

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 17th July, 1996

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.429

RECRUITMENT OF YOUTH INTO ARMED FORCES

Mr. Ruhiu asked the Minister of State, Office of the President, why the youth from Nairobi District are not recruited into the Armed Forces.

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

Recruitment into the Kenya Army has not been conducted in Nairobi mainly due to the large population in the City which would cause a problem of crowd control and proper vetting of suitable candidates. However, since the residents of Nairobi have an ancestral home of origin in the rural districts, it is expected that Nairobi youths who are interested in joining the Kenya Army go back for recruitment at their respective districts whenever interviews for the recruitment are announced.

Mr. Ruhiu: Mr. Speaker, Sir, I am sure you heard what the Assistant Minister has said. The answer is atrocious, evasive, discriminative and vicious. How can he say that the youth of Nairobi should travel all the way back where they came from and most of them do not come from any of those districts? They are born and brought up here for years, their mothers and fathers were born and brought up here, and he says that they should travel to their ancestral land. Can he tell this House, why this Government has been discriminating against the youth of Nairobi for so long?

Mr. Manga: Mr. Speaker, Sir, the Government has never been against any youth from any part of the country. Except it is the logistics of controlling that crowd and proper vetting as I have said.

Mr. Nthenge: Mr. Speaker, Sir, could the Assistant Minister agree with me that we, hon. Members of Parliament from Nairobi, if given a chance, can create conditions which are favourable for controlling that crowd and proper vetting of youths so that they can be recruited into the Army?

Mr. Manga: Mr. Speaker, Sir, if hon. Members of Parliament of Nairobi, want to bring that suggestion, it is welcome. Please, come and see me in the office.

Mr. Raila: Mr. Speaker, Sir, the answer given by the Assistant Minister is appalling in the extreme. There are people who were born and brought up here in Nairobi. There is another tribe called Nubians who live in Kibera who were born and brought up there. They know of no other home elsewhere and there are also other people who were born and brought in Dagoretti. In fact, some people have no other ancestral home other than Nairobi. Is the Assistant Minister in order to tell this House that youths in Nairobi have to go to their ancestral homes when we know that a fairly large percentage of the population in Nairobi was born and brought up here?

Mr. Manga: Mr. Speaker, Sir, I am quite in order because I know even we have some Nubians who are in the Army.

Mr. Farah: On a point of order, Mr. Speaker, Sir. The Assistant Minister has not answered the question; where should Nubians go to be recruited into the Army because Somalis will go to Garissa district, Kurias to Kuria district and so on? Where should a Nubian or a Mswahili from Majengo go to?

Mr. Manga: Mr. Speaker, Sir, I answered by saying that there are Nubians in the army and they must have come from some districts somewhere.

Mr. Kamuyu: Mr. Speaker, Sir, I was born and brought up in Nairobi, my father and mother too. Which ancestral home do I have to go to? This is all I know and I am a living example. What is the Assistant

Minister's comments to that? Shall I give him my birth certificate?

Mr. Manga: Mr. Speaker, Sir, my answer to that is that the hon. Member comes from Kiambu District.

Mr. Kamuyu: Mr. Speaker, Sir, on a point of order. Is the Assistant so ignorant not to understand that Dagoretti is within the precincts of the City of Nairobi? I am from Nairobi and not from Kiambu District! I am a living example of a person born and brought up in this City, and I am not from Kiambu District, and my father and mother too. What is your comment on a person like me? Where is my ancestral home?

Mr. Manga: Mr. Speaker, Sir, Nairobi Province used to be part of Kiambu.

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

Mr. Speaker,: Order! I am sorry, but we have to proceed. Next Question, Mr. Raila Odinga!

Prof. Mzee: On a point of order, Mr. Speaker, Sir. We are not satisfied with his reply.

Mr. Speaker: Not on that, Prof. Mzee. First of all, you are totally out of order to address the House before you are given permission. Proceed, Mr. Raila!

Question No. 720

DISAPPEARANCE OF THE LATE WATULO'S BODY

Mr. Raila asked the Minister for Health:-

(a) whether he is aware that the body of Mr. Isack Kasawa Watulo (deceased) who was admitted at the Kenyatta National Hospital on 28th April, 1994 (Admission No. 0294857) and died on 6th May, 1994, disappeared from the Hospital Mortuary and has not been traded to date; and,

(b) if the answer to "a" above is in the affirmative, what immediate steps will be taken to settle this matter.

The assistant Minister for Health (Mr. Criticos): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that Mr. Isack Kasawa Watulo (deceased) who was admitted at the Kenyatta National Hospital on 28th April, 1994 (Admission No. 0294857) and died on 6th May, 1994, disappeared from the hospital mortuary. However, I am aware his body stayed in the hospital mortuary between 7th May and 2nd June, 1994 when it was disposed off as unclaimed body under the Act of Gazette Notice Cap.242 of 1989.

A relative of the deceased who had been informed of the procedures to remove the body from the hospital immediately after the death, had indicated he would return after collecting the necessary funds for the expenses. The relative did not return until 7th June, 1994. The unclaimed bodies are disposed off after 14 days, according to the Notice, hence the fate of the body.

(b) The Ministry does not intend to take any further measures since the Kenyatta National Hospital management acted within the law.

Mr. Raila: Mr. Speaker, Sir, this is a very sad case, indeed. First, after the deceased's body had been removed to the mortuary, the relatives asked for time to raise money and they got a permit from the administration to collect money, a copy of which I have here. They collected funds and then on the 7th of June, 1994 when they went to the Kenyatta National Hospital mortuary to collect the body, they were told that they needed a City Council disposal permit, upon which they proceeded to the City Council, paid the money and got the disposal permit. When they came back to the hospital with the disposal permit together with a coffin and a van to collect the body to take to Mbale in Uganda, where the deceased came from, the body had disappeared mysteriously. So, it is not true that the body was disposed of on the 2nd June, 1994. Can the Assistant Minister confirm to this House that the body of Mr. Watulo was sold to some research institution because the doctors at Kenya National Hospital (KNH) suspected that this was a very mysterious disease and that research needed to be done? Can he confirm that this is actually the case and not that the body was disposed off for non collection as he is claiming here?

Mr. Criticos: Mr. Speaker, Sir, the hon. Member has really surprised me on that. If he has any further details, I would appreciate receiving them from him.

Mr. Kamuyu: He is not answering the question.

Mr. Criticos: Mr. Speaker, Sir, I am answering the question. Therefore, we follow the Act. Our mortuaries are full, and we have got to adhere to the Act to the fullest.

Mr. Kamuyu: Mr. Speaker, Sir, what period of time does the Ministry require, between the time a body is deposited into the mortuary and the disposal period?

Mr. Criticos: Mr. Speaker, Sir, according to the Act, it is 14 days. However, in many cases, we do

give an extended period of time, but it all depends on the pressure of that mortuary. If there are a lot of bodies, unfortunately, we have to adhere to the 14 days, as per the Act.

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, is the Assistant Minister, who is non-African aware that African spirits, when buried far away from their homes, come to haunt the families? In that respect, could the Assistant Minister consider now availing the remains of Mr. Watulo so that he could be buried near his ancestors in Western Kenya so that the spirits would not haunt them?

Mr. Criticos: Mr. Speaker, Sir, I am very much aware of that, but I am only aware that the Luos are the only ones who get buried at home. I am not aware of any Ugandan.

Mr. Raila: On a point of order, Mr. Speaker, Sir. This poor fellow was a Ugandan. Ugandans or Kenyans are still entitled to their rights. The relatives of the deceased are even up to now anxious to exhume the body, if it was buried at all, wherever it is, to take it to Uganda for a decent burial. Can the Assistant Minister undertake, in this House, to take the relatives of the deceased to the burial site so that they can exhume this body and take it and bury it decently in Uganda?

Mr. Criticos: Mr. Speaker, Sir, normally, the bodies are burnt and the ashes exposed off. Therefore, we cannot do that.

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

Mr. Speaker: I am sorry. Next Question!

Question No. 725

LIGHTS IN TRAIN COACHES

Mr. Kofa, on behalf of **Mr. D.D. Mbela**, asked the Minister for Transport and Communications:-

(a) if he is aware that passengers travelling in the third class compartments of the Nairobi/Mombasa and Mombasa/Nairobi passenger trains travel overnight without lights in the coaches; and,

(b) if the answer to "a" above is in the affirmative, what immediate remedial action he intends to take to stop this embarrassing situation.

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

(a) I am aware that passengers travelling in third class compartments of Nairobi/Mombasa and Mombasa/Nairobi passenger trains have occasionally travelled without lights in the coaches due to light failures.

(b) Major causes of light failures in the coaches have been, first, the age of the equipment which makes it easily prone to mechanical/electrical problems and, second, theft of coach electrical components.

The following remedial measures have been taken to ensure that the lighting system is being rectified:

(i) Required items have been imported and are being fitted.

(ii) A task force has been appointed to ascertain that the lighting system in the coaches is being restored.

(iii) Adequate funds have been set aside to consistently maintain lighting system.

(iv) Plans are underway to redesign the train lighting system in order to enhance reliability and reduce dependency on spares from overseas.

(v) A passenger Services Department has been established for closer attention and provision of quality service to train passengers.

Mr. Kofa: Mr. Speaker, Sir, it is very unfortunate for the Kenya Railways Corporation to take so long to rectify such a situation. For how long has this situation been going on?

Mr. Ahmed: Mr. Speaker, Sir, the problem has gone on for a short period.

Mr. Kofa: Mr. Speaker, Sir, for how long, has this problem been going on? "short period" is not telling us the time.

Mr. Ahmed: Mr. Speaker, Sir, the problem has not gone on for a long time and it appears occasionally, not always.

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to confuse the House? At one time he said that this anomaly had been going on for over a long time and this time, he says that it has not gone on over a long time. Which is which? Is he in order to confuse us?

Ms. Wanjiru: Is the Assistant Minister aware that the Kenya Railways is not even using the telephone services because they are unable to pay the bill? I do not know why the Assistant Minister is now exaggerating

the issue.

Mr. Ahmed: The statement that has been made by the hon. Member is not true.

Mr. Gitonga: Could the Minister tell us why this problem only occurs in third class coaches and not in second and first classes?

Mr. Ahmed: The problem occurs not only in the third class but also in the first class sometimes.

Question No.748

REPAIRS TO UGENYA ROADS

Mr. Orengo asked the Minister for Public Works and Housing whether he is aware that East Ugenya and North Ugenya locations, and many areas in West Ugenya and South Ugenya locations, are inaccessible because no roads have been maintained or repaired for the last two years, thereby causing extreme suffering to the people?

The Minister for Public Works and Housing (Prof. Ng'eno): Mr. Speaker, Sir, the answer to this Question is not yet ready as all the information relevant to answer it has not been gathered. Therefore, I beg the indulgence of the House so that I can answer this Question sometime next week.

Mr. Speaker: What is your reaction Mr. Orengo?

Mr. Mak'Onyango: On a point of order, Mr. Speaker, Sir. We are having too many of these deferments and they are affecting or undermining the business of the House. Could we get some guidance from you on how we are going to resolve this?

Mr. Speaker: Well, my guidance is, I ask Ministers to be ready with their answers and answer Questions when they are due. I was just asking Mr. Orengo, do you agree that the Question be deferred to next week?

Mr. Orengo: I had been approached by the Assistant Minister in relation to this Question. Unfortunately, the "Government" will probably be in my constituency next week. If the Minister can take the opportunity and capitalise on the presence of the "Government" in my constituency to do the necessary, I would be very grateful. Otherwise, I am willing to have this Question answered on Thursday, next week, after the "Government" has left my constituency and then we can compare notes.

Prof. Ng'eno: Mr. Speaker, Sir, the hon. Member is so lucky that the "Government" will be in the neighbourhood before I can answer this Question. In the process of answering the Question next week, he may find that the Question will have been overtaken by events.

(Question deferred)

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. I wish to seek guidance from the Chair. From what we have from both hon. Orengo and the Minister, does that constitute an answer to that Question, in spite of the Government being in the neighbourhood?

Question No.755

REPAIRS TO KINANGOP BRIDGES

Ms. Wanjiru asked the Minister for Public Works and Housing:-

(a) whether he is aware that the three bridges between Ndunyu Njeru, Engineer and Njabini Towns have collapsed; and

(b) if the answer to "a" above is in the affirmative, when will the bridges will be repaired.

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry has already completed replacing the old timber decks for both Turasha and Engineer bridges. The two bridges are now passable after completion of the repairs. The Kinja bridge which is also along the same route is under repair to replace its timber deck with a new deck of similar material. The remaining work will be completed before 26th July, 1996, after which it will be motorable.

(b) Two of the bridges are already repaired and the third bridge will be completed by the 26th of this month.

Ms. Wanjiru: Mr. Speaker, Sir, while I thank the Ministry for undertaking the repair of the bridges in

my constituency, I also take this chance to ask the Assistant Minister to fill the potholes between Magumu and Njabini roads. What are his comments on this?

Mr. Mwamzandi: It is our duty to repair the potholes. I assure the hon. Member that we are going to look into that and do it as soon as possible.

Mr. Mulusya: I have just been talking to hon. Wanjiru Mwangi about the problems which the people of this area have been undergoing since those bridges broke down. What has the Ministry been doing to maintain those bridges to make sure they can foretell when they are about to collapse and repair them in good time, to avert this crisis which they have now been faced with?

Mr. Mwamzandi: Although the area was very wet, we have repaired them in good time.

Mr. Githiomi: Instead of the Ministry providing a temporary solution by building a timber bridge, could the Ministry consider providing a permanent solution by building a permanent bridge?

Mr. Mwamzandi: The hon. Member will agree with me that we are not going to remain with timber bridges throughout the years, as we are an Independent state now. We are replacing them slowly with permanent bridges.

Question No.744

CONSTRUCTION OF DAMS IN KAJIADO CENTRAL

Mr. Sankori asked the Minister of Tourism and Wildlife what delayed the implementation of the development projects which the Ministry promised to undertake such as Oloibor Ajiji, Lolngosua and Ilmamen dams.

The Assistant Minister for Tourism and Wildlife (Mr. Kisiero): Mr. Speaker, Sir, I beg to reply.

The delay in the implementation of the development projects such as Oloibor, Ajiji, Lolngosua and Ilmamen dams has been caused by need to sensitise the communities on the best way to use the dams so that no siltation occurs in the future. This has been completed and the implementation of the first phase has already started. However, Ilmamen dam will be de-silted in the second phase.

Mr. Sankori: Mr. Speaker, Sir, is the Assistant Minister trying to say that he is going to teach them before providing them with the dams? What we are asking is that you, you committed that Ministry that you are going to build dams in these areas in 1994, but up to now none of them has been built? What are you doing?

Mr. Kisiero: Mr. Speaker, Sir, first of all, we have to consult the community and agree on where these dams would be constructed, and as of now, money is available from 1st July, 1996, and we are ready to carry out the project.

Mr. Kamuyu: Mr. Speaker, Sir, can the Assistant Minister tell us how many other projects have stalled throughout the country, especially in KANU Zones where promises have not been fulfilled at all?

(Laughter)

Mr. Kisiero: Mr. Speaker, Sir, that is very different question.

Mr. Shikuku: Mr. Speaker, Sir, arising from that reply, is the Assistant Minister aware that there are many promises which had been made by the Government, and even to the extent of wooing some hon. Members from the Opposition side that if they join KANU, everything would be done and after crossing, nothing is done?

Mr. Kisiero: I am not aware, Mr. Speaker, Sir.

Mr. Sankori: Mr. Speaker, Sir, while I appreciate the reply given by the Assistant Minister that these projects are going to start by 1st July, 1996, today, is 17th July, 1996, and nothing has started. Does that mean that I am going to wait until 1st July, 1997 before these projects are started?

Mr. Kisiero: Mr. Speaker, Sir, it is normal that it takes a few days to organise with the Treasury for the funds to be released. I already know that Kshs 650,000 has been set aside for the job.

Mr. Arte: Mr. Speaker, Sir, the hon. Member has asked about three places where dams are supposed to be constructed and the Assistant Minister is saying that Kshs 650,000 is the only amount of money set aside for these projects. How many dams can Kshs 650,000 build?

Mr. Kisiero: Mr. Speaker, Sir, I have said that we would start with two dams and, then, later on we would work on the last one.

Mr. Farah: On a point of order, Mr. Speaker, Sir. Only one dam! We were told in the Floor of this House that at hon. Arte's constituency Kshs 3.8 million had been allocated, but that amount could not complete

that dam. How can the Assistant Minister mislead us that he is going to use Kshs 650,000 to build two or three dams? It is not going to be enough even for one dam.

Mr. Kisiero: Mr. Speaker, Sir, it all depends on the size of the dam.

(Laughter)

Mr. Speaker: Next Question, Mr. Muite.

Question No 563

COSTS OF CRIMINAL CASE NO. 2273 OF 1993

Mr. Maore, on behalf of **Mr. Muite**, asked the Attorney-General:-

- (a) how much money, to date, the Government had spent in the criminal case No 2273 of 1993 in the Principal Magistrate's Court at Nakuru; and,
- (b) what the break-down of the total expenses in "a" above was.

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

(a) The Government does not have a system of computing the costs or expenses incurred in each criminal case. The Government pays the salaries of civil servants and judicial officers employed in the administration of justice, plus other expenses incurred in accordance with the budgeted amount under the various Heads and Items in the voted expenditure.

(b) In view of the answer to "a" above, (b) does not arise.

Mr. Maore: Mr. Speaker, Sir, the answer given by the Attorney-General is quite evasive and misleading in the sense that the Question is not about each criminal case, but it is about a specific case No. 2273 of 1993 in the Principal Magistrate's Court at Nakuru on which the Koigi's trial was based. How much money did the Government spend in terms of salaries to the judge, State Counsel and the witnesses because there are specific allowances that are paid to the witnesses and so many other expenses you incur? How much was it and in your view as the Attorney-General, do you believe that it was a worthy cause to commit public funds to, given **[Mr. Maore]**

that you knew from the first day that the case was trumped up and organised?

Mr. Wako: Mr. Speaker, Sir, I have answered the question by stating each criminal case and this is just one of the many criminal cases which are pending before the court. As to the last part of that question, I wish to plead that the matter is *sub judice*.

Mr. Obwocha: Mr. Speaker, Sir, I do not know whether you are satisfied with the answer the Attorney-General has given this House. This specific Question was asking about the expenses of criminal case No 2273 of 1993, and the hon. Attorney-General should have instructed his officers to find out how much money was paid to the witnesses, how much was paid in terms of transporting these people and so on, and the suspects under question. Can you instruct this horrible Attorney-General to give us this information?

An. hon. Member: Horrible Attorney-General! He must withdraw that remark.

Dr. Wako: On a point of order, Mr. Speaker, Sir. I heard Mr. Obwocha say "this horrible Attorney-General". Can he substantiated his remark?

Mr. Obwocha: Mr. Speaker, Sir, I said the hon. Attorney-General or the smiling Attorney-General.

(Laughter)

Mr. Wako: Mr. Speaker, Sir, as I stated, to be able to give this answer, we must have a system in which we can compute all the costs involved, and that includes the State Counsel, Magistrate and all other expenses involved.

We do not have that system. It may be there in the private sector where an advocate can say that he has spent so many hours on this case and, therefore, I charge so much. But we do not have that system in the Government.

Mr. Icharia: On a point of order, Mr. Speaker, Sir. If the Attorney-General has not had the time to compute the costs involved, can he go back and compute those expenses and bring them to this House, next week to show how much has been spent on this particular case?

Mr. Wako: Mr. Speaker, Sir, it is not possible. Well, I can tell you how much paper was spent and

how much it costs. That is possible. But to compute the total costs involved in each criminal case is impossible.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. Arising from that evasive reply from the Attorney-General and taking into account that Kenyans are very intelligent and educated, is he satisfied with himself, and is he honest with himself and to this House, that he is incapable of finding out the costs of this specific criminal case, not all the criminal cases in the Republic of Kenya, only this criminal case? Does he mean that his officers cannot compute and give us the total costs involved? Is he really admitting that his officers, plus himself, are so inefficient that they cannot compute the expenses of this particular criminal case; not all the cases in the Republic of Kenya?

Mr. Wako: Mr. Speaker, Sir, I am satisfied that we cannot compute the total cost incurred in each criminal case and this is one of the each criminal case. The Government does not have a system of computing costs involved in any criminal case.

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

Mr. Speaker: Order! Order, Dr. Lwali-Oyondi.

Mr. Wamalwa: Mr. Speaker, Sir, the Attorney-General has just informed the House that the Government does not have a system whereby it can compute the costs of each criminal case. Would the Attorney-General be prepared now, to tell the House that the Government will come up with a system to determine the costs of each criminal case because this is the only way he is going to be transparent and accountable to this House?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I agree that it is necessary in future that the Government should come up with a system in which it can compute the costs of each criminal case. Therefore, I do hope that the computerisation system that we are now negotiating with United Nations Development Programme (UNDP) and other international donors to provide compute not only in the judiciary, but also the prosecution and my office, will be a step in the direction of assisting the Government to compute the costs.

QUESTIONS BY PRIVATE NOTICE

SHOOTING OF ITE FARM RESIDENTS

Mr. Kapten: Mr. Speaker, Sir, I need a written reply to this Question but however, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Is the Minister aware that Administration Police and the Chief of Kaibei Location in Trans Nzoia District have since Thursday 20th June, 1996, terrorised residents of Ite Farm and all the surrounding areas by shooting innocent people including a school boy?

(b) If the answer to "a" above is in the affirmative, how many bullets were fired by the Chief and Administration Police between the period of 20th June, 1996, to 24th June, 1996, when they were on the farm?

The Assistant Minister, Office of the President (Mr. Manga): Mr. Speaker, Sir, this Question touches on the shooting of innocent wananchi, and, therefore, the Minister will want to have a little bit of time to seriously investigate these allegations and I confirm that the answer will be here on Tuesday afternoon, next week.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. This hon. Assistant Minister has requested to reply to three Questions this morning and he has requested that he does that on Tuesday.

Do you seriously expect that he is going to have all the answers on Tuesday to a Question which has been deferred before and he is postponing it to Tuesday again when he is likely, as others have done, to abscond from coming to the House on Tuesday because of the backlog of work and promises?

The Assistant Minister, Office of the President (Mr. Manga): Mr. Speaker, Sir, each Question is treated separately on its own merit; therefore, it should not be connected.

Mr. Speaker: The Question is therefore deferred to next week. When would you prefer to have an answer, Mr. Kapten?

Mr. Kapten: Could I have it answered on Wednesday, next week?

Mr. Speaker: Very well.

(Question deferred)

Mr. Kapten: Mr. Speaker, Sir, could the Assistant Minister tell the administrator not to threaten the residents of this farm because he is threatening to kill them.

The Assistant Minister, Office of the President (Mr. Manga): Mr. Speaker, Sir, as I said before, the

investigations are being carried on and, if anything it will be stopped.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. There was a very serious allegation by the hon. Kapten to the effect that the administrator is threatening to kill these wananchi and he wanted assurance from the Assistant Minister that this will not happen and he has not given that assurance. Can he give that assurance?

The Assistant Minister, Office of the President (Mr. Manga): Mr. Speaker, Sir, I have just said that the matter is under investigation and if there is any threat, you can be assured that the Government will not allow it and it will be stopped.

CONSTRUCTION OF GODOWN AT MOMBASA AIRPORT

Prof. Mzee: Mr. Speaker, Sir, I beg to ask the Minister for Transport and Communications the following Question by Private Notice.

The Assistant Minister for Transport and Communications (Mr. Morogo): Mr. Speaker, Sir, I beg the indulgence of the House that, this Question be answered on Tuesday next week.

Mr. Kamuyu: Mr. Speaker, Sir, we do need your guidance on this matter and other matters. The Ministers are taking this side for a ride, when so many answers are not forthcoming. They are not prepared to answer and they seem to be enjoying a lot of leeway apparently from the Chair, because they are doing so with a big smile by saying that "I will answer when I wish"; that is the kind of situation.

These are Questions by Private Notice and they are very urgent. Can he be told to answer the Question now?

Mr. Speaker: Order! I have said in the past that Members must take the House very seriously and I urge Ministers to answer questions promptly. There is absolutely no reason why we should be deferring questions as a matter of routine. So, will that advice from the Chair be acted upon by all parties concerned.

Prof. Mzee: Could I request for the answer on Wednesday afternoon next week?

Mr. Speaker: Very well.

(Question deferred)

Mr. Nyagah: On a point of order, Mr. Speaker, Sir. I am going to talk about the seriousness of this matter. I filed my questions in 1995 and in January 1996, I renewed them. To date I have not asked a single Question since then as a result of what these Ministers are doing. I am an hon. Member of Parliament; I have pressing issues and my people want to see me bring their issues here. How do you react to that? Up-to today - and we are about to close another Session - I only contribute when other Members ask their questions but my Questions never appear on the Order Paper and it is serious.

CLOSURE OF PORT'S SECURITY DEPARTMENT

Mr. Obwocha: Mr. Speaker, Sir, I beg to ask the Minister for Transport and Communications the following Question by Private Notice.

(a) Is the Minister aware that Kenya Ports Authority (KPA) is closing down its security department and hence rendering many workers jobless?

(b) If the answer to "a" above is in the affirmative, which private security firm has been contracted to offer security services to Kenya Ports Authority?

The Assistant Minister for Transport and Communications (Mr. Morogo): Mr. Speaker, Sir, we are shall also ask the indulgence of the House for this Question to be deferred to---

Hon. Members: No! No! No!

Mr. Obwocha: On a point of order, Mr. Speaker, Sir. The seriousness of this Question is that I filed this question and it appeared on the Order Paper on the 4th of July, on Thursday last week but one and, you, yourself ordered the substantive Speaker that it should appear last week but because of the pressing business of this House, it did not appear and today, the Assistant Minister comes and says that he does not have the answer.

Mr. Speaker: May I, as a matter of interest, ask the Assistant Minister what causes these unnecessary postponements when it comes to the answering of Questions.

The Assistant Minister for Transport and Communications (Mr. Morogo): Mr. Speaker, Sir, my Ministry has very rarely asked for the indulgence or for the deferment of questions. On this particular question, the Minister himself had the courtesy to consult the hon. Members because the answers that we had were not

satisfactory. This being a Private Member's Question, we take it with the seriousness that it deserves and we want to get the accurate answers to the hon. Member and this is the reason why we are asking for these deferments because we want to get more information so as to answer the Questions satisfactorily.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. I did point out last week, as a result of non-answering of questions by Ministers raised by hon. Members on this side of the House, that I was trying to invoke Standing Order Number 45 which of course as you know, that one can move any Motion without Notice so that we can discuss this conduct of these hon. Members on the other side, particularly the Ministers, who have made it a habit to come to this House without any reasonable reason for not answering the Questions. I thought that you should allow me to move a Motion to discuss the conduct of these hon. guys.

(Loud Applause)

Mr. Speaker: Order! I suppose the Assistant Minister has heard the sentiments of the House. I suppose he has heard the concern of the Chair and I hope that unnecessary requests for deferment of questions will not be repeated and that it will be made minimal to the basic absolute necessity.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. This is a very serious matter because twice today this afternoon, the Assistant Minister who is normally very efficient in answering his questions has had to ask for the indulgence of this House to get better answers than the ones that he got from his civil servants. You have seen that questions have been deferred in this House before, precisely because the answers the Ministers are getting from the Civil Service are unsatisfactory. For how long is this Parliament going to allow a Civil Service that has outlived its usefulness to paralyse the business of this Parliament? Can something be done to get the Civil Service to support this political Government because that is where the weakness is. What can be done? Can we get a Statement from the Government on what they are going to do about that?

The Assistant Minister for Transport and Communications (Mr. Morogo): Mr. Speaker, Sir, let me assure that House that we take the House very seriously, and for that matter, we take serious steps regarding the officers charged with responsibility of preparing the answers. Let me further stress that within my own Ministry, we have already taken the necessary steps and I believe that such an affair will not arise again.

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

Mr. Speaker: Order, Mr. Orengo.

Mr. Obwocha: Thank you Mr. Speaker, Sir. Could we know from the Minister then whether he will be able to answer this Question tomorrow, Thursday, or the latest on Tuesday?

The Assistant Minister for Transport and Communications (Mr. Morogo): Mr. Speaker, Sir, I will answer it on Tuesday.

Mr. Speaker: Very Well, the Question deferred.

(Question deferred)

Mr. Orengo: On a point of order Mr. Speaker, Sir. Standing Order No.36 states:-

" A Question is brought by way of a Private Notice after Mr. Speaker is satisfied that it is of an urgent matter".

Is your authority not being undermined, and that of the House, when you are satisfied that the matter is urgent and is not treated as an urgent matter? Secondly, the Standing Order states that once you have certified that the Question is urgent, it shall be answered within the next two days. The operative word is "shall." So, I am concerned about this bargaining, we are bargaining over when to answer, when the Standing Orders are very clear.

Mr. Speaker: Order! I am also concerned, and I have already made my stand clear. I have instructed Ministers who have to answer Questions to do so on dues dates unless, there is a very good reason why it should not be done. I do not think that we should have at all, this routine of deferment. I think it is also undermining the integrity of the House. Next Question, Mr. Abu Mohammed.

IRREGULAR DISPOSAL OF LAMU AMBULANCE

(Mr. Abu to ask the Minister for Health:-

(a) Is the Minister aware that the only Ambulance, MV Afya I, that was serving Pate, Siyo, Faza, Kizingitini, Matondoni, Sheila, Manda and Kiwayu villages within Lamu Archipelago has been

irregularly disposed of by the District Commissioner, Lamu, contrary to his instructions and authority as indicated under letter MISC/II/A/I/(133) of 1st March, 1996?

(b) What was the valuation price of this vessel at the time of sale and how much was it sold for?

(c) In view of the distances between the islands and the district hospital, what urgent steps is the Minister taking to replace this vessel and have the District Commissioner, Lamu, surcharged for this irregular disposal of Ministry's property?)

Mr. Speaker: Mr. Abu Mohammed not here? Question dropped.

(Question dropped)

Mr. Nthenge: On a point of order, Mr. Speaker, Sir. I am following an issue raised by my colleague hon. George Anyona. The Civil Service of Kenya now is determined to let down the House. What are we going to do about it? This is because the Ministers cannot travel all over Kenya to get information. They are being given information which they know is wrong, and they say: "I cannot answer this way, I am not a fool." What are we going to do with that civil servants who are belittling their employer because the employer is a public and we are the agents of the public?

Mr. Speaker: I do not know whether there is anybody in the Government who wants to respond.

The Minister of State, Office of the President (Mr. Kones): Mr. Speaker, Sir, I think as much as we are agreed that certain members of the Civil Service may not be totally efficient, I think it is wrong to give a total condemnation of the entire Civil Service. I think this incident that has happened today, where certain Questions have been deferred because of inadequate answers, or at times the Ministers have said that they do not have enough information--- I think this could be dealt within individually with each Ministry. But I think it is wrong to make a blanket condemnation. I will make sure that we get adequate answers and on good time.

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. I am just wondering whether it is in order for us who are not directly connected with the Civil Service to blame the Civil Service. We should be blaming the inefficiency of the Ministers who should be liaising with the civil servants. I am wondering whether we are in order to blame the civil servants whose work we do not know. We know the work of the Ministers.

Mr. Ruhii: Mr. Speaker, Sir. I seek your leave to stand on a point of order regarding the towing of vehicles in the City of Nairobi. Of late, there has been an outcry from motorists because their cars have been towed and by the time they reach the destination the handbrakes are out of order. The clutches and pressure plates are also all out of order because they are towed when sometimes the car is engaged in gear. I rise to ask for a Ministerial Statement because last year, in this House I asked this Question and the Minister for Local Government promised to introduce a system whereby motor vehicles will be immobilised by using a method they described as clump, whatever that means. Now, there is an outcry add I want to get a Ministerial Statement as to why this has again started. According to what the Minister said here, I am reading the HANSARD--- He said: "If that is the case, that the cars are being damaged, I will investigate and put a stop to it until this method of clump immobilisation is introduced". So I need a Ministerial Statement by tomorrow.

Mr. Speaker: Anybody who wants to respond to that?

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. Last week I asked for a Ministerial Statement to be made in this House in respect of the City Council workers. It was not made on Tuesday, today is Wednesday, the Minister is nowhere to be seen and from your ruling which you made earlier on, the Minister should take seriously the issues in this House. I do not see the Minister here, he may be hiding somewhere. I also asked for a Ministerial Statement from the Office of the President in connection with money they owe the City Council. I wanted to confirm whether they owe the City Council any money. I know the Office of the President owes the Nairobi City Council something like Kshs1.8 billion which they have not paid. I want him to confirm how much they owe the Council. He can deny it is not Kshs1.8 billion. He should tell us the figures and why they have not paid the City Council. They should pay the City Council, so that it can be able to pay the workers. I am asking for those two Ministerial Statements. Why are they not standing up to reply to those?

The Minister of State, Office of the President (Mr. Kones): Mr. Speaker, Sir, the two issues that have been raised by hon. Ruhii and hon. Shikuku could actually come in a form of a question. If the two Members would ask Questions, we will.

Mr. Shikuku: On a point of order Mr. Speaker, Sir. I know when to ask a Question. I stood in this House and I have a right like any other Member to demand a Ministerial Statement from any Ministry. Is it in order for the Minister to tell me that I can put in a form of a Question? He is trying to teach me what to do, when I should be teaching him what to do, my long experience. I know when a Ministerial Statement is required.

Could he now make a Ministerial Statement which I requested for last week?

The Minister of State, Office of the President (Mr. Kones): Mr. Speaker, Sir, I insist that I will not make a Ministerial Statement; I will answer a Question. So, put in a Question and I will answer it.

Mr. Mak'Onyango: On a point of order Mr. Speaker, Sir. I rise on a point of order to seek for your guidance regarding the status of the Public Accounts Committee Report. July is about to come to an end, when the Report by the Controller and Audit-General is supposed to be on the Table of the House.

Mr. Speaker, Sir, I am seeing a situation where the Report of the Controller and Auditor-General is going to override with the PAC. When are we going to have the Public Accounts Report?

Mr. Speaker: Order! I understand that the Report is still with the Government Printer. As soon as the same is printed, it will be laid on the table of this House.

Hon. Members: When will this be?

Mr. Speaker: Order, hon. Members! You know very well that I am not working in the Government Printer. As soon as the Government has printed the Report, it will be laid here.

Mr. Wamalwa: On a point of order, Mr. Speaker, Sir. I am gravely concerned about this as the Chairman of that Committee, because in the final sittings, we were told that work should be completed quickly, and that the Report was already being printed here and it would just go to the Government Printer for binding. Now, a whole month has gone since we finished that work and we have not seen the Report yet. So, this raises some concern, because we do not want to reach a stage where a new Report overtakes an old Report like it happened this year, which forced the Committee to work over the Christmas season.

Mr. Speaker: As I have already told hon. Members, I really do not know anything about printing but the best I can do is to find out from the Government Printer as to what stage of printing they are and ensure that they do it quickly and have it tabled in this House.

Mr. Wamalwa: On a point of order, Mr. Speaker, Sir. Generally, it must have become apparent to you as it has to the whole House, that there is some laxity on the performance by the Government in terms of answering questions, handling things like Parliamentary Reports and we are receiving vague promises from Ministers and other people while the Leader of Government Business himself is here. Do you not think that it is about time the Leader of Government Business himself told us what is happening on that side of the House?

Hon. Members: He is hiding!

Mr. Speaker: Order! We will now hear Mr. Mudavadi.

MINISTERIAL STATEMENT

WINDING UP: KENYA NATIONAL ASSURANCE COMPANY

The Minister for Finance (Mr. Mudavadi): Thank you, Mr. Speaker, Sir. I just wish to stand on a point of order so that I can make a Ministerial Statement on the Kenya National Assurance Company. On 18th June, 1996, the Commissioner of Insurance appointed a statutory manager for the Kenya National Assurance Company in accordance with Section 67(c) of the Insurance Act and this was Coopers and Lybrand. The manager has now given their recommendations on the various options available for the restructuring of the Kenya National Assurance Company. After considering their recommendations, it has been concluded that the general insurance business is irreversibly insolvent while there is some potential to transfer the long time life insurance business as an on-going concern. Having considered all the financial implications of these options which involve a sum of close to Kshs3 billion, the Government has decided that the Company be wound up. The long term business will be restructured under the winding up arrangement for purposes of transfer to another insurer consequently and in accordance with the provisions of Section 123 of the Insurance Act. An interim liquidator has now been appointed. Upon the appointment of the liquidator on 15th July, 1996, the appointment of the statutory manager, Messrs. Coopers and Lybrand, under Section 67(c) of the Insurance Act, ceased. The liquidator will not have the power to effect any new contracts of insurance.

It is expected that the liquidator shall also as far as it may be possible, carry on with the existing business of the life funds including the receipt of premiums of policies in force with a view to entering into appropriate schemes of arrangement to facilitate the transfer of these funds to another insurer.

It is also expected that the liquidator will apply to the court for the appointment of a special manager to handle the activities of the closed funds and designing schemes of arrangement prior to their transfer to other insurance.

Following the appointment of the liquidator, the staff have been made redundant. In this regard, the Government has set aside funds to make payments towards severance costs. This process has started and the liquidator has been requested to provide information for the computation of the amounts of severance. Payments details will then be communicated shortly. **Mr. Shikuku:** On a point of order, Mr. Speaker, Sir. Will the Minister inform us what is going to happen to the employees' terminal benefits because these people have families and relatives to cater for? They have been thrown out in the cold! I think when the Minister came in, he had a good look at these people. Now, what is he going to do about this and particularly about those people who had insurance policies with the company and those who had been employed and have now been asked to repay their loans within 90 days? Lastly, did this thing just come all over a sudden? Was it an accident? Was the Minister not aware of the trend that led to this downfall, and if he was, why did he not take appropriate action to avert the situation before it was too late?

The Minister for Finance (Mr. Mudavadi): Mr. Speaker, Sir, I will try to respond as effectively as possible to the points being raised. First, I would like to point out that in the statement that I have just given, I have indicated that the Government has set aside some funds to make payments towards the severance costs. I have also said that this process has started and the liquidator has been requested to provide information for the computation of the amounts of severance costs. The liquidator will look through the staff profile, see what is due and then advise on what the computation costs should be.

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

Mr. Speaker: Order, hon. Members! I think this is a very important issue and I think it is in the interest of the House to hear the Minister fully, so that Kenyans out there who are affected know truly what is their fate. So, can we give the Minister maximum cooperation.

The Minister for Finance (Mr. Mudavadi): That was the first point I was responding to.

The second point related to whether the situation of Kenya National Assurance is an instant one or it is something that has been developing over time. In all fairness, we do know from the reports and recommendations that we have been given by the statutory manager who was appointed that the problem of insolvency of Kenya National Assurance Company is not a sudden issue. It is something that has built up over time. In order to have come to this conclusion, I think it was proper that the Government got professional advice to go into an in depth analysis of the situation of Kenya National Assurance before any decisions could be made, and this is why we could not have made any other decision prior to having received very comprehensive professional advice as we have received from the statutory manager.

Mr. J.N. Mungai: On a point of order, Mr. Speaker, Sir. We very well know that all the people who were used to rip off KNAC were appointed by the Government. Indeed, throughout the time that this company has been going down, we have not heard of any of those senior officers of KNAC who has been arrested and taken to court. Instead, some of them have been transferred from that company and promoted to other companies. The Minister is very well aware of that. We also know that the Company Secretary, who is also the Chief Legal Officer of that Company has been used to rip off that company by being allowed to appoint his own agents to investigate matters of that company, and later paying them overwhelming sums of money. I have a case where an appointed agent was sent to go and investigate the question of Uchumi Insurance Brokers versus the Company. They were investigating for an amount of Kshs15 million. The agent who was appointed was paid close to Kshs2.7 million. You can see that kind of rip off. We would like to hear the Minister telling this House what he is going to do to those people, in view of the fact that the people who are now suffering are over 1,000 ordinary wananchi, who are being left out in the cold, and yet these people who ripped off the company are now sitting comfortably in their posh homes, and some of them in this House, and no action has been taken against them. We want to hear the Minister explaining what he is going to do about these people.

The Minister for Finance (Mr. Mudavadi): Thank you very much, Mr. Speaker, Sir. I would just like to stress that we expect the liquidator, in the process of looking through all the details of KNAC, where there is adequate evidence that can be used to commit any of the management that may have been involved in fraudulent transactions within the company and, therefore, contributed to the decline of this company, they will be taken to court.

Mr. D. Otieno: Mr. Speaker, Sir, the problem of KNAC is serious. First of all, it is a Government company. Secondly, it is setting a precedent that may affect other companies in the industry. Thirdly, the problems started before the Minister was an hon. Member of this House. The Report which the Assistant Minister tabled here on 9th July, The Insurance Annual Report, shows that the general business of KNAC was insolvent as early as 1988. We are talking of eight years. The life business became insolvent from 1990. The moral question is: A Government company allowed to go down knowingly for so long, and now, claimants are

left with liquidators. Is it right for the Minister to leave disabled Kenyans in hospitals expecting claims from KNAC, and yet, they are the people who insured faithfully with this company because it was a Government company? What moral strength shall we have when a private little company goes under? Shall we answer the public properly?

I personally plead that first of all, the Minister should publish the Insurance Annual Report in time. Before, early this afternoon, the issue of erosion of the dignity of Parliament by late submission of reports was raised. Insurance Annual Reports were submitted last Tuesday, which is six years late, and at the same time, a Government company was going down during those six years. On inquiry, the Commissioner of Insurance told me that he could not publish those reports because he did not have any money to pay the Government Printer. We would have reason to tell the public that under Section 52 of the Insurance Act, we informed them of the true condition of all insurance companies and if they continued placing business in those companies, they knew their financial conditions. But here is a case that reports required to be laid in this House under an Act of Parliament were also not laid, and the first casualty is a Government company. I want to ask the Minister to see if he can do something and manage the KNAC issue, a little different from the direction he is taking.

The Minister for Finance (Mr. Mudavadi): Thank you very much, Mr. Speaker, Sir. I just want to say that hon. Members have raised some very valid points. The first point is the question of the delay in laying on the Table of this House the Insurance Annual Reports by the Commissioner of Insurance. This is an issue we are addressing, and for the first time in a long time, he does acknowledge that the insurance reports are now being laid on the Table of this House.

Secondly, I would like to stress that this is a very painful process, even to me personally, as the Minister for Finance. This is because the people affected are numerous. I am saying that it is a painful process because the decision that has been made by the Government has got a lot of other sides to the coin. First and foremost, to salvage KNAC, the Government would require close to Kshs3 billion. There is an issue here that, to raise Kshs3 billion to salvage KNAC, would mean that there must be excessive taxation. I do not think that, that would be easy.

Hon. Members: Those who stole should be made to pay!

The Minister for Finance (Mr. Mudavadi): Secondly, I want to put it on record that I concur and, indeed, I made this statement sometimes back that there is need to review the insurance industry more thoroughly than we have done in the past. This is because we can fall in a situation where there will be numerous other insurance companies going under and leaving a lot of Kenyans in trouble. In this regard, we are clearly working towards bringing a comprehensive review of the Insurance Act, which will take into account the kind of pitfalls that we have fallen in with KNAC.

(Loud consultations)

Mr. Speaker: Order, hon. Members! We know in general that we do not turn a Ministerial Statement into a debate. But, I also appreciate the anxiety of hon. Members and the Kenyans who are affected over this issue. This is why I have given some latitude for the Minister to give further details, and for hon. Members to voice their concern about this issue. But it must now come to an end. We will now proceed to the next order. Next Order!

Hon. Members: On a point of order!

Mr. Speaker: Order! Order! In fact, there is a Question by Mr. Kaptan on this subject coming up. I will let the hon. Members who have further concern about that issue participate when that Question comes up in the House.

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

Mr. Speaker: Order! We have now left that issue and we are proceeding to the next Order.

BILL

Second Reading

THE NATIONAL INTELLIGENCE SERVICES BILL

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. Before this Bill is moved, if you look at the Standing Orders, you will see that the business of this House is normally set down by the Sessional Committee,

although I am conscious of the fact that there is a Standing Order which gives the Government power to decide on what comes first on the Order Paper. Some of us had prepared for debate on the Auctioneers Bill, and also the Committee Stage to debate the amendments which are already on the Paper. Now, we are being told to debate Bill No. 6, while Bill No. 5 has not been concluded. This, in my opinion, is ambushing hon. Members of this House. Some of us are not prepared for the Order that has just been read out. Could we ask your indulgence to, in fairness, allow us to go to the Auctioneers Bill and after it, we can come back to the National Intelligence Bill. We were not aware of debate on this Bill.

Mr. Speaker: Mr. Shikuku, you are asking me to change the Orders of the day, and yet you have said that you are aware of the Standing Order which gives the Government the right to place on the Order Paper, Orders in the order it pleases. What would you like me to do about that Standing Order?

Mr. Shikuku: Mr. Speaker, Sir, the business of the day is decided on by the Sessional Committee, whose majority members are from the Government, but when we met last time, this Bill was not discussed at all. Now, we are seeing a change on the Order Paper today. In the past, I have seen what I am asking you to do. The Speaker comes to the House and, if the Minister is not present, he says: "Well, gentlemen we will leave this Order and go to the next one because the Minister is not in the House". I was asking you if you could invoke that practice and say: "Well gentlemen, why do you not finish on the Auctioneers Bill which is going into the Committee Stage and then come back to this other Bill". This can be done by you.

Mr. Speaker: Mr. Shikuku, I do not want to get involved in that. As you know I am not a member of the Sessional Committee. So, I cannot answer for it.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): On a point of order, Mr. Speaker, Sir. Let me put the matter this way: Indeed, in the last Sessional Committee meeting, we did make it clear that there would be several Bills on the Order Paper. There were the Auctioneers and the National Intelligence Bills and, of course, the various votes under the Committee of Supply. I would like to inform this House that the Government, knowing that there are these two Bills, has decided to give priority to the National Intelligence Bill. But definitely - I want to say it here - it was brought to the attention of the Sessional Committee that this Bill would be discussed in the House.

Prof. Mzee: On a point of order, Mr. Speaker, Sir. I am a member of the Sessional Committee but I was not aware at all, that this Bill would be listed down for discussion!

Mr. Speaker: Order! When you go back to the Sessional Committee, discuss that point. For now I think the Bill is properly before the House. Proceed, Mr. Kones.

The Minister of State, Office of the President (Mr. Kones): Mr. Speaker, Sir, I beg to move that the National Intelligence Services Bill be now read a second time. This Bill is being introduced into this House, so that we can have an Act of this Parliament that will enable the Government to create two bodies that will deal with the intelligence of this country. One will be known as the "National Intelligence Service", and it will directly replace the Directorate of Security Intelligence. The second one will be the "Kenya External Intelligence Service" and it will succeed the "Counter-Intelligence Agency".

The internal intelligence body will act against organised crimes, subversion, sabotage, terrorism and activities of agents of foreign powers from within and without. We realise that for any country to be stable democratically, we need to have a very articulate intelligence network - a network that will ensure that whatever is happening is within the democratic institutions of the country. Without that security assurance, it is going to be very difficult for any government to go about its business, because of insecurity which is likely to sabotage any of the activities that will be intended to improve the economy of the country. The external intelligence service will deal with matters that arise outside the country; that will also be of a lot of political concern to the country. The functions of the external intelligence service shall be the collection, production and dissemination of intelligence from other countries, counter-intelligence, including information otherwise unobtainable within the country. We are talking of intelligence information that will improve exchange of commodities between our country and other countries. We know that for any country to prosper, it would depend very much on export and import business. If we do not have intelligence information collected externally, we will have a problem in getting to know what is likely to be in good or poor demand in other countries. Therefore, if we operate only from within the country, we are likely to get ourselves into a problem in exporting our raw materials or finished products. We know for certain that we opened up foreign service offices which deal primarily with diplomatic issues. Also, these diplomatic foreign offices are intended to very much improve trade with the other countries. We will rely very much on the external intelligence to give us information, otherwise we will not be in a position to know what we have in the country, which is in demand externally.

Mr. Speaker, Sir, we are also living in a region surrounded by so many other countries. They may be friendly or not friendly, but whatever the case, we need to have the information that we need at any given point in time. That is the reason why we need to also have the external intelligence service. It is very important that we have this because of the reasons that I have given earlier on. There will be two persons who will be heading these two intelligence services. They will be called Director-Generals, one in charge of the internal services and the other one will be in charge of the external services. These two persons will be appointed by the President and they will be reporting to the President directly. There may be some queries as to why these two intelligence director-generals should be reporting directly to the President. We know in this country constitutionally, that the President of this country is an executive President. The President has those executive powers to appoint and also has those executive powers to execute, and therefore it will be a big anomaly if the two intelligent director-generals were not reporting directly to the President. There has been some concern as to whether these two officers probably should be reporting to other committees before they eventually get to the President. The fact is, there will be two bodies that will also sit on a national level to decide on what kind of information they want, but ultimately, the net receiver of this information should be the President who is executive.

Mr. Speaker, Sir, there are certain powers that these two bodies will have. In the past, the Special Branch which was a police arm used to operate within the Police Act. This was also a bit inadequate because they were operating within what the Police Act could give them. Now if we pass this Bill, this body will be a body that is totally almost independent of the police arm. They will have separate powers. If there is any need for them to investigate other bodies like the police and any other discipline forces they will do so as opposed to when they were directly reporting to the police. In the past, the Special Branch operating within the police had a bit of problems in the sense that sometimes you never really had very competent officers because sometimes we had police who were deployed in that service of intelligence and before they actually catch up with the operations there, they are transferred to CID and then after that they go back to the regular police and then you really never had the chance to train these people properly. This weakened this body a bit in the sense that they were not able to get a very disciplined force to operate for that body only.

Mr. Speaker, Sir, this department will sometimes be required to be armed. There have been some queries as to why these people should be armed whereas in fact, what they need to do is simply to gather information. The communities that we leave in today are changing drastically and the very people that we are going to be investigating in most cases are not just simple people. These are not just people in the village who probably are unarmed. In most cases, some of these criminals that we are investigating are actually armed with sophisticated weapons and if these officers are going to be exposed to these dangers, and they themselves are not armed, they might not execute their duties properly. We are not going to arm these fellows so that they go shooting around aimlessly but so that, in case they are confronted with any danger, they are able to protect themselves. The same people will sometimes also be used to protect the VIPs; say a visiting VIP from another country or within the country. If they are going to give that protection, they must be protected in the first place and then they can protect others in return. We do not expect these people to misuse the arms that they are going to be given. In any case, anybody carrying arms normally will know the limitation of the use of these arms and we think they are going to use the arms in very good faith and that they will feel protected all the time that they are executing their duties when they are armed. Sometimes, they may not necessarily be armed all the time, it will depend on the duty they have been assigned. They may not totally be without arms.

Mr. Speaker, Sir, concerning their terms of service, currently the Special Branch, the arm that is running this intelligence service in the country are operating within the terms of the Police Force. We find that probably because they do slightly extra and a different job, they may not necessarily have to fall within those terms. We are thinking that the Director-General in liaison with the Director of Personal Management will develop the terms and conditions of these officers which are going to be attractive so that they may not be tempted to get some other income elsewhere because otherwise, they are likely to start giving the wrong information if they feel sometimes they may be lured away from what really they need to be looking for just because they are looking for extra money elsewhere. We believe they should operate under different terms and conditions of service. We expect that when this Bill is passed some of the officers who are already working with the Special Branch will be absorbed within the new National Intelligence Service. Some of them may not have to be absorbed in within the new National Intelligence Service. Reasons are that, those of them who will have been performing very well will continue and those who may not have been performing very well will have to leave the service. The Director-Generals will also come up with a code of conduct. This code of conduct will be kind of a term that puts them in line with what is expected of them all the time. It is not a complicated code of conduct. It will be a very straightforward code of conduct and this will also be developed by the Director-Generals.

Mr. Speaker, Sir, there is also going to be the penalty part of it, if just in case, for any reason, they fail to

perform according to the code of conduct that they will have been given. There will be various punishments ranging from dismissal to probably just misdemeanour reduction of ranks or suspension. But, of course, the final part of it will be expulsion or sacking but that is the last that can be done to them. They will of course be given a chance to improve and become better officers.

Mr. Speaker, Sir, there is also the issue of the tribunal. I think this is the most attractive part of this Bill.

In the past we very well know that some of the Special Branch officers have done certain bad things but we have never had a case where their deeds were challenged anywhere. The tribunal which will also be appointed by the President and chaired by a retired Judge will act as a stop gap measure so that in case these officers acting beyond what is expected of them, then the case could be brought to this tribunal.

We expect this tribunal, when appointed, to be very fair and impartial in its performance of duties. It will not be subjected to any court of law and, therefore, their ruling will be final. They will only be reporting to the President direct. The fact that the President will appoint the chairman from a retired Judge gives it an extra security in the sense that the same Judge will not be looking for another job. This will be a retired Judge. Two, the same Judge would have had some good performance in the past so that we are not going in for a retired Judge who performs poorly in the courts.

As I said, this tribunal is one of the most attractive parts of this Bill because if any mwananchi feels that there was some injustice done to him, he will have a place to report to, forward their complaints to, they have a place where they can be listened to, and whatever evidence they give this tribunal will not be used against them in any other court of law.

Mr. Speaker, Sir, I think we are moving away from what we used to have as what most hon. Members have said the Nyati House or whatever they called it, the 26th floor of the Nyayo House. I think such things may not happen again. We are now moving away from that and forming a very disciplined team of intelligent that is going to operate without discrimination and having in mind the state of political affairs that we have in our country today and that we are operating a totally democratic society so that whatever people do and whatever they tell this tribunal will be treated with total confidence.

There is also probably going to be some queries as to why this tribunal will have to be appointed again by the President. The President is the executive arm of the Government and if the President was not going to be appointing this tribunal then who else would do that. He is the only qualified person within the Constitution that has those powers to appoint this very high-powered tribunal. We believe that Kenyans will make the best use of this tribunal if it will be appointed. If they will not have any complaint, the tribunal will be put in there just to serve as security for anybody whom might want to use it.

Mr. Speaker, Sir, this same intelligent team will not just be operating from wananchi direct to the President. But they will also be advising Ministries, Departments of Government on what they need to do or what measures they need to take against whatever is likely to happen to that Ministry or Department. In most cases, where Ministries like Ministry of Commerce and Industry, Ministry for Agriculture, Livestock Development and Marketing, Ministry of Energy and so on, when they need some information which is likely to give them a chance to communicate favourably with external forces.

Once established, we believe that this country will have moved a step forward towards democracy. I believe whatever issues the hon. Members have about this Bill, they are free to raise them. We will listen to them and where we feel that there are some good proposals and need for some amendments, we will be ready to put in some constructive amendments. But in totality, I urge hon. Members to debate and support this Bill because it is my total conviction that it will give this country a more democratic way of dealing with intelligence collections. Other countries have done this in the past. For example, there is a similar body in operation in United Kingdom. We do not want hon. Members to feel that this is another body which is going to be used to intimidate anybody. In fact, it is the opposite.

People hearing about Special Branch and any intelligence, they feel very nervous about them. But I think there is no country in the world which will run without the intelligence collections. If we are serious about having a stable country, secure country and so on, we must have the intelligent network. The intelligence collection is good for all of us, the security of this country is good for all of us, whether we are in the Opposition or in the Government, or whether we are actively involved in politics or not, whether you are in business or not. Security of any country is paramount and it helps anybody any time. I urge hon. Members to give it very positive thoughts and they should contribute what they feel should be inserted in this Bill. I have heard of hon. Members saying that this is another introduction of a police state. I think it is very far from it. If anything, we are moving away from the police special branch and going in to the civilian intelligence network so that we can delink them from the police force. The only thing is that they will sometimes be acting within the Acts of police in case they have a problem when they are executing their duty. They will apply that Act of Parliament that gives the police

that provision. Otherwise, any other time, these are civilian people.

For a good democracy, I urge hon. Members to support this Bill and, as I said, let hon. Members give good proposals, something that they feel really need to be put in here to improve the force.

With those few remarks, I beg to move that this Bill be read a Second Time.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to second this very important Bill. As the Mover of the Bill has said, it is so important that this very crucial Bill be debated and constructive suggestions be made so that we can have a good national intelligence Bill.

Mr. Speaker, Sir, the genesis of this Bill goes way back to 1987 when the President appointed a Commission to look into the terms and conditions of the service of the members of police and prisons. That Commission was chaired by renowned scholar by the name of Professor Simon Ominde. It did make its recommendations and among these recommendations is that the intelligence services should be set up separately under their own Act of Parliament and not operate as a sub-department under the Police Department. So, in a sense, this particular Bill should have come up long time ago. It is late in coming and therefore, I do hope that the Members of this august Assembly, will give it the necessary consideration so that it can be enacted.

Mr. Speaker, Sir, it is of course something very important that we discuss matters of intelligence. Matters of intelligence are normally done in secret and so on and people do not exactly know what is going on. We are now moving into an era where, even some of these things must come out in the open and be dealt with openly. The two arms, the Directorate of Security Intelligence has been a department under the police department and the Directorate of Counter Intelligence Agency, which has existed has also been under the police department. We are now saying: Let us establish these two agencies by an Act of Parliament. It is true that they were, in fact, lawfully and constitutionally established even before under our Constitution by the Executive Arm of the Government, which is the President. But we are now saying: Let us now bring it out in the open, let it be established under an Act enacted by this august Assembly.

In dealing with issues of security and intelligence, I think it is important to bear in mind, particularly under democratic system, that they do not become in themselves, a centre for power, rivalling Parliament, the Executive and even the Judiciary, as has been the tendency in some of the countries. It is important that as we are a democratic country, that these security apparatus must accept the authority of the democratic institution of the society. The Government must exercise meaningful control over the intelligence community. A democratically elected Government must exercise that meaningful control over the intelligence. It is also important that the security apparatus must operate under the rule of law, and that their functions and duties should also be clearly defined. So, the purpose of this Bill is to enable this House to pass a legislation which will bring out in the open, as far as possible, the way in which the intelligence services of this country are operating. It is, to me, a step in the direction of transparency and accountability in the functioning of the intelligence services in this country.

Mr. Speaker, Sir, the Mover of the Bill has gone through it and I will also just quickly go through the Bill and point out some of the salient features. You will note that Section Four--- I do not have to repeat the fact that we shall have two Director-Generals; one to deal with the National and another one to deal with External Intelligence Services. The functions and services have been set out in Section Four. In those functions, you will see that among the functions are issues such as organised crimes, apart from the usual traditional ones of subversion, espionage, sabotage and terrorism. In most of the intelligence services in the modern world, they have gone beyond those intelligence services that are only necessary for military purposes. The whole beginning of intelligence services was in the military, through spying on your enemy, finding out his true formation, the strength of his army and so on, and using that information to map out your own strategies. But the functions of intelligence services have now gone beyond that. They have gone to include the functions as set up under Section Four. In most or in nearly all the countries which have a similar Bill as this one, and in drafting of this Bill, reference and consultations were made with other Governments which have similar Bills such as: The United Kingdom, Australia, New Zealand, Canada and other Commonwealth countries. In those countries, their intelligence services also encompass what is called organised crimes. In these organised crimes, we have crimes such as drug trafficking, crimes which are computer related and crimes which do not just happen within the one nation state, but happen internationally, where the perpetrators could be based in many different countries. Therefore, organised crime in fact, has become a profession with its own expertise and everything like that. Consequently, we need this type of organisation to be able to investigate "organised crimes". In fact, in the U.K., the similar Act does not use the word organised crimes, but just says "serious crimes", which is even wider than organised crimes. But here, we felt that we have the Directorate of Criminal Investigation, which will deal with most of the crimes, but some of these very sophisticated organised crimes require the assistance of the intelligence services.

Mr. Speaker, Sir, the services should be confined, as you can see, not just to political and other things, but

also to economic espionage. That is why, under this Bill, you have to safeguard the economic well being of the Republic. As we debate this Bill before this August Assembly, even other intelligence services in other countries, including the United States of America, are having to re-define their role and to set the priorities right as far as investigations are concerned. Right now, organisations such as the Central Intelligence Agency (CIA) and so on, are now having to think again as to what their role should be in a world which is no longer a bi-polar but a uni-polar world, governed by the United States of America. If one has kept abreast of what is going on, they are saying that now, instead of focusing on so called Communist subversion, they will now be focusing on economic intelligence. The future of this country is now to be focused on economics, trade and commerce. Therefore, the type of intelligence that we need is one that can assist even our own businessmen to be able to penetrate the other markets abroad. Therefore, Section 4(a) and (b) does cover the safeguarding of our economic well being.

As far as the other issue is concerned, I will mention the fact that the services shall be under the authority of the President. That is mentioned in Section 3(i) and (ii). The President is the Head of State and under Section 23 of the Constitution, the executive authority of the Government of Kenya is vested in the President. I think it is important in the current situation prevailing in Kenya, that an important service such as this one operates under the executive authority of the Government. In fact, let me also state that all over the world, even the developed countries like the UK, and other Commonwealth countries, an important service as this one operates under the legal authority of the President, the Head of State and Government.

[Mr. Speaker left the Chair]

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

In the UK, the Chiefs of Intelligent Services are appointed, not even by the Prime Minister, but by the Secretary of State. The same applies to the provisions in other Commonwealth countries. Amongst the objectives of those intelligent services as set out in the Acts of Parliament in those countries, is to carry out their investigations in accordance with defence and foreign policies of Her Majesty's Government. Therefore, in a democratic state, this type of services have to be answerable to the executive and the head of the executive authority in this country is the President. I am quoting the Constitution and Section 23 of the Constitution does state that: "The executive authority of the Government of Kenya is vested in the President." Consequently---

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. We have tried through interjections, to draw the attention of the attorney-General to the ruling by the Speaker, where the words President should be substituted by the word Government. Is he in order to violate that?

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order, hon. Shikuku. I think you are wrong. I think that ruling is only limited to the contents of the Public Accounts Committee other than as a general rule. The Attorney-General is a Minister of the Government. Even under the Standing Orders, he is entitled to use the President as authority for his arguments.

Mr. Orenge: On a point of order, Mr. Temporary Deputy Speaker, Sir. Although that ruling was related to the Public Accounts Committee Report, it was based on the Standing Orders that: "You shall not discuss the personal conduct of the President". Our position was that the personal conduct had nothing to do with the Constitutional functions of the President. We were overruled that any conduct of the President cannot be discussed. The Attorney-General is bringing in, the Constitutional conduct of that office by using the name of the President. He is not merely reading the Constitution. He is bringing the question of the conduct of the Office of the President into discussion, not as an authority of what he is saying; but he is discussing the conduct of the President and yet, we should not do that under the Standing Orders, according to the Speaker.

The Attorney-General (Mr. Wako): I am not discussing the conduct of the President. I am merely referring to the Sections which my learned friend knows very well. I am also, under Section 2---

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order, Attorney-General! If you breach the rules, I will stop you. As long as I have not, you should carry on.

The Attorney-General (Mr. Wako): I think under Section 2 of the Interpretations and Clauses Act, the Attorney-General is also a Minister. I do not want to repeat what the Mover of the Motion said and so, I do not want to go through all the sections. I will only comment on some of the clauses.

If you look at Clause 8 of the Bill, it states: The Director-General shall take all reasonable steps to ensure that:-

(a) "The operations of the service are limited to and directly related to the purposes of the

discharge of his functions.

(b) "The Service is kept free from any influences from within or outside agencies or considerations not relevant to its functions.

(c) "Nothing is done that might lend colour to any suggestions that the Service is concerned to further or protect the interests of any particular person or any section of the community or with matters other than the discharge of his functions."

This is a very important function that the Director-General of the Services will have to do, to ensure that some of the allegations that have been there in the past, whether founded or not, to the effect that the intelligent services are being used to further the interests of one person, a few people or a section of the community and so on will be looked into.

We are now spelling it out very clearly in black and white in this Bill, that the Intelligence Services are there to function objectively, fairly and impartially and within the legal limits set out under this Act. I will later on be coming to the section which deals with supposing they do not, what happens? But the fact of the matter is that to be transparent, the Government is now bringing this Bill. If this Bill is enacted, it will give the authority as it were, to be able to say to any individual: "No, we do not want to further your interests or the interests of a particular community - ours are national interests and we are supposed to safeguard them."

If you also take into account what I have just said, and relate it to Clause 10 of the Bill, which imposes a duty on any person appointed to declare or to take an oath in a form set out in the schedule before he takes up his work.

Mr. Temporary Deputy Speaker, Sir, you should also take into account what I have said and relate it to Clause 10 of the Bill, which imposes a duty on any person appointed to declare or to take an oath in a form set out in the Schedule before he takes his work. If you look at the wording of that form, you will notice that this is very important because these services must operate under the rule of law, and they must operate under the Constitution.

If you look at the wording of that oath, you will see that the officer, before he takes office, he will take an oath of allegiance. Not only that, if he cannot take the oath, he must declare in a manner which is binding on his conscience. There are three things that he will swear. One of them is allegiance to the President and the Republic of Kenya. The President, in accordance with this form, is the Head of State and the Executive authority as I stated earlier, rests in him. Therefore, in swearing this oath, he is really swearing to this country.

Secondly, he will swear that he will at all times do his utmost to preserve the national security and peace of Kenya, and to present offenses in accordance with his duties. Three; He will swear that "I will subject myself to the National Intelligence Services Act, the Bill we are about to pass, and to all other Acts, orders and regulations now or in the future in force relating to my service". In other words, he is declaring that he would be bound by the provisions of this Bill, and among the things that he is being bound by the provisions of this Bill is Clause 8, whose contents I have just mentioned.

Mr. Temporary Deputy Speaker, Sir, I then now come to Clause 15. On this Clause I want to inform this august Assembly that there is a misprint in this particular Clause, and I can assure this august Assembly that the Bill that was passed by the Cabinet did not contain the word "not" in Section 15 (1) which reads:-

"Any officer while in the course of proper performance his duty commits any offence against any written

law, such officer, as it appears, it says, shall not be liable to prosecution for such an offence".

The fact is the word "not" should not be there. We shall table an amendment to correct that typographical error. It was not there in the original Bill, so it will be out. Any officer who breaches any of the laws must be subject to prosecution where an offence is committed. I can assure the House that that is all and it was there in all the drafts.

Mr. Temporary Deputy Speaker, Sir, again, here is another instance in which we are now coming out very, very clearly that in the performance of their duties, they will be subject to prosecution. Two, Section 15 (2) states that prosecution shall be done with my written consent, the Attorney-General, and that consent will be after consultation. Again the word "consultation" was properly chosen. That consent would not be on the advice of, for example, the Director-General of the Intelligence Services. It will be on the recommendation of the Director-General or whatever; it will just be in "consultation". In "consultation", I can justify this. Again in other legislation it is because when you are dealing with intelligence services, the Attorney-General also should take into account, in deciding to prosecute as he normally does, the issues of national and public interest. Therefore, under Section 15, the officer who commit crimes in the course of his duties would be liable to prosecution when the Attorney-General consents.

Mr. Temporary Deputy Speaker, Sir, you can see that the combination of Clauses 14 and 15 is really to prevent as it were, abuse of power because any power can be subject to abuse. Those clauses are meant to prevent that abuse and to ensure that whatever powers that they have are exercised properly and legally, and in accordance

with not only this Act, but also under the Constitution. Here this Bill is providing yet an additional avenue for complaints. In fact as I shall be saying that when I come to the Tribunal, it is providing additional checks and balances which are in the open and are provided for in the Bill.

Mr. Temporary Deputy Speaker, Sir, there may have been accusations in the past about the excesses of our intelligence services and so on. Those excesses, where proven, have been dealt with in accordance with the criminal justice system of this country. This Bill is yet enhancing that process by making it clear under Bill that you are subject to prosecution and that you are not only subject to prosecution, but you can be found guilty and be imprisoned. But not only that, it is making clear to the officers that their calling, is not a particular individual or a particular community, but their calling is to the national security of this country. That is why those processes have clearly spelt out those two matters.

Mr. Temporary Deputy Speaker, Sir, may be I can also touch on Clause 17, page 109, although the Mover touched on it briefly. This is a Clause which relates to the use of arms. When can an officer use arms? There you will find the specific instances, very clearly, as to when an officer can use arms. In this regard, I want to underline the words set out in the proviso of that Clause and it says:-

"Provided that arms shall not be used as authorised in paragraph (a) unless the officer has a reasonable ground to believe that he cannot otherwise prevent the escape and unless he gives warnings to such a person that he is about to use arms against him and the warning is not heeded. (b) As authorised in paragraph (b) or (c) unless the officer has reasonable grounds to believe that he or any other person is in danger of grievous bodily harm or that he cannot otherwise prevent the rescue or as the case may effect the arrest"

Mr. Temporary Deputy Speaker, Sir, this Clause 17 on the use of arms by intelligence officers, is in conformity with the United Nations Code for law enforcement officers.

The words there are in fact taken out of the United Nations Code for Law Enforcement Officers (UNCLEO).

Mr. Temporary Deputy Speaker, Sir, let me touch on the issue of the Scheme of Service. One of the drawbacks was that for as long as the intelligence services continue to operate under the sub-department of the police, the terms and conditions of service could not be such as to attract the type of people who ought to work for the intelligence services of any country. I am aware, for example, that in the United States of America (USA) top graduates from top universities in America do compete to get jobs in the intelligence services. The intelligence services of this country must be manned by very intelligent people. The intelligent services are, as the Mover said, necessary instruments in policy making. If the information given is not correct or is inadequate or is deficient in any manner, then that has a direct impact on the type of decisions that will be made. And, therefore, it is very important that the intelligent services be manned by people who can seek out and process information; who can give accurate and objective information even if that information is unpalatable to the authorities: who can give it in an efficient manner, who can give it competently and honestly. It is, therefore, crucial that the Scheme of Service of these people be such as to attract that type of person be it a man or a woman. The type of person who can report truthfully and honestly what the situation is on the ground and, therefore enable the decision makers to make appropriate decisions. It requires intelligence and that is why it is called the National Intelligence Services Bill because it requires intelligent people and, therefore, under Clause 12, I am sure that it will be the foundation stone of setting up an appropriate Scheme of Service for our intelligence offices. It will be a stepping stone for putting in place a comprehensive training scheme for such officers. Mark you, as I said earlier, intelligence is no longer just committed to the military. It must cover security issues and security issues in the broader sense of the term. In fact an American

scholar has said that security is now conceived less in military terms and more in the broader sense of freedom from vulnerability of the modern society. Therefore, we need our intelligence services to be manned by people who are computer experts which is the in thing of the future: by specialists who are good at international trade and commerce issues. That is a thing for the future. Intelligence services should be manned by experts who are good in the scientific world because some investigations must involve science and so on. In other words, we really need part of the cream of our society and our schools to go into the intelligence services if the intelligence services have to play a proper and adequate role in our society.

Mr. Temporary Deputy Speaker, Sir, in addition, of course to Clauses 8 and 9 which I mentioned, the Director-General, as the Mover of the motion did state, will also have to issue and maintain a disciplinary code which will be enforced and that code will have the authority to mete out various credentials of disciplinary penalties and so on.

Mr. Temporary Deputy Speaker, Sir, with these few remarks, let me add more. Clause 18 of the Bill touches on a very important thing called the Complaints Tribunal. Through this Bill, we are now saying that we

should have a system in addition to that which is already existing. We should have an additional system whereby any person who is aggrieved or complaints about any conduct of any intelligence officer can lodge his complaints. The Tribunal, as was stated by the Mover, shall be composed of a retired Judge of the High Court or an advocate to be appointed a Judge of the High Court. It is my intention to move amendments at the Committee Stage to widen that because sometimes we have very few retired judges and, therefore, it might be limiting to be an appointee or on whom to appoint and as somebody rightly stated, the retirement age of judges is seventy four years and, therefore at any given time we may have very few of them and when they do retire at seventy four years, maybe they just want to take a good and well earned rest rather than being bothered with more work. So, we may have to do some light amendment there. But to preserve this principle that the Chairman must be a person of impeccable character, legally qualified with a track record in his work, whether in the private sector or on the bench must be there.

Mr. Temporary Deputy Speaker, Sir, I do not have to go to the details of the procedure of the Tribunal and so on but let me touch on Clause 20 (7). This Tribunal is not a toothless bulldog as stated elsewhere. It has teeth and it provides that avenue of complaints.

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

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, it provides methods of investigating those complaints and it goes further to say:- "And subject to the provisions of this Act, appropriate disciplinary action shall be taken against the officer who is found to be guilty."

What does "subject to the provisions of this Act" mean? All it means is that if that misconduct amounts to an offence under this Act, or under any Penal Code, then that officer has to be prosecuted. If it does not amount to an offence, then disciplinary action shall be taken. Here the expression used is not that the disciplinary action "may be taken." The words used are that "disciplinary action shall be taken." And the "shall" makes it mandatory that such an action must be taken. Therefore, this tribunal has teeth and it can bite. It is to composed, as I said, of people who command respect in the society and who have reputation to keep in ensuring that they are discharging those duties in a fair and impartial manner.

Mr. Deputy Speaker, Sir, in addition to the Clause that I have just read, which shows that this tribunal has teeth, we have Clause 8 where the tribunal also makes its conclusions, recommendations and findings to the President. The President also, in whom this authority is vested, can also using that authority, ensure that the recommendations of the tribunal are followed and implemented.

Mr. Deputy Speaker, Sir, Clause 21 is meant to give the same type of security and immunity to the members of this tribunal which the members of the judiciary enjoy. The other clauses are more or less straightforward and I will wait to see the recommendations or the constructive suggestions that may come to the Floor on how to improve this particular text.

Mr. Deputy Speaker, Sir, just to sum up, this particular Bill is a step in the right direction to increase some transparency and accountability in the work of our intelligence services. But in the drafting of this Bill, we have consulted other Bills from the developed countries particularly in the Commonwealth. We not only had reference to them but we also consulted them because the intention of the Government is to have nothing but the best as far as our laws are concerned. This is a very important Bill, and I look forward to hearing constructive contributions from the Members of this august House.

With those few remarks Mr. Deputy Speaker, Sir, I beg to second.

(Question proposed)

Mr. Orengo: Thank you very much Mr. Deputy Speaker, Sir. I welcome the move by the Government to bring this Bill, but I am totally opposed to the content of this Bill, not only in its intentions and objectives, but in many other respects which I shall point out. In line with democratisation and transparency, it is important that every segment of the Government, the intelligence services included, must act on the basis of a statute, an Act of Parliament and not like in the previous years where the Special Branch as it was called, operated under the police Act or as a wing of the Police Department. In those circumstances it was very difficult to know exactly in law what were the duties and functions of the Special Branch. Now, it is welcome that this Parliament is discussing the functions and the activities of the intelligence service as it is called in this Bill.

Mr. Deputy Speaker, Sir, first I am not very happy with this Bill coming before this House when the

Attorney-General and the Government have refused, and continued to refuse, to ratify and accede to the UN convention against torture. We should show leadership in Africa and in the rest of the Third World by giving life to the respect and dignity of every human being and citizen of this country. The fact that this Bill can come to this House before the Attorney-General and the Government take steps to ensure that the culture of torture is removed---

The Attorney-General (Mr. Wako): On a point of information Mr. Deputy Speaker, Sir. I would like to inform my learned colleague that as a matter of fact, the Government is taking steps to do that.

Mr. Orenge: But Mr. Deputy Speaker, Sir, I would believe somebody else but not Attorney-General when he says that he is taking steps. He has taken steps with Task Forces on many issues affecting criminal law and the Detention Act, but up to now those steps have not led anywhere. I do not know whether those steps are going backwards or forwards.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, on the Task Forces, I think my learned friend is aware that already four Task Forces have made their final reports this House is going to debate them. In fact, on the Order Paper today, we have the Court Brokers Bill which came from the Task Forces. So, we are on the move.

Mr. Orenge: But, Mr. Deputy Speaker, Sir, to begin with the Auctioneers Bill, when we are talking about the Constitution, detention without trial and many other more important areas---

The Attorney-General (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to say that we are talking about detention without trial when he is aware that since August, 1991, there has been no detainee in this country? Law follows practice!

Mr. Orenge: That is not a point of order, and in any case, the fact that those laws still exist in our Statutes, very clearly reflects what is in the mind of the Attorney-General and this Government. If they were against detention without trial, they would repeal the law. In fact, I am against the utterances that have come from the Government saying that things are based on the attitude of mind. The attitude of mind in the Government does not carry the day, it is the laws, the practices that are established and traditions which are enacted in this Parliament, that can have the force of law. And as we are here, the detention laws are still part and parcel of the municipal laws of this country.

The Assistant Minister for Local Government (Dr. Wameyo): You will one day go to detention yourself!

Mr. Shikuku: On a point of order, Mr. Deputy Speaker, Sir. Did you hear the interjection by hon. Dr. Wameyo saying that people must be detained?

Mr. Deputy Speaker: Order! Frankly, I did not hear that, but if he did, well, what it is worth is that it is his own opinion.

Mr. Shikuku: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member who has never been to a police cell in order to advocate for detention? It is a very awkward situation and some of us who have been there get very angry when we hear any species of humanity talking of detention without trial. If God wishes, he might as well be struck dead!

Mr. Orenge: Thank you very much, hon. Shikuku, for those comments. Again, it reflects general attitude on the side opposite.

Mr. Deputy Speaker, Sir, it is clear from this Bill that the Government is trying to put into force ways and means of carrying out the Detention Act through the Special Branch because before there was no clear statutory provisions on how the Special Branch should carry out its activities. Now, it is clear that the position that the Government is taking is that it is giving a go ahead to the Special Branch to carry out the activities they have been carrying out over the years, particularly, in the last 20 years. This Bill does not belong to a democracy. It is a Bill which should be moved in a government where dictatorship is the order of the day. That is my position. I will point out one by one why I think this Bill belongs to a Gestapo unit and not a civilian force which should have the responsibility of making sure that there is protection of fundamental rights in the Constitution. There is obsession with national security. When you go through this Bill from beginning to the end, what is being called national security is not clearly defined in this Act. I am terribly concerned that where there is no clear distinction of the areas of operations between the regular police and the Special Branch, because the National Intelligence are going to wreck havoc and carry out acts which are going to sabotage the liberty, freedom and rights of the people in this country. I am speaking from a position of knowledge in the murder of the late Dr. Ouko. In the Report by Scotland Yard, you will find that the activities of the Special Branch were being questioned because it was not clear whether they were investigating a murder or whether they were collecting intelligence. In the process, what the National Intelligence was doing at that time was to ensure that every clue that would have led to the discovery of the murderers of Dr. Ouko was completely covered.

In this Act, it is very dangerous that there is no distinction between the activities of the regular police and the Special Branch. I invite the Attorney-General to look at the Report by Troon where he questioned the activities of the Special Branch including files which disappeared from the residence of the late Dr. Ouko. Instead of helping the regular police in carrying out the investigations, the Special Branch was busy arresting those whom they thought were against the Government. Many people were arrested and again that is in the Troon Report. People who had nothing to do with the murder of Dr. Ouko were placed in detention for as long as the state wished.

The Attorney-General should advise the Government to come clearly with a Bill which will draw a distinction between the functions and the works of the regular police and the National Intelligence Services. Indeed, one former Member of this House who was known as Okuto-Bala once told me that in his days, before dictatorship came in, when he heard that the Special Branch were around, he felt very comfortable to speak freely his mind because intelligence would be collected to advise the Government on whether the move it was taking was popular or not popular. Right now, the situation has changed. When you see a member of the National Intelligence around you do not want to speak freely. You would rather shut up and demand that he goes away. This culture should go away. We in the Opposition are suffering. Yesterday, I had a telephone conversation with some of my colleagues in my constituency and they told me that at a particular burial, there were units of the Special Branch there thinking that I would be at that burial. A whole Government Land Lover full of security team wasting time and money just to go there and listen to what I was probably going to say in that particular funeral. This culture of a Gestapo police is not the culture of an Intelligence that is committed to finding out facts that would help the Government make the right decisions.

From the interpretation clause of this particular Bill, under the definition of the National Security, it states: - "national security includes the protection of Kenya from acts of espionage, sabotage, subversion and terror whether or not it is directed from or intended to be committed within Kenya".

What is espionage now? Is it the National Intelligence community who are going to tell us what espionage is? Good laws should define anticipated offenses.

Now we have left it to the National Intelligence community to deduce for themselves what espionage is. I will go through various Detention Orders here and you will see the meaning of what I am trying to bring out. You will see that what the National Intelligence has been accusing others of doing as offences has ended up to be nothing other than acts of political harassment and oppression.

Again, what is sabotage? In fact, if you go to the Penal Code, sabotage is a very ordinary criminal offence that one would not think that a whole Intelligence would engage into. If we were to go by the definition of the Penal Code, then the National Intelligence Services has nothing to do with acts of sabotage and if it is not as it is defined in the Penal Code, then this Bill should tell Kenyans what sabotage or the activities that are deemed to be acts of sabotage are. Again, whereas in the Penal Code there is something about subversion, subversion as it exists in our Statute books, has its origin from the colonial period and what was subversion in those days and what is subversion now cannot be taken to be version in other democracies. In this country, quite clear cases of political expression and actions are deemed sabotage.

Again, I will read some of the Detention Orders that accuse people of subversion and you will find that unless these offences or activities are defined in the law, we are not changing the situation.

Mr. Shikuku: On a point of information, Mr. Deputy Speaker, Sir. I was in this House when I said KANU was dead. Just simple English: KANU was dead.

An hon. Member: What about now?

Mr. Shikuku: I am repeating even now that KANU is dead because it has not even held elections according to its Constitution. When you say KANU is dead on the Floor of this House, can you imagine that, that can be subversion? Just to say KANU is dead on the Floor of this House is subversion. I went in for three years, one month and 12 days.

The Assistant Minister for Local Government (Mr. Kamuren): On a point of order, Mr. Deputy Speaker, Sir. My point of order is in connection with what hon. Shikuku has said. He did say so then, but I am surprised that he is now repeating the same, when KANU is the ruling party. Even at that time, KANU was the ruling party. It is still the ruling party. Is it in order for him to inform hon. Orenge while dwelling on what he said that time and repeat it again? I do not think that would be in order. KANU is alive.

Mr. Deputy Speaker: Proceed, hon. Orenge.

Mr. Orenge: Mr. Deputy Speaker, Sir, I have received the information from hon. Shikuku with a lot of thanks. As to who is ruling, I thought it is the Government which is ruling, and I do not know whether the hon. Member has heard the song called "Tawala Kenya". I do not know whether it says KANU or "the Government"

is ruling. So, that is really a matter which is arguable.

Mr. Deputy Speaker, Sir, the word "terrorism" is not defined in any of the Statutes of this country. So, we are leaving it to the National Intelligence Services to tell the Government or whoever is concerned what terrorism is. We saw a lot of terrorism during the land clashes. Hon. Kiliku and his Committee came here with a report which touched on terrorism. That was really terrorism. Yet, at that time, this Government was not able to deal with terrorism. Instead, it was aiding and abetting terrorism during the land clashes. So, the definition of the word terrorism--- In fact the Minister is here, and I want to tell you that if I asked him what terrorism or espionage is, he would want a day or two to tell this House what these words mean in this Bill.

Mr. Deputy Speaker, Sir, this culture of detention---

The Minister of State, Office of the President (Mr. Kones): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to try and impute some improper motives on me that I may not be able to describe what terrorism is all about in this text, and that I could do it in two days? The thing is; whether or not I was given two days is not important to try and describe what terrorism is. What is important is whether or not people will desist from terrorism.

An hon. Member: That is not a point of order. It is a point of argument and the Minister should be sent out!

Mr. Orenge: Mr. Deputy Speaker, Sir, that is a point of argument. But to my knowledge, if you say that somebody does not know something, that is a statement of fact, and it is not imputing improper motives.

Mr. Deputy Speaker: It is an allegation!

Mr. Orenge: No, Mr. Deputy Speaker, Sir. If I know that he does not know, that is a statement of fact.

The Minister of State, Office of the President (Mr. Kones): How do you know?

An hon. Member: He is making it worse!

Mr. Orenge: Mr. Deputy Speaker, Sir, hon. Kones has heard what we have said.

The Minister of State, Office of the President (Mr. Kones): I have seen your problem.

Mr. Orenge: Yes. Mr. Deputy Speaker, Sir, all that I am saying is that these words should be defined in the statutes, so that we can know what the Special Branch is dealing with. I am saying that something like subversion as it exists in the Penal Code Chapter 63 of the Laws of Kenya, the regular police can deal with it, without involving the National Intelligence Service.

Mr. Deputy Speaker, Sir, coming to the more substantive parts of the Bill, that is Clause 3, we should have two Bills establishing two separate and distinct intelligence services and not two-in-one. This is because if you have a National Intelligence Service without any clear line of command, there will be a lot of competition. In fact, from my knowledge, Section 3, Sub-Section 1 part (b) which creates an external wing of the National Intelligence Service is as a result of competition between two departments within the present situation as it exists.

I have no confidence at all, and I am speaking from the position of knowledge, with what has now been dubbed the Kenya External Intelligence Service. There was one time when there was an allegation that some mercenaries were being trained in Uganda, with the support of South Africa. That was a story created from this wing of the Special Branch. They are the ones who created it and made politicians on the other side of the House who do not know what is happening to go to public meetings saying that there was a guerrilla wing being trained in Uganda. Today, we are the best friends with President Museveni. But three years ago, we were making those type of accusations against a neighbouring state, that it was harbouring guerrillas who were being trained with the help of another government, and the story was being created from a department of this Government.

I am also aware, and I am talking from the position of knowledge, that this wing was behind so many cases involving FERA. FERA was a creation of the Special Branch. It was never in existence, and so many Kenyans have suffered through torture, including an old man who is more than 75 years old, who was accused of being a member of FERA and the Government---

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

Mr. Orenge: I accept, hon. Munyasia.

Mr. Munyasia: I wish to inform---

The Minister of State, Office of the President (Mr. Kones): On a point of order, Mr. Deputy Speaker, Sir. I would like to urge the hon. Member who is contributing to try and stick to the Bill. I want to tell him to stick to the Bill.

Mr. Deputy Speaker: Order! I can hardly hear what the Minister is saying. What are you saying hon. Kones?

The Minister of State, Office of the President (Mr. Kones): I am trying to ask you if I will be in order to urge the hon. Member to try and stick to the Bill. This is because he is taking us back to what we are trying to

move away from. He is telling us what happened three years ago. What we are saying is that we are changing the Bill, and that is why we are bringing the Bill here. So, it is wrong to mislead the country and this House that we are trying to formalise what was happening three years ago. It is not true.

Mr. Orenge: Mr. Deputy Speaker, Sir, I did say here at the beginning, when the Attorney-General was here, that I do not take this Bill in good faith. This is because this Government has not acceded to two very important United Nations Conventions. I am telling you that so long as this Government has not acceded and ratified the United Nations Organisation Convention against torture, then this Bill is useless. This is because in the minds and activities of members of this Government, torture is part and parcel of normal governance when it should not be, according to the Constitution of this country.

Mr. Munyasia: On a point of information, Mr. Deputy Speaker, Sir. I wish to inform hon. Orenge and the House at large that one of the victims of the created thing called "Fera", is an old man of 86 years, who was an ex-senior chief during the colonial days. The man is called Jonathan Barasa, and now he is in hospital in Bungoma District. He is suffering from the effects of the torture that he received when he was in custody.

Mr. Orenge: Mr. Deputy Speaker, Sir, I know the officer who is in charge of this counter-intelligence agency. I respect his brother, who is---

Mr. Nthenge: On a point of order, Mr. Deputy Speaker, Sir. Can we agree that the Government should take notes and wait to reply to the debate, instead of hon. Kones and other hon. Members standing now and then to argue their points as if Mr. Kones has been denied the right to reply? Can he take his notes and finally reply to hon. Orenge's argument? When we are trying to follow hon. Orenge's argument, he is being interrupted on points of argument. Hon. Kones or any other hon. Member has the right to argue his case after hon. Orenge sits down!

Mr. Orenge: Mr. Deputy Speaker, Sir, I thank Mr. Nthenge. The counter-intelligence agency is headed by somebody who has convinced this Government that he has a very important role to play, when, in fact, his role up to now has been to feed this Government on falsehoods and create rumours in matters that only exist in his mind and those of the members of this Government. I would urge the Government to ensure that we have only one national security intelligence. The purpose of creating these two departments is not bona fide. Their creation is being done by a particular individual who, is known as Mr. Sumbeiywo. He wants to continue peddling information and rumours, so that he can get those who are opposed to this Government into trouble.

Mr. Shikuku: On a point of order, Mr. Deputy Speaker, Sir. Would you call a section of the House to order. It is over there and hon. Wameyo is the chairman of the discussion on the other side of the House.

Dr. Deputy Speaker: I am not aware of any discussion taking place anywhere in this House, except on the Floor of the House.

Mr. Orenge: Mr. Deputy Speaker, Sir, you heard the arguments of the hon. Attorney-General. He was saying that this intelligence service should come under the authority of the President. His argument was that executive authority of the Government is vested in the President. Section 23(2) of the Constitution states:-

"Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President".

So, the Constitution is telling us that we can actually give this responsibility to another person. Now, we have got this culture in this country where all executive authority is being pushed onto the President. That only happens in an absolute monarchy. In a republican democracy such as Kenya we cannot have a situation where every now and then, every authority is vested in the President. Mr. Deputy Speaker, Sir, I think it will be very dangerous to create a department of the Government, like the national intelligence service, which is accountable to the President and which operates under the authority of the President. We know that the President in this country cannot come before this Parliament to account for his conduct in the execution of his public office. I would agree with this section if the President of this country was making appearances in this House and giving account of his actions and decisions, so that this Parliament would have an opportunity to question him on the conduct of a department under him. The situation is that we will not have a Minister whom we can hold accountable. This is because Hon. Kones has not asked this House to give him those powers. I would have been quite comfortable to question him on matters relating to the national intelligence service. Now, that he has opted to give those powers to the President, let him amend the Constitution so that the President can also come here, like the Prime Minister of the United Kingdom, for us to question him on matters as they arise.

Mr. Achola: On a point of order, Mr. Deputy Speaker, Sir. Will you, please, ask Dr. Wameyo to get out of the House, because of his conduct?

Mr. Deputy Speaker: Frankly, maybe from his strategic position I could not see him from my seat. I have not realised anything so unbecoming from him. But repeated protests about this particular hon. Member

tend to convince me that something must be a little off the standard. Hon. Wameyo, I take it that from now henceforth you will sit like any other hon. Member and listen.

The Minister Health (Mr. Angatia): On a point of order, Mr. Deputy Speaker, Sir. If the way hon. Wameyo is sitting is dishonourable, how are we supposed to sit in the Front Bench?

Mr. Orenge: Mr. Deputy Speaker, Sir, I sympathise with hon. Wameyo, but luckily for us hon. Gumo is here. I will urge somebody to nominate Mr. Mwangale to this House and then hon. Wameyo shall forever hold his feet together.

When we come to the functions of the national intelligence service, we find that this is the most serious part of this Bill. I want to repeat some words which hon. Shikuku used in this House. I have been looking through the HANSARD rather carefully during the last two or three weeks, and have seen where hon. Shikuku warned other hon. Members that they would live to, one day regret the enactments they were passing. I read about how two years after hon. Shikuku had said he was reminding a particular hon. Member that two years earlier, he had warned that particular hon. Member would regret his action or conduct. Unfortunately, that hon. Member and hon. Shikuku were not on the same side of the House. But when hon. Shikuku was saying those words that hon. Member and hon. Shikuku were on very good terms. I wish that when hon. Shikuku makes his contribution, he reminds hon. Members that if they pass this enactment they shall live to regret it. Let him tell the House: "You shall live to regret it". Mr. Deputy Speaker, Sir, clause 4(1)(a) is the most ludicrous piece of legislation that this House has ever been asked to enact. I shall read it so that I can have the opportunity to comment on it, the way I want. It reads:-

"To preserve national security and to provide protection against organized crimes from subversion, espionage, sabotage and terrorism, from the activities of agents of foreign powers and from actions intended to overthrow or undermine Parliamentary democracy by political, industrial or violent means."

Mr. Deputy Speaker, Sir, this clause is not only ludicrous, but it is also dangerous. We know that in this country at the moment, we have political parties, and in each of the constitutions of the political parties the major objective in all these political parties is to take the reigns of power; to remove whichever Government is in place, to remove it from power. The KANU constitution similarly, even if it is in power at the moment, its aims and objects is to bring about the rule of KANU now or in the future. So, when you say that you want to undermine political Parliamentary democracy, one must be very, very careful about what you are talking about because I would say without fear of contradiction that the intention even to change the Standing Orders that we have, that is Standing Order No.147 and No.148, is an action to undermine Parliamentary democracy; it is! Now, if that is my view, what about this Government? If that is my view, and I am a liberal person, what about this Government which consists of despots and hawks? Any activity that these political parties are involved in---

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Maundu): On a point of order, Mr. Deputy Speaker, Sir, is it in order for my learned friend to use such caustic language against other hon. Members? Words like "despotic" and "hawks"? Can he withdraw the use of such language? I think it is annoying.

Mr. Deputy Speaker: Can you repeat what you were saying?

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Maundu): Is it in order for my hon. learned friend, Mr. Orenge, to use language which tends to depict and imply improper motive on the Members on this bench? He said "we are despotic and hawks."

Mr. Orenge: Mr. Deputy Speaker, Sir, for somebody who for the last two weeks has been pleading for the Kambas to get their share and he is sitting on that side, I do not---

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Maundu): On a point of order, Mr. Deputy Speaker, Sir. My learned friend, should not throw a red herring. Let us face this matter here. The other matters we can discuss elsewhere. We would like the hon. Member, to withdraw the use of the words "despotic" and "hawks".

Mr. Orenge: Mr. Deputy Speaker, Sir, as far as I am concerned, those words are Parliamentary and---

Mr. Deputy Speaker: Repeat them for the second time!

Mr. Orenge: Hawks! Some of us who are versed in political science and the language of journalism, when you say somebody is a "hawk", it has a very civil meaning.

Mr. Deputy Speaker: I concur!

Mr. Orenge: So, Mr. Deputy Speaker, Sir, probably you need to have seminars in English and use of political language for the Government side for sometime, so that we can debate without interruption.

So, what I am saying is that, in a democracy what other means do you have to use to bring a Government in power out of office? It is through political means which can also include civil disobedience. That is political

means of bringing a down a Government that does not listen to reason. And it is justified and it is not an offence under any law. If hon. Kones thinks it is an offence, he should tell me in his reply. But, it is not an offence, it is a political action. It is positive action.

Mr. Shikuku: An industrial action!

Mr. Orengo: Yes, an industrial action. Unfortunately, so many of the people on the opposite side were not there when the veterans on this side like Ramogi Achieng-Oneko and Martin Shikuku were using industrial means to bring about change.

Mr. Shikuku: And that is what has made Kones come here!

Mr. Orengo: Mr. Deputy Speaker, Sir, even "violent means" cannot be put here in a blanket form as it is. Because, what is violence? We should be told what violence is. But to me, what the residents of Mwea did in defying the police when they were carrying out an illegal activity of trying to stop a legal meeting where hon. Dr. Kituyi, expressed his freedom of expression without fear or favour. The people of Mwea who are heroic Kenyans and they took action and stopped the police from carrying out an illegal order from a very stupid District Officer. So, we should be told what violence means. It should not just be left in this blanket form and before they can accuse people of violence, let the national intelligence service learn to know that to keep some people in detention for two to three days without seeing their relatives or a lawyer, is an act of violence.

Mr. Nthenge: Like they did to me!

Mr. Orengo: Mr. Deputy Speaker, Sir, this particular clause if it is carried through by this Parliament, we are trying to legitimise despotism, oppression and dictatorship. After we have agreed on multi-party democracy, to bring a Bill like this before this House is an act of contempt of the Members of this House. This particular clause should be reconsidered because we shall not be moved an inch to get away from our rights, to use political means, industrial means and any other lawful means including civil disobedience to kick this minority Government out of power. That is our commitment.

Mr. Deputy Speaker, Sir, we should also think of the Press. Many journalists in this country have been arrested, detained and imprisoned for purely articulating views from politicians; writing out innocently reports about what other politicians have said. They have written commentaries, they have even questioned whether this Parliament is effective or not. There are some people who believe that this Parliament in so long as we refuse to have a constitutional convention and to overhaul the Constitution, this Parliament has not met the demands and wishes of the people of this country.

Mr. Nthenge: That is the truth!

Mr. Orengo: Can you accuse the journalists who are talking of undermining parliamentary democracy?

If this remains as it is in this Bill, I am sure that some of these un-educated illiterate Members in the intelligence - and I know them--- Hon. Martin Shikuku, knows them. They used to stone our cars in the name of intelligence. If these are the type of people that we are employing in the national intelligence service, people who do not know the difference between right and wrong and you expect them to know what a parliamentary democracy is, you are putting the lives of many people in jeopardy including those of journalists.

Mr. Deputy Speaker, Sir, if journalists and the Press do not have the freedom to say what they have been saying in the last 20 years or so, some of these changes that have even enabled some hon. Members of Parliament the other opposite, through the 70 per cent on rule queuing system, would never make it to this House, but they made it to this House after these changes came. The editor of *Beyond*, Mr. Mbugua, was convicted and served a sentence of nearly 18 months because he went to Nandi District and wrote that the queuing system which was then used by KANU under the 70 per cent rule was not democratic, and some people who had not been elected were nominated as candidates. For making those comments, he was jailed for 18 months. Now, it is some hon. Members on that side who are enjoying the freedom that this particular gentleman fought for. And now they are sitting there with their eyes closed without knowing the consequences of this Bill, like hon. Martin Shikuku, I am telling you, you are going to live to regret for the rest of your life what you are trying to do in this Bill. It is serious! Some of you have never been confronted by the police, some of you have never been arrested, and some of you have never been into a police cell, you can take these matters very lightly, but some of us like Dr. John Khaminwa who was a lawyer for Kenyans who were involved in democratic activities like hon. Rubia and hon. Matiba, when he went as a lawyer to the police headquarters in Nairobi area to look for his clients, he was arrested and detained. And if you read the Detention Order what he was being accused of, you would not even, as a representative of this House, want to see this Bill being read in this House at any stage because hon. Khaminwa was detained for carrying out his activities as an advocate without fear or favour and to make sure that the rights of his clients were guaranteed. But when he went to Nairobi Police Headquarters, he was arrested and detained and served for 18 months without charge, without being taken to any court of law.

If you do not make these changes, now when we win in 1997, before we make these changes, the

detention law may still be in place and those who have looted Kenya National Assurance Company and those who are making a lot of noise like the Secretary-General of KANU, they may have to taste a bit of the fire!

(Applause)

In fact, for senior politicians like hon. Ramogi Achieng-Oneko, this man has really nothing to count for himself having been detained with Mzee Kenyatta. If you go to Lamu museum, if you read what colonialists said about hon. Achieng-Oneko, it is there for you to read. And this man is in the Opposition, I would be ashamed to sit on that side. I would choose to sit on the side hon. Achieng Oneko is sitting because he knows the roots of Independence of this country.

So, Mr. Deputy Speaker, Sir, let us take this matter seriously because if we are just passing Bills without thinking seriously about their consequences, then we are not serving this nation and people of this country. In fact, a Bill like this should not be seen in partisan terms, we should look at it very carefully. I am indebted to hon. Kones when he says that we are starting a new beginning, and if, indeed, we are starting a new beginning, let us look at this Bill closely. But I can tell the hon. Minister that if he does not look at these changes, unfortunately, the people in the intelligence community and the police have two or three lives, they are not like politicians. Politicians probably have only one life and one day he will find probably this Bill will be used against him. Like I know something was used against hon. Kamotho and he was treading on his feet without uttering a word. But now, he would never allow anybody to talk, he is always responding.

(Laughter)

Mr. Deputy Speaker, Sir, I am saying that this is a dangerous Clause because it does not set a distinction between the activities of the regular police, the Special Branch and even organised crime. What really is organised crime? It is not defined here. We cannot just assume, because the world is talking about organised crime that, once we mention it in the Bill, we know what it is. What is it?

An hon. Member: Akasha!

Mr. Orengo: Mr. Deputy Speaker, Sir, the "blanket" framing of this Bill on this particular Clause, should not stand, and since it deals with the functions of this Bill on the basis of Clause Four alone, this Bill should not be passed by this House, and I oppose it with everything I have got.

Sub-section (b) is even more ludicrous, and it states as follows:

"To safeguard the economic well being of the Republic against threats posed by the actions or intentions of persons inside or outside."

This afternoon, we heard what hon. Dalmas Otieno was saying about Kenya National Assurance Company (KNAC). What was the Special Branch doing with its intelligence work when KNAC was being looted? What was it doing? Even now that we are trying to bring this Bill, what are you doing about KNAC?

Mr. Nthenge: Enriching themselves!

Mr. Orengo: Some of the people who have brought this parastatal down, which was a market leader, are sitting in this House. So, we are allowing the National Intelligence Service to have a free hand, we will give them *a carte blanche* to decide for themselves what is economic well-being. What does it mean?

An hon. Member: They are not economical!

Mr. Orengo: Mr. Deputy Speaker, Sir, how do you start and say; now we are investigating into the activities which are jeopardising the economic well being? What is the starting point? These things must be made clear in the Bill, not through "blanket" Clauses like this.

Mr. Deputy Speaker, Sir, I urge the House to refuse this Bill on the basis that the functions of the National Intelligence Service, as set out in this Bill, are to undermine democracy. They are to undermine the little gains that we have made and they are there to advance the cause of certain individuals, who do not want changes to be carried out in this country in order to make sure that we have a proper and real democracy. If the hon. Attorney-General, the Leader of Government Business, and others would tell me that they withdraw their threat to disband the Public Accounts Committee (PAC) as presently constituted, then I would know that they are there to protect Parliamentary democracy. But, anything from this Government, the way it is behaving, is not for the protection of Parliamentary democracy. In fact, many times the Government has said that "*hii multi-party ina matatizo*". The Parliamentary democracy, as established, is being challenged by the head of the people sitting on that side. He does not believe in it, and now you are saying that those of us who will criticise---

An hon. Member: Who is that?

Mr. Orengo: The Government!

(Laughter)

At least, if you wanted lessons in multi-party democracy, then the teachers are on this side. Mr. Deputy Speaker, Sir, then you come to the functions of the Kenya External Intelligence Service which shall be: "the collection, production and dissemination of foreign---

Dr. Otieno-Kopiyo: On a point of information, Mr. Temporary Deputy Speaker, Sir. Through the Chair, I would like to inform hon. Orenge that Parliamentary democracy is a threat to the economic well being of most hon. Members from the KANU side of the House.

Mr. Orenge: Those who believe in democracy have certain traditions and practices because they believe in democracy. The privileges and immunities of every Member of Parliament is a very important tradition of every Parliament. We have had instances when Members of Parliament were being arrested, like hon. Njenga Mungai was arrested within the precincts of this House, and his clothes were torn in the process. To me, that was undermining Parliamentary democracy. Some years ago, hon. Kamuyu was arrested in circumstances which showed quite clearly that he had not committed any offence and the case went nowhere. Unless we look at this Bill carefully, because we know that this Government can do away even with its Vice-President like it did with the late hon. Dr. Karanja. You may find a situation where, tomorrow, hon. Saitoti is put in jail. That time, the Leader of Government Business will know that we are more of his friends than those in the KANU side of the House. For us, anybody who is being sacked unfairly and whose freedoms are being curtailed, whether you are black or white, a Luo or Kikuyu, we will stand in your name.

In fact, if hon. Biwott is put to trial and I find that the procedures are not being followed, I may take the opportunity as a "friend of the court" and say things are not going the way they should go. But, I know that the KANU Members of Parliament, when a Bill of this nature is brought to the House, they do not think of the consequences of a Bill of this nature, especially when we are talking about functions.

"That this external wing or service shall disseminate and collect information" - disseminate to who? To who? It is not clear. The information that is supposed to be disseminated is with regard to : Intelligence on political, economic, sociological and technical aspects of foreign intelligence affecting the national securities. To who shall they disseminate this information? That is not clear in that particular part of the Bill.

The hon. Attorney-General was here and obviously, enjoying the fact he is the one who shall give consent to strategies under Clause 16 of this Bill. In fact, he said "I". There was an Attorney-General here who said that when hon. Members are imprisoned or suffering, he enjoys his sleep. That was hon. Kamere. I do not know whether he sleeps these days. The Attorney-General here was being another Kamere too. If you look at Clause 15(2), it says:

"No prosecution under Sub-section(1) shall be instituted without the prior written consent of the Attorney-General who shall not give such consent until he has consulted the Director-General."

So, we want to prosecute somebody in the service and the Director-General is also part of the service. He can be prosecuted also for committing offences or for acts of indiscipline either through the tribunal or through the court. But if all that is done, the Attorney-General has to seek consent from the Director-General, that is why I am saying those who brought this Bill to the House did not read it.

Mr. Deputy Speaker, Sir, the hon. Attorney-General should be very careful when he writes the objectives at the end. He writes every Bill in very good language. In fact, one of my friends was telling me that the hon. Attorney-General would be probably better as a Minister for Foreign Affairs, but when it comes to matters of law, he has really failed this Parliament. But at the end, he has written us very long memorandum about the intentions and reasons for this Bill. This Bill also relates to him, and we know that under the Constitution, Section 26, the Attorney-General has absolute powers over prosecution. In fact, the Constitution says that in exercise of his powers, as the Director of Prosecutions, he shall not consult anybody or any authority, and it is clear. That is why the Attorney-General has got security of tenure because in his conduct and activities, as the Director of Prosecutions, he needs the security of tenure and that is why he is given absolute powers and under the Constitution, he is not required to consult even the Government or the President. But here, we have a Clause which is against the spirit of the Constitution and it is against the clear provisions of the Constitution which says that the Attorney-General shall not consult anybody or he shall not seek authority from anybody. Here you find now, that there is a Director-General, who, according to this Bill, has now more powers than even the Government because the Attorney-General does not need to consult the Government. But here, he has to consult the Director-General.

Mr. Mulusya: Which Government?

An. hon. Member: Mzee!

Mr. Orengo: Mr. Deputy Speaker, Sir, when we talk about the Government, we are just continuing to demonstrate that once you make a ludicrous ruling, then we must face the consequences. When we talk about the Government, you are free to think it is the Government or the President. It is for hon. Kones to find out. That is his homework!

(Applause)

Mr. Deputy Speaker, Sir, Clause 15, which the hon. Attorney-General said he was going to be bringing amendments to, sometimes you have to be fair to somebody that something which affected his own authority and he did not see it, but he saw this other one; but it is true that this Clause cannot stand the way it is.

Mr. Deputy Speaker, Sir, you remember there was somebody known as Karanja, who was murdered by the Special Branch and allegedly buried in Eldoret. The High Court issued directives that the body be exhumed or the body be produced before the court and the Special Branch spent nearly a week trying to look for the body of the late Karanja in Eldoret, when, in fact, they had murdered him at Karura Forest. It was the Director of CID, in fact, who did say that, indeed, the late Karanja was shot by the police. At the end of the day, the Judge who was trying to make sure that justice was done, Justice Schoefield, who said that this was a murder that involved the life of a Kenyan, "I want either the body of the late Karanja to be brought and, if he was murdered, the body must be exhumed and identified, or if the body cannot be found, the police must swear an affidavit confirming and agreeing that they did murder Karanja". It was not to be, instead it was the Judge of the High Court who had to be sent away in very, very bad circumstances. This is where somebody who was standing for justice is the one who was sent away and his contract was terminated and he was treated like a dog. So in the process, it is the National Intelligence Services (Special Branch) who got away unscathed.

Mr. Shikuku: On a point of information, Mr. Deputy Speaker, Sir. I wish to inform the hon. Member that many of those who had died in the hands of this citizen of ours we are talking about, were disturbed. Graves were opened. Dead people sleeping peacefully in their graves were disturbed. They were looking for a dead body with a bullet hole in the head. They woke "everybody" and looked at all the heads, their skulls and there was no hole. That shows you what type of Government we have.

Mr. Orengo: Mr. Deputy Speaker, Sir, if this Bill is allowed to go the way it is, then such occurrences will continue to recur and right now, as I speak, if you are ---

Mr. Nyanja: On a point of information, Mr. Deputy Speaker, Sir. I want to inform hon. Orengo, and indeed the House and in general the whole nation, that the late Karanja who purportedly was buried in Eldoret but was never found, was buried and buried until his bones turned into water. So, he was never identified and that is the truth. That is what we know and that is it.

Mr. Orengo: Mr. Deputy Speaker, Sir, I am grateful for that information. Karanja is gone. The hon. Attorney-General might recall that when the Special Branch was keeping a witness who allegedly or purportedly was supposed to give evidence in the Koigi trial was shot in Nyayo House. Many of the cases that this country has visited upon Koigi without reason or justification will never be forgotten. This particular witness was shot in Nyayo House and the Attorney-General directed that investigations be carried out, but up to now, we do not know where those investigations led and what was done. The life of that particular individual was of no consequence to this Government although he was killed in Nyayo House, but the good thing is that this man was a fighter because he also bruised a few people at Nyayo House, but the Attorney-General should tell us what were the results of those investigations into the killing of that man at Nyayo House.

The Attorney-General (Mr. Wako): On a point of information, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to mislead this House by saying that Section 24 (8) is in conflict with Section 15, when Section 26 (8) talks about the Attorney-General not being subject to the direction or control of any power or authority? The Attorney-General is at liberty to consult as provided for under Section 15, but obviously he cannot be subject to the direction of the Director-General of the Intelligence.

Mr. Orengo: Mr. Deputy Speaker, Sir, the problem with the Attorney-General is that somebody has told him that I have said something, he has rushed in trying to respond to whatever I said, and again he has not read the Constitution properly in relation to this Clause. This Clause does not say that "he shall consult", it says that he cannot give consent to prosecute until he consults. You are directed to consult, you are not give a discretion, you are ordered to consult. We learned English with the Attorney-General at Alliance High School, but since he joined this Government, I am not surprised that his English is going.

Mr. Deputy Speaker, Sir, I think I have dealt with that point sufficiently.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. arap Saina): On a point of order, Mr. Deputy Speaker, Sir. Is the Member on the Floor trying to tell us that he attended a special

class in Alliance where he was taught different English from what others were taught? I think the Attorney-General speaks better English than you.

Mr. Deputy Speaker: Order! Please, always address the Chair.

Mr. Orenge: Mr. Deputy Speaker, Sir, actually I have a lot of respect for hon. Saina. I normally call him a *laibon*. We share poetry, Shakespeare, which I must say a lot of times when you want to talk about poetry or Shakespeare, you will find very few people on the other side who can share poetry and Shakespeare. I can understand under what spirits--- He is just trying to say that he went to the right school and he learned English. I know what you are talking about, hon. Saina.

(Laughter)

Mr. Deputy Speaker, Sir, undermining Parliamentary democracy includes invading the National Assembly or putting in place in the National Assembly agents of the National Intelligence Service. They are too many in this Parliament, and their presence is undermining Parliamentary democracy. Sometimes even the members of staff in this Parliament, we do not know whether they are serving as civil servants of this Parliament or they are Special Branch or the police reserves. I am asking the Clerk of this House to choose whether he wants to be a Special Branch, a police reservist, or a Police Reserve, Assistant Commissioner or whether he wants to be the Clerk of the National Assembly.

Mr. Deputy Speaker: Order! Mr. Orenge, I only warned you to bring you back, but please, let us keep the staff of the House out of the debate.

Mr. Shikuku: On a point of order, Mr. Deputy Speaker, Sir. I do respect your ruling, but since the Clerk is defined under Standing Order No.2, are you suggesting that we bring another substantive Motion to discuss the Clerk?

Mr. Orenge: Mr. Deputy Speaker, Sir, I wanted to read the Detention Order against Dr. Khaminwa who went to represent a client without fear or favour to seek out the safety and conditions of his clients in a police station. He was arrested and thereafter detained and later he was served with Detention Order. It reads as follows:-

"You have been involved in subversive activities aimed at undermining and overthrowing the Government of Kenya, as by the law established. You have associated yourself and established frequent contacts with well-known anti-Government characters and personalities like Kenneth Matiba and Charles Rubia".

Mr. Deputy Speaker, Sir, we have come to learn that all that hon. Rubia and hon. Matiba wanted was multiparty democracy, and at that time associating with the two gentlemen or even acting for them as an advocate was termed to be subversion. I will continue to read. Just imagine Dr. Khaminwa, somebody who is just interested in defending people in court, being accused.

"Under the disguise of legal consultations, you have indulged yourself in a series of unlawful and illegal meetings in Nairobi".

Dr. Khaminwa in an illegal meeting in Nairobi? You hardly find him in the streets here or anywhere in meetings, but if you go to his chambers, you will find him there with the said anti-Government characters because he was consulting with them in the chambers and that is now deemed subversive. I will go on:-

"At those meetings you and the said characters have planned, discussed and mapped out strategies to overthrow the Government of Kenya by unlawful means including violence".

That is why I was asking for the word "violence" to be described. You see, these words are appearing. Hon. Kones, you are in a lot of trouble!

"You have also, in conjunction with the same characters and others within the country, discussed and conducted yourselves and made utterances in a manner calculated to cause disturbance in the country, dissatisfaction, discontent, ill-will and hostility among the people of Kenya".

If you look at Dr. Khaminwa's record, the utterances he made were in court. You can never find Dr. Khaminwa in a public meeting. When I was a Member of this Parliament, in a KANU Parliamentary Group Meeting, the Government told us that there was a lawyer called Khaminwa who said that he did not have powers to hire and fire. Dr. Khaminwa was arguing in court that under the Public Service Commission, the President does not have powers to hire and fire certain members of staff

who are appointed by the Public Service Commission. Now, that became a subject in the KANU Parliamentary Group. His arguments in courts became a subject of a KANU Parliamentary Group and he was stating facts that the President did not have those powers and for that, he was detained. "With the same said characters you have discussed and promoted unlawful formation

or creation of another political party in contravention of the provisions of the Constitution"

You see, the people who were saying these things about Dr. Khaminwa were not in KANU when it was being formed yet they were accusing Dr. Khaminwa of trying to form another party. This life can be unfair!

"You have made utterances and conducted yourself in total disregard and disrespect to the Head of State---"

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): On a point of order, Mr. Deputy Speaker, Sir. Undoubtedly, what hon. Orenge is reading to us is fairly entertaining and interesting, but is it really relevant to the substantive Bill? I think it is not.

Mr. Orenge: Mr. Deputy Speaker, Sir, that is why I was saying that Clause 4 of this Bill is dangerous because you can be arrested or subject to investigation of the National Intelligence Service if you undermine what they are calling political parliamentary democracy. If through political activity, you are deemed to be undermining parliamentary democracy--- I would appreciate if the Leader of Government Business is not going to direct instructions to you using his hands. That is unfair. He is trying to prevail on your mind. I have seen him do that.

Mr. Deputy Speaker: Order! Would you repeat that?

Mr. Orenge: Mr. Deputy Speaker, Sir, the Leader of Government Business expected you to make a ruling when he stood on a point of order. You did not make a ruling. I was making my contribution and I saw him beckon at you. I saw it with my own eyes. I am an honourable Member of this House.

Mr. Deputy Speaker: Order! I suppose that when hon. Members rise on points of order, they always want favour from the Chair. It is up to the Chair to decide whether it is a point of order to which he should respond, or one to which he should allow the hon. Member on the Floor to continue responding.

Mr. Orenge: Mr. Deputy Speaker, Sir, I am speaking from experience, because I have seen it happen. Whenever the Government side is concerned about a particular position, you will see hon. Juma Boy walk to the Leader of the Government Business. They will conspire and come to the Clerk at the Table, and from the Clerk, when they are satisfied that they have been properly advised, they normally walk to the Speaker's Chair. We look at these things. We have eyes. I know you cannot succumb to the Leader of the Government Business, Mr. Deputy Speaker, Sir. I know that for sure.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): On a point of order, Mr. Deputy Speaker, Sir. Is hon. Orenge in order to cast aspersions on me by claiming that I beckoned at you to rule on the point of order when I stood? I never beckoned at you and besides, that one is an affront to the Chair aimed to give the impression that the Chair is directed from this side of the House.

Mr. Deputy Speaker: Order! Hon. Members are free to beckon at the Chair to respond to their points of order. It is up to the Chair to decide whether to respond or to leave the hon. Member on the Floor to respond. I want to assure you, hon. Orenge, that if you beckon at me, I will decide personally whether to respond or not to respond, and not because you beckoned at me. The same goes for everybody.

Mr. Orenge: Thank you very much, Mr. Deputy Speaker, Sir, because I normally do more than beckoning. I normally come to you and plead. But I will never deny it. What I find objectionable is that the Leader---

Mr. Deputy Speaker: Please, stick to the Bill!

Mr. Orenge: Okay. I will leave that argument and come back to the Bill. I was actually reading the last sentence of this Detention Order, which reads as follows:

"You have made utterances and conducted yourself in total disregard and disrespect to the Head of State, and have engaged yourself overtly or otherwise, in activities aimed at creating alarm, despondency and fear among the people and the inhabitants of Kenya. Therefore, because of these anti-Government activities and in the interest of the preservation of national security, your detention has become necessary".

So, my submission is that Clause 4 of this Bill is merely putting into place what this Government has been doing in the last 30 years. That is detaining people without trial. Because the Detention Act, or the Preservation of Public Security Act has become very unpopular, they are bringing the objects of the Preservation of Public Security Act through the back door, through this Bill.

Mr. Achieng-Oneko: On a point of information, Mr. Deputy Speaker, Sir. The allegations that hon. Orenge has read were labelled against me by the Governor of Kenya in 1952. You see that it is a pity that they are the very same words which he has read now. I would have recited the whole page, because I know them by heart. So, it is just taking over from the colonial rule, who misruled us for 40 years.

Mr. Orenge: The only difference, hon. Oneko, is that the colonial government knew better how to

misrule than---

ADJOURNMENT

Mr. Deputy Speaker: Order! Hon Orengo, you will proceed tomorrow. Hon. Members, it is now time for the interruption of business. The House, therefore, stands adjourned until Thursday, 18th July, 1996 at 2.30 p.m.

The House rose at 6.30 p.m.