humane. Otherwise, what they go through is horrible.

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

**Mr. Kihoro:** Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this opportunity to contribute to this important Bill. I came well prepared to contribute to this debate because I have been involved in the cause for human rights for a long time. One thing I must do is to read out the names of about 21 organisations which have been involved in the cause for human rights in this country. These organisations have brought about the Bill before the House. These are:

Citizens' Coalition for Constitutional Changes (CCCC), which has been involved in a human rights struggle for a long time.

Abantu for Development,

Centre for Law Research International (CLARION),

Chemichemi ya Ukweli

Coalition on Violence Against Women (CVAW)

Education Centre for Women in Democracy, where we have hon. Seii who has done a lot of work on human rights.

Federation of Women Lawyers in Kenya (FIDA),

Independent Medical Legal Unit (IMLU)

Institute for Education in Democracy (IED).

International Commission of Jurists (ICJ)

I am not sure whether the Kenya Human Rights Commission might not also, later on, claim ownership of the title to the Bill and the Act of Parliament after it becomes law, because as you can see, we have the Kenya National Commission on Human Rights Bill and the Kenya Human Rights Commission which has been there for more than ten years. There are other similar bodies like:-

The Kenya Land Alliance (KLA),

Kituo cha Sheria(KCS),

The Law Society of Kenya(LSK),

Legal Resources Foundation (LRF),

The National Convention Executive Council Peace and Justice Commission(PJC)

PEACENET

People Against Torture (PAT),

The Public Law Institute (PLI)

Release Political Prisoners (RPP)

Centre for Governance & Development

I hereby table the list.

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

Mr. Temporary Deputy Speaker, Sir, in the process of the debate, there must be a summary of what has happened. What we are debating here is a Bill, and I believe we were elected to this House by the people who have worked for the course of human rights in this country for a long time. Many of them who have fought for a long time have gone unrecognised, while others have been imprisoned. Now that the Government - we have been told it is a reformist Government - is prepared to look back and correct past mistakes, it is time to recognise those people who have done so much work to make sure that the Government constitutes the Kenya National Commission on Human Rights.

Mr. Temporary Deputy Speaker, Sir, the course for human rights - as Mr. Ntimama said - is as old as the creation of human beings. I believe we are late by 39 to 40 years. The Israelites never gave up their journey of 40 years from Egypt to Canaan. They arrived after 40 years and, therefore, I believe we could see light at the end of the tunnel.

There are very many international human rights statutes that this country is signatory to. There were facts mentioned by the Attorney-General when he was moving the Bill, and very many hon. Members have also spoken about them. If we looked at Cap.5 of the Constitution, which is one of the oldest chapters in our Constitution, after nearly 25 amendments to the Constitution from 1964, it has basically remained intact. This chapter is based on the 1951 European Convention on Human Rights. It dwells on freedom from torture, freedom of expression, freedom of worship and freedom from hunger campaign. Mr. Ntimama talked about the freedom people should have. Development in this country should involve the 30 million Kenyans. There should be no discrimination in

development. If there is no development, there will be no freedom from hunger.

There is also the freedom of conscience and freedom of religion. I believe that the present Government has over-emphasised freedom of conscience and religion. There are so many churches. The proliferation of churches in this country is phenomenal. I am not saying that we should not worship, but there should be a certain order in how we worship. According to the Bible, you can even worship under a tree and the prayers will get to Heaven. Many church organizations that are offensive to prayers offered to God have come up.

Mr. Temporary Deputy Speaker, Sir, there is need for legal aid in this country. There are very many people whose rights have always existed in the Constitution, but they are unable to pursue them because of the cost of justice in this country. Hon. Members have spoken about that. It is important that as we debate this Bill, we should also think about the need for a legal aid scheme that is going to enable many of our people to get justice. We are aware that 56 per cent of Kenyans live below the poverty line, which is far below the accepted international standards. It is based on receipt of US\$1 per day. Whereas I welcome the Bill, I would like to urge the Attorney-General to accept that we have more than 3,000 lawyers in this country, many of them practising and committed to their work. We should have a legal aid scheme that is going to enable many Kenyans living below the poverty line, and unable to pursue their rights, get some reprieve. That is why - as has been said by Mr. Kibaki - very many people are buying their freedom from the police. How can the police who are supposed to protect us, be the first offenders? Every evening they go to the roads, the villages and the chief's camp, and have become the biggest danger to the rights of Kenyans. I propose that Kiganjo Police Training College, which is in my constituency and where very many Kenyans have been killed recently, establishes a human rights school. There are very many of us who are prepared to volunteer free services to teach the 30,000 police officers in this country. The police stopped performing their functions long ago. I do not subscribe to the view that it is the people of this country who threaten peace and order; it is the police more than anybody else. Two months ago, in my constituency, a woman was shot by the police at the market while fighting for stalls with some corrupt people.

Thank you Mr. Temporary Deputy Speaker.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Muturi): Hon. Members, it is time to interrupt the business of the House. The House stands adjourned until tomorrow, Wednesday, 10th April, at 9.00 a.m. Mr. Kihoro will have more minutes.

The House rose at 6.30 p.m.