

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 23rd October, 2003

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

NOTICE OF MOTION

EXTENSION OF CKRC MANDATE

Mr. Muite: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:- THAT, pursuant to the provisions of Section 26(5) of the Constitution of Kenya Review Commission Act, Cap 3A of the Laws of Kenya; this House resolves that the period and mandate of the Constitution of Kenya Review Commission be extended to 30th June, 2004.

QUESTION BY PRIVATE NOTICE

ABDUCTION OF MR. AGUFA

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

(a) Is the Minister aware that on the night of 8th September, 1995, Mr. Jaxon Muhindi Agufa was forcefully abducted at night from his house in Kikuyu Town by unknown people and that he has not been seen again?

(b) Is he further aware that the outcome of investigations carried out by the officers from Kikuyu Police Station into the abduction and subsequent disappearance of Mr. Agufa

has not been availed to his family and the next of kin?

(c) Could the Minister inform the House the whereabouts of Mr. Agufa?

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

(a) I am aware that Mr. Jaxon Muhindi Agufa was reported missing from 8th September, 1995. However, I am not aware that he was forcefully abducted at night from his house in Kikuyu Town.

(b) Yes, I am aware.

(c) Police investigations have not established the whereabouts of Mr. Agufa. The Criminal Investigations Department (CID) Inquiry File No.5/97 is still open.

Mr. Akaranga: Mr. Deputy Speaker, Sir, although the Question states that this person was

abducted from Kikuyu Town, Mr. Jaxon comes from Igunga Village in Sabatia Constituency. We are talking about the life of a citizen who was forcefully abducted at night from his house in Kikuyu Town. Is the Assistant Minister aware that a lady by the name of Sylvia Achieng Onyango came at night, together with unknown people, and knocked on Jaxon's door? This lady is well known even to the police and up to today she is still there and has important information. The answer the Assistant Minister has given is not serious. Could the Assistant Minister tell us whether they have taken recorded statements from this lady because she has some leading information?

Mr. Tarus: Mr. Deputy Speaker, Sir, evidence has been gathered by police officers and there are no records that the lady under reference has recorded a statement. However, we would be glad to have the information brought forward by the hon. Member because it will also be of assistance in the investigations.

Mr. Muite: Mr. Deputy Speaker, Sir, I wish to take this opportunity to express sorrow to hon. Akaranga that a person from his constituency went missing from my constituency. However, when will the Government give a functioning vehicle to Kikuyu Police Station? The other day I had to help police officers to physically push their Land Rover so that it could start because it had stalled. When will the Government give a functioning vehicle to Kikuyu Police Station and also to the DO, Kikuyu because they have none?

Mr. Tarus: Mr. Deputy Speaker, Sir, I will respond to the question of the need for a vehicle for Kikuyu Police Station, but for the DO, perhaps, I may not respond now. However, a few months ago, we did acquire vehicles for distribution among the police stations and I do reckon that they were insufficient. However, we are in the process of acquiring additional vehicles and just like the other stations do require them, we shall also consider Kikuyu Police Station.

Mr. Akaranga: Mr. Deputy Speaker, Sir, I have a copy of a letter written to the District Criminal Investigation Officer (DCIO), Kiambu here with me from the Director of Criminal Investigations instructing the DCIO, Kiambu to go an extra mile to ensure that Mr. Jaxon Muhindi Agufa is, indeed, found. However, I am surprised when the Assistant Minister says that there was completely nothing which was---

Mr. Deputy Speaker: Mr. Akaranga, could you ask your question?

Mr. Akaranga: Mr. Deputy Speaker, Sir, the issue is that anytime the junior police officers wanted to investigate this case they were either transferred or removed from Kikuyu Police Station. Could the Assistant Minister tell us why the Government has taken such a long time to record statements from these people?

Mr. Deputy Speaker: Mr. Assistant Minister, let me assist the hon. Member here. We are dealing with the life of a citizen and a matter which occurred in 1995. Today is 2003. Could we get some seriousness in this matter and have it speedily investigated and get results?

Mr. Tarus: Mr. Deputy Speaker, Sir, I oblige. We shall do exactly that.

Maj-Gen. Nkaissey: Mr. Deputy Speaker, Sir, I quite agree with you that the issue of safety and security of Kenyans needs to be taken seriously. Could the Assistant Minister tell us how many Kenyans, just like Jaxon Muhindi Agufa, have been abducted forcefully and have never been seen again?

Mr. Tarus: Mr. Deputy Speaker, Sir, I do not have those records here.

Mr. Deputy Speaker: Now, it is not hard to finish this matter. I think the Assistant Minister did say that Mr. Akaranga was to furnish details of the lady to the Assistant Minister so that he can cause investigations to be carried out speedily. That is how we are going to conclude the matter.

ORAL ANSWERS TO QUESTIONS

*Question No.067*CONSTRUCTION OF MARICH
POLICE STATION

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

(a) whether he is aware that the Marich Police

[Mr. Rotino]

Station is poorly constructed and that the cells are unfit for human habitation;

(b) who the contractor was and how the contract was awarded; and,

(c) how much money has been spent so far on the construction of the police station.

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

(a) I am aware that Marich Police Station is made up of temporary buildings. However, the cells are fit for human habitation.

(b) The contract was awarded to a Mr. James John Naibei Kadenge of West Pokot. The contract was awarded by the Officer Commanding Police Division (OCPD), West Pokot.

(c) Kshs700,000 has so far been spent to date.

Mr. Rotino: Mr. Deputy Speaker, Sir, I do not understand what the Assistant Minister means by "temporary buildings" because my constituency lies in a very hot district. The temperatures go up to 36 degrees centigrade, yet the cells are "unipot"! Can you imagine living in a "unipot" during mid-day? Yet the Assistant Minister is telling me that the cells are fit for human habitation!

Mr. Tarus: Mr. Deputy Speaker, Sir, I have said that the structures are temporary and, being so, they may not really have all the sufficient requirements for a normal habitation. **Hon.**

Members: On a point of order!

Mr. Deputy Speaker: Order, Members! I want the Assistant Minister to finish answering. I will take your points of order later on!

Mr. Tarus: Mr. Deputy Speaker, Sir, these temporary buildings were constructed on the basis of the need at that time.

Mr. Mwandawiro: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Assistant Minister to mislead the House that cells in Kenya are fit for human habitation when we know they are not? They do not even have beds up to now!

Mr. Tarus: Mr. Deputy Speaker, Sir, I am not sure whether I am misleading the House, but the hon. Member did remark that the temporary buildings were unsuitable for human habitation considering the conditions of the area. I am not going to address the other areas, but I will confine myself to this particular Question.

Mr. Rotino: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Allow your hon. colleague, Dr. Galgallo, to help you. I will give you your time.

Dr. Galgallo: Mr. Deputy Speaker, Sir, we know that unipots being used for habitation in hot areas are a health hazard. The prisoners living in them will be congested and they will be exposed to heat stroke. Could the Assistant Minister consider discontinuing the use of those unipots or will he agree to take responsibility in case of death caused by heat stroke?

Mr. Tarus: Mr. Deputy Speaker, Sir, I note the expressions given by the hon. Members and I do oblige that the Government will look for better facilities for these areas.

Mr. Serut: Mr. Deputy Speaker, Sir, the Assistant Minister has told the House that the cells in Marich are temporarily built. I thought all police cells are uniform and they must be having building

plans for the same. How come the cells in Marich are temporary?

Mr. Tarus: Mr. Deputy Speaker, Sir, we are addressing a problem that arose due to lack of vision by the last Government.

Mr. Muiruri: Mr. Deputy Speaker, Sir, I do believe you heard the Assistant Minister say that the contract to construct this police station and the police cells was awarded by the OCPD. The OCPD has no know-how on construction, designs and procurement. Since when did OCPDs get involved in procurement and awarding of contracts?

Mr. Tarus: Mr. Deputy Speaker, Sir, the answer is very precise and that is why the people of Kenya needed change. If they could allow an OCPD to procure and to award tenders---

Mr. Deputy Speaker: Mr. Rotino, I will give you a last point of order and a last supplementary question.

Mr. Rotino: On a point of order, Mr. Deputy Speaker, Sir. The construction of Marich Police Station was done this year when the NARC Government was in already power and not the KANU Government. Let him answer that first before I ask another question.

Mr. Deputy Speaker: Mr. Rotino, you have given him that information. Now ask your last question!

Mr. Rotino: Mr. Deputy Speaker, Sir, if you visit Marich Police Station, what the Assistant Minister is saying, that its construction cost Kshs700,000, is not true. The construction is not even worth Kshs200,000 because the buildings were constructed using mud! The buildings are completely temporary yet they call them "Police Station Reporting Office". It could not have cost Kshs700,000 at all. I am requesting the Assistant Minister to visit Marich Police Station.

Mr. Tarus: Mr. Deputy Speaker, Sir, may I correct the position. This tender was awarded during the Financial Year 2000/2001.

Mr. Deputy Speaker: Will you be willing to visit Marich Police Station and ascertain whether the buildings are made of mud?

Mr. Tarus: Indeed, Mr. Deputy Speaker, Sir, I will be willing to visit the police station.

Hon. Members: When?

Mr. Tarus: Mr. Deputy Speaker, Sir, we will arrange.

Mr. Deputy Speaker: I do not think it is up to the Chair to say when. It is up to the hon. Member to consult the Assistant Minister.

Question No.399

RE-CARPETING OF RODI-
KOPANY-KARUNGU ROAD

Mr. Ogur asked the Minister for Roads, Public Works and Housing, when he will re-carpet the Rodi-Kopany-Karungu Road which is currently impassable.

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

Patching and sealing work on Rodi-Kopany-Karungu Road, which is 48 kilometres long, will start this financial year.

Mr. Ogur: Mr. Deputy Speaker, Sir, the man who did that road recently should not be the one to do it again. He did a very bad work. Who is going to re-do it, now that it was done very badly such that after only three years, it is very, very bad? Is it the same man?

Eng. Toro: Mr. Deputy Speaker, Sir, I agree with the hon. Member because there is an element of poor workmanship. The tender for the construction of the road was awarded to TM-AM

Construction Company in 1992 and the construction works were completed in 1996. However, in the year 2000, it was observed that there were premature furrows on certain sections of the road which were caused partly by excessive *El Nino* rains of 1997/98. However, I cannot blame it entirely on the *El Nino* rains because this was only after about three years.

Mr. Ogur: Mr. Deputy Speaker, Sir, the Assistant Minister has observed that the work was badly done at that time and money is going to be used on the same road, yet I have other roads in my constituency which could have been repaired with the same money. Is there any other money allocated in case the road becomes bad again soon?

Eng. Toro: Mr. Deputy Speaker, Sir, let me assure the hon. Member that the contractors, TM-AM, are not the ones who are going to do the patching and sealing of the road. That work will be done by our resealing units based in Kisumu and I am sure that they are going to do a better job.

Question No.685

CONSTRUCTION OF ROAD E817

Mr. Muriungi asked the Minister for Roads, Public Works and Housing:-

(a) whether he is aware that the construction of Road E817 from the junction of C91 at Farm and Kawiru was abandoned by the contractor, Messrs. Krishan Behal since the year 2002;

(b) if he could inform the House how much money has so far been paid to the contractor and how much is outstanding; and,

(c) when the construction of the road will be completed.

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

(a) I am not aware that the contractor for the construction of the Farm-Kawiru Road has abandoned work. I am, however, aware that progress of work has not been in conformity with the targets earlier set for the completion of the project.

(b) The amount of money paid to the contractor for the work already done and certified is Kshs133,702,237 and the balance is Kshs83,499,309.50.

(c) The work is anticipated to be completed by February, 2004.

Mr. Muriungi: Mr. Deputy Speaker, Sir, I am surprised that the Assistant Minister is not aware that this road; which is only 11.5 kilometres long, and which has so far taken six years, has been abandoned by Krishan Behal, who I think is one of the black-listed "cowboy" contractors. This project has taken six years, and the road has been washed away completely. Even the survey and the base protecting work which were done are now no longer there. The road is full of gullies and is impassable.

The Assistant Minister says that he is aware that the work was not done in conformity with the targets. Could he tell us what these targets were, including the time-frame within which this road should have been completed?

Eng. Toro: Mr. Deputy Speaker, Sir, the details regarding this contract were as follows:

The project award date was 10th March, 1998. The contract period for the 11.5 kilometres of road was supposed to be 12 months. The expected completion date was 6th April, 1999. However, some extension time was given; of another 14 months. The revised completion date was June, 2000. The contract sum was Kshs217,201,546

The details of the work as requested by the hon. Member indicate that the site clearance, the earth work and the sub-base have been 100 per cent complete. However, the base is only 9 per cent complete, while nothing has been done about the priming and the service dressings.

Mr. Mukiri: Mr. Deputy Speaker, Sir, this is just one clear case of breach of contract by these dangerous contractors against the Government. Does it mean that the Government is helpless when these contractors breach their contracts? Does the Government not have the right to sue them?

Eng. Toro: Mr. Deputy Speaker, Sir, I am sorry to say that there was total mismanagement of this contract because the records show that it was only once, on 17th June, 2002, when the Ministry wrote to the contractor. The same contractor replied and gave an undertaking that he would finish the work within two months. However, the work was not finished and there were no follow-ups so that the contract could be determined.

At the moment, the Ministry has already written to the contractor according to the terms of the contract, giving him 28 days from today, to finish the project and hand over the road to the Ministry, failure to which the contract of the project would be terminated.

Mr. Maore: Mr. Deputy Speaker, Sir, the then Minister for Roads, Public Works and Housing, Mr. Morogo, visited the project on 14th July, 2002 and the contractor promised that the work would be finished in two months. Now, the Assistant Minister is giving an undertaking that the work will be finished in four months. Could the Assistant Minister assure this House that at the end of 28 days from today, he can come to this House and give an update on this job?

Eng. Toro: Mr. Deputy Speaker, Sir, I would like to give that undertaking; that within 28 days the Ministry is going to be decisive on this contractor because he has failed to complete this project yet he has no pending bills. So, he cannot give any excuses for the non-completion of the project in time. The fact is that he just does not want to complete the project for reasons that we do not know. But the final letter has been dispatched to him and we will be decisive after 28 days after which we will terminate his contract.

Mr. Deputy Speaker: Let us have the last question on that issue from Mr. Muriungi.

Mr. Muriungi: Mr. Deputy Speaker, Sir, has the Assistant Minister agreed that there was a breach of contract or a near-breach of contract by this contractor? What guarantee is the Assistant Minister going to give us that the contractor will finish the project within 28 days? Further, what disciplinary measures is he going to take against this contractor, because the road has reverted to its original form before work on it began, considering that we need this road?

Eng. Toro: Mr. Deputy Speaker, Sir, I can guarantee that the necessary disciplinary action will be taken, because the road has not yet been handed over to the Ministry. The guarantee period for one year is also not yet on because no substantially complete road has been handed over to the Ministry. So, whatever has gone wrong, the contractor is supposed to make good. We are going to make sure that he is going to do so, failure to which the right decision will be made. I undertake that if this is not done, the hon. Member can question me again in Parliament.

COMMUNICATION FROM THE CHAIR

DISTINGUISHED GUESTS FROM NORWEGIAN PARLIAMENT

Mr. Deputy Speaker: Hon. Members, I have to interrupt Question Time. We will continue after this brief communication from the Chair.

I must draw the attention of hon. Members to the presence of distinguished Members of Standing Committee on Foreign Affairs of Norwegian Parliament, seated in the Speaker's Row. They arrived in the country yesterday and will be around up to the end of the week. They are:

Hon. Inge Lonning	- 1st Vice-Chairman, Conservative	Party
Hon. Jon Lilletun	- Christian Democratic Party	
Hon. Kristin Halvorsen	- Socialist Left Party	
Hon. Haakon Blankenborg	- Labour Party	
Hon. Gunhild Oyangen	- Labour Party	
Hon. Christopher Stensaker	- Progress Party	
Hon. Mr. Lars Rise	- Christian Democratic Party	
Hon. Finn Martin Vallersnes	- Conservative Party	
Hon. Morten Høglund	- Progress Party	
Hon. Ingrid Opedal	- Socialist Left Party	
Mr. Christian Syse	- Permanent Secretary	

Hon. Members, these ladies and gentlemen are here to exchange views with Government leaders, hon. Members of the Departmental Committee on Defence and Foreign Relations and other political leaders; on bilateral issues between the two sister countries.

I would like, on behalf of the House, to take this opportunity to wish all hon. Members from the Norwegian Parliament a very successful tour of this country.

Thank you!

(Applause)

(Resumption of Oral Answers to Questions)

Mr. Deputy Speaker: We may now proceed to the next Question by Mr. Mahamud.

Question No.559

IMPROVEMENT OF EDUCATION STANDARDS
IN WAJIR DISTRICT

Mr. Mahamud asked the Minister for Education, Science and Technology:-

- if he could state how many candidates sat for the Kenya Certificate of Secondary Education (KCSE) in Wajir District from 1997 to 2001, by gender, on a yearly basis;
- how many of the students in "a" above were admitted to public universities; and,
- what measures he has put in place to improve education standards in the district.

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

(a) Between 1997 to 2001, a total of 2,212 students sat for KCSE in Wajir District.

(b) Seven students, who scored a Grade "B" and above, were admitted to public universities between that time.

(c) The Ministry has put in place the following measures and strategies to improve education in the district. We are aware that we need to have a comprehensive plan. There are already programmes on Early Childhood Education (ECE). We have 74 ECE centres with a total enrolment of 3,890 pupils. We are supporting the free primary education programme and up to date almost Kshs12 million has been disbursed for the purchase of books and other necessary facilities--

Mr. Deputy Speaker: Dr. Mwiria, could you address yourself to the Question because there are certain issues you are raising which are, perhaps, supplementary?

The Assistant Minister for Education, Science and Technology (Dr. Mwiria): Mr. Deputy Speaker, Sir, the other measures include: Free primary school education, grants to low-cost boarding primary schools in the district, a school feeding programme, bursaries to the students in the

schools, ASAL grants to district schools, improve staffing of teachers in the schools, the promotion of the girl child through a support of about Kshs150,000 per year, provision of science laboratory equipment of Kshs200,000 each for a number schools, intensification of inspection and supervision and support through the Higher Education Loans Board (HELB).

Mr. Mahamud: Mr. Deputy Speaker, Sir, I think this is the biggest joke of the year. The Assistant Minister says that in the last five consecutive years only seven students, out of 2,212, were admitted to public universities. This is equivalent to 0.003 per cent. Is he really very serious that this Government is providing quality education in North Eastern Province?

Dr. Mwiria: Mr. Deputy Speaker, Sir, this is, indeed, a very serious problem. I sympathise with the people who are trying to improve the standards of education in the district. Yes, we are doing a great deal and we would like to do a lot more. For example, between 1997 and 2001, only seven students qualified to go to public universities. This is, of course, scandalous. However, there is evidence that there is an improvement because, last year, ten students qualified to go to public universities compared to seven students in a period of five years.

Mr. Shaaban: Mr. Deputy Speaker, Sir, only about 2,000 students have secondary education in Wajir District. Could the Assistant Minister tell this House what is the school enrolment rate for secondary education? How many eligible students were supposed to attend secondary school education in the last five years?

(Loud consultations)

Mr. Deputy Speaker: Order! Hon. Members, I will ask Mr. Shaaban to repeat his question because the Assistant Minister could not hear owing to the loud consultations. May I appeal to hon. Members to consult in low tones.

Proceed, Mr. Shaaban!

Mr. Shaaban: Mr. Deputy Speaker, Sir, in the last five years, only 2,000 students went to secondary schools in Wajir District. I would like to know from the Assistant Minister what was the enrolment rate for the secondary schools in those five years?

Dr. Mwiria: Mr. Deputy Speaker, Sir, there are eight secondary schools in Wajir District. Out of those, there were 162 boys and 612 girls. The total enrolment, of course, is quite low. However, we have to put more measures in place to try to improve both access and retention of students in those schools. The Ministry is doing quite a bit in terms of supporting those students who are already enrolled to ensure that they continue and complete their education.

Mr. ole Ntimama: On a point of order, Mr. Deputy Speaker. A few minutes ago, I heard the Assistant Minister say that he sympathises with the people who are trying to improve education standards in the district. I am surprised. Is he in order to say so, when he should actually go ahead and tell this House what they are doing to save the situation in North Eastern Province? He should not sympathise! We do not need sympathy! We need action!

(Applause)

Dr. Mwiria: Mr. Deputy Speaker, Sir, action begins with sympathy. I think if we appreciate the problem, it is much easier for us to be able to do something. I think I was misunderstood. I just meant that I appreciate the depth of the problem.

Dr. Ali: Mr. Deputy Speaker, Sir, I know the Assistant Minister knows the size of Wajir District. The size of Wajir District can only be compared to Central Province, Western Province and Nyanza Province combined. He said there is intensification of inspection of schools. However, there is no single vehicle for the inspectors in the whole of Wajir District. Will the inspectors move on foot or use camels to conduct these inspections?

Dr. Mwiria: Mr. Deputy Speaker, Sir, we, as a Ministry, will do our best to ensure that there are enough facilities to strengthen supervision. So, if there are no vehicles, we will check with the Ministry officials to ensure that there is adequate transportation.

Mr. Sasura: Mr. Deputy Speaker, Sir, this is a matter of policy. Why were there only seven students out of 2,212 admitted to public universities in the last five years? He categorically stated that it is true that only seven students with Grade B and above were admitted to universities. Let us forget about the past. What policies has he put in place now to ensure that his Ministry addresses this problem?

Could he consider lowering the cut-off point required for university entry? In short, what is the quota for Wajir District?

Dr. Mwiria: Mr. Deputy Speaker, Sir, in addition to the affirmative action programme for the girl child, we have also considered the situation in North Eastern Province and decided that, beginning with this Financial Year 2003/2004, students from North Eastern Province will be able to join universities with one point less than students from other parts of the country.

Mr. Mahamud: Mr. Deputy Speaker, Sir, the Assistant Minister is now talking of lowering the points by one. However, that is not enough, considering the number of students who have been locked out of public universities in the past years. We would like the cut-off point to be lowered and a bridging course to be introduced. I would like--

Mr. Deputy Speaker: Order! Mr. Mahamud, you are now making a contribution or a debate. Ask your question!

Mr. Mahamud: Mr. Deputy Speaker, Sir, could the Assistant Minister assure us that he will lower the cut-off point further, say for girls, by four points and for boys by two points?

Dr. Mwiria: Mr. Deputy Speaker, Sir, I cannot make that kind of a decision at this point. However, the first step is for us to see whether or not we are making serious progress in terms of the already agreed cut-off point. Certainly, we will be quite happy to review the situation. We would like to do much more than lowering the cut-off point because we need to take several simultaneous actions. The first one is to improve the quality of education in primary and secondary schools.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Could you consult in low tones? Next Question!

Question No.883

NUMBER OF EDUCATION OFFICERS/SCHOOL
INSPECTORS IN BOMET

Mr. J.K. Koech asked the Minister for Education, Science and Technology:-

- (a) what the current establishment of Education Officers and School Inspectors in Bomet District is; and,
- (b) whether this establishment is sufficient to administer and inspect all the primary schools in the district.

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

(a) The current establishment of Education Officers and School Inspectors in Bomet District is as follows: One Senior Assistant Director of Education, who is the District Education Officer, nine Education Officers and 16 inspectors of schools.

(b) We believe the establishment is sufficient to administer and inspect primary and secondary schools in the district, as there are six divisions--

Mr. Sirma: On a point of order, Mr. Deputy Speaker, Sir. The hon. Assistant Minister should have first addressed the issue of the written reply, instead of answering the Question. The hon. Member did not get the written reply.

The Assistant Minister for Education, Science and Technology (Dr. Mwiria): Mr. Deputy Speaker, Sir, I am sorry. The written reply was supposed to have been sent to the relevant office in Parliament. I must apologise if he has not received it, but I assure him that it is not my fault.

Mr. Deputy Speaker: Proceed, Dr. Mwiria!

The Assistant Minister for Education, Science and Technology (Dr. Mwiria): Mr. Deputy Speaker, Sir, I beg to continue answering the Question.

(b) The establishment is sufficient to administer and inspect primary and secondary schools in the district, because there are six divisions in the district and each of the divisions has an area Education Officer. There are 14 zones with 14 Zonal Inspectors. So, there is only one zone that does not have an inspector, but that one is also being served by a Tack Tutor while the area Education Officers also assist them to ensure that the schools are inspected properly.

Mr. Koech: Mr. Deputy Speaker, Sir, while I tried to follow the answer by the Assistant Minister, because I did not get the written reply, I do not think he got the gist of my Question. In Bomet District, we have got over 60 secondary schools and over 200 primary schools. Now, when he talks of an assistant education officer, this officer cannot do any inspection in secondary schools. We have only one District Education Officer who can inspect schools in the district, which is impossible. We do not have officers who can do justice to the secondary schools inspection.

Dr. Mwiria: Mr. Deputy Speaker, Sir, this is a countrywide problem. We have DEOs who go to inspect various secondary schools, but many of the inspectors are limited to primary schools. We hope to have a stronger team at the district education offices, where there will be many more inspectors who will be able to oversee secondary education. This will not just be in Bomet District, but the whole country.

Mr. Kimeto: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister say that this is a countrywide problem. Bearing in mind that Bomet is a very large district with only one District Education Officer, what is he going to do to improve the standard of education in that district?

Dr. Mwiria: Mr. Deputy Speaker, Sir, I would first like to say that education officers are assigned to divisions all over the country. The situation in Bomet in terms of education officers is exactly the same as it is everywhere else in the country. In terms of improving the quality of education in Bomet District and other parts of this country, we hope to strengthen inspection and provide the relevant teaching materials. We are going to support programmes on science laboratories in all the districts and ensure that there are enough teaching staff in all the schools, to be able to cope with the numbers of students that are in our secondary and primary schools. Largely, a variety of measures will be taken. They will range from improving the depths of those that are available to teach to the provision of relevant planning and teaching inputs, as well as intensifying supervision and inspection.

Mr. Owino: Mr. Deputy Speaker, Sir, the problem of school education officers and inspectors is a countrywide problem. Even in places where they are, they have been made impotent because they do not have communication tools. So, they literally sit in their offices doing nothing. What is the Ministry's plan to enable them have some communication facilities, even if they are bicycles, so that they are able to reach the schools?

Dr. Mwiria: Mr. Deputy Speaker, Sir, all zones will be provided with motorbikes so that school inspectors can use them to reach schools in every corner of their respective districts. So, that is one measure we are taking in terms of transport. Also, all districts are going to be provided with additional vehicles. This will be at the district level and the provincial level. There will be vehicles at the districts and provinces, and motorbikes at the zonal level.

Mr. Koech: Mr. Deputy Speaker, Sir, you can see this Question has not been answered adequately. The Minister says that inspection of schools in the country is non-existent. I hope he can agree with me, from the statement he has made, that there is no inspection. Inspection should involve finances and teaching standards in secondary schools. When is he going to re-introduce inspection in secondary schools?

Dr. Mwiria: Mr. Deputy Speaker, Sir, it is not entirely true to say that inspection is non-existent. It may not be adequate. As a Ministry, we are going to ensure that we do more of it. Already in Bomet District, there is an on-going panel inspection of schools, but I agree with Mr. Koech that we are not doing enough. The immediate action is to try to have more inspection programmes taking place in our secondary schools.

Question No.693

REHABILITATION OF SUGAR FACTORIES

Mr. Osundwa asked the Minister for Agriculture:-

- (a) how much money was spent on the rehabilitation of sugar factories in the country from the Sugar Development Levy since the inception of the Fund;
- (b) what the efficiency rate of the factories so rehabilitated is; and,
- (c) whether he could table a list of the contractors who undertook the rehabilitation works and the amounts paid to them.

The Assistant Minister for Agriculture (Mr. Khaniri): Mr. Deputy Speaker, Sir, I beg to seek the indulgence of the House for this Question to be deferred to Wednesday next week, because you realise the Question is very wide; touching on all the sugar factories, and there is some information that we are still waiting for from some of the sugar factories before we can answer the Question adequately.

Mr. Deputy Speaker: Mr. Osundwa, is that okay with you?

Mr. Osundwa: It is not okay with me, Mr. Deputy Speaker, Sir. I would like this Question answered on Tuesday at 2.30 p.m. I already have the written reply with me, and he only has to build it a little bit. So, the Question should be answered on Tuesday, at 2.30 p.m.

Mr. Deputy Speaker: Mr. Khaniri, how do you explain that? The hon. Member already has an answer, but you do not want to use it; instead, you are waiting for another answer.

The Assistant Minister for Agriculture (Mr. Khaniri): Mr. Deputy Speaker, Sir, I also have the answer, but there is some vital information that I may require for the supplementary questions.

Mr. Deputy Speaker: Very well! Mr. Osundwa, I think it is better to delay a bit and get a sufficient answer. So, we agree to defer the Question to Tuesday next week.

Mr. Osundwa: That is okay.

(Question deferred)

Question No. 481

WATER SUPPLY TO MOYALE

Dr. Galgallo asked the Minister for Water Resources Management and Development:-

- (a) if he is aware that majority of the residents of Moyale Town depend on water smuggled from Ethiopia by water peddlers;

- (b) if he is further aware that Sololo Town lacks a water supply system, and;
- (c) in view of "a" and "b", what plans the Ministry have to supply sufficient water to residents of Moyale Town and establish a water supply system in Sololo Town.

The Minister for Water Resources Management and Development (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to reply.

I am aware that majority of residents of Moyale Town depend on water from Moyale Urban Water Supply. However, some residents draw water from shallow wells within Moyale Town, while other residents obtain water from Moyale in Ethiopia. I am aware that Sololo Town lacks a water supply system. Sololo residents get water from a number of sources including Rammatta Pan, Sololo rock catchment and three boreholes with a production capacity of one cubic metre each. Two of the boreholes are fitted with handpumps and the other is equipped with a windpump. My Ministry has taken the following measures to ensure that the residents of Moyale town get sufficient water supply and that a reliable water supply system for Sololo Town is established.

In the last Financial Year, 2002/2003, the Ministry spent Kshs500,000 to partly desilt Holale Dam which is the source of Moyale Urban Water Supply. In the current financial year, the Ministry has earmarked Kshs4 million for the rehabilitation of Moyale Water Supply as follows:-

- (a) Desilting and rehabilitation of Holale Dam - Kshs1 million.
- (b) Construction of Treatment Works - Kshs1.5 million
- (c) Improvement and expansion of distribution lines -Kshs1.5 million.

To establish a reliable water supply system for Sololo Town, the Ministry has allocated Kshs5 million this financial year which will be used to undertake the following works:-

- (a) To expand the Rammatta Pan storage capacity to 30,000 cubic metres at Kshs1.5 million.
- (b) Construct intake works and treatment works at Kshs1.5 million.
- (c) Construct a 90-cubic metre storage tank at Kshs1 million, and;
- (d) Construct distribution system at Kshs1 million.

Mr. Deputy Speaker, Sir, in view of the limited surface water resources in Moyale and Sololo, in the current financial year, the Ministry intends to carry out intensive ground water investigations which will be undertaken with a view to identifying reliable ground aquifers for development of permanent and adequate water supplies for the two towns.

Dr. Galgalo: Mr. Deputy Speaker, Sir, I want to thank the Minister for that comprehensive answer. We appreciate that she continues to distinguish herself as a working Minister.

I would like to make a small request; that the Kshs1.5 million which she has allocated for expansion of the Rammatta Pan, kindly, relocate it to construction of distribution systems because Sololo Town is quite large and Kshs1 million for a distribution system will not have much impact.

Ms. Karua: The Ministry will consider that and I will invite the hon. Member to visit the Ministry offices, then we can see if that can be worked out.

Mr. Sasura: Mr. Deputy Speaker, Sir, the relationship between the Moyale of Ethiopia and the Moyale of Kenya is not the best. The Minister has conceded that some of the water being used in Moyale Town is from Moyale in Ethiopia. Could the Minister tell us the involvement of the Ministry of Water Resources Management and Development officials in Moyale Kenya to monitor the potability of the water that comes from across? It would be a risk in terms of security depending on the relation between the two countries at the particular time?

Ms. Karua: Mr. Deputy Speaker, Sir, we are not in a position to monitor water from a neighbouring country. The best the Ministry can do is to adopt emergency measures to alleviate the shortage in Moyale Town.

CLEAN WATER SUPPLY TO
SAMBURU DISTRICT

Mr. Leshore asked the Minister for Water Resources Management and Development:-

- (a) what plans the Ministry has to provide clean drinking water to the entire Samburu District; and,
- (b) when pumps will be provided for boreholes in Kilthamay, Lerata, Kalama, Ndonyo, Wasin and Seleolipi.

The Minister for Water Resources Management and Development (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to reply.

My Ministry has had plans to supply Samburu with clean drinking water as follows:-

(a) In the Financial Year 200/2001 under the Kenya/Japan Grant-Aid Programme, 14 boreholes were drilled and equipped with handpumps and then handed over to the communities for management in various divisions of Samburu.

(b) In the last Financial Year, 2002/2003, the Ministry completed Lengewan and Namanyarombo Earth Dams at a total of Kshs4.2 million.

(c) In the current financial year, the Ministry has earmarked Kshs10 million for the rehabilitation of rural water supplies and the construction of dams and water pans in order to increase water coverage in Samburu District.

(d) My Ministry recently carried out a technical assessment of the status of all the operational and stalled water projects in Samburu District and established that the financial requirement for rehabilitation and augmentation amounted to Kshs250 million. This assessment will form a basis for forward planning budget.

(e) The Ministry will fund the equipping of Kilthamay, Lerata B, Kalama, Ndonyo, Wasin boreholes with handpumps this financial year. However, Seleolipi will require a submersible pump and construction of a 50 - cubic metre storage tank and distribution network at a total cost of Kshs3.5 million. The works will be funded during the next financial year.

Mr. Leshore: Mr. Deputy Speaker, Sir, I would like to thank the Minister for a very good answer. Indeed, the Minister said that part of the funds could be made available this financial year. I would like her to also consider funding Seleolipi, which requires about Kshs3.5 million, during this financial year instead of extending it to next year.

Ms. Karua: Mr. Deputy Speaker, Sir, we can only do that through the Supplementary Estimates. We will try and see if that is possible.

Mr. Lesrima: Mr. Deputy Speaker, Sir, is the Minister aware that for Lengewan Dam, which is in my constituency, the Kshs2.1 million that was spent could rehabilitate the dam but, unfortunately, the dam collapsed? Soon, thereafter, I realised that the engineer did not have the capacity to do a good job or something fishy happened. Is the Minister aware that in, fact, the resources of this financial year will have to be used to re-do that job, making the cost go up to Ksh4.2 million? What action is the Minister going to take in terms of desilting the dam and making ensure that a bad job is not done next time?

Ms. Karua: Mr. Deputy Speaker, Sir, I am aware that, in the past, some errant officers have used monies meant for desilting of dams to perhaps "desilt" their own stomachs. We are taking measures to ensure that Kenyans get value for their money and ensure that the money voted this year for Samburu, and anywhere else, will go into serving the community. I do promise the hon. Member that I shall visit Samburu District to see the situation myself.

Mr. Deputy Speaker: Could someone move the microphone close to Mr. Leshore?

Mr. Leshore: Mr. Deputy Speaker, Sir, I would like to thank the Minister and welcome her to Samburu. I would like her also to tell us what happened to the Egyptian borehole gifts which we had been promised last year?

Ms. Karua: Mr. Deputy Speaker, Sir, we are still negotiating. I am not in a position to promise firmly at this moment that there will be boreholes, but we are talking.

Mr. Deputy Speaker: Very well. Next Question by Eng. Nyamunga.

Dr. Awiti: Mr. Deputy Speaker, Sir, could I ask Question No.691 on behalf of Eng. Nyamunga?

Mr. Deputy Speaker: Did Eng. Nyamunga give you permission to ask his Question?

Dr. Awiti: I know where he has gone to and he had said that if he does not come in time, I could ask the Question on his behalf.

Mr. Deputy Speaker: Order! You know there is a difference between knowing where an hon. Member is and getting consent to ask the Question. Have you got his consent to ask the Question because we have no information?

Dr. Awiti: I have consent from him, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Go ahead!

Question No.691

DEVELOPMENT OF REGULATION
AGAINST LOUD MUSIC

Dr. Awiti, on behalf of **Eng. Nyamunga**, asked the Minister for Trade and Industry:-

(a) whether he is aware that in Nairobi and most urban centres in the country, loud music from bars and nightclubs is depriving many families of their right to sleep at night; and,

(b) given that sleep is a basic human right, when the Kenya Bureau of Standards will develop a standard enforceable in law, to protect families from the nuisance, as is the practice in many countries worldwide.

The Assistant Minister for Trade and Industry (Mr. Miriti): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that in Nairobi and most urban centres in the country, loud music from bars and nightclubs is depriving many families of their right to sleep at night. However, I am aware of sporadic noise nuisance especially during daytime.

(b) The Kenya Bureau of Standards (KEBS) does not have equipment for measuring sound or noise levels. However, it is in the process of purchasing the equipment and setting up a laboratory for sound and noise measurements. The lab will be ready by June 2004.

The National Environmental Management Authority, which is a body that is charged with the responsibility of checking on matters related to the environment, recently set up a task force on noise pollution. The terms of reference for the task force is to come up with regulations, guidelines and recommended actions on the type of standards that the country needs on noise and sound. The KEBS is represented in the task force. The recommendations of the said task force will be used in formulating Kenyan standards on noise.

Dr. Awiti: Mr. Deputy Speaker, Sir, I do not know where this Assistant Minister stays. The noise level of the music in Nairobi is very common. Such noise is not only found in Nairobi; you will find the same happening in Kisumu and Mombasa. Could I ask the Assistant Minister to accompany me to the places where the noise level of the music is interfering with people who are supposed to be asleep?

Mr. Miriti: Thank you for the invitation to bars and nightclubs, but as I said, I am aware of sporadic noise nuisance. Even the hooting of vehicles is noise. I am not aware that it disturbs the families that live near the nightclubs and bars.

Mr. Muiruri: Mr. Deputy Speaker, Sir, one only needs to go to Milimani, Lenana Road and the surrounding areas around Yaya Centre these days and note that these high class residential areas have now been invaded by bars and nightclubs. These bars and nightclubs close very late, after midnight. It is quite a nuisance to the residents of those areas because their children have got to study. Should the Question be addressed to the Minister for Trade and Industry or the Ministry for Local Government because the information I have is that, these licences are issued by the Nairobi City Council? This Question is probably not addressed to the right Ministry.

Mr. Miriti: Mr. Deputy Speaker, Sir, the licensing authority of bars and nightclubs is the Office of the President where we have district commissioners sitting as the chairmen of the licensing authorities. The Question I was answering is whether the KEBS is looking into the problem of setting standards and indeed, it is looking into that problem.

Dr. Awiti: Mr. Deputy Speaker, Sir, the Assistant Minister said that he welcomes my invitation. I would like us to agree with him here when we can do this because I think it is a very important matter.

Mr. Deputy Speaker: Order, Dr. Awiti! It is not this House that should keep the diary and schedules of Ministers. So, you will agree outside. That is the end of Question Time.

POINTS OF ORDER

STATUS OF KILIFI CASHEWNUTS FACTORY

Mr. Khamisi: Mr. Deputy Speaker, Sir, I stand on a point of order to ask for a Ministerial Statement from the Minister for Co-operative Development and Marketing on the status of the Kilifi Cashewnuts Factory. Last year, the factory was reportedly bought by a Kisumu-based company called Millennium Limited under circumstances that are not familiar up to now and since then the farmers have protested and refused to supply raw cashewnuts to this company effectively rendering it inoperative. On the 13th of September, 2003, the Minister for Co-operative Development and Marketing came to Kilifi and gave the company a 21 days notice to enter into dialogue with the farmers on how they could be integrated into the affairs of this company.

The Minister further warned that the Government would take over this company, should the owners refuse to enter into dialogue. The 21 days deadline has already expired and the Kilifi farmers are angry because no action has been taken by the Government. I would like the Minister to explain to this House how he intends to move forward since Millennium Company Limited has refused to talk to the farmers. I want the Minister to tell the House who the owners are, how they acquired the company and how he intends to involve the farmers in the running of the company.

Mr. Deputy Speaker: Is the Minister for Co-operative Development and Marketing here?

The Assistant Minister for Co-operative Development and Marketing (Mr. Kenneth): I have noted that, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Very well. Next week.

INSECURITY ON THARAKA/ IGEMBE BORDER

Mr. Muriungi: Mr. Deputy Speaker, Sir, I rise to ask for a Ministerial Statement from the Minister of State, Office of the

President in charge of internal security concerning the insecurity on the Tharaka/Igembe border. Yesterday, a gang of about 30 armed warriors crossed over from Tharaka to Marega in Igembe Constituency, killing a man by the name of Ntoruru Mbiuthi. Last week, the same people from Tharaka invaded farms in Mugoti area of Igembe Constituency, shot two men, Paul Murungi and M'Athangi Mwirabua with poisoned arrows and they were hospitalised in Mau Methodist Hospital. A month ago, there was a similar invasion on people in their farms as they were preparing to plant.

Even before I came to this Chamber, I was called by people in the same area of Igembe South who were running away from their farms because the invasion is still on. I would like to know what the Minister is doing to contain this problem that has reared its ugly head after a lull of several years.

Mr. Deputy Speaker: Mr. Tarus, have you heard?

The Assistant Minister, Office of the President (Mr. Tarus): I have heard, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Very well. Next week.

IMPLEMENTATION OF CIVIL SERVICE REFORM PROGRAMME

Mr. J.M. Mutiso: Mr. Deputy Speaker, Sir, I rise to demand a Ministerial Statement from the Minister for Finance, concerning the Civil Service Reform Programme where 26,000 public servants were retrenched and paid Kshs40,000 which is equivalent to about US\$500,333(?) out of the promised Kshs240,000 that each retrenchee was to receive. In June, 2003, the Minister for Finance promised to pay the remaining balance. I demand that the Minister should issue a Statement on the status of the payments to these retrenchees.

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I will issue the Statement on Tuesday afternoon.

Mr. Deputy Speaker: I have two Ministerial Statements; one on seat belts by Mr. Ligale and another on Judges by the Minister for Justice and Constitutional Affairs. I will start with Mr. Murungi.

MINISTERIAL STATEMENTS

ACTION TO AVERT CONSTITUTIONAL CRISIS AT THE JUDICIARY

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Thank you, Mr. Deputy Speaker, Sir. On 15th October, 2003, Mr. Ndambuki asked me to make a Ministerial Statement on the current developments in the Judiciary. On 19th March, 2003, the hon. Chief Justice appointed the Integrity and Anti-Corruption Committee of the Judiciary under the chairmanship of hon. Mr. Justice Aaron Ringera. The Committee's terms of reference were:-

- (i) To investigate and report on the magnitude and corruption in the Judiciary.
- (ii) To identify the nature, forms and causes of corruption in the Judiciary.
- (iii) To find out the level of bribery in monetary terms.
- (iv) to report the impact of corruption on the performance of the Judiciary.
- (v) To identify corrupt members of the Judiciary and recommend disciplinary or other measures to be taken against them.
- (vi) To recommend strategies for detection and prevention of corruption in the Judiciary, and address any other related matter.

Mr. Deputy Speaker, Sir, the Committee submitted its Report to the hon. Chief Justice on 30th September, 2003. The Report was comprehensive and thorough. Among its many findings, it

identified certain judicial officers, including judges, magistrates and para-legal staff as having been adversely linked to misconduct and corrupt practices. Thereafter, the hon. Chief Justice advised those judges, who were affected, to resign or to prepare to face a tribunal as provided for in the Constitution. As for the magistrates and para-legal staff, their cases were to be dealt with administratively by the Judicial Service Commission.

Mr. Deputy Speaker, Sir, on 15th October, 2003, on the advice of the hon. Chief Justice, His Excellency the President appointed two tribunals to investigate the said allegations of corruption and misconduct against six judges of the Court of Appeal and 17 judges of the High Court under Section 62(8) of the Constitution. The composition of the two tribunals is as follows:- For the Court of Appeal: Justice Akilano Akiwumi, Justice (Rtd) Abdul Majid Cockar, Justice Benjamin Kubo, Mr. Nzamba Kitonga and William Deverell. For the High Court, the Tribunal is chaired by Mr. Lee Muthoga. The members are Justice John Mwera, Justice Leonard Njagi, Mr. Daniel Musinga and Mr. Isaac Lenaola. Upon appointment of these two tribunals, the affected judges were immediately suspended from performance of their duties as provided for under Section 62(6) of the Constitution.

As would be expected, Mr. Deputy Speaker, Sir, there has been some disruption of judicial operations, especially in upcountry stations where there was only one judge. However, the problem is temporary as arrangements are under way to fill the vacant positions in all levels of the Judiciary left by the suspended officers. The Judicial Service Commission has put in motion plans to recruit additional magistrates who are expected to replace those who might be dismissed after investigation into their conduct has been finalised. Interviews for the new magistrates, at the level of the senior resident magistrate, are due to be carried out in the next two weeks.

I would like to emphasize that the Government is totally committed to re-establishing a truly, clean, accountable, efficient and independent Judiciary in this country. This is in keeping with the Government's stated goal of zero tolerance to corruption. We commend the hon. Chief Justice for carrying out this onerous exercise strictly in accordance with the Constitution, the law and the due process. This exercise will continue until all forms of corruption and misconduct are completely rooted out of our judicial system. The Judiciary is at the apex of our governance institutions and the starting of our reform process there demonstrates the commitment of this Government to its overall anti-corruption strategy as explained by His Excellency the President.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, I thank the Minister for issuing that Ministerial Statement. We also support the zero tolerance to corruption. Could he explain to us why the judges and magistrates were suspended through the media? Why were they not given their suspension letters informing them why they were mentioned in the Report?

The Minister for Justice and Constitutional Affairs (Mr. Muriungi): Mr. Deputy Speaker, Sir, what the hon. Member has said is not factually correct. Each of the judges and each of the magistrates has received a letter. For the magistrates, the letter requires them to show cause why they should not be dismissed following these allegations which constitute gross misconduct. As for the judges, they have received letters requiring them either to resign or to choose to appear before the tribunal. The detailed evidence regarding the allegations of corruption made against them will be revealed when they appear before the tribunal. As of now, they can only have a statement of the general case against them which implicates them in misconduct or acts of corruption. The evidence is to be provided at the tribunal. So, it is not correct to say that they got the information through the Press. Each has got a personal letter.

Thank you.

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. We are fully conversant with the rule that Ministerial Statements are not to be treated like parliamentary Questions. But given the seriousness of this matter and the national interest, I think it is perfectly within your discretion to give us a little greater latitude in seeking clarification.

(Applause)

Mr. ole Ntimama: Thank you, Mr. Deputy Speaker, Sir. First of all, the hon. Minister should be assured that most of us support the fight against graft in this country. Secondly, we all know that no judge would go to a client and solicit for money or any other favours directly. The soliciting, inducement and brokerage has been done by lawyers. Would he then move on and purge the Bar?

(Applause)

The Minister for Justice and Constitutional Affairs (Mr. Muriungi): Mr. Deputy Speaker, Sir, the hon. Member should be aware that the Law Society of Kenya (LSK) has formed an Anti-Corruption Committee. That committee is investigating acts of corruption and misconduct among the advocates. We also have the Advocates Complaints Commission, which has received over 1,600 complaints by Kenyans against advocates. As soon as we get the report from the LSK, and any other report that may come in future, we are going to take very stringent measures. I promise radical surgery of the Bar itself.

Mr. Nyachae: Mr. Deputy Speaker, Sir, we support the actions being taken to deal with corruption. Could the Minister clarify and inform this House what became of a similar report by Justice Kwach? He had also investigated and listed certain people. The talk right now is that the report by Justice Kwach may have mentioned certain people who are not mentioned in the Ringera Report. Could we have both reports, so that we can see who has been left out and who has been mentioned, so that all of them could be dealt with?

(Applause)

The Minister for Justice and Constitutional Affairs (Mr. Muriungi): Mr. Deputy Speaker, Sir, the point raised by the hon. Member is valid. We have continued to receive complaints that some judges, who are not in the Ringera Report, and who members of the public seem to know are corrupt, are still sitting on the Bench.

(Applause)

But the Ringera Committee had to go strictly by the evidence that the members of public forwarded to them. The war against corruption has just started and it is going on. The Kwach Report was considered by the Ringera Committee. The Ringera Committee looked at the Kwach Report. What I am saying is that if there is any judge who has participated in corrupt practices, and is not included in that list, as soon as we get evidence of corruption, action is going to be taken even against him or her, even if he or she is not on the list.

(Applause)

Mr. Deputy Speaker: I will exercise my discretion as requested by Dr. Godana, and ask Mr. M. Kilonzo to seek clarification. That would be final.

Mr. M. Kilonzo: Thank you very much, Mr. Deputy Speaker, Sir. I rise to seek clarification from the Minister. I must go on record by stating that we accept and applaud the Government's efforts to eradicate corruption. However, could the Minister clarify how the Director of Public Prosecutions has been appointed lead counsel in the tribunal that is investigating judges in the High Court?

Secondly, could he tell the House which upcountry stations do not have judges now? Thirdly, could he tell this honourable House how and under what section of the law, particularly under the Constitution, the Chief Justice purported to appoint a disciplinary committee against judges? Fourthly, could he tell this House how the Chief Justice would be able to fill vacant positions of judges prior to the completion of the work of the tribunals? The Constitution is very clear that they continue holding office until a recommendation is made to the President for their removal.

Finally, I seek clarification from the Minister on the question of the tribunals themselves. The Constitution is clear, under Section 62, that only one tribunal requires to be appointed per judge. How is it that all judges have been ganged up together in two tribunals?

The Minister for Justice and Constitutional Affairs (Mr. Muriungi): Mr. Deputy Speaker, Sir, the hon. Member has asked for so many clarifications that the Minister is at a loss. Maybe, I could start from what I can remember from the bottom.

With regard to complaints that only two tribunals have been appointed for all judges, instead of one tribunal for each judge, I would like to challenge my learned friend, who is also a senior counsel, to read for me our copy of the Constitution here, which section of the Constitution says that there will be one tribunal for each judge.

(Applause)

The two tribunals are going to sit on different days and hear the complaints against each of the judges separately. So, they are not going to mix the hearing of complaints against one judge with another. Although there are two tribunals, they are going to hear each of the cases separately. So, there is no need of setting up a multiplicity of tribunals for which we might not have any competent personnel at this stage.

Mr. Deputy Speaker, Sir, I do not have the information on my fingertips on which upcountry station does not have a judge. But I know, for instance, that there is no judge at Meru, Kisii--

Dr. Godana: And also in Moyale!

The Minister for Justice and Constitutional Affairs (Mr. Muriungi): No! No! There is no station in Moyale in the first place. I think that information is available and I do not need to give it right now.

Mr. Deputy Speaker, Sir, it is true that the Director of Public Prosecutions (DPP) has been appointed an assisting counsel to the tribunal on the judges of the High Court. The DPP is a qualified lawyer of long standing and experience and there is no law, either written or practised, which could bar him from being appointed as an assisting counsel to that tribunal. Again, if my learned senior counsel has any such law, I would like him to draw its attention to me, and we shall act accordingly.

Mr. Deputy Speaker: That matter is finished!

Mr. M. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. The Minister did not answer one of my questions!

Mr. Deputy Speaker: Which one, Mr. M. Kilonzo?

Mr. M. Kilonzo: I did specifically ask the section of the Constitution under which the Chief Justice purported to appoint a disciplinary committee against the judges.

Mr. Deputy Speaker: Mr. Minister, could you address that?

The Minister for Justice and Constitutional Affairs (Mr. Muriungi): Mr. Deputy Speaker, Sir, I am not aware of the disciplinary committee the learned counsel is talking about. I am only aware that he appointed tribunals. He also appointed the investigating committee led by Justice Ringera. The Chief Justice, as the head of the Judiciary, is free to appoint any administrative committee. It is implied

in the powers of the Chief Justice. It is inherent in his appointment as the Chief Justice, for the proper and efficient administration of justice and the rule of law in this country, for that committee to be appointed. Why did the learned counsel not complain when the Kwach Committee was appointed? Why is he complaining now?

(Applause)

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

Mr. Deputy Speaker: Order now, hon. Members! Look at the clock. It is now 4.00 p.m. and we are running short of time.

Proceed, Mr. Ligale!

OWNERSHIP OF SEATBELTS
CONSIGNMENT AT MOMBASA PORT

The Assistant Minister for Transport and Communications (Mr. Ligale): Mr. Deputy Speaker, Sir, on Wednesday last week the hon. Member for Molo, Mr. Mukiri, requested a Ministerial Statement on two containers of seatbelts purported to be at the Port of Mombasa.

*(Mr. Cheboi consulted with
Mr. M. Kariuki)*

Mr. Deputy Speaker: Order! Who is that hon. Member over there?

Hon. Members: He is none other than Mr. Cheboi!

Mr. Deputy Speaker: Mr. Cheboi, you cannot move from the Opposition side to the Government side, stand there and consult with Mr. M. Kariuki! You are out of order!

Proceed, Mr. Ligale!

The Assistant Minister for Transport and Communications (Mr. Ligale): Mr. Deputy Speaker, Sir, I have said that, on Wednesday last week, the hon. Member for Molo, Mr. Mukiri, requested a Ministerial Statement on two containers of seatbelts purported to be at the Port of Mombasa. The hon. Member specifically wanted to know who the importers of the two containers of seatbelts were. He also wanted to know how come the importers appeared to have had prior knowledge of the Minister's intention to order all public service vehicles to be fitted with seatbelts, so that they could order them and the ship carrying them could dock at the Port of Mombasa less than two weeks after the Minister's directive.

Mr. Deputy Speaker, Sir, I would like to state the following. As a result of the sharp increase in the number of Kenyans losing their lives through road accidents in the country, the Minister for Transport and Communications, in exercise of the powers conferred on him by Section 119 of the Traffic Act, Cap. 403 of the Laws of Kenya, has introduced the Traffic (Amendment) Rules, 2003, which require all vehicles used on Kenyan roads to be fitted with seatbelts, and all public service vehicles and commercial vehicles to be fitted with speed governors. When these measures were introduced, some sections of the *matatu* industry started spreading malicious rumours that some unnamed businessmen, working in conjunction with the Ministry officials, had imported two containers of seatbelts and speed governors. They also alleged that the two containers were at the Port of Mombasa.

Mr. Deputy Speaker, Sir, our Ministry immediately requested the

Managing Director, Kenya Ports Authority (KPA) to investigate this allegation and, by this morning, no container with these gadgets had been located at the Port of Mombasa. There has been no evidence to show any official from the Ministry of Transport and Communications as being involved in the importation of the purported seatbelts or speed governors. The Ministry has not commissioned anybody to import or sell these items. I would, however, like to reiterate that the Kenyan economy is liberalised and anybody is free to carry out any type of business. The consumers of these items are also free to buy them from dealers of their choice. Introduction of seatbelts and speed governors was first gazetted in this country in 1987. I am informed that before the Legal Notice suspending the initial rules, which required passenger service vehicles (PSVs) to be fitted with seatbelts, a number of dealers had, in fact, imported some of these items.

Thank you, Mr. Deputy Speaker Sir.

Mr. Mukiri: Thank you, Mr. Deputy Speaker, Sir. I am very happy to hear from the Assistant Minister that all these were just rumours. However, I would like to seek two clarifications from the Assistant Minister. Since he has said that these were mere rumours---

Mr. Deputy Speaker: Mr. Mukiri, could you speak up because you are too short to reach the microphone?

Mr. Mukiri: Mr. Deputy Speaker, Sir, since the Assistant Minister has confirmed that these were mere rumours which were published at the back of the an edition of the *East African Standard* newspaper and broadcast by all the mainstream media stations, I would like to know from him whether he knows the people who were behind these rumours. I am saying this because the mainstream media houses are owned by the Opposition.

Secondly, I would like to seek a clarification on the Traffic (Amendment) Rules, 2003, which will be enforced next year. There are some *matatu* pick-ups, which---

Mr. Deputy Speaker: Mr. Mukiri, you are taking too long in seeking your clarification!

Mr. Mukiri: Mr. Deputy Speaker, Sir, the clarification I am seeking from the Assistant Minister is on the application of these rules, especially the ones which relate to pick-up *matatus* commonly known as "boxes", which are many in the rural areas. I would like to know from the Assistant Minister how they will be fitted with seatbelts. This matter might be embarrassing to the Government later.

The Assistant Minister for Transport and Communications (Mr. Ligale): Thank you, Mr. Deputy Speaker, Sir. I cannot confirm the source of that rumour. When a rumour starts Kenyans who seem to be very good at spreading it, they spread it very fast. Indeed, yesterday my Minister held a Press conference after discussing this matter with the Matatu Welfare Association, and gave the owners of PSVs more time to fit their vehicles with seatbelts. The Minister talked about the two purported containers of seatbelts at the Port of Mombasa, and everybody agreed that this was a rumour. With regard to whether these gadgets will be fitted in *matatus* all over the country--- Since *matatus*, along with buses and lorries, cause all the major accidents, they have to be fitted with these gadgets. That is why *matatu* owners have been given more time to access the seatbelts and fit them in their vehicles. Even *matatu* pick-ups will be fitted with seatbelts.

Dr. Galgalo: Mr. Deputy Speaker, Sir, the Assistant Minister has not given the clarification which was sought by the hon. Member. The hon. Member had said that there are pick-up *matatus* in which passengers sit in two rows facing each other. How will these *matatus* be fitted with seatbelts?

Secondly, there are no buses in most parts of northern Kenya and people in that area travel in lorries. How will these lorries be fitted with seatbelts?

The Assistant Minister for Transport and Communications (Mr. Ligale): Mr. Deputy Speaker, Sir, a lorry is not PSV. Those pick-up *matatus*, which have two benches on which passengers sit, are not PSVs, and as such these rules do not apply to them. In fact, the owners of these vehicles break the law when they carry passengers because these vehicles are not meant to carry

passengers.

Mr. J.M. Mutiso: Mr. Deputy Speaker, Sir, the introduction of safety belts and speed governors is likely to introduce a monopoly in the supply of these gadgets. What measures has the Assistant Minister put in place to ensure that people in the transport industry are not exploited through practices which are contrary to the provisions of the Monopolies and Restrictive Practices Act?

The Assistant Minister for Transport and Communications (Mr. Ligale): Mr. Deputy Speaker, Sir, we are not aware that these gadgets have been ordered by a few individuals. We would like to encourage anybody who has money to import the gadgets so that everybody will be able to acquire them cheaply.

Mr. Deputy Speaker: That brings us to the end of that matter. Next Order!

BILLS

Second Reading

THE PRESIDENTIAL RETIREMENT BENEFITS BILL

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I beg to move that the Presidential Retirement Benefits Bill (Bill No.11) be now read a Second Time.

This is an important Bill which derives its force from the Constitution of Kenya. Section 13(2) of the present Constitution has a provision that says:-

"Where the President ceases to hold office, he shall be entitled to receive a pension, gratuity and other allowances, together with such other benefits and facilities, including adequate security, office, staff and travel allowances, as may be prescribed by or under an Act of Parliament".

The Bill before the House proposes retirement benefits for the presently retired President and any future retired President. The benefits which are contained in this Bill were recommended by the Cockar Tribunal, which was appointed by the Parliamentary Service Commission last year. It made recommendations on the terms and conditions of service of Members of Parliament, Ministers and Assistant Ministers, the Vice-President and the President. It also recommend retirement benefits for the President.

The Bill specifies the people who will be entitled to retirement benefits. These include a retired President, the reigning President upon his resignation or death in office, and his or her spouse. It also provides for children under the age of 21 years. As part of natural justice, the Bill gives conditions on which these benefits could be denied a President by a two-thirds majority of this House. The conditions include, for instance, removal of the President from office for violating the Constitution. Another condition is that if a President or former President is convicted of an offence and sentenced to imprisonment for a term of three years or more without the option of a fine, he will forfeit his retirement benefits. There is a provision that a retired President should not actively participate in politics, or actively engaged in the activities of any political party. This is contained in Clause 6(1) of this Bill, which reads:-

"A retired President shall neither hold office in nor actively engage in the activities of any political party".

Mr. Deputy Speaker, Sir, the Bill then goes on to provide the benefits that a retired President will enjoy, and specifies the benefits of a surviving spouse upon the death of a President. It is important to say here that the Bill provides other benefits such as a car, housing allowance and staff for a retired President.

Before I conclude, I want to say that this is an important Bill which ensures that a retired President lives like a former leading citizen. We would not want our retired Presidents to live like paupers. We want them to continue enjoying the fruits of hard work as former Presidents of this nation. Let me also add that the benefits of a retired President will be drawn directly from the Consolidated Fund. We will not have to vote money for them every year. It will automatically come from the Consolidated Fund, although it will be administered by the Accounting Officer for State House.

With those rather many remarks, I beg to move.

The Minister for Justice and Constitutional Affairs (Mr. Muriungi): Mr. Deputy Speaker, Sir, I beg to second this very important Bill.

The NARC Government is committed to consolidation of democratic practices in this country, and to promoting peace and stability. We would like to introduce a new political culture in this country, in which elder statesmen are respected. You will recall the old days when it was not enough for a person to be only a President. A person had to be a President for life. We had such Presidents as Mr. Kamuzu Banda and Emperor Jean Bokasa of the Central African Republic. There are many others I can talk about, like former President Mobutu Seseseko. The reason why this President wanted to be a President for life is because he thought there was no life after the presidency. He thought that after the presidency, he would find his way quickly to the grave. That is why there were so many coups in Africa, because the only way to succeed a President for life was to terminate his life. I think many people do not realise that we are making an important milestone in introducing this Bill. It is sending a clear signal that one does not have to be a President for life in Kenya and that there is dignified life after retirement of a President.

Mr. Deputy Speaker, Sir, in January this year, I got into a lot of trouble from my friends in KANU when I said that we were not going to pay any retirement benefits to former President Moi unless he resigned from the chairmanship of the party. For us, the chairmanship of a party was an indication that he was still active in politics. Therefore, he had not retired and hence not entitled to retirement benefits. I want now to announce from the Floor of this House that I fully support payment of retirement benefits to former President Moi. I want to congratulate him for his foresight in resigning from being the chairman of the Opposition party so that he can be an elder and a statesman for us all. We are redefining the role of the elder and statesmen. I believe a time will come when somebody like the former President Moi who has extensive network and who knows many people in high places all over the world would be used like the former President Jimmy Carter, who is being used as an ambassador for his country in certain situations.

I would like to see a retired President, for instance, being involved in peace negotiations, like what we are doing in Sudan, Somalia and also abroad. I was also very happy to see the former President Moi, on Moi Day, visiting children's homes and distributing clothes, foods and doing other acts of charity for the children. I think that is a very good example of a role that a retired President can do. We all saw the former President Jerry Rawlings of Ghana who came to this country as a UNICEF ambassador against HIV/AIDS pandemic. A retired President should pick up a cause. I think the former President of the USA, Mr. Bill Clinton, is doing the same. We should follow these examples here in Kenya. Let us not harass and hunt down former Presidents.

When in a high office, one has to make certain decisions. I do not think there is any President in the world who would not make a mistake here and there. They are human beings like everybody else. I think people should be given that latitude to govern. The human errors which we can forgive should be forgiven. We should respect these people as examples. Sometimes, history turns out that things which were correctly done become incorrect. For instance, if you were a capitalist and then communists take over, however, innocent you were, the acts which you committed at that time would be judged by history to be crimes. So, I am appealing for tolerance and for Kenyans to be

understanding, and to treat an elder statesmen with respect so that we can stabilise this country and promote development for our people. I think that the past cannot be reinvented. We can only learn from its mistakes.

Mr. Deputy Speaker, Sir, when I say that I am happy and would like the former President Moi to live for a long time so that he can watch what we are doing, I do not say it in bad taste. I sincerely mean it. He should live and see that things can be done differently. I hope one of these days he will come out to share his own experiences with Kenyans. When we were at the constitutional conference at the *Bomas* of Kenya, one of the Chairmen of the Committees said that we should invite the former President Moi to come and tell us how that seat was; how easy or difficult it was for him to rule as an Executive President, so that we could learn from his experience; the mistakes and successes that he made, as we are designing this new system. Of course, some people thought it was in bad taste, but I thought it was good. He should share his experience with the rest of the Kenyans.

Mr. Deputy Speaker, Sir, there is not very much to say about this Bill. The Bill is not targeting any particular person. I believe that Mama Ngina Kenyatta will benefit from this Bill as a wife of a former President. I also believe the former President Moi and members of his family will also be beneficiaries of the Bill. I believe that when time comes for His Excellency President Kibaki to retire, he will also be a beneficiary, and any other President who comes after him.

I remember, in 1998, a delegation of hon. Members of Parliament went to visit Botswana. We had one great day when we went to visit the former President of Botswana, Mr. Quett Masire. He opened for us his gate. He was in a pick-up car. It was only him and his driver. He took us around his farm. He told us that the people of Botswana import a lot of food from South Africa. However, he was trying to show them that they could farm, make money and a living out of it. So, he was trying to grow maize, and he also kept some ostriches. After that, he took us to his home for a cup of tea. He was a very simple person living a very relaxed life. I remember the then hon. Member of Parliament for Matuga, Mr. Suleiman Kamolleh, asked him: "Mr. Ex-President, why did you decide to leave all that glory to come here and grow cabbages and maize?" He told us that people do not seem to understand human nature, and that, in everything you do, a time comes when you cannot do it again; at least, in the way that you used to do it in the past. He further told us that even in boxing, there was Mr. Muhammad Ali who was the world boxing champion. A time came when Mr. Muhammad Ali had to get out of the boxing ring. Then there was Mr. Pele from Brazil, the greatest football champion in the world. He went on to say that even those people who knew that their time had come can gracefully step down and do other things. However, there are other people who still continue trying to be in the ring long after their time has expired. Those are the people who die in the ring. I think this Bill recognises that very basic human fact. We are Members of Parliament today. We are making a lot of noise here, but 20 years---

Mr. Deputy Speaker: Order, Mr. Murungi! Hon. Members do not make noises!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): I am sorry, Mr. Deputy Speaker, Sir. We are making very useful contribution in this House.

(Laughter)

However, ten years from now, I do not know where I, Mr. Murungi, or the Speaker will be. We might be looking after goats and chicken in our respective rural homes, and other people will be booming in this House. So, we should be conscious of this fact. That is why I think it is very important that, for those people who have sacrificed quite a bit of their lives to serve the public - because we now declare our wealth; people are not going to steal any more - we have to provide retirement packages. Otherwise, they are going to lead very miserable lives even after being President of this country.

So, I think this is a very important Bill. It is good for our country and our democracy. I,

therefore, urge all Members of Parliament to support it.

Thank you, Mr. Deputy Speaker, Sir.

(Question proposed)

Mr. Deputy Speaker: Mr. M. Kilonzo, I understand that you are the Official Opposition respondent. So, could you proceed?

Mr. M. Kilonzo: Mr. Deputy Speaker, Sir, that is so. I would like to take this opportunity to, first of all, thank the Minister for Finance and the Minister for Justice and Constitutional Affairs, and the Government generally, for bringing this Bill.

Like them, I share the concern of the problems that this continent suffered over the last five decades. I tend to share the view that the only way of removing "life Presidents" in the past was to take their lives. Thank God, this country has been God-fearing. With the enactment of this law, it will no longer be necessary to contemplate taking the life of a President because he is a "life President". First of all, holders of the presidency in this country will be serving a maximum period of two terms. It is, therefore, with enormous sense of gratitude to acknowledge the enormous democratisation that this country is bringing to bear. In my view, a law like this one is going to help greatly in such democratisation.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I would also like to join the Mover and the Seconder of this Bill in saying that a time has come that in this country we recognise the Office of the President as an office belonging to all of us regardless of the political party one belongs to. Time has come to send a signal to all politicians in this House and outside that when you seek to become this country's President, you must handle yourself with the dignity that belongs to that office, because when you complete your term of office, the country, through the taxpayer, is going to honour the same dignity by supporting you in a style befitting that position. Similarly, I think it is time that Kenya comes to the forefront in sending a signal across the rest of the continent - excluding countries such as Tanzania and South Africa - that there is really no need to harass a former President.

I would also like to take this opportunity to thank His Excellency President Mwai Kibaki for the enormous realisation early this week in entertaining the former President at State House, and for them to be seen in the front pages of the newspapers, shaking hands and thereafter to be reported to have held no less than a one-hour discussion. It is my firm view that after those of us who wish to seek the presidency realise, as my learned colleague has said, that there is "life" after the presidency, they will treat the country with the respect that it deserves.

(Applause)

Mr. Temporary Deputy Speaker, Sir, having made those remarks, please, allow me to point out a few and very serious flaws in the manner in which this Bill has been drafted. I will, on behalf of the Official Opposition, be bringing serious amendments to some of the clauses of this Bill at the Committee Stage. But for the time being, I will point out the serious flaws contained in this Bill. The first one is the date of commencement. The Minister for Justice and Constitutional Affairs has already mentioned the name of Her Excellency Mama Ngina Kenyatta. This lady has been a widow in this country since August, 1978. I see no reason whatsoever, why this country has lived with a widow who

has carried herself with so much dignity over all these years without recognising the role that she has played, and continues to play. Therefore, the commencement date of this Bill ought to be considered by this august House. I believe that the 1st of January is not a magic date. It is a date which we can consider and make sure that we send a message to the widow of our late President, that her role in this country is recognised. So, I think we need to amend the commencement date of this Bill.

Secondly, I suggest that this country, and particularly this House, should be magnanimous enough to notice that the presidency is not the only constitutional office that we have in this country. We have the Offices of the Attorney-General, the Controller and Auditor-General, and that of the Speaker of the National Assembly. As far as I am concerned, these are constitutional offices and, therefore, we need to make provisions for the retirement of their holders, so that they know that there is life after, for instance, being the Controller and Auditor-General of this country for so many decades, so that they can, perhaps, willingly, accept to retire.

Mr. Temporary Deputy Speaker, Sir, as you are aware, Section 109(4) of our current Constitution made provision since Independence that this House will make a law for the retirement of an Attorney-General. As I speak to you, that law has never been made. Secondly, Section 110(3) makes provision that Parliament will pass a law for the retirement age of a Controller and Auditor-General. Again, as I speak, that law has not been passed. So, I think it will be fair that we include these offices, including that of the Speaker of the National Assembly, in this particular Bill. I dare say, and I stand to be corrected, that the Cockar Report that dwelt on the remuneration of Members of Parliament, had actually recommended that we also take account of these very important able members of our society. Why? Because a President, however able, cannot run this country on his/her own. He/she requires constitutional officers. We should, therefore, consider them.

Thirdly, the definition of "spouse" in this Bill, again, illustrates a point which I raised while contributing to the Bill on gender. I said that Mohamedan and African Customary Marriages recognise polygamy, and that it is unfair to continue, for more than a century since we were colonised, treating our people's traditions and customs as though they are alien. Therefore, the Bill ought to be amended to take into account the fact that a ruling President, or a retired President, or a deceased President, could have, or could have had, more than one wife. Indeed, the Succession Act contemplates this kind of a situation and makes provision for the possibility of a man who was in a polygamous marriage to be accounted for. Therefore, I will be suggesting, at the Committee Stage, and we will be making serious proposals, that we must accommodate "spouses" instead of one spouse, because of our traditions and customs. We have no reason whatsoever, at this time in our lives, to be ashamed of our customs or our religions, especially the Islamic religion and its practices.

(Applause)

Mr. Temporary Deputy Speaker, Sir, the other point I wish to make is a very serious one, and I have mentioned it to the Minister for Justice and Constitutional Affairs. Paragraph 4 of this Bill suggests that after a President has retired - in fact, if you read it, it looks as if this can be done even after he has died - Parliament can move and pass a Motion, supported by not less than two-thirds of its membership, that the President should cease getting his retirement benefits. I dare say that nothing can be more ridiculous than that because, if he or she has died, then he or she will not be there. But even if he or she is alive and is living somewhere in Kenya, he or she is a stranger to the House. He or she will not have the opportunity to contribute to debate or defend him or herself. By the time Parliament will be discussing the Bill as to whether he or she is guilty of gross misconduct; or that he or she should cease to hold office on account of having acted in wilful violation of the Constitution, that man or woman - because I envisage a woman being a President in this country - will not have the right of audience in this Chamber. He or she will be a stranger, and under the Standing Orders of this House,

he or she will not be able to defend themselves.

I suggest that if we are going to democratise, as we are trying to do through this Bill, we must find a way of removing Clause 4 of the Bill, or amend it substantially to recognise the fact that it is ridiculous to say that, once the man or woman is at home, you can pass this Bill. It would be fair to remember that, under the existing Constitution, Section 14 protects a sitting President from criminal or civil cases. Therefore, to introduce the idea after he or she has gone home on retirement is outrageous.

May I also remind this honourable House, with utmost respect, that, if it was up to President George Bush of the United States of America (USA), he would probably introduce a similar Bill in the Congress to bar former President Clinton from receiving his benefits. You remember the fight they had over Monica Lewinsky and others. If Mr. Bill Clinton was a Kenyan President and this Bill was law, one would easily find his shenanigans with Monica Lewinsky gross misconduct. But we do notice that the most developed democratic country in the world has not thought of anything of the sort and, therefore, I urge this House to be magnanimous and recognise and confer dignity on a former President.

The Minister for Planning and National Development (Prof. Anyang'-Nyong'o): On a point of order, Mr. Temporary Deputy Speaker, Sir. I regret to interrupt my dear friend, but is it in order for Mr. M. Kilonzo to put into disrepute the very beautiful love affair between Clinton and Lewinsky as a shenanigan?

Mr. M. Kilonzo: I am glad that my learned Professor does not think his deity is a shenanigan, but I would rather leave that judgement to him. The point I am making is very serious! I am saying that the time to judge that a President has acted in wilful violation of the Constitution, or is guilty of gross misconduct is when he or she is in the office. After he or she goes home, please, allow the normal standard law to apply to that man or woman, rather than introducing this Bill.

I dare say, and I challenge the Minister for Justice and Constitutional Affairs, to realise that by bringing in Clause 4 as drafted, he is introducing the desire by sitting Presidents to refuse, or manipulate the Constitution and the political process, so that they can remain in office. They will be scared that the moment they leave office, the Professor will move a Motion that he or she was guilty of some gross misconduct, or violated the Constitution. We want those people to serve the country for five years, or a maximum of ten years, then go home and live in peace. I urge the Minister to consider that very strongly.

Secondly, on part (b), that is conviction for an offence, as far as I am concerned, the former President can be convicted for failing to pay his workers or other mundane conviction. It is my view that this provision is dangerous for our country because it will make men and women Presidents refuse to go home because they will be scared of being prosecuted and losing their benefits. We ought to allow them to go home and rest without worrying about what offence will stop them from getting their benefits. Let us leave that to the decision of a magistrate or a judge who assesses a criminal case.

Similarly, on holding office--- I will discuss that in a few moments. If you look at Clause 4(b)(ii), you will notice that, as worded, it will deny former President Moi his benefits. By operation of the law, he held office as KANU chairman until yesterday, when his retirement was accepted by the party. Therefore, this clause must be removed! We should just say that the benefits will apply from January and he is entitled to go home and enjoy himself. I would like to remind this honourable House that the former President Nixon of the USA, notwithstanding the fact that he left his presidency in disgrace, continues to enjoy his retirement benefits. Let us not start undoing what we want to do to complete democratisation. Let us allow the man or woman to live in shame if he or she has conducted himself badly. That shame alone will be enough punishment, instead of saying that he or she will lose benefits because he or she is guilty of gross misconduct. If Nixon could continue enjoying his benefits, I do not see any reason why a country like Kenya should make a law of the nature that is being proposed. At the Committee Stage, we will propose that those clauses should be amended to take into

account those factors.

The other thing is the commencement date of the benefits under Clause 4. I have mentioned the issue of Her Excellency Mama Ngina Kenyatta. That also goes for other widows, because African and Muslim Presidents are likely to leave behind more than one widow. On the issue of cash allowances, I urge this House to adjust them according to levels of inflation. I have a feeling that, if in 1978, we had a law like this, making provisions for the sort of allowances a President should be given, we probably would have put a figure of Kshs30,000. It would have now required Her Excellency Mama Ngina Kenyatta to come to this Chamber to ask Parliament: "Why is it that you are giving me only a retirement benefit of Kshs30,000? It is no longer enough to support me in my lifestyle!" Therefore, under Clause 7, I would be asking the Minister for Finance to consider adjusting the allowances, depending on the levels of inflation in the previous year, or the cost of living index as assessed by the Kenya Bureau of Statistics. That will prevent former Presidents worrying about coming to this Chamber for discussion.

Mr. Temporary Deputy Speaker, Sir, it is my firm view that a suitable dwelling should be sufficiently defined, to remove this anxiety from would-be Presidents that when they retire, they would be given a suitable dwelling. A few months ago, I would have expected the Minister for Justice and Constitutional Affairs- if he was told to give a retired President a suitable dwelling- would say: "Go to Kawangware!" I salute the attitudes that I see now of respect and mutual acceptance of that particular role. A suitable dwelling under Clause 5(d) should be defined with some element of certainty, so that we know that any political party that comes to power with bitterness, will not transfer that bitterness to the outgoing President by subjecting him or her to a dwelling house that may not meet his or her standards.

On the other hand, there is mention of a Mercedes Benz. I do not understand the preoccupation of Kenyans with a motor vehicle called "Mercedes Benz". There is no guarantee that in 30 years' time, it will be the motor vehicle of choice. In the Bill, the Minister has used the words "Mercedes Benz". I think we should merely say: "A motor vehicle of their choice". In fact, many people, with no disrespect to Mercedes Benz, are opting for BMWs and other brands. So, we should delete the words "Mercedes Benz". I know the NARC Ministers are crazy about Mercedes Benzes. They have that preoccupation. I think we should merely say: "A car of reasonable standards". Similarly, we should also specify the age of the car. I have a lot of time for the Minister for Finance, but a few months ago, if my good friend, the Minister for Justice and Constitutional Affairs, had been told to buy a four-wheel drive motor vehicle for former President Moi, he would have probably gone and bought a three year old Suzuki. What I am saying is this, but with a light touch--

The Minister for Justice and Constitutional Affairs (Mr. Muriungi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to impute improper motives on the Minister for Justice and Constitutional Affairs, when he knows that he means well for everybody and that he will, in fact, buy a brand new motor vehicle for the former President?

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I am guided by the Minister's statement that the former President should go home and look after his goats under a tree while listening to a radio. My impression would be that if he wants somebody to look after goats, why would you give him a Toyota or a Land Cruiser? So, I am inspired by those remarks of the hon. Minister, and I respect his current attitude towards the former President.

The age of the motor vehicle should be defined with certainty. We should know how old these motor vehicles would be. I have known situations where somebody who is retired and is entitled to a car is given a five-year old car. So, therefore, the age of these motor vehicles should be clarified.

Mr. Temporary Deputy Speaker, Sir, allow me to speak with passion about Clause 6. Clause 6(1) suggests that:-

"A retired President shall neither hold office in, nor actively engage in the activities of

any political party."

You must forgive me since I have a lot of time for America, but I think it offers a very good example. I would like to remind this honourable House that in the just concluded Recall Election in the State of California, where Governor Davis was challenged by nearly more than 100 people for the governorship, former President Clinton was out there campaigning for Governor Davis and there have not been any complaints from the American administration. Therefore, I would say, to require a retired President, both to relinquish his citizen's right to seek the office of the President, because that is what the Constitution says by limiting it to two five-year terms, and at the same time telling him that he cannot participate in political activities of any party, is unconstitutional.

Mr. Temporary Deputy Speaker, Sir, therefore, I urge the Minister to allow that we amend this particular clause, as I would be proposing in due course, that the limitation should be limited to holding office in any political party, but he should be free to go to rallies and advise his former members and so on. Why? Because the next Sub-section (2) states:-

"A retired President shall be expected to play a non-partisan, consultative and advisory role to the Government and the people of Kenya.

It will be up to him and his successor to make sure that the former President does not participate in clearly partisan issues while commenting on national issues. I do believe very firmly that any attempts to limit and to appear to water down the rights of a former President to advise his former political party or, for that matter, even a new political party--- Many people forget that former President Reagan of the United States of America was, in fact, formerly a Democrat and then he crossed over and became a Republican and he took them to the White House. I do not want us to say that we are democratising while at the same time we create roadblocks and limitations to the activities of the former President, particularly in harmless situations like going to a party rally and merely talking.

Mr. Temporary Deputy Speaker, Sir, I want to remind you, in this regard, of Margaret Thatcher, the former Prime Minister of Britain. Except during this year, she still goes to the annual conventions of her political party and contributes very seriously to the discussions there. Therefore, it is with this reason, because we are not going to remain the scattered tribal parties we are now - that in future, I envisage political parties that will cut across the country, where they will be having national conventions for even up to a week, like it happens in other countries. It is fair that each party, at that point in time, be allowed to utilise its best gun being the former President in going to advise them. It is for this reason, therefore, that I believe Clause 6 should be amended dramatically, and I think it ought to be made possible for them to continue maintaining political parties, like advising their parties without holding office.

Mr. Temporary Deputy Speaker, Sir, again in Clause 6(2) at page 438, I will be proposing that the word "non-partisan" be deleted because, again, when you go to advise or help Governor Davis of the Democratic Party in a Recall Election in California, you are doing your---

The Minister for Gender, Sports, Culture and Social Services (Mr. Balala): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to start instructing us to follow the American laws in Kenya?

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Balala! Just allow the hon. Member to proceed!

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, if I suggested that, I would be out of order, but I am a Senior Counsel. I am unlikely ever to make a mistake like that. I am suggesting an example. I have tried to be very sober in this issue, and I am trying to merely point out that once you use the word "non-partisan", with all due respect again to His Excellency the President when he does retire, you are suggesting that NARC cannot call him to a rally in Mombasa to come and say:- "Hon. Balala is a good man." I think we ought to allow that to continue.

Mr. Temporary Deputy Speaker, Sir, however, I am saying, and I am totally serious in this, that he should not hold office as Chairman of either the National Alliance Party of Kenya (NAK), the Democratic Party (DP) or any other party, but he ought to go and feel free. That would allow the beauty of what I saw in America, much as I am opposed to the principles of recalling of Members of Parliament; to see Clinton stamping out there campaigning for his Governor. I think it is fair. We should allow our former Presidents to be able to do that.

With those remarks, I wish to support this Bill, subject to the amendments that we shall be proposing at the Committee Stage. Thank you.

Mr. Wamwere: Asante sana, Bw. Naibu Spika wa Muda. Nasimama nusu kuunga mkono Mswada huu na nusu kuupinga. Naunga hii sheria mkono kwa sababu naelewa kwamba kutekelezwa kwake kutasaidia kuimarisha demokrasia hapa nchini kwetu na pia barani Afrika. Itatusaidia kuondoa uongozi wa kimabavu na pia itatusaidia kuondoa wivu wa Marais wakati wamo ofisini. Lakini huu Mswada pia una upungufu mkubwa. Una upungufu mkubwa kwa sababu haubagui kati ya Rais ambaye amekuwa kiongozi wa kimabavu wakati wa utawala wake, na kati ya Rais ambaye amekuwa kiongozi afuataye maongozi ya kidemokrasia. Haubagui kati ya kiongozi ambaye anajitafutia mali yake kwa njia za haki, na kiongozi ambaye amekuwa mwizi wakati wote amepokuwemo ofisini.

Bw. Naibu Spika wa Muda, kwa sababu hizo, ningetaka kupendekeza marekebisho ambayo yatamruhusu kiongozi yeyote ambaye amekuwa mfuata demokrasia apewe haya malipo, lakini kiongozi ambaye amekuwa akitawala kwa kimabavu anyimwe haya malipo.

Ikiwa kiongozi hakujihusisha na wizi, anastahili kupewa marupurupu hayo ili wakati anapoongoza nchi asiwe na hofu kwamba akiacha uongozi, ataenda kuishi maisha ya kimaskini. Lakini kama kuna kiongozi ambaye amejilimbikizia dunia nzima na ambaye hata mali yake haihesabiki--

Mr. Salat: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): What is it, Mr. Salat?

Mr. Salat: Mr. Temporary Deputy Speaker, Sir, I would like to seek clarification whether we are talking about an individual or the Presidential Retirement Benefits Bill?

The Temporary Deputy Speaker (Mr. Ethuro): That is not a point of order. Continue, Mr. Wamwere!

Mr. Wamwere: Isitoshe, Bw. Naibu Spika wa Muda, sidhani kufikia hapo nilipofikia, nimetaja jina la mtu yeyote. Lakini mhe. Salat anajua ninaongea juu ya nani. Labda anajua ninaongea juu ya babu yake.

Viongozi madikteta hawafai kulipwa malipo ambayo yamependekewa na huu Mswada kwa sababu tumeona madikteta wakizifilisi nchi zao na kuzifukarisha kabisa. Madikteta hao wamewafanya wananchi, isipokuwa wezi wenzao, mafukara hohe hahe. Halafu wakati wa kusherehekea udikteta wao wanakwenda kutoa mali kidogo kidogo kwa wale waliofanywa maskini na kutarajia kwamba sisi tutakuja hapa kuwasifu. Kufanya kosa la aina hii ni unafiki na ni kuikosea nchi.

Bw. Naibu Spika wa Muda, mimi siwezi nikasimama hapa kumtetea mtu ambaye alinizuilia miaka tisa, eti apewe hayo malipo. Mtu ambaye alinifilisi mimi na familia yangu kiasi cha kwamba nisingekuwa hapa, ningekuwa mmoja wa wale ambao wangeenda kuomba kwa sababu ya umaskini. Siwezi kusimama hapa kusema kwamba huyu aliyenifilisi alipwe malipo ya kianasaa. Inasemekana kwamba tukiupitisha huu Mswada, tutapeana mfano mzuri kwa dunia nzima. Lakini ningependa kuuliza swali. Wale wenyeji wa Chile, ambao miaka hii yote wamekuwa wakitafuta namna ya kumpeleka dikteta Pinochet mahakamani, wakisikia kwamba sisi tunawapa madikteta wetu malipo kama haya, watafikiria nini? Watu wa Congo watasema nini wakisikia kwamba huku kwetu tumeipitisha sheria ambayo itawatunuka madikteta kwa malipo aina hii? Bila shaka watasema kwamba ikiwa Mobutu wao angekuwa hai, basi, naye pia angelipwa malipo aina hii.

Huku kuwalipa madikteta malipo ya aina hii hakusaidii demokrasia, bali kunaipunguza kwa sababu mtu akijua kwamba hata awe kiongozi wa kimabavu kiasi gani, bado atalipwa, kwa nini asiwe

dikteta? Lakini mtu akijua kwamba sheria ina kipengele cha kusema kwamba ikiwa kiongozi hafuati uongozi wa kidemokrasia hastahili kulipwa, atafuata uongozi wa kidemokrasia. Kwa hivyo, mimi ningetaka marekebisho yafanywe katika Mswada huu. Marekebisho hayo yaeleze wazi kwamba atakayelipwa haya malipo ni yule ambaye hakufuata maongozi ya kidikteta na hakujihusisha na wizi wakati wa utawala wake. Hapa Afrika, tumeona Marais ambao wakati wa kung'atuka uongozini, wamejilimbikizia dunia ya mashamba. Unakuta mtu hamiliki shamba moja ama mawili tu, bali mashamba kumi kila mahali nchini. Utakuta kwamba mtu huyo ana biashara, nyumba, magari yasiyohesabika na pesa zisizohesabika katika benki, huku familia yake ikioza kwa utajiri. Halafu tujiambie kwamba ni haki kumpatia mtu huyo huyo mamilioni ya pesa! Ni haki gani tutakuwa tunafanya? Ni demokrasia gani tutakuwa tukisaidia kusambaza? Lazima tuwe wabaguzi kwa sababu nchi yetu imejaa maskini na wao wakisikia kwamba kodi yao inachukuliwa kwenda kuwakimu madikteta katika anasa nyingine baada ya kustaafu, tutakuwa tunawacheka.

Bw. Naibu Spika wa Muda, kama kuna malipo yoyote atapewa Rais mstaafu, hayo malipo yasilenge kumsaidia kwenda kuishi maisha ya kianasa. Mhe. Kilonzo ametuambia kwamba ni lazima Marais waliostaafu wapewe magari aina ya Mercedes Benz, na kama wakati wao wa kustaafu Mercedes Benz haitakuwa ndiyo gari muhimu zaidi, wanunuliwe ndege aina ya Helikopta! Kama haya ndiyo maisha tutawauliza watozwa kodi wagharamie, tutakuwa tunaikosea nchi hii kabisa. Malipo ya kustaafu ya Rais lazima yawe ya kumwezesha kuishi maisha ya kawaida, lakini si maisha ya kianasa; eti maisha aliyozoea kuishi akiwa Rais. Ikiwa itakuwa hivyo, hapatakuwa na tofauti baina ya Rais aliye mamlakani na yule aliyestaafu kwa sababu watakuwa wanalipwa mishahara ile ile; maisha yatakuwa yale yale. Kwa nini sisi wananchi wengine tuwe na tofauti wakati tunapofanya kazi na wakati tumestaafu, kama Marais nao hawaturuhusiwa kuwa na tofauti hiyo ambayo ni ya kawaida tu?

Ninapinga kabisa haya maneno yasemayo kwamba mtu apewe pesa ambazo zitamsaidia kuishi maisha ya kianasa ambayo hayastahili kugharamiwa na kodi. Ikiwa ni lazima, basi mtu ajigharamie binafsi. Hata hivyo ningependa kuunga mkono jambo moja ambalo lilitajwa na mhe. Kilonzo kuhusu kutomkataza Rais mstaafu kufanya siasa. Nadhani ni haki Rais mstaafu kuwa na haki zake zote zilizomo katika Katiba. Huwezi kusema kwamba mtu ni huru, huku ukimwambia kwamba hawezi kufanya siasa. Ni kweli kwamba kuna nchi ambazo haziruhusu mtu ambaye wakati mmoja alikuwa Rais, kuwa Rais tena. Lakini, vile vile, kuna nchi ambazo zinaruhusu Rais mstaafu kupigania nyadhifa za kisiasa tena. Akibahatika, anaweza kurudi tena. Hapa kwetu sipendekezi hivyo, lakini mtu aruhusiwe kufurahia haki zake zote za kikatiba na kisheria. Apewe nafasi ya kutoa maoni yake akitaka, lakini awe tayari kupingwa. Kusiwe na mambo tunayoyasikia humu nchini kwamba Rais mstaafu aendelee kuchukuliwa kama mtu aliye juu ya sheria.

Ingawa mhe. Kilonzo alikuwa akiongea jinsi ninavyoongea, nina hakika kwamba atasikia nikipendekeza kuwa Rais mstaafu akitajwa, kwa mfano, katika tume inayochunguza kashfa ya Goldenberg, awe tayari kwenda moja kwa moja kujibu maswali mbele ya tume, kwa sababu anapostaafu, anakoma kuwa juu ya sheria. Lakini kuna watu ambao wanafikiria kwamba Rais mstaafu anaweza kuwa juu ya sheria. Eti wananchi wakitaka aende kujibu maswali, tuhuma au mambo aliyohusika nayo awali, wasithubutu kusema hivyo, kwa sababu huyo Rais mstaafu ni mtu muhimu sana. Rais akistaafu sharti ajue kwamba anakuwa mtu wa kawaida. Wengine wetu tumeshikilia kwamba ukiwa Rais, usiwe juu ya sheria kwa sababu huku kuwa juu ya sheria ndiko kumewafanya Marais wengi kuwa madikteta. Lakini Rais mstaafu akijua hayuko juu ya sheria tena, basi atafuata sheria na kufanya haki.

Kwa hivyo, Rais mstaafu akitajwa katika uchunguzi unaoendelea, kusiwe na watu wa kumtetea na kusema ya kwamba asiende kutoa taarifa mbele ya tume au mbele ya polisi ati kwa sababu ni Rais mstaafu. Rais mstaafu si Rais mtawala, bali ni Rais mstaafu. Kuna tofauti kati ya Rais mtawala na Rais mstaafu. Wote hawawezi kepewa haki sawa na kila kitu sawa.

Bw. Naibu Spika wa Muda, ningependa kuongezea kwamba makosa ya kutekeleza udikteta ni

makosa makubwa sana nchini. Na iwapo tutajifanya kuwa hatuyajui makosa kama haya, tukaanza kujipiga vifua kama vile watu wa chama cha KANU wanavyofanya sasa wakitaka kumaanisha kwamba wao hawakukosea, nchi hii itakuwa imekosea njia. Chama cha KANU ni lazima kikubali kwamba katika miaka 40 ya utawala wake, kimekosea nchi hii kwa namna kubwa sana; kimetuvurugia mambo mengi na kimeleta ufisadi nchini. Hata ule ufisadi wa mahakama umeletwa nchini na uongozi wa chama cha KANU. Kama viongozi wa chama cha KANU hawakuwa wafisadi, hakuna mahakimu ambao wangukuwa wafisadi. Mahakimu wafisadi walizaliwa na watawala wafisadi wa chama cha KANU; watu ambao walitumia vyeo vyao ili kueneza, kukuza na kutukuza ufisadi. Hii ndio sababu kila mtu mwingine akajua kuwa ikiwa anataka kuendelea, kupata madaraka, au kufanya jambo lolote lile, ni lazima awe mfiisadi.

Mr. Kimeto: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to say that corruption was perpetrated by only those people who belonged to KANU, including the former President? Members of Parliament who were involved in the same corruption are now sitting here as the Members running the country. Why does he not mention the names of those Members?

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Kimeto! That is not a point of order.

Proceed, Mr. Wamwere.

Mr. Wamwere: Mhe. Naibu Spika wa Muda, yamkini tunaweza kusema kuwa iwapo kulikuwa na wafisadi ambao wako katika upande huu wa sakafu, kwa sasa, wameokoka.

(Laughter)

Lakini wale wafisadi ambao walikuwa upande ule wa sakafu na bado wapo humo, hao ni wafisadi sugu na ambao hawana haki ya kuongea juu ya ufisadi au kuukosoa ufisadi. Kitu wanachostahili kufanya ni kuiomba nchi hii msamaha.

Mr. Mukiri: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Mukiri. Proceed, Mr. Wamwere.

Mr. Wamwere: Hawa ni watu ambao hawastahili kusimama wakati tunapoongea, kwa sababu kwa miaka mingi walituzuia kuongea---

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Amina, what is your problem with Mr. Wamwere?

Ms. Abdalla: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for this hon. Member to insinuate that corruption is only rife in KANU, when it is a known fact that he "exported" corruption to Norway by demanding disability allowances?

(Applause)

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Order! Let Mr. Wamwere make his contribution. We cannot have a point of order immediately after another one. Order, Mr. Mwenje! Order!

Proceed, Mr. Wamwere.

Mr. Wamwere: Mhe. Naibu Spika wa Muda, kitu ninachosema ni kuwa ufisadi tulio nao nchini una mizizi yake. Na hiyo mizizi inapatikana katika utawala uliopita wa KANU. Hilo silo jambo geni kwa mtu yeyote. Lakini---

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. You will agree with me that hon. Abdalla has imputed bad motives on hon. Wamwere, and this is against the Standing Orders. Could hon. Amina be requested to withdraw and apologise to the House?

The Temporary Deputy Speaker (Mr. Ethuro): Order, Members! Mr. Mwenje is very right. No Member is allowed to discuss the conduct of another Member before bringing a substantive Motion to this House. So, hon. Abdalla, can you withdraw and apologise?

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, the matter was reported in the Press. I seek your guidance on whether we cannot repeat matters that are reported in the Press?

The Temporary Deputy Speaker (Mr. Ethuro): The point is that you cannot raise an issue against a Member without bringing a substantive Motion. So, we are not discussing whether it is true or not true; it is the procedure.

Ms. Abdalla: Considering that it is my wish for this Bill to pass, and given that the hon. Member has not defended himself, I still take this opportunity to withdraw that remark!

(Laughter)

The Temporary Deputy Speaker (Mr. Ethuro): Very well, proceed, Mr. Wamwere. What is it, Mr. Mukiri?

Mr. Mukiri: On a point of order, Mr. Temporary Deputy Speaker, Sir. Ms. Abdalla has just withdrawn her remark, but she has not apologised to the Member. She should apologise!

The Temporary Deputy Speaker (Mr. Ethuro): That is correct, Ms. Abdalla, you have withdrawn your remark, but you have not apologised to the Member. So, can you do both now?

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, as a fellow pastoralist, you know that is a very difficult thing for us to do. That is apologising---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Ms. Abdalla! The Chair is not a pastoralist!

(Laughter)

Ms. Abdalla, withdraw your remark and apologise!

Ms. Abdalla: I wish to withdraw and apologise.

The Temporary Deputy Speaker (Mr. Ethuro): Very well. Proceed, Mr. Wamwere.

Mr. Wamwere: Mhe. Naibu Spika wa Muda, sasa sijui niseme nini, kwa sababu kwa kweli, ingawa mhe. Amina anaomba msamaha, ningetaka aelewe kitu kimoja; ya kwamba kule uhamishoni, nilikuwa nimetimuliwa na chama chake na Rais wake. Kama sio Rais wake, singe---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wamwere! This matter has been settled. Once the Member has withdrawn her remark and apologised, there is nothing you are talking about now. So, can you just proceed?

Mr. Wamwere: Haya basi, mhe. Naibu Spika wa Muda, nitaendelea. Lakini kwa namna ambayo anasema kuwa nilipeleka ufiisadi Norway---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wamwere! The Chair has made a ruling. You are well advised to ignore that matter.

Please, proceed on other matters.

Mr. M. Kilonzo: Or sit down if you have nothing to say.

Mr. Wamwere: Mhe. Naibu Spika wa Muda, nikimalizia, ningependa kusema hivi; kwamba niko tayari kuunga mkono huu Mswada, lakini kwa sharti moja. Nalo ni tuweke tofauti kati ya kiongozi ambaye amejiepusha na udikteta na wizi wakati wa utawala wake, halafu tuseme kiongozi

kama yule ndiye anayestahili kulipwa malipo yanayopendekezwa na Mswada huu. Pia, ningependa Mswada huu ufafanue wazi kwamba iwapo kiongozi ameshiriki ufasadi na udikteta wakati wa utawala wake, kiongozi kama huyo hafai kulipwa malipo ya uzeeni. Kwa kusema kweli tukifuata falsafa ya kisiasa, wakati huu duniani ni madikteta wote wanapelekwa jela baada ya kustaafu na hawaruhusiwi kuishi maisha ya anasa. Ninasema hivi kama mtu aliyepata mateso mengi chini ya utawala wa Kenyatta na Moi. Kwa pamoja, wote walinfunga kwa muda wa miaka 13. Si kwa sababu nilivunja sheria yoyote au nilikuwa mwizi. La! Lakini ni kwa sababu nilikuwa ninapigania haki za kidemokrasia na uhuru ambao unawaruhusu wao kuketi pale na kusema mambo pasipo ya kusumbuliwa na polisi.

Bw. Naibu Spika wa Muda, watu ambao wanavunja haki za kibinadamu wakati wanatawala, iwapo tutasema tuwape zawadi ya malipo nono wanapostaafu, ni makosa makubwa. Tukifanya hivyo, tutakuwa tunawapa moyo madikteta wengine kuzuka, sio tu hapa kwetu, lakini katika Afrika nzima. Kwa hivyo, tukifanya hayo marekebisho katika Mswada huu nitauunga mkono. Lakini kwa sasa siupingi wala kuunga mkono Mswada huu.

Mr. Kimathi: Mr. Temporary Deputy Speaker, Sir, it is very unfortunate if we have to bring to this hon. House our personal feelings rather than our patriotism to our nation. I may have been mistreated so much by the former regimes, but I should not get personal. We are making a law here. I also intend to become a President of this country one day. Any President governs a country in accordance with the rule of law at that time.

The hon. Member was a Member of this House when I was still fighting to come to this House. He never did anything to change the law, to tame and control the dictatorship as we are doing now at Bomas of Kenya and in this House. The law we are making here is for retired Presidents. It is a pity that the hon. Member wants former President Moi to testify before the Goldenberg Commission of Inquiry because he has been mentioned. As and when he is purported to have done something, he was protected by the Constitution during his tenure as a President. We cannot follow him now that he is out of office. He is a Kenyan like any other Kenyan. Whatever he did at that time, he was protected by the Constitution the way His Excellency President Mwai Kibaki is currently protected. Kenyans must learn to respect the rule of law prevailing in the country. Today, His Excellency the President Kibaki, with his institutions and instruments of the law, cannot allow any Kenyan or an hon. Member, to breach the law. I would like to remind the hon. Member that if he or myself broke the law, we would have to face the music. Any President preserves the integrity and the rule of law prevailing during his tenure of office.

Mr. Temporary Deputy Speaker, Sir, it is absurd for anybody to feel jealous of those who have succeeded. Some of us are able to buy bicycles, motorbikes, good cars and good clothes. We are living in a capitalistic society. We are struggling for the best in life. I am also wishing our constituents all the best. It is sad that when we are fighting poverty, some people are holding onto it. Fortunately, I am not among them. I grew in poverty. I had jiggers and I worked in people's *shambas*. Everybody is looking forward to a good life. It also took me 35 years to get into this House. I am grateful that I am here. I did not ever think that I would ever come here. It is the hope of every Kenyan that one day they will either be an hon. Member of Parliament, an Assistant Minister, a Minister, a Vice-President, a Prime Minister or even the President of this country. It is very disturbing if a President will have to be a pauper to be recognised.

Mr. Temporary Deputy Speaker, Sir, if you are a hard working man and you have your money, whether you are poor or rich, you are a Kenyan and you deserve to vie for any office in this country. You deserve to be elected as an hon. Member, a President or even as a Prime Minister if you are popular. It is disturbing to hear that some people cherish poverty. The communist countries are no longer practising socialism. They are practising capitalism. Even the Bible tells us that if one does not work, he should not eat. If you work hard, you will earn money to buy clothes for your family. With money, you can buy a bicycle; if you have more, a motorcycle, if you get the chance to have more

money, you can advance and buy a small car, a Mercedes Benz or even a Rolls Royce.

Mr. Temporary Deputy Speaker, Sir, I beg to support this Bill. It is not a Bill for former Presidents Kenyatta and Moi. It is not even for His Excellency President Mwai Kibaki. It is for the Presidents who will rule this country 1,000 to 2,000 years to come, when all of us will not be in this world. It is unfortunate if some hon. Members in this House get personal about this Bill because of reasons such as, "one day the Speaker abused me, or he did not give me a chance to speak." We are making a law here that is non-partisan. Every hon. Member of Parliament here is qualified to occupy any high post in this country. We do not want to imagine that somebody will say, "we did not do well and, therefore, we do not deserve our pension." I am only praying that I am able to make it after the 2007 General Elections, if God keeps me alive, so that I can also enjoy pension because I do not want to retire miserably. About 99 per cent of ex-hon. Members of this House, as all us have seen outside there, are paupers. This is very unfortunate. We must make sure that those people who have had a chance to serve our brothers and sisters in the constituencies do not live in utter poverty.

Mr. Temporary Deputy Speaker, Sir, with amendments as suggested by my friend, the learned counsel, I beg to support.

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Temporary Deputy Speaker, Sir, I would like to thank you for this opportunity to contribute on what I believe is a very important Bill in this country. I would like to begin by stating that, when all is said and done, former President Moi did Kenya proud by handing over power in a peaceful way.

(Applause)

It is very important for us to build on that culture. With time, we will emulate Tanzania where they have orderly transfer of power. I believe that they are now on their third President since independence. This is also so, that even after His Excellency President Mwai Kibaki has served for a maximum of ten years, he can also pass on the baton and whoever comes on later can pass it, so that we have a culture of transferring power peacefully.

Mr. Temporary Deputy Speaker, Sir, the temperatures are cooling down sufficiently now for us to begin to appreciate when some momentous political event has happened. In many ways, perhaps, this is a cease-fire Bill in terms of saying that we would like to treat Presidents who have retired properly and decently so that the country matures politically.

Mr. Temporary Deputy Speaker, Sir, it is actually unfortunate that this Bill was not debated when Prof. Anyang'-Nyong'o introduced it or a variant of it, so that by 1st January, 2003, there would have been such a law in place. As matters stand, there is a period where we have not provided for the retirement benefits of retired President Moi. Of course, as it was pointed out, we have also not provided retirement for the spouse of the late Mzee Jomo Kenyatta. I support the point that was made by Mr. M. Kilonzo, that this Bill should not just cater for a spouse because a President can have more than one spouse under African Customary Law and Islamic Law.

Mr. Temporary Deputy Speaker, Sir, this Bill gives people who will be President security so that they do not have to be corrupt or engage in malpractices. This will allow them to concentrate on merely doing their job of being chief executive, so that they also do not have to engage in business activities, and focus on providing quality leadership. Also, this particular Bill shows that the Kenyan people will appreciate a President who has served them, and the spouse of such a President. I think again, we are beginning to develop a good democratic culture where our people appreciate those who have sacrificed to serve them, particularly when they serve them well. I think, this is one of the most important signals that the NARC Government is not interested in witch-hunting, and will decently treat retiring Presidents as well as their spouses.

Mr. Temporary Deputy Speaker, Sir, eventually, when we get to the Committee Stage, we

need to consider Section 4(d), where it is stated that if a spouse of a President remarries, then benefits under this Act will cease. I say so because, there is a presumption that the President will always be a man, and if the wife, therefore, remarries, then she should not continue to have retirement benefits that accrue under this particular Bill. I think it is important to consider that section, so that even if somebody remarried, whether it is the wife or the husband of a retired President, there is still provision for benefits under this law, because you could remarry somebody who has no income at all. Therefore, by the mere fact that you have remarried, you should not be denied continuing to enjoy benefits under this particular law.

Mr. Temporary Deputy Speaker, Sir, I think, as Mr. M. Kilonzo stated, it might be important to look at Sections 4 and 6 of the Bill carefully because, if the President is the head of the party, under normal circumstances they will not relinquish that headship of the party at the same time as they retire as President. Even former President Nyerere continued to be the Chairman of Chama Cha Mapinduzi (CCM) after he had left the presidency. It is necessary to allow for a period of time, so that they can honourable pass on the leadership of the party. We do not want to penalise anybody merely because they are holding brief headship of a party, so that they can, in a good way, offer a transition. We should protect those people. I hope that when we consider this Bill at the Committee Stage, we will put in such a provision, so that we do not penalise somebody who is waiting to hand over leadership of the party, so that they can enjoy benefits, subsequently.

Mr. Temporary Deputy Speaker, Sir, I think we need to deny pension to any President who is impeached during his or her presidency because they will have done things that will have contradicted the Constitution. If a President is impeached during his or her tenure because he or she has gone against the Constitution and virtually acted against the people, then the country may say it will not give him or her a pension. But if Presidents have served their period and they have never been impeached, then they cannot be denied pension retrospectively, because that would fly in the face of what happens under the rule of law. Unfortunately, up to now, we have never had a legal definition of the word "dictatorship", and I think, somewhere as we pass laws, we will have a legal definition of dictatorship, so that we can catch people who are dictators. Of course, it is our belief that we will never have another dictator in Kenya because we are now running a new system.

Mr. Temporary Deputy Speaker, Sir, for me, one of the most important provisions of this Bill, apart from recognizing retiring Presidents and their spouses, is the fact that we can use people who have retired. They can advise and do many things, so that the country continues to use their expertise. One of the justifications of spending a lot of money on a retired President when he or she is alive, is that they will continue to work for the country in terms of offering advise and being useful in many spheres. They should, however, not be paid any extra money at all. I think, there is a provision in the Bill where they might be paid more money for the special things that they do. But if we give them pension, they should work for us, and we should not pay them anything extra.

Mr. Temporary Deputy Speaker, Sir, again, one thing that I would have suggested is that, a retired President who is alive should actually be in the Prerogative of Mercy Committee, so that they are also used in the country in terms of addressing issues of clemency. I think that is one specific important advisory function that they could play, although under Section 63 of this Bill, it is stated that they will offer general advisory services. As we do the Constitution, I hope that we are going to ask Presidents who have retired to be part of the Prerogative of Mercy Committee, so that they assist there.

Mr. Temporary Deputy Speaker, Sir, I also think that Section 51 should not just be about telephones. It should rather be about communication generally, because we have advanced to E-Mail and the Internet. So, we should use the generic term "communication" so that we can provide for their communication needs.

I was unhappy when Mr. M. Kilonzo said that Mr. Murungi would have consigned former

President Moi to Kawangware area, as if to suggest that Kawangware area is a bad place. Kenyans live there, and anywhere where Kenyans live, former President Moi or Mr. M. Kilonzo can also live there. Indeed, former President Moi used to live in Kibera area, which is a working class area. Also, Mandela's former wife lived with the people. I encourage Mr. M. Kilonzo to begin to cultivate an interest of living with the people, because I suspect he is going to go far in terms of politics.

Mr. Temporary Deputy Speaker, Sir, as I conclude, I would like to also suggest that we seriously consider putting in this Bill, a provision for supporting a Foundation that a retired President may associate himself or herself with, so that we actually help them to pursue a cause. For example, Jimmy Carter and Nelson Mandela have many things that they are doing in their retirement, so that they do not feel that their time is not occupied. I would request that at the Committee Stage, we put a line where we say we will contribute some sum of money for supporting the Foundation of the President and, therefore, a worthwhile cause for the former President. We should encourage, maybe, two other ways like the past regime; we may encourage many people who have a lot of money to actually begin to give to charity, begin Foundations or pursue noble causes for our population, so that it is not just something for Mr. M. Kilonzo and those who can afford to give something to the community.

Therefore, I really think that this is a great Bill. It is beginning to show that, as a country, we are beginning to stabilise and consolidate our democracy. Some of the temperatures that have been up and about are beginning to cool vis-a-vis KANU and NARC. I am also hopeful that within NARC, the temperatures will cool. They are cooling and we are not quarrelling currently. We hope that things will remain that way. As a people, we do by-partisan things which are beyond NARC and KANU. When we oppose to things, we begin to secure our democracy as people. Therefore, subject to some of those things we have stated and other things that we will discuss within the Committee, this is actually a Bill that we should not take a lot of time discussing, so that we pass it and move on to other work.

Thank you.

Mr. Wario: Asante, Bw. Naibu Spika wa Muda, kwa fursa uliyonipa kuchangia Mswada ulio mbele yetu. Mswada huu ni muhimu sana kwa taifa letu. Tuliambiwa tusimlpe malipo Rais bepari. Mtu hawi bepari kwa kuzalilwa; mtu hufanywa bepari na waliomchagua. Wakenya ni werevu na wameweka chombo cha Bunge kuingilia kati mtu anapoleta mamlaka ya kupita kiwango. Kufikia sasa, Wakenya wana werevu wa kutosha. Kuna Bunge hili ambalo tunazungumzia leo.

Fursa ya Rais kuwa "dictator," haitakuwepo katika nchi ya Kenya. Ukitaka kumfanya Rais kuwa "dictator", utamfanya wewe mwenyewe. Ukimchagua Rais kisha umuite kanisani siku ya pili na kumwambia atangaze mamlaka yake kama kwamba hana mamalaka, bila shaka atakuwa bepari. Sidhani kwamba bepari atatoa mamlaka yake na kukuambia "shika utawale na uendelee kutawala nchi." Huyu hatakuwa bepari tena.

Bw. Naibu Spika wa Muda, ningependa kuomba tuangalie uzalendo wetu, nchi yetu, na cheo cha Urais kama mali ya Wakenya. Cheo cha urais sio mali ya mtu binafsi, wala sio cha jamii fulani. Ningependekeza kuwa leo tukiweka sheria ya kupima Rais fulani, kama alikuwa "dictator" asilipwe malipo yake, tutatumia chombo kipi kuhakikisha kwamba fulani sio "dictator" na wengine sio "dictator"? Tutakuwa tumeweka nchi hii katika hali ngumu. Yangu ni kutoa pendekezo kwamba tupitishie Mwada huu. Mswada huu tutaupitisha kwa sababu ya nchi hii wala sio kwa sababu ya Rais Hayati Mzee Jomo Kenyatta au kwa sababu ya Rais Mstaafu Bw. Daniel arap Moi, au kwa sababu ya Rais Kibaki.

Ni nani anayejua kwamba sitakuwa Rais wa nchi hii baadaye? Leo hatuwezi kuleta sheria ya kujiwekea vikingi sisi wenyewe, au watoto wetu ambao watakuja kuwa Rais siku zijazo. Tupitishie sheria ambayo itaweza kuwafaa watoto wetu kuendeleza shughuli zao vizuri.

Bw. Naibu Spika wa Muda, katika nchi za Kiafrika, wengi wa Marais hushikwa na hofu ya

kuachilia mamlaka kwa mtu mwingine kwa sababu huwa wanaona mbele yao giza kubwa ya umaskini na shida. Tusipokuwa na sheria leo ya kuwawezesha na kuwapatia hakikisho kwamba mbele yao watakuwa wananchi kama wananchi wengine; watakuwa na chombo fulani cha kuwahudumia katika Serikali, kutakuwa na sheria za kuwalinda, hakuna atakayeng'ang'ania mamlaka. Tusipokuwa na sheria kama hizo, basi mtu akipata urais atakuwa ameupata. Hatawachilia kiti kwa mtu mwingine. Kwa hivyo, kuwawezesha wao kuendesha kazi zao na kujiuzulu alivyofanya Rais mstaafu Bw. Mandela---. Ni miaka michache tu imepita ambapo alisema nchi iendeshwwe na vijana. Hii ni kwa sababu kuna chombo ambacho kinamwezesha kuwa na mapumziko mazuri. Hapa tunapoishi katika nchi hii, Waziri wa Serikali aweza kusema kuwa Serikali imeleta sheria kwa sababu walitaka mmoja wetu apate mamalaka. Katika nchi hii, aliyeshika mamlaka hupatawa na hofu kubwa kwa vile wanaomzungumzia, wako karibu naye? Ningependa kuita Wakenya tuangalie mbele yetu. Tusitunge sheria kwa sababu ya mtu fulani; tusitunge sheria kwa sababu ya cheo fulani. Tutunge sheria kwa sababu ya nchi nzima, na hivyo, hali itakuwa rahisi kwetu.

Malipo baada ya kazi ni haki ya yule aliyetenda kazi. Ni haki yake kwa sababu ameshaifanya ile kazi; amemaliza kazi hiyo, kwa hivyo alipwe malipo yake. Hafai kuomba na kusema kuwa hataingilia siasa; atakuwa mwaminifu, bali ameshafanya kazi yake na kumaliza. Ni haki yake kulipwa malipo yake. Hafai kuomba. Kume kuwa na mambo ya kutishana na watu kuambiwa wasiende mwenendo fulani; wasiende kusalimia watu fulani; wasisimame na chama fulani. Siku ile alikuwa akiifanya kazi, hakupewa masharti. Leo anapomaliza kazi, asipewe masharti mengine, ila mumlipe haki yake apumzike salama salimini.

Mheshiwa mmoja ambaye aliuchangia Mwsada huu alisema alilaani cheo cha Rais akisema kuwa amefungwa jela na Marais wawili. Si jambo la kawaida Marais wawili kumfunga mtu mmoja. Ikiwa umefungwa na Rais mmoja na kisha utafungwa na mwingine, nenda ukasome Sheria ya Kenya. Kuna kasoro fulani na wewe! Ninahofia kuwa Rais wa tatu atakufunga pia kwa sababu yamekuwa ni mazoea yako kufungwa!

(Laughter)

Mr. Mwenje: Jambo la nidhamu, Bw. Naibu Spika wa Muda. Je, ni haki Bw. Wario kutoka Bura kusema jambo hilo kuwa angali anajua kwamba Serikali iliyokuwepo ilifuata nyayo za ile iliyokuwepo? Kwa hivyo, mambo waliyoyafanya yalikuwa ya kufuatilia tu?

Mr. Wario: Bw. Naibu Spika wa Muda, kwa ruhusa yako, sijajua ni chini ya kifungu gabi cha nidhamu Mheshimiwa Mbunge mzungumzaji ananiharibia mazungumzo yangu.

Nilisema hapa kuwa, tukiwa Wakenya, au viongozi wa nchi hii, lazima tuwe watiifu kwa nchi na kwa sheria za nchi. Sio jambo la kawaida kwa sababu, mimi hushituka Marais kadhaa wakifunga mtu mmoja. Kuna kasoro mahali fulani na lazima tujikosoe.

Katika kuchangia Mswada ulio mbele yetu, ningependa kuuliza; mtu kabla hajakuwa Rais, alikuwa nani? Mtu hawezi kuwa Rais wa Kenya maisha yake yote. Lazima utaona kuwa huyu mtu alikuwa na biashara na mali mahali pengine. Leo umeunda siasa ukawa Rais wa nchi. Mali yako ni yako na kazi uliyofanya ni mbali na mali yako. Mali yako iko salama na haki yako lazima ulipwe, isifungamishwe pamoja.

Bw. Naibu Spika wa Muda, kuna baadhi ya vitendo ambavyo vinalazimisha Marais kuwa wafisadi au kupambana na wafanyibiashara. Nilivyosema hapo awali, Rais asipokuwa na matarajio katika kustaafu kwake, bila shaka atang'ang'ana aone kesho atakapoachilia mamlaka, lazima awe mtu anayeweza kujimudu kimaisha. Usiwe Rais wa Kenya leo na kesho asubuhi unaomba; huna pa kuelekea. Kama sheria itakulinda, basi ng'ang'ana ufanye biashara. Kama sheria haitakulinda, hakuna haja ya Rais kufanya biashara katika nchi ya Kenya.

Ukiangalia kifungu cha 6(2), masharti yamewekwa kwamba Rais aliyestaafu asihusike na

mambo ya kisiasa, na hii ni baadhi ya dhuluma ya haki ya kibinadamu. Ukiwa daktari, ukifanya kazi ya Serikali kisha ustaafu, udaktari wako bado upo. Nenda ufanye biashara. Ukiwa wakili aliyesomea uanasheria, unapostaafu, fungua ofisi yako ufanye biashara. Kwa nini Rais aliyekuwa mwanasiasa baada ya kustaafu aambiwe asizungumze kuhusu siasa tena? Hii ni baadhi ya dhuluma inayofanyiwa haki ya ubinadamu. Kwa hivyo, Rais aendeshe siasa, ajiuzulu kwa kiti na aendeshe mambo ya chama. Hayo si makosa.

Kifungu cha 4(4)(b) kinazungumzia juu ya kutomlipa mtu baada ya kustaafu akiolewa. Kifungu hiki kiliwekwa hasa kulenga wanawake wanyanyaswe. Ukiangalia, huko Afrika Kusini ni kinyume. Utaona mzee amestaafu, halafu akaoa. Akinyimwa haki kwa sababu hakuoa--- Mara nyingine, si wanawake tu ndio wanaolewa; hata wanaume hufanya kosa hilo. Kwa hivyo, tutakapotunga sheria, tuangalie pande zote. Tusilemee upande mmoja.

Kwa hayo machache, ninaunga mkono.

Mr. Mwenje: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to air my views after listening to a melodious kind of contribution. I want to agree with those who say that this is an important Bill. It should be the right of everybody to get retirement benefits. This should apply to the President, Members of Parliament, civil servants and everybody else. When we are looking at these figures, we must be reasonable.

First, I want to agree with Mr. Kibwana and the others who said that one major problem with this Bill is that, unless it applies retrospectively, it will not cover the Presidents as the hon. Members had intended. It starts from January 2003, and both of those Presidents who have so far retired or died are not covered under this Act. No Act can be applied retrospectively. The lawyers are here and they know it. Due to that, I will move an amendment because I would also want them to be covered. I will move an amendment during the Committee Stage under Section 3 where we can now have (2) after--- First of all, I have to label it (1) and then we have to go to (2) after (c), which should simply read: "That for the avoidance of doubt, all former Presidents of Kenya--"

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Mwenje! Are you bringing an amendment?

Mr. Mwenje: I am only saying what I will do during Committee Stage.

The Temporary Deputy Speaker (Mr. Ethuro): It is not necessary.

Mr. Mwenje: Fine. Maybe, it is not necessary. I will bring an amendment which should cover the former Presidents of the Republic of Kenya, because, they are otherwise not covered. If we are thinking of having them covered, then I will have to move that amendment. I will bring it during the Committee Stage.

There are many things in this Bill which I find very interesting and debatable. They need to be looked into. I want to start with the benefits of these Presidents. I find some areas a little bit awkward. When you say that you allow somebody "unlimited travel", what does that mean? This is from the taxpayers' money. There must be limited travel. Somebody might become a tourist; going to the Coast, Samburu and Maasai Mara every other day. At the end of the day, you will find that the figure is very high. I think it is necessary to limit these amounts. We should not allow for unlimited amounts because, otherwise, somebody will be travelling every hour at the cost of the taxpayer. I do not agree with the word "unlimited". This House should never give unlimited authority. It is a blank cheque and it can be misused. This appears on page 439. I think that is not right.

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

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

We are also talking of granting the President two Mercedes Benzes, two four-wheel-drive cars, a fuel allowance not exceeding Kshs200,000, and an allowance of Kshs300,000 per month for electricity. Is this President going to establish an industry so that he will be paying Kshs300,000 for electricity? Let us be realistic. We cannot allocate an allowance of Kshs300,000 because supposing he establishes an industry and says that the electricity bill will be paid by the taxpayer? I do not know of anyone who has ever spent Kshs300,000 on electricity. That is not being reasonable. We need to amend this and put a smaller figure. That is why the Press sometimes picks up on such issues and we find that we are hit and have no explanation to offer. You require to have an industry in order to be paying Kshs300,000 for electricity. That should be amended.

We should allow one Mercedes Benz for the retired President. His security detail should be given ordinary cars. Why should his security detail also use a Mercedes Benz? A Mercedes Benz has high fuel consumption and maintenance is expensive. Those of us who have driven Mercedes Benzes know what it means. Why do the bodyguards and all those *watu wa mikono* need a Mercedes Benz? I think we need to amend that.

Why does the retired President need two four-wheel-drive vehicles? Give him one and the others can use ordinary vehicles. Why are we subjecting taxpayers to paying so much money just for a vehicle to carry the bodyguards? Let them use the ordinary vehicles. The retiring President may be given a four-wheel-drive car. That is alright. Give the retired President any vehicle, even a Range Rover, but let the others use ordinary vehicles. If they are policemen, let them use ordinary vehicles. That vehicle consumes a lot of fuel. I think we need to reduce the number of cars to be one Mercedes Benz and one four-wheel-drive vehicle. The others should be ordinary vehicles.

Mr. Temporary Deputy Speaker, Sir, fuel allowance of Kshs200,000 is on the higher side but it can be acceptable.

Mr. Temporary Deputy Speaker, Sir, Clause 5(b) says that the President shall be entitled to a monthly pension equal to 80 per cent of the monthly salary currently paid to the sitting President. First of all, this is ambiguous. Which president are we referring to, the retired president, or the current president? If we are talking of the current President; today, the President is paid over Kshs1 million, then we are talking of about Kshs800,000 monthly. So, we are saying that he is going away for retirement with a pension which will be more than the salary he was being paid. Why should he be paid a pension which is more than what he was being paid as his salary when he was the president? It is not logical! We should pay him, say, 50 per cent of what he was being paid when he was in office.

If that is the case, I will also be moving a Motion in this House that when we retire, we should be paid pension at the rate of the sitting Members of Parliament at that time. Let us be reasonable and fair to the taxpayers. We should not overburden them with an individual who has retired and who is not very poor. It is also common knowledge that no president is going to retire poor. I know hon. Members have retired poor. But no president will tell us that he is going to retire poor. That will not be logical. He should be the first person to show us what to do so that we can also earn a just living without involving ourselves in corrupt deals. It is a little bit unreasonable to base the pension of the retired president on 80 per cent of the monthly salary of the sitting president. I do not agree with it. I think it is important that we amend it.

Mr. Temporary Deputy Speaker, Sir, Clause 4(2) says that "where the National Assembly passes a resolution under subsection (1), a retired president or a surviving spouse shall not be entitled to any benefits under this Act, or their entitlement to such benefits shall be reduced in accordance with such resolution." If the House has the power to reduce, it should also have the power to increase because life may be difficult at one time or another. I think it is reasonable for this particular section to be on the positive end also, that it can also increase where they feel that a retired president is living under conditions which do not befit him. The House should reconsider where the retired president or

the spouse is being paid less money which will make them suffer. If the figure, today, remains at Kshs1 million, in future, that figure may be worth Kshs100,000 depending on the prevailing inflation. I think it is important to allow the House to have that leeway to increase the benefits.

Mr. Temporary Deputy Speaker, Sir, I also want to associate myself with those speakers who said that if a retired president or his spouse remarries that should not be an issue. If the retired president remarries a non-citizen, we should allow him or her to continue enjoying those benefits. The question of remarrying should be amended and remain as when the spouse dies. But at the same time, for how long will the Government pay these spouses? It is not clear that you pay them up to a particular level. If a spouse of a retired president remarries and bears children, whose children are those? Do they belong to the retired president or the spouse? Are they entitled to enjoy this facility which was meant for the children of the retired president? I think it is important to consider that. That is why whoever drafted this Bill should have made that provision so that they are taken care of. In developed countries like America, we have seen spouses remarry and get other children. It is not clear under the Act whether those children are supposed to enjoy the same facility. I think it is important that this Bill be amended at the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, unfortunately, the Minister is not there.

(Mr. Katuku stood up in his place)

The Assistant Minister is there but he is not writing anything. He is simply listening!

Hon. Members: The officers are there!

(Laughter)

Mr. Mwenje: Fortunately, the officers are here. I hope they are getting it right.

The Assistant Minister for Finance (Mr. Katuku): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is Mr. Mwenje in order to insinuate that I am not writing anything when he is saying nothing? My officers are taking notes.

(Laughter)

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order! Mr. Katuku, you are out of order. Mr. Mwenje is saying something and he is entitled to an opinion as to whether you are writing something or not.

Proceed, Mr. Mwenje!

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, would the Assistant Minister withdraw that remark and apologise? That was very rude.

The Temporary Deputy Speaker (Mr. Khamasi): I have made a ruling.

Proceed, Mr. Mwenje!

Mr. Mwenje: I hope he will take a pen and write down what we are saying.

Mr. Temporary Deputy Speaker, Sir, there is also the question of "suitable office" in the urban areas. It does not say which urban area. You could open one in Thika and another one in Kabartonjo. We need to be specific. If you have to have an office, it should be in Nairobi because that is where the headquarters of any president would be. I do not know why one needs an office in an urban centre which costs Kshs200,000 and another one which costs Kshs100,000 in the rural area. If it is in the rural area, then he can use the office within his own house, which is also paid for by the Government. Why do we need two offices, one in the city and another one in upcountry?

As much as I like this Bill, I find it is a little bit exaggerated. We need to look at it again and

amend some of these things. Otherwise, if we pass it the way it is, we will be hit by the Press. I do not think I need an office here and another one upcountry which are all paid for by the taxpayers. I think we are over-burdening the taxpayers. I think it is important to decide whether we want the retired president to have an office here or in the rural area. I do not think it is necessary to give a retired president several cars with unlimited travel, furniture, equipment and personnel.

Mr. Temporary Deputy Speaker, Sir, in the Bill itself, there are so many things which I do not know how to make use of. I am being reasonable. I am not talking about anybody. The taxpayer will question this Bill when we pass it. To provide a retired president with two personal assistants is a bit reasonable. But four secretaries! What is he going to use the four secretaries for? Even the current President has two secretaries. Why does a retired president need four secretaries? I request that we reduce them to two. There is also a proposal to give a retired president, four messengers! Where will he be sending them? Are we employing people to work in their private businesses? If it is a private business, they should pay for it. But if it is for the purposes of a retired president four messengers are many. I know that the late Mzee Kenyatta and retired former President, Mr. Moi had two messengers. Even President Kibaki has two messengers. Fortunately, I have been around during the time of all those presidents. Mr. Munyao would bear me witness because he was also with me. They have always had two messengers. But now, we want to give them four messengers when they retire! How can you explain that to the public? How do you reason that out?

Look at the issue of four drivers! How many cars are they supposed to drive? If we have given him three cars; two mercedes benzes and one four-wheel drive, what is the fourth driver for? Who does he drive? To take children to school? There is no retired president who will have school-going children. I doubt it! If there is a retired president who has children, then it is against the Constitution. There is already an age limit of 35 years for one to become a president. Let us make it three drivers. He does not need four drivers because he does not have children to take to school. One driver can drive the wife and the others could be for security purposes. After all, the security men themselves are mainly drivers.

Six security guards looks a bit reasonable. But to have two cooks, I do not know how much food he wants to eat! Maybe, we can have one cook in Nairobi and the other one for the other home, up-country. If you look at two housekeepers, two gardeners, two laundry persons and four house cleaners, it looks a bit exaggerated! I would go for three or two house cleaners!

As I said earlier, on the question of unlimited local travel, you cannot put the word "unlimited"! That would be like giving somebody a blank cheque. It should be limited, even if it means 50. It would be understood. But when we say "unlimited" we would be hit by the Press. The retired president can even spend Kshs10 million on travel expenses. But because it is in the Bill, you will have to pay for it. He will say it is in the Bill. So, how would you refuse to pay even if he spent Kshs100 million? That is a very dangerous position. He could go and sleep in Maasai Mara and even ask to be charged Kshs1 million a day! It would be paid because it is contained in the Act. We would rather put a figure of how much he can spend on travelling, rather than saying "unlimited" travels. Whoever was drafting this Bill lost sight of those particular issues. If we put a figure, he will also know how much he is entitled to spend. We should not talk about "unlimited". The word unlimited is dangerous to anybody, especially the taxpayer. We should not pass an Act providing for unlimited travels. When you say unlimited travel, it is not only travelling, but it is unlimited amount of money being spent.

Mr. Temporary Deputy Speaker, Sir, I do not intend to go very far, but when you come to international travel, a retired president is given an allowance of up to four trips! Trips to where? Why not give him a certain amount of money to spend? Instead of making four trips, he might want to make ten trips. He could decide to use Kshs100,000 on one trip and another Kshs200,000 on another trip because he has the figures. But if you limit him to four trips, he might want to go on ten trips. The trips might be important. But he or she should be given a figure to budget for the trips. If you limit him to

four trips, you are either limiting him too much, or you are giving him also another unlimited amount of money to spend.

Mr. Temporary Deputy Speaker, Sir, I agree that a retired president should get Very Important Person (VIP) treatment wherever he goes, even if it is at the airport in my constituency! I also offer to meet him at times when it is necessary. I hope that what I have said has been noted and will be corrected. Those who think the Bill is directed at any individual are totally mistaken. The future will tell because many will come. The Bill cannot be directed at anybody.

I think the question of dictatorship should be looked into. Let them behave when they are in office. That is because some retired presidents have punished others. Why would I want to contribute money for the upkeep of somebody who punished others, including me, and killed the economy of this country? That is supposed to be looked into.

Mr. Temporary Deputy Speaker, Sir, this is a very important and tricky Bill. If we are not careful and pass it the way it is, we will regret it one day. I also agree and join others to say that when the former president handed over power, he showed a very good thing. In future, handing-over power should be conducted in that manner. Maybe, we should have guidelines on how one should hand over. You remember how it was at Uhuru Park. It was chaotic. It is also important to mention how a handing-over ceremony of any president is going to be conducted. There is no law that indicates how a handing-over ceremony should be done.

I was at Uhuru Park and nobody was controlling what was happening. I was the president of this country for one and half hours, controlling the people at Uhuru Park and this country because there was nobody. The law does not state how a handing-over ceremony should be conducted. To avoid that in future, let us propose guidelines on how the ceremony should be conducted.

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

Mr. Kimeto: Thank you very much, Mr. Temporary Deputy Speaker, Sir. I want to support this Motion and I would like it to be amended in several ways.

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Kimeto! We are debating a Bill and not a Motion.

Mr. Kimeto: Mr. Temporary Deputy Speaker, Sir, thank you very much for advising me. This is a very good Bill. If we pass it without emotions, it will be a good Bill for future retired presidents. If we put a good retirement package for retired presidents, it will encourage sitting presidents not to do bad things. They will know that sooner or later, they will benefit from many things. So this Bill, if looked into without emotions, will assist retired presidents of this country. We do not want to pass this Bill as if it is going to assist one particular person while killing another. We should pass it without emotions so that, Members of Parliament, like Mr. Kimeto, who never knew he would become a Member of Parliament in the old days, can become the president of this country. I want this House to pass on the information that Mr. Kimeto would like to become the president of this country. He will not subject Kenyans to so many problems.

Mr. Temporary Deputy Speaker, Sir, I would like this Bill to be passed by this House so that future Presidents can know that the State will provide them with good houses, give them competent workers and good cars when they retire. We should not tell an incoming President that if he or she does this or that while in office, he or she will lose this and that. A retired President should be treated like any ordinary citizen. If a retired President breaks the laws of this country while in office, he or she should be taken to court in accordance with the laws of this country. We should not say that if a retired President does this or that, then this and that should happen to him. The laws of this country should take care of that situation. If a President breaks any of the laws governing this country, he should be taken to court and charged with the offence. We should pass a Bill in this House which states that the President of this country is not above the laws of this country. If this is done, it will compel sitting Presidents to adhere to the laws of this country. The immediate former President did not

participate in the Goldenberg scandal, as some hon. Members have alleged in this House. We should not level all these accusations against him, but instead we should praise him. For example, the immediate former President, Mr. Daniel Toroitich arap Moi ruled this country for 24 years, and yet some hon. Members are trying to witch hunt him. These hon. Members should understand that--

The Assistant Minister for Labour and Human Resource Development (Mr. Odoyo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to mislead this House that this good Government of NARC is trying to witch hunt the immediate former President?

Mr. Kimeto: Mr. Temporary Deputy Speaker, Sir, I have not said that the NARC Government--

The Temporary Deputy Speaker (Mr. Khamasi): You are right, Mr. Kimeto! I have not heard you mention the word "NARC".

Therefore, proceed!

Mr. Kimeto: Mr. Temporary Deputy Speaker, Sir, you have said exactly what I was going to say. The hon. Member should listen carefully. I have said that some hon. Members have been criticising the immediate former President, who ruled for 24 years, and yet he led this country to higher economic heights. It is retired President Moi who handed over power to President Kibaki.

The NARC Government is only eight months old--

The Assistant Minister for Labour and Human Resource Development (Mr. Odoyo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Why should you allow the hon. Member to keep on misleading this House? He knows very well that it was wananchi who voted in the NARC Government and President Moi merely handed over power to President Kibaki.

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Odoyo, I think you are unnecessarily interrupting Mr. Kimeto! Could you, please, allow him to make his contribution on this Bill?

Mr. Kimeto: Mr. Temporary Deputy Speaker, Sir, forgive the Assistant Minister because he is learning to be in the Government the same way we are also learning to be in the Opposition. Let him sit and listen to what I am saying.

We should not witch hunt the late Mzee Jomo Kenyatta, who led this country after Independence, and was succeeded by former President Moi, who later on handed over power to President Kibaki. So, these former Presidents should be given good retirement benefits. In the case of the late President Mzee Jomo Kenyatta, his spouses, who are alive should be given his retirement benefits.

I would like to say that an old President should not be stopped from marrying. If a President can take care of his children without any problem he should be allowed to marry even ten wives and have many children. Very soon we will have young Presidents with school-going children at the time of leaving office. We should assist such Presidents. I am responding to the remarks made by an hon. Member in this House that a retired President might not have school-going children. Nobody can tell what will happen in future. I am saying this because a person could be elected the President of this country at the age of 35 years, retire at the age of 45 years and still marry. If the late Vice-President, Mr. Wamalwa, was the President of this country, he would now be expecting a child in the near future, and that child would still be taken care of by the State.

I would like this House to pass good laws, which will not punish the people who will be elected Presidents of this country in future. I am saying this because nobody knows whether or not I will be the President of this country in future. We should enact laws which will not punish us when we are elected President of this country, the current President or the immediate former President. The Minister should have provided in this Bill that a retired President would be attending national functions together with a sitting President, as was the case during the last Kenyatta Day celebrations held at the Nyayo National Stadium. We would like the immediate former President and the sitting President to

be friends for the benefit of this nation. If this happens, we will not have the Government being overthrown. If a person overthrows the Government, he should not be given retirement benefits when he leaves office. But if a person is elected President by the majority of Kenyans the way President Kibaki was, he should be entitled to retirement benefits when he retires. So, every President who is elected democratically should be paid retirement benefits when he leaves office. Therefore, we should not move amendments to this Bill and make it punitive to retired Presidents.

Mr. Temporary Deputy Speaker, with those few remarks, I beg to support this Bill with some amendments.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to make a few comments on this Bill. The spirit that this Bill brings to this country is very good. It is good because it is important to recognise the work done and dedication shown by our leaders by rewarding them.

There are a few Clauses in this Bill which our good friend here, Mr. Katuku, should look at keenly because they do not make sense. A President is a President and how he leaves office is immaterial. Whether a President is hounded out of office by way of impeachment or in whichever other way, he remains a former President of the country, and he or she should be entitled to a pension.

So, it does not matter whether the former President left office for violation of the Constitution or is guilty of gross misconduct. The underlying principle is whether he was or was not the President of this country. In the Public Service we have lots of officers who breach the law and are normally retired in the public interest and still, wherever they are, they get their pension.

Mr. Temporary Deputy Speaker, Sir, Clause 4(1)(b)(i), where the Bill stipulates that a President who has retired will forfeit his pension if convicted of an offense and sentenced to imprisonment for a term of three years or more without the option of a fine, does not make any sense at all. What happens if a retired President is convicted of a traffic offence or an offense under the Public Health Act and send to jail for three years? Does he lose his pension? Do these actions have anything to do with his conduct as a former President? I do not believe that we should have these limitations. If we want to pass the law to give a retired President pension, it does not matter who, then we must do so. We should not create limiting clauses that end up taking away what we are trying to give.

What would happen if a retired President faces trumped up charges and is locked up? Will he lose his pension? What will happen if we get a President in future, who wakes up one day and decides that all his predecessors have something to answer for as it happened in Ghana? Luckily, in Ghana the former leaders were not jailed but shot dead, and so the issue of whether they were to get benefits or not did not arise. We should not create a situation where the rights we want to give by way of legislation turn into privileges that can be withdrawn at will. That will not be a good law.

The Constitution of this country, including the one that we are debating at the Bomas of Kenya, gives every Kenyan the freedom of association. That freedom of association means and includes enrolment, membership and participation in activities of political parties. I do not believe that the holding of office in a political party by a retired President should lead to withdrawal of his pension. That will be a violation of the Constitution as it is now and even the one we are debating at the Bomas of Kenya, if we eventually promulgate it.

Mr. Temporary Deputy Speaker, Sir, I honestly do not understand what Mr. Katuku has in mind when he gives this House an unfettered discretion to bring a Motion, not even a Bill, to interfere with the pension that we are enacting in Clause 4(1). We are told that Parliament may, by a Motion, decide to limit the benefits of a retired President. This Parliament cannot, even by a Motion, limit the benefits of a clerk or a cleaner in the Government! Why would we want to limit the benefits that we have given in recognition of the fact that the retired man or woman has served this country as a President? These are things that the line Ministry, which has brought this Bill, should look into.

If in future we shall have Vice Presidents as running mates to the President, meaning that the President will not be able to hire and fire the Vice President at will the way it was done in the previous regime, then they should also be entitled to a pension. This is because as a running mate, a vice-president will serve a full term under the President, and will stand to serve the remainder of the term in the event that the President leaves office for whatever reason. We should extend the benefits provided by this Bill to the Vice-President. I can see that wisdom seems to have flown well and there is an intention to introduce a clause in this Bill to that effect.

On Clause 5(f) and (g), I want to point out that if we intend to give our retired Presidents cars, then we should clearly stipulate that we buy him new cars. We should not get into a situation where a retired President is given shells that cannot even move. This can happen to anybody. We should pass a law that will create comfort for a retired President. We should make it absolutely mandatory that the State will buy him cars. We should also have in the schedule a clause that provides that such cars will be renewed after a particular period, and that in the event of any accident, obviously the insurance will take care. However, the lifespan of such cars, as is the case in Government, should be adhered to.

On Clause 5(j), it is necessary to indicate that the full medical and hospital cover provided for the President, including local and overseas treatment, should cover the spouse as well. This is because the Bill seems to indicate that the spouse will only benefit if the retired President dies. In matters of health, it is important to give a medical cover to the spouse. After all, if a retired President has to live happily, he or she must have a spouse who is properly covered in terms of health as well.

Mr. Temporary Deputy Speaker, Sir, on the schedule in which the provisions of the Act are repeated, it would be necessary to pluck out clauses, like the one on holding office in a political party, that tend to violate the constitutional rights of a retired President. It is important to point out in relation to conviction for an offence that in the USA, when Mr. Richard Nixon was hounded out of office through the Watergate scandal, he still received a pension until he died. I do not see any difference between our democracy and the American democracy. If we want to support a retired President, it is important that we do so.

I also want to point out that apart from the retirement benefits, it may be desirable for us to have some clear chart on what we expect a retired President to do. If a retired President has served one term of office, he is, under the Constitution, entitled to come back and run for another term. However, during the period when he serves his new term his pension will be suspended. For a President who has served his two full terms, we should have some provision that gives him a role that is not purely discretionary for the Government of the day. We should provide that a retired President will be expected to preside over and participate in some public functions. His role during national days should be clearly defined so that he does not just turn up at national functions as a rubble rouser. This way, we will make retired Presidents feel that it is not worth any while to be meddlesome in a system that took over from him. Otherwise, if they do not have defined roles the temptation for them to be cheeky against the Government that has succeeded them will be so high. This will not be good for the country.

Mr. Temporary Deputy Speaker, Sir, on the whole, the spirit of this Bill is very good in that we are now recognizing that those who have served this country in such a high capacity, it does not matter how they served, must be recognised and rewarded.

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

Dr. Godana: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to make some very brief contribution to the simple and straight forward Bill before the House. The Bill is most welcome. Indeed, it is long overdue. We should have passed it last year before we went for elections. In fact, after the elections we should have passed it as the first thing.

There are only two Clauses that I want to comment on. The first is Clause 1. It says:

"This Act may be cited as the Presidential Retirement Benefits Act, 2003, and shall,

subject to Section 6, be deemed to have come into operation on 1st January, 2003."

Mr. Temporary Deputy Speaker, Sir, I wonder why its operation date is 1st January, 2003, yet, I recall that the former President went on retirement the day the current President swore the oath of office. I think it should be from the day after the current President swore the oath of office.

Mr. Temporary Deputy Speaker, Sir, on Clause 4, I listened keenly to what my colleague, Mr. Wetangula said, and I fully concur with him. The idea inserted in Clause 4 (1), of circumstances under which pension can be denied is most monstrous. A pension is payment for services already done. In a sense, it is earnings already legally earned. No conduct, short of change of national loyalty and, perhaps, change of national loyalty in terms of becoming a citizen of a country which may be constituted to be an enemy State, should deny a public servant who is on pension his pension earnings. I do know the law and practice in this country is that, indeed, there are at anytime, pensioners who are in our prisons serving major sentences of up to ten years. I have never heard of an attempt to deny them their pensions because they committed a major or grievous felony for which they were committed to prison. I remember in one case fighting for the family of a pensioner who was committed to prison for a few years. I insisted that his pension be paid to him and not to his family. We had to find a way to talk to him in prison to ensure that he did not deny the family the benefits of his pension. I came up against the argument from the prison authorities rightly, that they could not take the money from him because it was his. I think they were right. So, I think this idea should be completely expunged.

Mr. Temporary Deputy Speaker, Sir, I want also to talk about the idea of a former President abusing the Constitution, or otherwise, engaging in conduct which is considered to be serious misbehaviour. A former President is subject to the law of the land like every other citizen. I think it comes to the same thing really. It is an amplification of the so called "circumstances under which pension can be denied." The whole idea of denying the retired President his retirement benefits on the account of his conduct is tantamount to making the payment of pension conditional. Payment of pension should be conditional on only one thing, that is, service already rendered. In this case, service as the President of the Republic. Where a President, maybe, because of the change of law in future and the new Constitution--- I see the Assistant Minister for Finance, who was sitting in for the Minister for Finance, has taken to conducting a Kamba meeting in one corner of the House there.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Katuku! Hon. Members, could we listen to Dr. Godana?

Dr. Godana: Thank you, Mr. Temporary Deputy Speaker, Sir. I thought the Minister had given him the brief to sit in and take notes.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for my learned friend here to impute improper motives on Mr. Katuku, that he is holding a tribal meeting in the Chamber of Parliament?

(Laughter)

Dr. Godana: Mr. Temporary Deputy Speaker, Sir, there was no imputation of improper motives. I think the evidence is clear. Three hon. Members, all from the Kamba community, talking partially in Kikamba---

The Temporary Deputy Speaker (Mr. Khamasi): Order, Dr. Godana! In any case, Mr. Katuku never raised an issue. So, you can proceed.

The Assistant Minister for Finance (Mr. Katuku): On a point of order, Mr. Temporary

Deputy Speaker, Sir. Is the hon. Member in order to impute improper motive on my part, Mr. Munyao and Mr. Kilonzo, that we are holding an illegal meeting here, while we are allowed to consult, whether tribal, or otherwise?

Dr. Godana: Mr. Temporary Deputy Speaker, Sir, I beg to continue since I had said I did not impute any improper motive. I had just expressed my displeasure. Shall I call it this time then "the Kamba Regional Alliance" in one corner of the Chamber?

Mr. Temporary Deputy Speaker, Sir, the provisions in Clause 4(4)(a) again, refer to the benefits conferred on a surviving spouse under Sections six and seven. It says:

"those benefits shall commence on the day after the retired or serving President dies."

We are making the law for the future. I wonder whether it would not be proper in the case of a serving President who dies to say "the day after he is buried" I thought he is vested with the full benefits of the office until his body is interred."

Part "b" says:

"Such benefits shall not be payable unless such spouse waives the right to any other annuity or pension to which the spouse is entitled under the provisions of any other Act."

Obviously, two pensions cannot be paid to one person. That is the general law right now. Indeed, in many other situations where individuals who are already on pension, engage in new employment which is entitled to pension benefit, the practice in this country is to put the person under the National Social Security Fund (NSSF) type of payments for the second term of service. I think that it is quite in order that the person will have to waive the first pension. I think Clause "c" is also quite in order.

So, in effect, I fully agree with the detailed provisions set out in Article 5. I do not think I need to go into the details. It is obvious, that where we talk of two Mercedes Benz cars and other sorts of facilities, we are talking of effective facilities. We hope no Government really worth its name will go to the point of offering to a retiring President, vehicles which are fit only for boarding.

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

Mr. M. Kariuki: Thank you, Mr. Temporary Deputy Speaker, Sir. I beg to support this Bill. It is unfortunate that it has taken us 40 years to bring this particular Bill to the House. It is quite understandable that in the past we had lived in fear. The people who have been presiding over the leadership of this country could not allow us even to imagine their retirement or demise. I think it is for that reason that Parliament never bothered to bring this particular legislation for deliberation. I think it is a positive commentary that we are now discussion this particular Bill under a very expanded democratic space. We can now imagine the death and retirement of Presidents with impunity.

Mr. Temporary Deputy Speaker, Sir, let me address myself to the provision of Clause 4. I know that several observations have been made on this particular clause, but I still see two important aspects of this particular clause. The first part of this clause sets the standards of ethics and conduct for presidents who are in office and the second part of it sets the conduct and ethics of presidents who have retired. I think the object is, really, to try and raise the image of a serving or a retiring president and to inspire confidence in the public and in that particular office holder.

Some observations have been made that we need to amend Clause 4, so that retiring presidents are not visited by their conducts while in office. It is against all cardinal principles of international laws to try and create a statute of impunity on any individual. I think Clause 4 is very carefully drafted in such a manner that no president will enjoy impunity or immunity either, and I support that particular position.

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

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

Mr. Temporary Deputy Speaker, Sir, if you look at Section 14 of the Constitution, there are varied interpretations by different people. Mr. M. Kilonzo has a different interpretation of that particular Section. But Section 14 of the current Constitution does not create impunity or immunity on the holder of the Office of the President. What it actually does is to delay any possible action being taken against the holder of that Office at the time when he is holding the office. That is essentially to ensure that he is not interrupted in his execution of State duties while acting as the President of the Republic of Kenya. That is not synonymous with impunity or immunity.

I hold the view that a serving president who retires, and who had committed criminal acts or civil wrongs while in office, should be liable to be pursued after he has left office. I believe that the current jurisprudence in international law is, in fact, to make Heads of State accountable for their conduct while in office and ensure that their conduct is consistent with international standards on human rights. That is why today, some Heads of States who have retired, like in the case of Pinnochet, had to flee to foreign countries only to find that international warrants for their arrest had been issued. Now the same is going to happen to the immediate former Liberian President, Mr. Charles Taylor.

So, as much as we want to re-assure our retiring Heads of States that they are safe, the international jurisprudence is such that we cannot grant them impunity. They must be held accountable for their conduct while in office. Even after retiring, they must continue to behave in such a manner that inspires confidence in the citizens of this country. So, I fully support the provisions of Clause 4. I think they are intended to ensure that those standards are, indeed, observed.

Mr. Temporary Deputy Speaker, Sir, I would like to comment on Clause 6. I have a very serious problem with the use of the term "active participation in politics". Clause 6 states as follows:-

"A retired President shall neither hold office in nor actively engage in the activities of any political party."

This particular phrase is very loaded; it is a very vague term. It is subject to different interpretation. I do not know what degree of "active engagement" we are talking about. That depends on a particular person interpreting that particular Clause. I would have been in a much happier position if this Clause was more specific; saying a retiring President will not do A, B, C. For instance, it could say he should not contest an elective office. That would be understandable. At the same time, if a retired President is to continue to be a member of his political party, the question then is whether he is engaging in active political activity.

Therefore, we need to reconstruct this particular Clause and be more particular about what we want. We need to draw a catalogue of political activities that we think can be construed to be "active engagement in political activities", and those that we think will not compromise the image of a retiring President. As it stands now, the phrase "active engagement" is very vague and ambiguous. It is likely to bring problems when it comes to the question of interpretation.

Mr. Temporary Deputy Speaker, Sir, on the whole, I agree with the spirit of this particular Clause in the sense that a retiring President should not be seen to assume a high profile in the affairs of a particular party. The enormous retirement benefits that he will be getting will be coming from taxpayers across the board. They will not be coming from taxpayers in a particular party in which he will be assuming a high profile. So, I agree that there is a sense in which retiring Presidents have to assume a low profile as far as political activities are concerned, but the degree and extent to which they can do so, has to be defined by this particular Clause.

I agree entirely with Mr. Mwenje regarding the provisions of Clause 5. If one looks at the particular benefits proposed in this Bill, one will be more comfortable as a retired Head of State rather

than as a serving Head of State. Certainly, the benefits will be enormous. A retired President will be getting 80 per cent of a serving President's salary and other tax-free benefits. A retired President will not be having the headache of having to manage the affairs of the country. I think there is a sense in which this provision is disproportionate. We need to make it such that a retired President is able to survive as a dignified citizen and ensure that he meets his basic requirements of life until he meets his death. The same should apply to his family. However, the way in which Clause 5 has been crafted is such that it looks more attractive to be a retired President than a serving one.

Mr. Temporary Deputy Speaker, Sir, in providing our retired Presidents with these particular benefits, it is important to bear in mind the kind of country we are living in, especially the level of poverty and the number of poor people that we have. We have to bear in mind the kind of benefits that the workers who retire daily from the Civil Service get. There has to be some sort of a link between the benefits of a retired President and those of a retired worker in this country. If we give our retired workers a lumpsum amount of Ksh40,000, which they do not receive even five years after retirement, and who continue to suffer after five years, why do we have to be so particular about a retired Head of State who, as this Bill proposes, will be having a country house and an urban house? This particular Clause proposes allowances for both his urban and rural houses. We will be giving him so much house allowance for his urban town and Kshs150,000 for his rural house. This is not a poor citizen.

So, in creating these particular benefits, we have a challenge to meet. We must satisfy the citizens of this country that the President is just like one of them, and that it is just a matter of degree or the extent to which we should confer benefits to him, that we are not conferring to other retiring public servants. So, we should consider the state of our economy, the level of poverty in this country, the performance of our economy, and then come up with a formula that will ensure that a retiring President is not unduly elevated to such an extent that he will never understand the poverty at the grassroots level.

I appreciate that we are trying to give attractive perks to a retired President, so that the potential presidents of this country can see the need to respect the democratic tenets that we are trying to create. But in doing so, we should not go overboard. There is need to re-visit Clause 5 and the Schedule relating to the benefits of a retired President. I agree with the hon. Members who think that we should adjust the benefits proposed herein accordingly. It is important that we show some compassion to the poor people without assuming such a high position in terms of our earnings that we are likely to be out of touch with the ordinary people.

Mr. Temporary Deputy Speaker, Sir, I would like to make some observations relating to the duties of a president after retirement. In other jurisdictions, retiring Heads of States must get something to do, rather than running their own private affairs and Non-Governmental Organisations (NGOs). They should have a role to play in terms of being part of a consultative body that advises the President. They have the benefit of experience because they have had time in leadership and I think that, other than having the so-called "kitchen cabinet" as frequently referred to, the heads of state should constitute that particular "cabinet", which should advise a serving president because of the experience that they have shared.

I think that in some situations, particularly when we have to go for a mission that requires peace making both nationally and internationally, the President should be able to delegate some of those powers to a retired Head of State. It is a great honour that they should be the ones promoting peace both locally and internationally. I think there should be special duties for retiring Heads of State. We do not want them to go back to their farms, rot and after a few years, we are called to attend their burial.

Mr. Temporary Deputy Speaker, Sir, I would like to observe that there is something that appears contradictory between Clause 4 and Clause 12. Clause 4 makes provisions for Parliament, on a vote of two-thirds, to withdraw the benefits of a retired Head of State. But it says nothing more. If

you look at Clause 12, it says:-

"Regardless of the conduct of a retired head of state, he shall be accorded a State funeral".

I am just wondering that if a retired head of state has been found guilty of some crime and the benefits have been taken away from him by Parliament, how can the same Parliament proceed to say that a convicted criminal will be offered a State funeral. I think there is a sense in which we should be able to synchronize Clause 4 with Clause 12. If one is found guilty of having committed a crime and the benefits are withdrawn, he must not be given a State funeral under Clause 12. We do not want to have a national day to bury a criminal who ruined this country. We should give Parliament powers under Clause 4 to remove the rights for a State burial for a retired head of state who has been convicted of a criminal offence.

This Bill is coming at a time when there is a very friendly atmosphere. I remember that when it was initially published, there was a lot of acrimony. It was perceived as a way of witch-hunting and ensuring that former President Moi does not get his benefits. It has come after his retirement and the atmosphere is quite conducive to a national consensus. It is also timely.

My other concern about this Bill is that, if you look at the tax free benefits for a retiring head of state who earns a total package of about Kshs4 million, I think he should be humble enough and say that from whatever he gets, he can chip in some money for the development of this country by ensuring that he pays tax. There should be some modest form of tax. I think we are setting a bad and dangerous precedent where we fortify certain category of citizens from paying taxes. Members of Parliament pay taxes. So, a retired head of state, who probably earns eight times what a Member of Parliament earns, should be able to pay some tax. I have a little quarrel with that provision which fortifies a retired president from paying taxes.

With those few remarks, I beg to support.

Mr. Omingo: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this Bill. It is a Bill that has come quite handy and in good time. But we need to reflect back and understand the spirit in which it was introduced last year. You remember when we were in the Opposition- I am still in the Opposition- It is an open secret that this Bill was meant to entice the former President to leave office in comfort.

Mr. Temporary Deputy Speaker, Sir, suffice it to say that we must re-examine our Treasury. With the dawning of a new era in NARC, we must re-examine our position in line with what we have to pay, and whether we have the capacity to pay it. I support the Bill in its entirety, because the spirit is good.

But I have a serious quarrel with the content, amount and value in this Bill. I am saying that because previously, we have been accused of acting, behaving and leading without example. For that reason, we must look into this Bill. I intend to propose amendments to cut down expenditure on some heads. The purpose of any retirement benefit is to make the serving officer or executive comfortable. As Mr. Mwenje said, are we making the retired head of state more comfortable in retirement than when he was agonizing on how to administer 30 million people? I think we are not serious! We must look at it again as Kenyans, if we are supposed to get focused in that regard.

How about the taxes? We have moved away from leading from behind to leading from the top. I am a member of the Institute of Certified Public Accounts of Kenya (ICPAK) where, I am challenged everyday! I feel really handicapped in terms of tax payment programmes for Members of Parliament. Now, we are saying that a retiring president should be exempted from paying tax. I think that is not morally upright and must be looked into.

I am also worried about a president who does not finish a term. I may rise to the presidency after President Kibaki has finished his term and, perhaps, I am so incompetent that I cannot last a year. Would that be called a term? A term needs to be defined properly, so that we can understand whether it is a zero-term, a year-term or a five-year term. After all, why would you want to have a president

like that one of Rwanda, being given money to enjoy in retirement? I mean, we must get realistic and define the parameters within which this law is supposed to operate, so that we get sanity in line with what is supposed to happen upon retirement. That is because you can be a president who has deliberately pushed the country into war, caused life to perish, caused the economy to plunge into oblivion and then you are supposed to be given four secretaries on retirement. It is not morally upright.

The issue of spouse is contentious. When you are a serving civil servant or head of state, are you serving with your wife in that capacity? The benefits can pass to your spouse. I am wondering why the benefits of the office, for example when you are serving, are supposed to pass on to the spouse, including medical bills. I think we are not serious! It brings me to the point Mr. M. Kariuki talked about. Are we having a level playing field? Are we having two teams playing in a level playing ground where, one team is superior to the other and they cannot compete competitively? We must look into the issue of extending the benefits to the spouses.

One speaker, hon. M. Kilonzo, talked about an African President or man being polygamous by nature. Yes, so be it! But how many wives? I am going to marry 20 new young wives when I become President and State House will be a village of young wives giving birth to so many children because the State is going to provide for them. We must bring sanity into this area of personal interest. We could be polygamous, yes, but what is the limit? I mean, King Mswati of Swaziland marries every year. So, if a sitting President chooses to adopt that kind of style of living, we shall be having ten wives in a two-year term. Are we being sensible? We must look into this issue.

Mr. Temporary Deputy Speaker, Sir, one thing that is worrying also is that the Head of State upon retirement is also supposed to be given two offices, for example, one in Nairobi and another one in Kisii. Are we saying that you must be able to support these two offices and for what purpose? Indeed, when you look at the linkages between the responsibility of the retired President, he is not supposed to do anything whatsoever including advising any other person other than his party as per these provisions. Why are we then spending money to pay somebody in a vacuum who does not advise anybody? If I was in Government today, I would not like a retired President to advise me on Government matters because my policy is not the same as his. Let us be genuine. We must add this value to our tax paying public. What added value are those two offices going to give when this gentleman or lady leaves office and he can hardly advise anybody? What is the purpose? We must look into that expenditure aspect because it has knocked us down and brought about a negative budget of Kshs132 billion as of today and our children are going to be paying Kshs40,000 per person as soon as they are born. We must regulate our expenditure in this regard.

Mr. Temporary Deputy Speaker, Sir, the spirit of Clause 9 leaves me wondering. If you have already set out the parameters of what you want this man or woman to do upon retirement, why must he or she produce a statement on how he or she intends to administer these particular expenditures? You know it. It is good arithmetic. A house in Nairobi costs Kshs200,000 and another in Keroka will also cost Kshs100,000. We should add them up. Why should he be producing estimates? I think this will be one way of trying to gag the retired President who must also live comfortably, but not be strained.

Mr. Temporary Deputy Speaker, Sir, hon. Wetangula stood up here as a learned man and said: "Regardless of the status in which this man or woman leaves office, he must be paid benefits." I think we are joking. That is where the Rwanda case comes in. Am I going to sit and plunder the economy and simply because the law protects me, I must get money, and then expect you to pay me? That is not morally upright and we are saying that let us add value to the tax paying public. My biggest problem today in this particular Bill is the question of expenditure. If we would reconsider the possibility of reducing some of these luxurious provisions in this Bill, we would be different because I may want to go to office also for one year or one month and mess because hon. Wetangula has given me a cushion that I can commit any crime, retire, get money and live comfortably with four secretaries as opposed

to one.

Mr. Temporary Deputy Speaker, Sir, I am saying that in terms of instilling responsibility in a retired of Head of State companies give their directors cars that they were driving to go back home with. What is so special about buying him a new car? Why must we buy him a new car when he had a fleet of cars he was riding in? So, what we are saying is that in terms of instilling sanity in that State House, let him go with the cars he has been driving. If he has been messing them up, let him go with them. I mean, we have got to be realistic. Companies are doing the same. That instills responsibility and sanity in that particular office called State House. A while ago somebody stood up and said - I think it was hon. Katuku - that the vehicles that were in State House were vandalised and some were misused during the campaigns. Now, if you choose to use Government or State resources to campaign and by chance you go home without getting back to that office, go with the junks and repair them because they were giving you service and not the State. Why must we buy this man or woman new cars? We must put sanity in this regard.

Mr. Temporary Deputy Speaker, Sir, I am asking: What happens then, for instance, if the President who retires has a wife who perhaps, was also having pension and you want to give her also all the medical facilities? What surprises me is that in one of the Clauses, we intend to give a retired President Kshs300,000 for electricity and water. Are we joking? Do we really have that kind of money? Look at our economy. Today, in our country, 60 per cent of Kenyans live below the poverty line. A President who has served for ten years, for instance, is a person of means who has done so many things and has actually lived for all his entire life. I was about to suggest that we create an executive old-age home for the retired Presidents because what happens when ten of them were to retire within a spurn of ten years? How are we going to support such a budget? We need to introduce a fund and develop special executive homes for retired Presidents. It is so luxurious and we cannot afford it. We need to introduce, if possible, an executive home for the retiring Presidents. Of course, not for everybody, but only for those who retire after working for Kenyans and they can see the value that they have added to this nation.

Mr. Temporary Deputy Speaker, Sir, as I conclude, there is a case study I have for this nation regarding the expenditure we have had. Hon. Katuku can also agree with me because I know he knows, that out of the total debt which arises out of such kind of things--We will be living beyond our means because this jacket we are tailoring cannot be supported by our economy. It is one person today, but tomorrow they will be ten! 65 per cent of our GDP is in the form of both external and local debts. As if this is not enough, the scenario that unfolds, is so pathetic because every Kenyan today has a debt of Kshs21,645 to pay for what he does not know. Worse still, a Kenyan child born today is supposed to shoulder a debt burden of Kshs40,160 immediately he is born! Are we really being fair to these children? What are we saying?

Let us contain our expenditure. Let us live within our means and be reasonable in what we are proposing. I support the spirit of this Bill, but the contents and value in it, are totally disproportional to the state of our economy.

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

Mr. Salat: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this important Presidential Retirement Benefits Bill. First and foremost, today, in this House, has been a very important day. From the day the Mover of this Bill brought it here, I knew that there had been a change of heart, not long afterwards, the Seconder, followed suit. I then realised that the Mover and Seconder had seen the light. I never thought that this Bill would be discussed because, initially, there was so much acrimony about the status of a retired President. I had actually felt that Kenyans were good at taking care of dead Presidents than the living ones; retired Presidents. Since the Bill that we are discussing today addresses sitting Presidents, retired Presidents and any President

thereafter, first and foremost, I must take this opportunity to thank the former retired President for the manner in which he handed power. This has given this House an opportunity to discuss the Bill under an atmosphere that is peaceful.

It states quite clearly that:-

"This Act may be cited as the Presidential Retirement Benefits Act, 2003, and shall, subject to Section 6, be deemed to have come into operation on 1st January, 2003".

The reason for having this proviso, is that, it was intended to apply to the just retired President from the time he handed over on 30th December, 2002, so that he gets benefits for the full period he has been out of office. May I ask hon. Members to be as generous to our retired President as they were to themselves. We passed the Bill on Retirement Benefits for hon. Members of Parliament much after 1st January, but their allowances were backdated to 1st January.

So, I would plead with them to accept that this Bill, also becomes operational on 1st January, 2003, so that the first retired President can benefit from it fully, for the entire period he has been retired.

Mr. Temporary Deputy Speaker, Sir, a lot has been said about spouses who should benefit from the retirement benefits of a President. While it is true that we have African customs which allow marriage of several wives, in fact, African customs which make it possible for an hon. Member of Parliament to acquire a new wife every time he wins an election, I believe that, really, we should cater for all the spouses and not just one spouse.

Mr. Salat: Waziri!

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Salat!

The Minister for Finance (Mr. Mwiraria): Thank you, Mr. Temporary Deputy Speaker, Sir, for protecting me. I am just drawing attention to the hon. Member that there are some of us who acquire new wives every time we win an election. I am respecting it, and that is why I am saying, that where that happens, if somebody later becomes President, all his spouses should benefit from the pension he is enjoying. Of course, this also takes into account that the Muslim community allows somebody to marry four wives, and there is no reason why we should only pick on one to benefit from this pension.

The Temporary Deputy Speaker (Mr. Khamasi): Minister, address the Chair!

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, I was only looking in that direction because that is where my head felt more comfortable.

Mr. Salat: On a point of order, Mr. Temporary Deputy Speaker, Sir. You heard the Minister allude to the fact that the Bill allows for more than one spouse of a retired male President to benefit from the pension. What if we had a President who is female; would she be allowed to have as many husbands?

The Temporary Deputy Speaker (Mr. Khamasi): That is a frivolous point of order. Proceed, Mr. Mwiraria!

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, I am surprised that a Kenyan does not know that we do not practice polyandry in this country. That is only something which is common in India.

Mr. Temporary Deputy Speaker, Sir, with regard to the beneficiaries of this Bill, we have provided that the spouse of a retired President should benefit from it. I believe, it is only fair, because we are not going to increase or reduce the amount of money that we are paying as retirement benefits. It should be shared by spouses, where they are more than one.

Mr. Temporary Deputy Speaker, Sir, Kenya will never be the same again as a result of that very important occasion that we all witnessed at Uhuru Park when the then President chose to differ from the rest of Africa; where no President has ever handed over power peacefully like the former President did. Kenya has now attained a different light worldwide because the former President has

given this country respect. No one ever thought this country - an African country - could debate a Bill on how we should take care of retired Presidents, especially the retired President Moi who has led this country for the last 24 years. When you talk about Kenya now, everybody will say that the country is actually striving to be democratic. This Bill actually sends out a signal to other neighbouring countries in Africa, those countries which are still at war or those countries not at peace; that Kenya is an example to be emulated. It is for that reason that we thank the former President for actually putting this country in a new light.

Aside from that, the Bill that we are discussing today is being discussed with no political affiliation, because you never know, any one of us here as Members of Parliament, is qualified to someday contest and be the President of this country. So, when we discuss this Bill, we are discussing the security of that individual who would one day retire and follow the example set by the retired President, Mr. Moi. Security for a retired President means that a sitting President should not ask himself what he should do after retirement; should he start acquiring? It actually guarantees the person that there is no need to be corrupt as his retirement is guaranteed after serving this nation for the ten-year period as stipulated in the Constitution.

Mr. Temporary Deputy Speaker, Sir, the only issue that I have with this Bill is Clause 6, where it says that a retired President shall not actively engage in activities of any political party. I still find that this Bill was addressed to our retired President, His Excellency, Mr. Moi. What it fails to do is actually to articulate---

Mr. J.M. Mutiso: On a point of order, Mr. Temporary Deputy Speaker, Sir. We have had an exhaustive discussion about this Bill. Could the Mover of the Bill now be called upon to reply?

(Applause)

The Temporary Deputy Speaker (Mr. Khamasi): Yes, I am bound to accede to that request, but please, let hon. Salat finish his contribution, then we will call upon the Mover to reply.

(Loud Consultations)

The Temporary Deputy Speaker (Mr. Khamasi): Order! Mr. Salat, address the Chair!

Mr. Salat: Thank you, Mr. Temporary Deputy Speaker, Sir. There is so much consultation among hon. Members, that I would like to ask for protection from the Chair.

However, in conclusion, Clause 6 of this Bill needs to be addressed in detail, because it is not specific on the role of a retired President. For example, does it mean that a retired President cannot hold a *Harambee* for a church? Is that partly engaging in politics? This Clause does not specify.

Clause 6 (3) of this Bill states that:-

"A retired President may be requested by the Government to perform specific official functions and shall be paid a reasonable allowance in respect of such official functions."

What the Government is stating is that, this makes a retired President look like he is not performing, is corrupt or not democratically addressing issues. Are we going to force that President to actually perform functions that are contrary to his beliefs? This Clause needs to be looked at in a different light.

Mr. Temporary Deputy Speaker, Sir, Clause 12 proposes that:-

"Upon death, a retired President be accorded a State funeral."

I support this Clause entirely because a retired President deserves a State funeral like we had for the late Vice-President of this country, where we even adjourned a very important function of the constitutional review conference to mourn his death. This is because his contribution to this nation was

felt countrywide. Therefore, I do support that after serving this country for 24 years, the way retired President Moi has served this country, ten of which were after the repeal of Section 2(a) of the Constitution, he deserves to be accorded - or any other President thereafter - a State funeral. It is important that we honour the people who have kept this country intact. It is also important that we look at the welfare of retired Presidents, like former President Moi, who, in my opinion and the opinion of many other Kenyans out there, have done well for this country. We owe it them, to give them a retirement package, so that they can understand that, not all they did for this country was in vain, but they did it well for the benefit of this country. The sitting President and the Presidents who will come after him will take a cue from the retired President, that a President should not cling to power.

Mr. Temporary Deputy Speaker, Sir, therefore, I urge Mr. Mutiso to support this Bill. I am so glad that the Minister for Finance who was the seconder of this Bill, that today we shook hands after a very long time. I hope that atmosphere can be enhanced.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Khamasi): Hon. Members, we need to have a resolution of the House on the request put by Mr. J.M. Mutiso, which is that the Mover be called upon to reply.

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

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, let me thank all the hon. Members who have contributed to this Bill for being very objective; for looking at this Bill in the light it should be looked at and for accepting the fact that, we are moving this Bill to take care of past, present and future Presidents of this country.

Mr. Temporary Deputy Speaker, Sir, Mr. Salat made a few remarks about our having a change of heart and seeing the light. May I plead with him to accept the truth, which is, that we thank KANU for accepting a humiliating defeat.

(Applause)

Mr. Temporary Deputy Speaker, Sir, a lot has been said about this Bill. There are some people who complained that this Bill cannot apply to the just retired President. I would like to draw their attention to the short title and date of commencement of this Bill which is the first item.

It states quite clearly that:-

"This Act may be cited as the Presidential Retirement Benefits Act, 2003, and shall, subject to Section 6, be deemed to have come into operation on 1st January, 2003".

The reason for having this proviso, is that, it was intended to apply to the just retired President from the time he handed over on 30th December, 2002, so that he gets benefits for the full period he has been out of office. May I ask hon. Members to be as generous to our retired President as they were to themselves. We passed the Bill on Retirement Benefits for hon. Members of Parliament much after 1st January, but their allowances were backdated to 1st January. So, I would plead with them to accept that this Bill, also becomes operational on 1st January, 2003, so that the first retired President can benefit from it fully, for the entire period he has been retired.

Mr. Temporary Deputy Speaker, Sir, a lot has been said about spouses who should benefit from the retirement benefits of a President. While it is true that we have African customs which allow marriage of several wives, in fact, African customs which make it possible for an hon. Member of

Parliament to acquire a new wife every time he wins an election, I believe that, really, we should cater for all the spouses and not just one spouse.

Mr. Salat: Waziri!

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Salat!

The Minister for Finance (Mr. Mwiraria): Thank you, Mr. Temporary Deputy Speaker, Sir, for protecting me. I am just drawing attention to the hon. Member that there are some of us who acquire new wives every time we win an election. I am respecting it, and that is why I am saying, that where that happens, if somebody later becomes President, all his spouses should benefit from the pension he is enjoying. Of course, this also takes into account that the Muslim community allows somebody to marry four wives, and there is no reason why we should only pick on one to benefit from this pension.

The Temporary Deputy Speaker (Mr. Khamasi): Minister, address the Chair!

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, I was only looking in that direction because that is where my head felt more comfortable.

Mr. Salat: On a point of order, Mr. Temporary Deputy Speaker, Sir. You heard the Minister allude to the fact that the Bill allows for more than one spouse of a retired male President to benefit from the pension. What if we had a President who is female; would she be allowed to have as many husbands?

The Temporary Deputy Speaker (Mr. Khamasi): That is a frivolous point of order. Proceed, Mr. Mwiraria!

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, I am surprised that a Kenyan does not know that we do not practice polyandry in this country. That is only something which is common in India.

Mr. Temporary Deputy Speaker, Sir, with regard to the beneficiaries of this Bill, we have provided that the spouse of a retired President should benefit from it. I believe, it is only fair, because we are not going to increase or reduce the amount of money that we are paying as retirement benefits. It should be shared by spouses, where they are more than one.

Clause 4 has been criticised for trying to force a retired President into being scared in having two-thirds of the House vote against him. This Clause can only be taken to imply that we expect a retired President who has achieved and attained the highest Office in the land, to behave cautiously and properly so that he does not become an irresponsible ex-President.

There were few references to what has been happening in the USA. May I, with respect, say that it is true that the former President Bill Clinton even introduced Gen. Wesley as a candidate for the Democratic Party for the next Presidential Election. There is a big difference between Kenya and the USA. We cannot as a new democracy which is trying to mould itself and struggling to do a few things like having a handing over like the one we had in December, which we really respect, do things like Americans. Since this does not happen too often here, therefore, we should take things gradually. We should not be in a rush to behave or democratise like the Americans because we cannot match their behaviour.

Mr. Temporary Deputy Speaker, Sir, the British from whom we inherited this Parliament do not have a written Constitution. The British Constitution is in the heads of the Britons, yet, they are perhaps, one of the best democratic countries. We cannot say that because Britain does not have a written Constitution then we should not have one in Kenya. I am just trying to say that comparisons may be good but we may stretch ourselves too far. It is true that Mr. Bill Clinton can do what he wants in America. Here, we want a President who is there for the sake of keeping the nation together and one who keeps out of politics once he has retired. I think that is a good recommendation that is in this Bill.

I would also like to emphasise the fact that this Bill foresees a position whereby a former

President could be used by the nation to carry out some obligations on behalf of the nation. We foresee a position where a former President could hold an office for which he is paid. We are providing here that if he is paid a handsome sum of money, then it should be deducted from his or her pension benefit.

One hon. Member talked about the possibility of retiring a Vice President under similar terms. This can only become applicable once we have a system where we have a Presidential candidate with his running mate. At that stage, there is every reason to retire them both under similar terms. Since that situation does not arise today, I think that we can ignore it.

Mr. Temporary Deputy Speaker, Sir, I think Mr. Mutula Kilonzo spoke very convincingly about the need to review a former President's retirement benefits regularly in order to take care of inflation. As a pensioner I do agree entirely, but I want to draw the attention of the hon. Members to Clause 5(a)(b) which states that a retired President shall, during his lifetime be entitled to a monthly pension equal to 80 per cent of the monthly salary currently paid to the President. This means that if you change the salary of the current President, then automatically you change the benefits of the retired President.

(Applause)

Mr. Temporary Deputy Speaker, Sir, I do agree with those hon. Members who have taken issue with the provision that a President should be entitled to two Mercedes Benz cars having an engine capacity of 2800 cubic centimetres. As a nation which intends to industrialise and go into the manufacture of motor cars, a day will come when we will be proud to have our President drive in a Kenya-manufactured car. I agree with those who are suggesting that we should delete the Mercedes Benz when it comes to the Committee Stage and put a Sedan car, having this engine capacity. I am sure that in the lifetime of the hon. Members in this House, we shall be having our President driving in a locally manufactured Kenyan car.

Mr. Temporary Deputy Speaker, Sir, there have been suggestions that maybe, the President's benefits should be moved out of the main Bill and put in a Schedule which becomes easier to amend in future. This is something once again, which can be looked at when we come to the Committee Stage. As I stated earlier on, I really want to thank the hon. Members for a very candid discussion and for supporting this Bill. Incidentally, I should say that were the Attorney-General here, he would have moved this Motion, but we belong to the same Government and under collective responsibility, I was asked to move it. Therefore, it has been my pleasure to move the Bill. I really do appreciate what the hon. Members have said.

With those few remarks, I beg to move.

(Question put and agreed to)

*(The Bill was read a Second Time
and committed to a Committee of
the Whole House tomorrow)*

The Temporary Deputy Speaker (Mr. Khamasi): Next Order!

Second Reading

THE RETIREMENT BENEFITS
(AMENDMENT) BILL

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Retirement Benefits (Amendment) Bill be read a Second Time.

Mr. Temporary Deputy Speaker, Sir, this is a very short Bill whose aim is to bring a few amendments to the Retirement Benefits Act of 1997 in order to harmonise provisions with those of other Acts such as the Capital Markets Act, Cap.455A of the Laws of Kenya, the Insurance Act, Cap---

QUORUM

Mr. Serut: On a point of order, Mr. Temporary Deputy Speaker, Sir. We do not have a quorum in the House.

The Temporary Deputy Speaker (Mr. Khamasi): Yes, we do not have a quorum. Ring the Division Bell.

(The Division Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Khamasi): Hon. Members, due to lack of quorum, we have to interrupt our business today. The House is, therefore, adjourned until Tuesday, 28th October, 2003, at 2.30 p.m.

The House rose at 7.55 p.m.