

## NATIONAL ASSEMBLY

### OFFICIAL REPORT

**Tuesday, 12th March, 2003**

The House met at 2.30 a.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPER LAID

The following Paper was laid on the Table:-  
Report of the Departmental Committee on Administration of Justice and Legal Affairs on the Public Officer Ethics Bill, 2003.

*(By Mr. Muite on behalf of the Chairman)*

### NOTICES OF MOTIONS

**Mr. Sungu:** Mr. Speaker, Sir, I beg to give notices of the following Motions:-

#### SELECT COMMITTEE TO INVESTIGATE DEATH OF MR. ROBERT OUKO

THAT, noting with great concern that the murder of the late Dr. Robert Ouko in 1990 has never been resolved; and aware that the Judicial Commission of Inquiry was disbanded before concluding its proceedings, this House resolves to establish a Select Committee to investigate and report on the circumstances leading to the death of the late Minister, and that the following Members be appointed to the Committee:

Mr. P.K. Muite, MP; Dr. O. Oginga, MP; Prof. K. Kibwana, MP; Prof. C.A. Mango, MP; Mr. M. Kariuki, MP; Dr. A. Ali, MP; Mr. G. Sungu, MP; Mr. N.S. Ndung'u, MP; Mr. O. Kajwang, MP; Mr. G.M. Khaniri, MP; Mr. H.O. Obwocha, MP; Mr. J. Khamisi, MP; Mr. S.P. Shitanda, MP; Mr. S.C. Moroto, MP, and Mr. S. Leshore, MP; and further, that the Committee shall submit its Report and findings within nine months upon its establishment.

#### ABOLITION OF CAPITAL PUNISHMENT

THAT, in order to enhance the protection of the right to life, this House urges the Government to introduce the necessary legislation to abolish capital punishment in Kenya.

#### RECONSTRUCTION OF MIWANI SUGAR FACTORY

THAT, in view of the importance of the sugar industry to the economy; noting that Miwani Sugar Factory is one of the first factories to operate in this country; and cognisant of the fact that its assets have been misappropriated by investors, this House calls upon the Government to reconstruct Miwani Sugar Factory in order for it to operate again.

#### CHANGE OF FAMILY PLANNING POLICY

**Dr. Khalwale:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, given that the fertility rate among Kenyan women has fallen over the years; and that the life expectancy of the Kenyan people is at its lowest; and further that Kenyans face the highest and biggest threat of the HIV/AIDS scourge; this House urges the Government to change the policy on family planning from that of birth control to one of giving incentives to young couples

who wish to have more children.

## ORAL ANSWERS TO QUESTIONS

*Question No.022*

OPERATIONS OF NACC

**Mr. Sasura** asked the Minister of State, Office of the

President:-

- (a) how much money the Government has received from donors for the fight against HIV/AIDS menace in the country over the last four years;
- (b) whether he could table, by district, a list showing how funds were disbursed and managed at the district level; and,
- (c) what impact the operations of the National AIDS Control Council (NACC) and its affiliate institutions has had on the campaign to reduce the prevalence of HIV/AIDS in the country.

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

(a) Since the year 2000, the Government has received donations for HIV/AIDS programmes amounting to Kshs1,187,906,102.

(b) The list is hereby tabled.

*(Mr. Tarus laid the list on the Table)*

(c) The operations of NACC and its affiliate institutions have recorded a reduction in the HIV/AIDS prevalence notably to 14 per cent in the year 2000; 13 per cent in the year 2001, and 10 per cent in the year 2002.

Mr. Speaker, Sir, the reduction in HIV/AIDS prevalence has even exceeded the target set out in the National Strategic Plan. Within the 15 to 24-year old age group, the HIV/AIDS prevalence has been noted to drop from 13 per cent in the year 2001, to 9.5 per cent in the year 2002.

**Mr. Sasura:** Mr. Speaker, Sir, you can see that in a span of three years, the HIV/AIDS prevalence has reduced by about 5 per cent. But having received Kshs1 billion since the year 2000, is the Assistant Minister satisfied with 24 members of staff under the National AIDS Control Council (NACC) based at the Office of the President, earning a total of Kshs73 million per year, headed by a Director who earns Kshs2 million per month, when HIV/AIDS victims are languishing in problems and poverty in this country? Is he satisfied that we are not duplicating the job of the Ministry of Health? That is work which can be handled by the Ministry of Health and we are spending so much money on staff of NACC at the Office of the President.

**Mr. Tarus:** Mr. Speaker, Sir, I wish to inform the House that the problem of HIV/AIDS is very serious for this country. It is important to attract the human resource that will assist in ensuring that the menace is combated. As I said, the issue of pay for the staff who are working for the NACC is a question of attraction of the necessary talents that exist in this country, so that adequate capacity can be developed to ensure---

**An hon. Member:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Could we let him finish? There is developing a very unhealthy trend where, when a Minister is giving the reply to a Question, and before he or she has completed what he or she is saying, there are points of order which are, in essence, supplementary questions! We must understand what is a point of order. Ministers are entitled to give their reply the same way you are entitled to ask questions. So, could we have orderly conduct?

Proceed, Mr. Assistant Minister!

**Mr. Tarus:** Mr. Speaker, Sir, I was informing the House that the issue of pay was one of attracting the necessary human resource to develop adequate capacity to fight the HIV/AIDS menace.

Secondly, we do realise that HIV/AIDS, being a national problem, we require personnel who will be committed and who will not be motivated by other activities. That way, they will be able to concentrate on the fight against HIV/AIDS.

**Mr. Angwenyi:** Mr. Speaker, Sir, we declared HIV/AIDS a national disaster in 1999. We formed committees that would control that disaster throughout the country. I do know that in my constituency, we formed the Constituency Aids Control Committee. In the last three years, that committee has received Kshs35,000 only. But I am told that, in my constituency, the NACC has spent Kshs18 million! The Kshs18 million was paid to comen!

Could the Assistant Minister lay on the Table, a list of payments made to every constituency in the

country for the HIV/AIDS programme?

**Mr. Tarus:** Mr. Speaker, Sir, the list laid on the Table here shows the amount of money disbursed to Constituency Aids Committees.

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

**Mr. Speaker:** I hope it is a point of order! Let us see how it is!

**Mr. Wetangula:** Mr. Speaker, Sir, in view of the fact that whenever Ministers lay documents on the Table, they go to the Clerk and never reach Members of Parliament to ask questions about them, could I be in order to ask that, in future, if a Minister wants to table a document to support the Question he is answering, he circulates it in advance for Members to be able to acquaint themselves with the facts in it, so that they can ask supplementary questions?

**Mr. Speaker:** Mr. Assistant Minister, how many copies did you bring?

**Mr. Tarus:** Mr. Speaker, Sir, I brought only one copy.

**Mr. Speaker:** So, who sees it and who does not? Does it not amount to ambush?

**Mr. Tarus:** Mr. Speaker, Sir, I thought the Question asked for the facts to be laid on the Table.

**Mr. Speaker:** When you lay documents on the Table, ordinarily, what should happen is that the Question itself should be accompanied by an answer with 15 copies given to the Clerk. Those 15 copies must be annexed with the document that you are attaching. That means, therefore, if it was done strictly according to the Standing Orders, we would have, in front of us, 16 documents available for Members to peruse. You are new and I hope you will take note of that. Next time, please do as instructed. That applies to all Ministers by the way.

**Mr. Sasura:** On a point of order, Mr. Speaker, Sir. The HIV/AIDS scourge kills people, and this makes this Question very serious. Even though I am the one who asked this Question, I do not even have a written answer to it. I do not even have the document that has been laid on the Table. We have been ambushed.

Would I be in order to request the Chair to defer this Question to tomorrow, so that we can have enough time to peruse the document? This will enable us to question the existence of the National AIDS Control Council (NACC).

**Mr. Speaker:** Mr. Assistant Minister, will you be able to get those papers by tomorrow?

**Mr. Tarus:** Mr. Speaker, Sir, it would be appropriate for me to bring the document here on Tuesday, next week.

**Mr. Sasura:** Mr. Speaker, Sir, why not tomorrow?

**Mr. Speaker:** Order! You cannot have it both ways. You want the Question to be deferred. Actually, it should be in my discretion to defer it. Now, I use my discretion to defer the Question to Tuesday, next week.

*(Question deferred)*

*Question No.028*

#### INVOLVEMENT OF PARLIAMENTARY COMMITTEE IN BUDGET MAKING

**Mr. Kaindi** asked the Minister for Finance:-

(a) whether he is aware that the Ministry relies heavily on civil servants in the preparation of the annual Budget; and,

(b) whether he could ensure that before the Budget is presented to the House, sufficient involvement and consultation has been done with all the relevant Departmental Committees of Parliament.

**The Assistant Minister for Finance** (Mr. Katuku): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware. The Ministry does not, however, fully rely on the input of civil servants in the preparation of the annual Budget. The current Medium-Term Expenditure Framework Budget is participatory and involves as many stakeholders as possible, including hon. Members of Parliament and members of the public, whose input is taken into account in the final Budget.

(b) Yes, I shall ensure that sufficient involvement and consultation is done with all the relevant Departmental Committees. In addition, the hon. Members should note the following:-

(i) The Medium-Term Expenditure Framework Budget is a grassroot approach, which culminates in Parliament approving the annual Budget.

(ii) The Medium-Term Expenditure Framework approach to budgeting aims at removing bureaucracy and

secrecy from Budget preparation.

(iii) All hon. Members of Parliament are encouraged to be involved in the Medium-Term Expenditure Framework meetings whenever they are invited.

(iv) The Minister for Finance will provide fora for the Departmental Committees to make their input in the Budget before it is finalised.

**Mr. Kaindi:** Mr. Speaker, Sir, the import of this Question underscores the very urgent need for the establishment of a Parliamentary Budget Office, whose establishment was approved this morning. This will demystify the concept of the Budget preparation.

Now that the Assistant Minister has conceded that there is need to involve the relevant Departmental Committees and hon. Members of Parliament, could he ensure that this is not just routine? As a matter of fact, hon. Members should be given a timetable showing them when the committees that the Assistant Minister has referred to would be meeting, so that hon. Members can participate in the exercise effectively.

**Mr. Katuku:** Mr. Speaker, Sir, we will be doing exactly that. I will write to the Clerk of the National Assembly to give the programme to the hon. Members.

**Dr. Galgalo:** Mr. Speaker, Sir, what actually happens in our current budgetary process is that districts forward their budget plans to the Ministry headquarters in good time, but the Ministries headquarters shelve them. The Ministry officials then allocate funds according to what they perceive to be the needs of the districts in total disregard of what happens at the district level.

Could the Assistant Minister give us an assurance that the National Rainbow Coalition (NARC) Government will abandon the policy of handling the Budget as though it were a property of the Ministry headquarters? The Ministry of Finance should rather rely more heavily on the budget plans from the grassroots.

**Mr. Katuku:** Mr. Speaker, Sir, I am very happy that the hon. Member has admitted that the former KANU Government was doing the wrong thing. I want to assure him that the NARC Government will do what is necessary to ensure that budget plans from the grassroots are implemented in the Budget.

**M'Mukindia:** Mr. Speaker, Sir in the light of the fact that a Parliamentary Budget Office is not likely to be in place before the forthcoming Budget, and also in the light of the fact that the coming Budget will be the very first Budget to be presented by the NARC Government; and the fact that it will be extremely important for the next financial year, could the Assistant Minister tell us what methodology he will use to ensure that he consults the relevant Departmental Committees before the Budget is tabled in this House?

**Mr. Katuku:** Mr. Speaker, Sir, in my earlier response, I indicated that my Ministry will do all that is necessary to ensure that all hon. Members of Parliament, all Departmental Committees and other stakeholders are involved in the preparation of the Budget. We are in the process of organising fora for members of the public to give their input. We will issue a programme to the hon. Members, indicating where and when they can give their input to the Budget.

**Mr. Muchiri:** Mr. Speaker, Sir, is the Assistant Minister aware that hon. Members of Parliament are no longer members of the District Tender Boards? Could he assure this House that their exclusion from the membership of those boards that was effected by the former KANU Government is done away with? The Budget involves income and expenditure. We are surprised that money is spent in the districts without hon. Members of Parliament being involved in the process.

**Mr. Katuku:** Mr. Speaker, Sir, I have heard the sentiments raised by the hon. Member, and everything will be done to correct the situation.

**Mr. Kaindi:** Mr. Speaker, Sir, during debate on Mr. Oloo-Aringo's Motion this morning, it came out clearly that Motions cannot be referred to the relevant Departmental Committees once they have been presented to the House. This Question seeks to ensure that hon. Members are involved in the budgetary process in its early stages, so that they can scrutinise the Budget and comment on it appropriately.

I am reiterating what I had requested the Assistant Minister to do. In June, the Budget will be presented to this House. Could he ensure that we have a timetable in good time, so that the Departmental Committee on Finance, Planning and Trade, and other relevant Committees, could give their input before civil servants finalise the Budget preparation?

**Mr. Katuku:** Mr. Speaker, Sir, I want to assure the hon. Member that we are organising fora for public hearings in the month of March, 2003. One schedule is to be held at the City Hall Annex, where members of the public will give their input into the Budget preparation. I want to assure the hon. Member that we are keen on this issue, and we want to involve everybody in the budgetary process.

## REPAIR OF KIPKARREN RIVER BRIDGE

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

(a) whether he is aware that as a result of the heavy rains during the last two weeks of December, 2002, the concrete bridge across Kipkarren River, on Road D304 between Chemnoet and Kobiemit, was washed away; and,

(b) when this bridge will be repaired.

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

(a) I am aware that Kipkarren River bridge on Road D304, between Chemnoet and Kobiemit, was washed away by floods during the last two weeks of the month of December, 2002.

(b) The bridge will be repaired during the next financial year, namely, 2003/2004.

**Mr. Sambu:** Mr. Speaker, Sir, the bridge was washed away because the columns which supported the deck were eroded by running water coming from the road. If the deck is intact, could the Assistant Minister consider hiring heavy-lift equipment to lift the deck? After constructing the columns on both sides of the bridge, it will make it easier and faster to bring back the bridge to service.

**Eng. Toro:** Mr. Speaker, Sir, the bridge has a span of 28.4 metres. The portion that was affected is about 5.6 metres, where the apartment was washed away during the floods. It requires Ksh1.5 million to repair the bridge. We are looking into the possibility of spending emergency funds to repair the damage before the end of the year.

**Mr. Midiwo:** Mr. Speaker, Sir---

**Mr. Speaker:** Who are you?

**Mr. Midiwo:** Mr. Speaker, Sir, I am Jakoyo Midiwo, Member of Parliament for Gem. *Mimi ndio nilimtoa* Bw. Donde!

*(Laughter)*

Based on the Assistant Minister's answer, if a road is washed away, do we wait until the next financial year? What if the road is so important that economic activities in the area are halted? Should we not have some emergency measures being taken to repair the road when it is damaged by the rains because he is only talking about Kshs5 million? Does he mean that if a road is washed away, we have to wait for the next Budget? I also want to know the measures the Ministry of Roads, Public Works and Housing has taken to make sure that we do not have these bridges which can be washed away by a two-week rain because this is a common problem throughout the country!

**Eng. Toro:** Mr. Speaker, Sir, emergencies differ. In this particular case, there are two alternative routes which can be used while waiting for the repair of the bridge. One alternative is Chemnoet-Kipkarren-Kobiemit. This alternative route is about 17 kilometres long. The other alternative route is Chemnoet-Kabisaga-Cheptir-Kaigat-Kobiemit. This route is a bit longer because it is 25 kilometres long. So, we can say that there is an alternative route which makes it possible for us to look for resources to repair the bridge.

**Mr. Sambu:** Mr. Speaker, Sir, I agree with the Assistant Minister on the distances he has given us. One is going down 17 kilometres while the other one is going round 25 kilometres. Kipkarren River is the main tributary of River Nzoia. In fact, it is equally as large as River Nzoia. If you want to cross the river, you have to go down 17 kilometres or go up 25 kilometres. Could the Assistant Minister consider releasing the Kshs1.5 million from the *El Nino* Emergency Fund so that the bridge can be done as soon as possible?

**Eng. Toro:** Mr. Speaker, Sir, that possibility is being looked into.

*Question No.021*

## ALLOCATION OF FUNDS TO EL-NINO PROJECTS

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

(a) how much money was allocated and spent for the *El Nino* projects in Kericho District during the 2000/2001 and 2001/2002 Financial Years; and,

(b) which projects these are and how many of them are situated in Sigowet and Waldai Divisions of Belgut Constituency.

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

(a) A total of Kshs24.3 million was spent under the *El Nino* Roads Project in Kericho District during the 2000/2001 and 2001/2002 Financial Years.

(b) The projects which were rehabilitated in Kericho District, which fall in Kericho Town are Kalenjin and Kenyatta Roads - Contract No. ENEP/URRB/PR53, and Tengecha and Motogage Roads - Contract No. ENEP/URRB/PR69. None of the above quoted roads are situated in Sogowet and Waldai Divisions of Belgut Constituency.

**Mr. Keter:** Mr. Speaker, Sir, as much as I thank the Assistant Minister for the answers he has given me, the two projects under contract Nos. ENEP/URRB/PR53 and ENEP/URRB/PR69, were done under the *El Nino* Emergency Fund through the Ministry of Local Government. Those two projects only served the Municipality of Kericho. There are other projects which were done under---

**Mr. Speaker:** I am sorry, Mr. Keter! It is Question Time and not debating time! You should ask him your question.

**Mr. Keter:** Mr. Speaker, Sir, I would like to ask the Assistant Minister to tell us whether he is aware of contract No. ENEP/ERRB/PR54; that is Road D226 from Sotik all the way to my constituency. If you go there, you will see a big billboard indicating that the project was to be undertaken under the *El Nino* Emergency Project and the contractor was Priston Construction Company Limited. The billboard is there but the road was never done.

**Mr. Speaker:** Mr. Keter, what is your question?

**Mr. Keter:** Mr. Speaker, Sir, my question is: Is the Assistant Minister aware that there were other contracts done under the *El Nino* Emergency Project within the district?

**Eng. Toro:** Mr. Speaker, Sir, the Kericho District Disaster Committee under the chairmanship of the DC was asked to identify the priority roads in the district. This committee identified the roads which I have read out. Those were the roads which were done under the *El Nino* Emergency Fund. I am not aware of the roads he has talked about.

**Mr. Omamba:** Mr. Speaker, Sir, could I know from the Assistant Minister the state of the bridges which were to be done under the *El Nino* Emergency Fund, but were not completed?

**Eng. Toro:** Mr. Speaker, Sir, could the hon. Member repeat his question?

**Mr. Omamba:** Mr. Speaker, Sir, I have said that bridges that were done under the *El Nino* Emergency Fund were left uncompleted. What is he doing about them?

**Eng. Toro:** Mr. Speaker, Sir, I would rather get specific examples of the uncompleted bridges.

**Mr. Omamba:** Mr. Speaker, Sir, I have a road in my constituency which was done under the *El Nino* Emergency Fund. All the bridges on this road were left uncompleted. In this House, the Government agreed that it would send an Assistant Minister to go and see those bridges during the campaign period, but he said that all the tractors were taken to Nandi District. Is he aware of this bridge because people do not use it during the rainy season?

**Mr. Sambu:** On a point on order, Mr. Speaker, Sir. Is the hon. Questioner in order to impute improper motive on Nandi District when we did not see any tractor at all? He has said that all the tractors were taken to Nandi District. There are no tractors at the Ministry of Roads, Public Works and Housing in Nandi District. All of them are grounded.

**Mr. Speaker:** Leave Nandi District out of all this! It is also part of Kenya, even if they went there! Proceed, Mr. Assistant Minister!

**Eng. Toro:** Mr. Speaker, Sir, as the hon. Questioner is aware, the *El Nino* Project Management Unit was situated in the Office of the President, and maybe the then Assistant Minister, Office of the President was in charge of it. However, the *El Nino* projects are now being handed over to our Ministry and I would rather prefer he asks about a specific example so that we can look into it.

**Mr. Kombe:** Mr. Speaker, Sir, the Assistant Minister wants specific examples. There are so many bridges and culverts that were washed away and have not been repaired up to this minute. One is the Ferani Bridge on the way to Lunga Lunga. The second one is the culvert at Wamrabu on the way to Garashi situated in Magarini. There is another culvert before reaching Marafa which was washed away and some Kshs4 million was set aside for its repair and nothing has been done to date. Could the Assistant Minister tell us when he is going to make sure that those culverts and bridges are repaired immediately?

**Mr. Speaker:** Hon. Members, just before the Assistant Minister answers, I think he has to be extra human if he were to know the position of every culvert around the country without specifically being pointed to.

*(Laughter)*

Now, the effect of this is: Let us not hijack a Question. This Question by Mr. Keter was specific to a certain area and it is to that area that we expect the Assistant Minister to answer supplementary questions on. So, I ask the House: Please, do not hijack Questions from your colleagues except, of course, on matters that are common knowledge and widespread, but to ask the Assistant Minister to know every culvert is an impossibility. Eng. Toro, could you know all of them?

**Eng. Toro:** Mr. Speaker, Sir, I would but my computer has been shut down.

**Mr. Speaker:** What have you said?

**Eng. Toro:** Mr. Speaker, Sir, there is no way I could have all the answers to what he is asking.

**Mr. Speaker:** So, go ahead and answer him!

**Eng. Toro:** Mr. Speaker, Sir, I am saying there is no way I can know all the answers to the questions he is asking.

**Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir. Could I be in order to ask the Assistant Minister, as a matter of transparency, to give us a list of all the projects that have been undertaken under all the *El Nino* projects programme in the country?

**Mr. Speaker:** Order, hon. Angwenyi! He will not do anything of the sort. You are lazy! You should ask that specific Question. That is not a point of order; it is a point of laziness.

*(Laughter)*

Proceed, Mr. Keter!

**Mr. Keter:** Mr. Speaker, Sir, could the Assistant Minister undertake to investigate about the contract No.ENEP/ERRB/PR54?

**Eng. Toro:** Mr. Speaker, Sir, I will do exactly that if he puts it as a separate Question.

**Mr. N. Nyagah:** Mr. Speaker, Sir, since there was a lot of misappropriation of funds by KANU last year, could the Assistant Minister tell us what happened to Eng. Ngari who was fully responsible for the *El Nino* projects so that we know what action the good Government of NARC is going to take against him?

**Eng. Toro:** Mr. Speaker, Sir, we are not aware of what happened to the *El Nino* Programme. We in the Ministry are also not aware of what Eng. Ngari did or did not do.

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

*Question No.047*

REVIVAL OF BUNYALA IRRIGATION SCHEME

**Mr. Wanjala** asked the Minister for Agriculture and Livestock Development:-

- (a) whether he is aware that Bunyala Irrigation Scheme collapsed in the year 2000;
- (b) how much money is needed to revive the scheme; and,
- (c) what urgent measures he is taking to ensure that the scheme is revived in the 2003/2004 Financial Year.

**The Minister for Agriculture and Livestock Development** (Mr. Kirwa): Mr. Speaker, Sir, I beg to reply.

- (a) Yes, I am aware.
- (b) Kshs25,136,250 is required to revive Bunyala Irrigation Scheme.
- (c) The revival of Bunyala and other irrigation schemes in the country is being prioritised in the National Irrigation Board's corporate plan. Towards this end, the Ministry of Agriculture and Livestock Development plans to institute the necessary measures so that these programmes start from August this year.

**Mr. Wanjala:** Mr. Speaker, Sir, since the NARC Government is a Government of Kenyans and which has given them hope, could the Minister undertake to visit this scheme so that he sees it for himself? This is because most of this work that he is telling us was done by the civil servants might not have been undertaken on the ground. Since most Ministers are going on the ground, could he also undertake to go on the ground and see it for himself?

**Mr. Kirwa:** Mr. Speaker, Sir, I have a plan to visit various programmes under my Ministry and,

definitely, Bunyala is one of such projects that I will undertake to visit in the course of the year.

**Dr. Galgalo:** Mr. Speaker, Sir, we know that many parts of this country have good agricultural soils, but because of lack of water we are unable to utilise them. What plans does the Ministry have to expand the existing irrigation schemes with a view to making more land agriculturally productive in this country?

**Mr. Kirwa:** Mr. Speaker, Sir, in conjunction with the Ministry of Water Resources Management and Development, and in realisation of the policy of the Government, we are determined to ensure that we expand the land that is going to be put under irrigation so that many crops and livestock will benefit from this programme. As a beginning, we have increased the budgetary provision for irrigation under our Ministry, and we do hope this is going to move towards realisation of this dream.

**Mr. Speaker:** Hon. Members, while we are on this question of projects within Kenya and visiting of the same, I realised, during - the last Parliament, that enormous amounts of money were spent by Committees in travelling around the world and not around Kenya. Looking at this Question, it looks like very few Members know the site of this project and consequently the silence. For that little, I will force Members to know Kenya. Committees will spend the monies of travel on travelling within Kenya and not outside. So, I hope every Committee and its respective Chairman understands that travel will be local within Kenya so that Members of Parliament know their country and the problems associated with various parts of Kenya. So, let it be understood.

**Eng. Nyamunga:** Thank you very much, Mr. Speaker, Sir. First of all, I would like to thank the Minister for giving a very comprehensive answer to the Question. The Minister has said that besides reviving the particular irrigation scheme, other irrigation schemes which have failed, like Ahero and West Kano Irrigation will also be revived. I would like to remind the hon. Minister that one of the main reasons why these irrigation schemes have failed is because they are not gravity-fed, but power-fed.

We all know that electricity tariff in this country is very high and, therefore, when farmers are made to pay for electricity bills incurred when irrigating their fields, irrigation schemes fail. Could the Minister consider converting, for example, Ahero Irrigation Scheme to gravity-fed so that it stays the way Mwea Irrigation Scheme is still holding?

**Mr. Kirwa:** Mr. Speaker, Sir, discussions in my Ministry are under way, and the Director of Agriculture will be in that particular region from 19th of this month to ensure that he can carry out the study alongside other officers, to see how best irrigation schemes can be made use of appropriately in Ahero.

**Mr. M'Mukindia:** Mr. Speaker, Sir, the information available in the public domain is that for all intents and purposes, the National Irrigation Board (NIB) is dead. In view of the fact that the NIB is the custodian of these irrigation schemes, how is the Minister going to ensure that these irrigation schemes are actually revived?

**Mr. Kirwa:** Mr. Speaker, Sir, as part of rationalization of various parastatals under my Ministry, we have carried out a study to establish which of the parastatals are going to be revived, given their important nature to the contribution of reviving the economy of Kenya. The NIB is not one of the organisations that we will wind up because of its critical role in the development of this nation. Therefore, the question is okay, but the main problem is that information available to hon. M'Mukindia is not in keeping with the Government position in as far as irrigation issues are concerned.

**Mr. Speaker:** Very well. We can now move to the next Question!

**Mr. Wanjala:** Sorry, Mr. Speaker, Sir. I have a last question to ask!

**Mr. Speaker:** If you are not happy, you can ask the last one.

**Mr. Wanjala:** Mr. Speaker, Sir, you realise that one of the things that contributed to the collapse of rice irrigation schemes in this country is because there were cheap imports of rice into the country. Therefore, farmers could not sell their produce and get profit. Could the Minister undertake and confirm to this House that as he rehabilitates all these collapsed irrigation schemes, he will also ensure that rice is not imported into this country when we can produce our own rice, which is of high quality?

**Mr. Kirwa:** Mr. Speaker, Sir, we are operating under a liberalised regime. I think I will be doing more than I can, as a Minister, to give an undertaking as to what should be done. However, what we are doing as a Government is to ensure that any importation of foodstuffs into Kenya is done only in the legalised ones. I am saying this because importation is only when there is a deficit. When we have enough from our production sources, we do not import anything. I would like to assure hon. Members that this is the Government position.

**Mr. Shitanda:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead the House that there will be no importation of foodstuffs to our country, while the Government of Kenya is a signatory to COMESA and World Trade Organisation (WTO) treaties?

*(Applause)*



**Mr. Kirwa:** Mr. Speaker, Sir, initially, when I opened my remarks, I said that we are taking into cognizance the fact that we are operating under a liberalised market economy. We will respect any of these protocols we have signed with other countries, as a country. However, it is very critical that anything that we do, we must also try to safeguard the interest of the local farmers.

*Question No.017*

UPGRADING OF HOLA TOWN WATER SYSTEM

**Mr. Kofa** asked the Minister for Water Resources Management and Development when she will upgrade the water supply system in Hola Town.

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

My Ministry has embarked on upgrading Hola Water Supply. Already, a new diesel engine pump worth Kshs861,465.45 has been bought. However, its installation has been delayed by circumstances well known to the hon. Questioner.

The upgrading of Hola Water Supply will be undertaken as soon as the engine is availed to the Ministry.

*(Laughter)*

**Mr. Kofa:** Thank you, Mr. Speaker, Sir. Could the Minister elaborate the circumstances that the hon. Member in the person of Tola Kofa knows? Could she explain these circumstances to the House?

**Mr. Speaker:** But she says you know! So, you do not know them?

**Ms. Karua:** Mr. Speaker, Sir, I am willing to remind him now that he has asked.

The new diesel engine bought for the upgrading of Hola Water Supply is now held in Hola Police Station after being retrieved from the house of a very prominent person from Hola. I believe the hon. Member has information and he can assist the police. If only he could go and give them information, the pump would be released and Hola Water Supply would be upgraded. I believe he knows the prominent person from whose house the engine was retrieved.

**Mr. Sungu:** On a point order, Mr. Speaker, Sir. The Chair has clearly heard that a water pump used to serve *wananchi* was retrieved from the house of a prominent Kenyan. Would it be in order to ask the Minister to name that person because this is a crime?

**Mr. Speaker:** Order! She said "retrieved". Under what circumstances it went there, you cannot know from where you are seated, and deduce that it was criminal. Can you, unless of course, you have other powers that we do not possess?

Madam Minister, do you have any comment?

**Ms. Karua:** Yes, Mr. Speaker, Sir. The matter is subject to criminal investigation. I would very much like to name the prominent person, but the Standing Orders do not allow me to discuss the conduct of a Member of this House.

*(Laughter)*

**Mr. Speaker:** Order! Order!

**Dr. Godana:** Mr. Speaker, Sir, the Question is simple and straightforward. It asks; "when will the Minister upgrade the water supply system in Hola Town?" How does the possession of a pump, whether it is under criminal circumstances or otherwise, determine the Government's decision to upgrade the water supply systems or not?

**Ms. Karua:** Mr. Speaker, Sir, I am surprised at that question, but I will answer it. We require the pump in order to upgrade the Hola Water Supply.

**Mr. Kofa:** Mr. Speaker, Sir, it was in the papers, and everybody knows, that I am the person involved; it is not a secret.

*(Loud consultations)*

By then I was an Assistant Minister, Ministry of Water Development. So, I knew exactly what I was doing and my former Minister knew exactly what I was doing. In any case, it seems that the upgrading of the water supply at Hola was dependent upon this machine. To begin with, this machine is not a water pump engine, but a generator. So, that is misinformation. Therefore, there is a loophole in this reply.

*(Loud consultations)*

**Mr. Speaker:** Order! Order, all of you! Mr. Kofa, if there is a case on this water pump or generator, whatever it is, it can take its own course. Now, ask the Minister a relevant question about upgrading of water supply in Hola.

**Mr. Kofa:** Mr. Speaker, Sir, this water supply system was constructed in 1952, during the colonial era. The population then was 3,000 people and now, 50 years down the line, the population has grown tenfold. What is the policy of the Ministry of Water Resources Management and Development on the rehabilitation of water supply systems in Kenya and particularly that one at Hola?

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

**Mr. Speaker:** You will sit down, Mr. Sungu!

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

**Mr. Speaker:** Order! Order! Mr. Sungu, it does appear to me that you do not want hon. Members to transact business. Can we have serious business?

Madam Minister, would you answer the question?

**Ms. Karua:** Mr. Speaker, Sir, the information the hon. Member is giving us is needed by the police to facilitate release of the machine. I want to say that one of the steps of upgrading the Hola Water Supply is providing a powerful machine that would be able to pump water to the residents. I want to assure the hon. Member that what he did not do as an Assistant Minister for Water Development, this Government is going to do it for the residents of Hola. We are also going to look into expanding the sources of supply of water for Hola residents.

**Mr. Wario:** Mr. Speaker, Sir, we are living in a country where a litre of Keringet water is more expensive than a litre of diesel while millions and millions of cubic metres of water are draining into the sea. What is the Minister planning to do to save Kenyans from the high cost of water?

**Ms. Karua:** Mr. Speaker, Sir, I think that is totally a different question from the one put here. But I want to assure the hon. Member that plans are under way and the Ministry will soon make them public.

**Mr. O.K. Mwangi:** Thank you, Mr. Speaker, Sir. The Minister has said that the water supply for Hola cannot be upgraded because the machine is held by the police. Since the person who had the machine is known and the crime that, that person is purported to have committed is also known, why can the police not release the machine to the Ministry and continue to prosecute the criminal?

**Ms. Karua:** Mr. Speaker, Sir, I want to assure the hon. Member that the matter is receiving due attention and I promise we will expedite the process of having the machine released.

**Mr. Speaker:** Next Question, Mr. Muiruri!

*Question No.056*

ILLEGAL TRANSFER OF LAND TITLE

**Mr. Muiruri** asked the Minister for Lands and Settlement:-

(a) if he is aware that the District Officer (DO), Gatundu North, has illegally caused the change of ownership and transfer of Chania/Mataara title No.1489 without consent of the family of Martha Wangu Kamau and Gatundu North Land Control Board; and,

(b) if he could cancel the transfer.

**The Assistant Minister for Lands and Settlement** (Mr. Ojode): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that the DO, Gatundu North, illegally caused the transfer of Chania/Mataara title No.1489 without the consent of Martha Wangu Kamau's family and Gatundu North Land Control Board. However, our records indicate that Martha Wangu Kamau owns land title No.2326.

(b) Arising from my answer in "a" above, I cannot cancel the transfer.

**Mr. Muiruri:** Mr. Speaker, Sir, the answer given by the Assistant Minister is falsified. The issue of double or triple allocation of title deeds, especially in Thika District, is very common. As a result of this matter,

one Solomon Kamau Kangangi was on 10th March, 2003, arraigned in court for forgery and conspiring to defraud as a result of this transaction---

**Mr. Speaker:** Order, Mr. Muiruri! What are you up to? Are you delivering a speech?

**Mr. Muiruri:** Mr. Speaker, Sir, I am trying to lay the ground for falsified---

**Mr. Speaker:** Why do you not ask the Assistant Minister those questions?

**Mr. Muiruri:** Is the Assistant Minister aware that as a result of this transaction, Solomon Kamau Kangangi has been arraigned in court for the charges I have drawn to his attention? Is he also aware that the DO, Gatundu North, Mr. Ombaso Sagero, is the only person who has not appeared in court with regard to this transaction? This transaction would not have been effected without the transfer forms and the consent forms being signed by the DO, Gatundu North, who is also the Chairman of the Land Control Board!

**Mr. Speaker:** Order! Order! Mr. Muiruri, you are not a new Member. You are an old Member. This is Question Time, so you ask your question. You do not narrate what you know. Under Standing Order No.35, you cannot make the Question a pretext for debate. So, would you answer his question, Mr. Ojode?

**Mr. Ojode:** Mr. Speaker, Sir, you realise that he never questioned me on anything. But let me give him the background of the matter quickly. The title in question, No.1489, was originally registered in the name of Kangangi Thumbi on 25th December, 1989, as the owner of the land. However, he gave the same piece of land to Solomon Kamau Kangangi and Martha Wangu Kamau as a gift. On 7th August, 2001, Joseph Kimemia Kamau and Zacharia Mwaura Kamau had put a caution on the same land, claiming beneficiary interest. The same caution was removed on 9th December, 2002, under Section 133(2B) of Cap.300 of the Laws of Kenya. On 19th December, 2002, half the share of the land was transferred to Samuel Kagwe Ndung'u, while the other half was partitioned into two pieces and issued with two titles; No.2326 and 2327, respectively, on 24th December, 2002. Parcel No.2326 was registered in the name of Martha Wangu and remains so to date. Title No.2327 was registered in the name of Samuel Kagwe. Because it looks like there is some foul play somewhere, I have ordered the police to investigate this matter and arrest the culprit immediately.

**Mr. Muiruri:** Mr. Speaker, Sir, I think the Standing Orders are one-sided because when I tried to explain, you told me that I was giving a long story. But when the Assistant Minister is giving a lengthy explanation, you do not question him. Obviously---

**Mr. Speaker:** Order! Order! What you do not seem to understand is that when you file a Question, you are seeking information from the Minister. Therefore, the Minister must give you that information. If you do not understand, you are not allowed by the Standing Orders to ask a question whose answer you already know because you are tiring the House. So, ask him the question. He is supposed to know and you are not supposed to know.

**Mr. Muiruri:** Mr. Speaker, Sir, I am glad that the Assistant Minister has already ordered the police to carry out investigations. But as an Assistant Minister for Lands and Settlement, what powers does he have to order the police to launch investigations?

*(Laughter)*

**Mr. Ojode:** Mr. Speaker, Sir, I am the Government! We have collective responsibility, and if there is any criminal matter, we are allowed to order the police to investigate. It is a criminal offence and we will report back to you what the Government has so far done.

**Mr. Samoei:** Mr. Speaker, Sir, I appreciate what Mr. Ojode has said. However, I want to ask him--- We do have very serious problems involving district land boards which are normally supposed to give consent for transfer of properties. These land control boards are composed of people whose character, to a great extent, are questionable. This has become a very serious issue, and we have so many legal cases in court. I would like to ask the Minister what he is doing to make sure that persons nominated into the District Land Control Boards are persons of integrity, who will respect the sanctity of property of other people.

**Mr. Ojode:** Mr. Speaker, Sir, those land control boards were constituted by the former regime. The NARC Government has not constituted any board. As a matter of fact, as we are talking, we are---

**Mr. Samoei:** On a point of order, Mr. Speaker, Sir. I am in no way saying that the NARC Government has appointed anybody to the land boards. I am simply saying that those land control boards have in the past, and still do adjudicate over issues that are wanting in integrity. I would like the Assistant Minister to tell this House what steps he is taking.

**Mr. Ojode:** Mr. Speaker, Sir, I was just about to say what steps we are going to take. Since the NARC Government has not constituted any land control boards, we are in the process of having people with integrity on

the land control boards, not those ones who were selected by the past regime.

I would like to assure the House that we are going to constitute these land control boards. We are going to look for people of integrity. They are the ones who are going to have a say in any case.

**Mr. Haji:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to pass the buck? Every time we ask them Questions, they refer us to KANU and yet they are in power now. Some of them were also in KANU. Let him tell us what measures they are taking now as the Government.

**Mr. Ojode:** Mr. Speaker, Sir, let me assure the House that we are going to constitute new boards. We are also going to choose people of integrity and kick out those who sat in the previous land control boards.

**Mr. Speaker:** Hon. Members we are quite slow!

**Mr. Muiruri:** Mr. Speaker, Sir, I am satisfied with the Assistant Minister's answer. I also agree with him that the KANU Government committed a lot of messes in the Ministry of Lands and Settlement. As a result of that, could the Assistant Minister consider establishing a department within the Ministry of Lands and Settlement to look into all these matters and cancel all the previous title deeds which were fraudulently issued in the past.

**Mr. Ojode:** Mr. Speaker, Sir, we have already put a task force in place which is looking into various issues which are related to land. We are going to report to Kenyans the outcome once the task force completes its job.

*Question No.006*

BOUNDARIES OF KORA NATIONAL PARK

**Mr. Wario** asked the Minister for Environment, Natural Resources and Wildlife:-

- (a) what the boundaries of Kora National Park are; and,
- (b) whether he could table the map.

**The Minister for Environment, Natural Resources and Wildlife (Dr. Kulundu):** Mr. Speaker, Sir, I beg to reply.

(a) Kora National Park is in Tana River District. The boundary of this national park is as delineated on boundary plan No.204/65 that was gazetted in 1989, through a Legal Notice No.339 of 6th October, 1989. The area of the park is 1,787 square kilometres.

(b) I would like to table the said map and even give him an additional map of Kenya showing where Kora National Park is situated.

**Mr. Speaker:** Where it is in Kenya?

**Dr. Kulundu:** Yes.

**Mr. Wario:** Mr. Speaker, Sir, I hope the map will help the Minister because he is a Kenyan and not somebody from Tana River. The fact of the matter is that this is the oldest and only part in trust area. It is old in the sense that it started operating in 1969. What is the difference of the area of this particular park in 1969, and after the registration of 1989?

**Dr. Kulundu:** Mr. Speaker, Sir, this Legal Notice I have just referred to nullified Legal Notice No.279 of 1974 which had given Kora National Park 1,920 square kilometres. This Gazette Notice of 1974 was nullified by the Gazette Notice of 1989 which I have just quoted.

**Dr. Godana:** Mr. Speaker, Sir, it is evident that Kora National Park is in a district where land is trust land, and the Minister is saying that the Gazette Notice which increased the area of the national park nullified the earlier one. Could he tell us under what authority the Government increased the area of the national park to the new boundaries that he has said, given that this was trust land? What procedure did they follow?

**Dr. Kulundu:** Mr. Speaker, Sir, the information I have - this could be misleading information, as you know under the KANU regime all sorts of things used to happen - is that this new boundary was drawn at the request of the county council of Tana River.

**Dr. Godana:** On a point of order, Mr. Speaker, Sir. Trust land can only be set apart under our Constitution in accordance with very specified procedures. It cannot just be done because the county council has requested. Could he table the documents to show that, indeed, this land was set apart in compliance with the Constitution?

**Dr. Kulundu:** Mr. Speaker, Sir, if Dr. Godana cared to read the Wildlife Management and Conservation Act, he would know that Sections 7 and 8 confer the powers to alter boundaries upon the Minister in charge of---

**Dr. Godana:** (Inaudible)

**Dr. Kulundu:** You can go and read it. It is here. So, those powers are vested in the Minister in charge of wildlife management.

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

**Mr. Speaker:** What is your point of order? We must get out of this now.

**Mr. Haji:** Mr. Speaker, Sir, is the Minister aware that in Tana River District and all other---

**Mr. Speaker:** Mr. Haji, that is not a point of order.

**Mr. Haji:** What I want to ask is this: Is the Minister aware that this is the traditional area where people take their livestock during drought season? These people are now being denied the right to go and water their livestock at the river bordering Kora National Park.

**Mr. Speaker:** That is not a point of order. That is a supplementary question.

**Mr. Wario:** Mr. Speaker, Sir, Boka

Location which borders the park is being threatened to be removed from that particular area. The same Government which formed the location is now threatening to remove it. At the same time, the KWS security personnel are out to harass the area residents and kill their livestock at will. Could the Minister assure this House that the security personnel will respect the human dignity of all Kenyans?

**Dr. Kulundu:** Mr. Speaker, Sir, Boka Station is right inside the national park as you will no doubt see from this map. So, the question of people settling there should not even arise in the first place. My officers are under very strict instructions not to harass members of the public.

*(Dr. Godana stood up in his place)*

**Mr. Speaker:** Order, hon. Members. I think we are giving a very wrong impression particularly to new hon. Members that Question time is endless. Question time is strictly one hour. It should run from 2.30 to 3.30. I have just been generous in my usual way of trying to orientate new hon. Members, but at this rate we may be disorientating hon. Members. They will get used to two hours of Question Time, which is wrong. So, everybody should be on notice that tomorrow and henceforth, Question Time will be strictly one hour.

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

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

**Dr. Godana:** It is very important.

**Mr. Speaker:** If it is a question of adjudication in law, go to court.

Mr. Sasura's Question!

**Dr. Godana:** Mr. Speaker, Sir, it is really right to---

**Mr. Speaker:** Order! You all know I do not have powers to adjudicate where the boundaries of Kora National Park should be. Dr. Godana, you are a lawyer, and a very learned one at that. If you really think that the law, and particularly, the Constitution, was breached, proceed to the High Court, enjoin the Minister and get your remedy.

**Dr. Godana:** Mr. Speaker, Sir, I just wanted a response to this Question. It is not a matter of me taking him to court.

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

**Mr. Speaker:** Order! Mr. Munya, you are one of those Members who will be seeing the outside of this House very soon.

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

**Mr. Speaker:** Mr. Munya, I think you are acquiring a reputation of your own already in the House. So, please, tone down. That is my best advice to you. I have already dealt with this hon. Member and I do not want to deal with you. Question Time will end at 4.00 o'clock.

Mr. Sasura's Question!

### QUESTIONS BY PRIVATE NOTICE

#### MEASURES TO CURB INSECURITY ON NAIROBI-ADDIS ABABA ROAD (A2)

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

(a) How many people have been injured or killed on the A2 Road (Nairobi-Addis Ababa) in the section between Merille in Marsabit and Serolevi in Samburu districts by bandits since the year 2001 to date?

(b) Is the Minister aware that there are police posts in Merille and Serolevi centres without sufficient facilities to deal with bandits?

(c) What urgent measures is he taking to solve the insecurity problems in the said sections?

**The Minister of State, Office of the President** (Dr. Murungaru): Mr. Speaker, Sir, I was given the impression that this Question was not intended to appear on today's Order Paper. Therefore, the answer was not provided. The answer was not provided by my officers because they were under the impression that another Question was intended to appear on the Order Paper.

**Mr. Speaker:** Who gave you that impression?

**The Minister of State, Office of the President** (Dr. Murungaru): My officers, Mr. Speaker, Sir.

**Mr. Speaker:** Where did they get that wrong impression from?

**The Minister of State, Office of the President** (Dr. Murungaru): From your officers, Mr. Speaker, Sir.

*(Laughter)*

However, I must confess that I had a discussion with the hon. Questioner and I informed him that though we appeared to differ on the figure of the number of people involved, on the substantive part of the Question where he asked what we intend to do about insecurity on that particular portion of the road, I assured him that my Ministry would create a post---

**Mr. Speaker:** What is happening now, Dr. Murungaru? Are you answering or apologising?

**The Minister of State, Office of the President** (Dr. Murungaru): I am apologising and helping the hon. Questioner.

**Mr. Speaker:** No, we cannot have it both ways.

**The Minister of State, Office of the President** (Dr. Murungaru): May I then say that I am answering the Question to the best of my ability under the circumstances. I did inform the hon. Member that the Government would put up a police post at the point in question. This particular post will be very well equipped to deal with insecurity in that particular section. I gave that undertaking.

**Mr. Billow:** Is the Minister aware that part "b" of the Question says that the police posts are already there and that it is only that they do not have sufficient facilities? He says that he will put up a post there.

**Mr. Speaker:** If I may help the Minister, this Question came in previously and your assistant replied to it, but apparently the reply was not satisfactory to the House. There was certain information that he was supposed to seek, for example, the number of deaths along that road; the question of one motor vehicle alleged to have been stationed in Wamba, 200 kilometres away from the notorious site, and efficiency and efficacy in ensuring the security of the lives of travellers against bandits. Those were the problems that led to this Question being postponed. We did agree all of us that it was an important issue to be addressed by you.

If you really are disadvantaged as you say, I am quite mindful of giving you time up to Tuesday. What is your reaction, Mr. Sasura?

**Mr. Sasura:** Mr. Speaker, Sir, as the hon. Murungaru very ably and clearly explained, the issue was about the number of those injured and those who are dead. Last time, the Assistant Minister reminded us of Hollywood; he was a very good actor in the House. The hon. Murungaru has assured us that regardless of the number of injuries and deaths, he will set up a police force in the danger zone, which is very acceptable.

**Mr. Speaker:** I did not ask you for a long story. I asked you a simple question. Do you want us to give Dr. Murungaru more time or are you happy for him to answer, as unprepared as he says he is?

**Mr. Sasura:** Mr. Speaker, Sir, I will accept that he answers unprepared because his reply is satisfactory.

**Mr. Speaker:** That is very well. As long as I do not hear you complain.

**Mr. Sasura:** I am not complaining. I am asking a question. I would just like to ask the Minister, now---

**Mr. Speaker:** But he has not even answered.

**Mr. Sasura:** He has answered. He has said he is putting up a police post there, unless he wants to repeat himself.

**Mr. Speaker:** Have you finished giving your answer?

**The Minister of State, Office of the President** (Dr. Murungaru): Yes, Mr. Speaker, Sir.

**Mr. Sasura:** Now that the Minister agreed to put up a police post between Serolevi and Merille, considering that there is no water in that zone, could he assure us that there will be water for the police force and a radio call to facilitate communication between the other two stations in my constituency?

**Dr. Murungaru:** Mr. Speaker, Sir, we will put up an appropriate *unbwogable* police post.

**Mr. Speaker:** All the remaining Questions are deferred.

MURDER OF MR. MUIHIA TUBE

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

- (a) Is the Minister aware that Mr. Samuel Muihia Tube was killed on 15th January, 2003, at Kambyamet Scheme Naishi, Njoro, by a person or persons know to the family?
- (b) Is he further aware that a report was made at Naishi Police Station by the members of the family on 16th January, 2003, and also on 20th January, 2003, and that the police failed to take any action to apprehend the known suspects?
- (c) What is he doing to ensure that the murder suspects are brought to book?

*(Question deferred)*

MURDER OF MR. KIPTANUI CHEMITEI

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

- (a) Is the Minister aware that on the night of 2nd February, 2003, Mr. Josphat Kiptanui Chemitei, was killed by unknown assailants who later stole his goats and the matter reported at the Eming Police Station on 3rd February, 2003?
- (b) What action has he taken to have the culprits apprehended?

*(Question deferred)*

ARREST OF NATIONAL SOCCER PLAYERS

**(Mr. Khamasi)** to ask the Minister for Gender, Sports and National Heritage:-

Could the Minister explain the circumstances under which National Soccer Players under 17 years, Francis Ochieng' and Nicodemus Anunda, were arrested last weekend?

*(Question deferred)*

GRAVELLING OF ROAD D288

**(Mr. Sambu)** to ask the Minister for Roads, Public Works and Housing:-

- (a) Is the Minister aware that Road D288, section between Eldoret (Rivatex) and Simat Centre, was recently gravelled?
- (b) Is he aware that the contractor used silt and red soil rather than murrum to gravel the road and as a result, the road has been rendered impassable?
- (c) Who is this contractor and how much was he/she paid?
- (d) Could the Minister take immediate steps to ensure that the road is gravelled according to laid-down specifications?

*(Question deferred)*

**Mr. Speaker:** Next Order! Mr. Khamasi, do you want to seek a Ministerial Statement?

**Mr. Khamasi:** No, Mr. Speaker, Sir. I have got a different point of order.

I am wondering whether---

**Mr. Speaker:** Order! I have not given you a chance.

**Mr. Khamasi:** Mr. Speaker, Sir, I am wondering whether the Questions deferred will be listed as the first ones on the Order Paper from tomorrow.

**Mr. Speaker:** Yes, they will. I hope this will not arise again because we intend to spend one hour on Question Time. That works out to about four or five minutes per Question. So, I think, when asking supplementary questions, hon. Members will make a mental calculation to see to it that each Question takes between four and five minutes, so that we have more time for other business.

For the benefit of the new Members, Question Time is not part of the business of the House. It is, in fact, matters other than business. So, we must get to business every time because that is what brings us here. Anyway, I will have those Questions tomorrow listed first on the Order Paper and we will deal with them.

Next Order!

### POINTS OF ORDER

#### HARASSMENT OF SCHOOL OFFICIALS OVER CONTRIBUTIONS

**Mr. Salat:** Mr. Speaker, Sir, I rise to demand a Ministerial Statement from the Minister of State, Office of the President in charge of internal security. I would like him to tell the House the circumstances in which the headmaster of Koiboyot Secondary School, the area Assistant Chief and the BOG Chairman were forced to record statements with regard to contributions by Members of Parliament who had visited my constituency on 22nd February, 2003. Is it true that the Government is suspecting that the contributions by those hon. Members were meant to fund a militia group? Is it the NARC Government policy to suspect that all contributions by Opposition Members of Parliament are done with ulterior motives?

**Mr. Speaker:** Mr. Minister, are you prepared for that?

**The Minister of State, Office of the President** (Dr. Murungaru): Mr. Speaker, Sir, I would like to respond on Tuesday, next week.

#### CLOSURE OF MUMIAS SUGAR FACTORY

**Mr. Shitanda:** Mr. Speaker, Sir, I rise to request a Ministerial Statement from the Minister for Agriculture and Livestock Development regarding the closure of Mumias Sugar Factory and the arbitrary reduction of prices of sugar-cane by sugar factories; notably, Mumias, West Kenya, Chemilil and Sony, in total disregard of the Sugar Act and at the expense of the farmers.

#### ASSISTANCE TO OLE MEKENYO PRIMARY SCHOOL

**Mr. ole Ntutu:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Education, Science and Technology concerning an incident at Ole Mekenyo Primary School, Ololung'a Division in my constituency. On 3rd March, 2003, the entire roof of the whole school complex was blown off by the heavy wind leaving students and teachers in the open. I want to appeal to the Minister to give some assistance to that school.

**Mr. Speaker:** Anyone here from the Ministry of Education, Science and Technology intending to respond to that? They will be informed.

#### OWNERSHIP OF HYDRO-ELECTRIC POWER DAMS

**Mr. Muturi:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement, I suppose in view of the confusion, from the Office of the Vice-President and Minister for Reconstruction and something--

**The Minister of State, Office of the President** (Dr. Murungaru): On a point of order, Mr. Speaker, Sir. I am not aware that there is a Ministry of "Reconstruction and something". In the event that such Ministry does not exist, from whom does the hon. Member expect to get a Ministerial Statement?

**Mr. Muturi:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Office of the Vice-President and Ministry of National Reconstruction regarding the legal status and ownership of certain hydro-electric power dams. There seems to be some conflict between KenGen and TARDA, in view of statements emanating from the Vice-President and Minister for National Reconstruction himself on 6th, March, 2003, while on a tour of part of my constituency, and some statements attributed to the Minister for Energy yesterday in which he contradicted the Vice-President.

**Mr. Sasura:** Mr. Speaker, Sir, on Thursday last week, I rose to seek a Ministerial Statement from the Minister of State, Office of the President, concerning the murder of one of my constituents. The Minister promised to give a statement yesterday, but he has not done so.

**Mr. Speaker:** Dr. Murungaru, was that the statement you wanted to give yesterday?

**The Minister of State, Office of the President** (Dr. Murungaru): No, Mr. Speaker, Sir. This is a



different one.

**Mr. Speaker:** Are you ready with this one?

**The Minister of State, Office of the President** (Dr. Murungaru): Yes, I am.

**Mr. Speaker:** Go ahead!

#### MINISTERIAL STATEMENT

##### MURDER OF MR. MAGESHA WALDE

**The Minister of State, Office of the President** (Dr. Murungaru): Mr. Speaker, Sir, on Thursday 6th March, 2003, Mr. Sasura rose on a point of order and requested for a statement with regard to the murder of one Magesha Walde. In this connection I wish to state the following:

On 4th March, 2003, at about 10.30 p.m., the late Magesha Walde Aburji, aged 45 years, was shot dead by unknown gangsters next to his house which is situated next to Marsabit Airstrip. It is a distance of more than two kilometres from the nearest administration police post and not 500 metres as had been earlier alleged. The security officers visited the scene the same night they got information on the murder of Mr. Walde. They again returned to the murder scene the following day where they got useful leads in the case.

The hon. Member had specifically wanted to know whether I am aware of the existence of a cartel of people who are terrorising innocent citizens in Marsabit, claiming to be untouchable. My honest response is that I am not aware of the existence of such a group in Marsabit or anywhere else in the country. I suspect that this may have been the case some three months ago. So far, no report whatsoever has been made to the relevant authorities by any complainant alleging harassment by such groups or these people in Marsabit. However, I would be most grateful if the hon. Member would share any further information he may have so that we can take appropriate steps.

Today, as I read this statement, we have been able to arrest seven suspects who are helping police with investigations into the murder of Mr. Magesha Walde. All the seven are adult males and the motive of the killing is yet to be established. The suspects will appear in court as soon as the investigations are complete.

The murder of Mr. Magesha, like that of others who have lost their lives as a result of senseless killings by bandits, is truly regrettable. The Government will ensure that the perpetrators of the murder of Mr. Walde are brought to book. In addition, the Government is determined to ensure that violent crime is brought under control.

It is a vision which I trust all hon. Members and other Kenyans of goodwill, will share with me in our fight against all forms of violence in Northern Kenya and anywhere else in general.

**Mr. Speaker:** Mr. Sasura, would you like to seek any clarification from the Minister?

**Mr. Sasura:** Mr. Speaker, Sir, the Minister has asked me to give him further information. Does he want me to provide him with that information rightaway? You know, seeing the Minister at his office is as difficult as it was to see Mr. Zakayo Cheruiyot when he was a Permanent Secretary (PS) in the Office of the President in the previous regime.

*(Laughter)*

**The Minister of State, Office of the President** (Dr. Murungaru): Mr. Speaker, Sir, I am a politician and not a civil servant. So, it should be very easy for the hon. Member to see me. I would like to share the information with him in my office.

I believe that, that is where it will be most useful.

**Mr. Speaker:** Very well. All that ends well is well.

Let us proceed to the next Order.

#### BILL

##### *Second Reading*

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

*(The Minister for Justice and Constitutional Affairs on 6.3.2003)*

*(Resumption of Debate interrupted on 11.3.2003)*

**Mr. Speaker:** Hon. Member, Mr. Twaha, who was on the Floor when debate on this Bill was interrupted, has informed me that he would not be available in the House. Therefore, he has forfeited his remaining time.

Mr. Muturi, you may take the Floor.

**Mr. Muturi:** Mr. Speaker, Sir, I thank you for giving me the opportunity to contribute to the debate on the Constitution of Kenya (Amendment) Bill, 2003. As a party, we have already stated our position regarding this debate. I am totally opposed to this Bill because it is, *inter alia*, terrible and its draftmanship is wanting.

Mr. Speaker, Sir, if you look through the Memorandum of Objects and Reasons, the first thing you will note is that the principal object of the Bill is to make provision in the Constitution for the establishment of the Kenya Anti-Corruption Commission (KACC), and to vest the Commission with constitutional powers of investigation and prosecution of offences of corruption and economic crimes by public officers. The last statement is a contradiction, which cannot be allowed to exist in the supreme law of this land. The provision seeks to discriminate against a certain category of the Kenyan citizenry, namely, public officers. Corruption is an offence which does not have boundaries. It is, therefore, unimaginable that we can have a constitutional provision by way of an amendment to the current Constitution, which forbids discrimination of whatever nature, in this purported amendment to the current Constitution.

I appreciate the fact that there have been very nice statements coming from the leadership of the Government. Indeed, I would like to applaud His Excellency the President for declaring his intention to declare his wealth. Perhaps, from the point of view of the Presidency as an institution, that sounds a good beginning. We are talking about piecemeal legislation. We are talking about the President offering to declare his wealth.

While initiating debate on this Bill, the Minister said that, that would be forthcoming in about two months' time. However, there is no legal framework within which the President, as a person, will declare his wealth. In the proposed constitutional amendment, there is no indication as to what will happen to a President who gives false declaration of his wealth. I hope that, that does not happen, but it is pertinent that we guard ourselves against rushing things purely because they sound acceptable to certain individuals who have come up with policy papers that have been prepared in Washington DC.

If we get a false declaration, where will we be as a country? Constitutionally, there is nothing you can do to a sitting President. Section 14 of the Constitution protects him. If we amend one bit of the Constitution, we will subsequently realise that we made a mistake. The President may declare his wealth and then some people may say that everybody's declared wealth must be open to inspection. If, after such an inspection, it is realised the President's declaration of his wealth is not correct, what shall we do? On that one score, I would say that we need to re-think this issue.

That is the more reason why we are saying that piecemeal legislation, as opposed to the already started comprehensive review of the Constitution exercise, which has gone as far as producing a draft Constitution, which is ready for discussion and debate at the National Constitutional Conference if and when it is constituted, is not desirable. As I said, the intent of the President to declare his wealth is laudable. We must appreciate that the President might actually do what he said, but we need to be told what will happen to him if he makes a false declaration of his wealth. Even among the persons in the Government, I cannot see any of them giving a true declaration of their wealth. I will shortly demonstrate the inabilities of some of them to exercise the functions of their offices.

Mr. Deputy Speaker, Sir, I also wish to commend the role played by the Eighth Parliament, and particularly by the Select Committee that was chaired by Mr. Kombo, which produced a document which became so famous that it was even discussed at some international fora. I would like to laud the effort of Parliament in the fight against corruption as exemplified by its adoption of that Report. It appears that we started the fight against corruption quite well. Indeed, if you go through the Kombo Report, as it is popularly known, you will realise that the Committee recommended that certain matters be referred to the defunct Kenya Anti-Corruption Authority (KACA) for prosecution. However, as we all know, the greatest jolt happened on 22nd December, 2000, when the High Court, in the case of Gachiengo versus the Attorney-General of the Republic of Kenya, declared the defunct KACA unconstitutional. What I am saying so far is that, maybe, we can laud the efforts of the Presidency and those of the Legislature.

Mr. Deputy Speaker, Sir, it is up to there that I will agree with the proposals before us. The rest of my speech shall contain arguments about why I disagree with this Bill; or why I oppose it. The parties, Gachiengo and co-accused, made an application to the High Court under Sections 67 and 84 of the Constitution, alleging *inter alia*, that their rights guaranteed under the Constitution were being violated by being prosecuted and, indeed, for having been investigated and prosecuted by persons without authority. In that constitutional application in the High Court, was represented the State in the manner and shape of the Attorney-General or his representative, and

various arguments were advanced and among the decisions in that infamous ruling was that the powers to investigate criminal cases such as the one facing Gachiengo were exclusive to the Commissioner of Police and that, secondly, the powers to prosecute in a case such as the one facing Gachiengo and company were exclusively vested in the Attorney-General, and that they were not capable of delegation.

Mr. Deputy Speaker, Sir, that did not only sound the last whistle, but actually was the death knell to the Kenya Anti-Corruption Authority (KACA). A lot of the frustrations that have set in revolve around that decision.

Like I have said, the Attorney-General was ably represented in that constitutional application. Here, before this House, in the Eighth Parliament, and in meetings outside this House, both locally and internationally, our ever-smiling and happy Attorney-General has, forever, maintained that the Gachiengo decision was bad law. Indeed, like you can see, he is also smiling even now! I agree with him that the decision was very bad law. It purported to introduce some unknown criminal jurisprudence anywhere within the Commonwealth. For that reason, I have continued to agree with the Attorney-General.

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

**Mr. Muturi:** No! No! I do not require any information. He will have the opportunity to say what he has to say! Like I said, Gachiengo and Partner went to the High Court under the provisions of Sections 67 and 84 of the Constitution. What amazes me is this: It is a well known fact that, in the event, the Attorney-General who has, all over the world and even in this House, told us that, that decision was bad law, never saw it fit to lodge an appeal in the Court of Appeal---

**Mr. Muite:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member, who is also a lawyer, to mislead the House that the Attorney-General could have lodged an appeal, when he knows, or ought to know, that on a reference to the High Court from a magistrate's court under Section 67 of the Kenya Constitution, no appeal is permitted in law? Although he is a junior counsel, does he not know that, that is the position?

**Mr. Muturi:** Mr. Deputy Speaker, Sir, like I said, Gachiengo and Partner went to High Court from the subordinate court under Sections 67 and 84 of the Constitution. Section 84 is the one that gives the procedure on how to enforce your rights when you think or suspect they are being violated. Under Section 84 Subsection 7, which I will read for the benefit of the House, reads as follows--- That is after the determination. In fact, Subsection 3 of Section 84 reads:-

"If in proceedings in a subordinate court a question arises as to the contravention of any of the provisions of Section 70 to 83 inclusive, the person presiding in that court may and shall, if any party to the proceedings so requests, refer the question to the High Court, unless, in his opinion, the raising of the question is merely frivolous and vexatious".

That duly happened in the subordinate court. Subsection 7 reads:-

"A person aggrieved by the determination of the High Court under this section, may appeal to the Court of Appeal as of right".

I said that they went to court under Sections 67 and 84 of the Constitution. So, I am right to tell this House that the Attorney-General failed to exercise his powers to appeal to the Court of Appeal, being a person aggrieved by the decision of the High Court.

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

**Mr. Muturi:** Do not worry! You will have time to say what you have to say!

Now, as a result, and that is my point, all that we have continued to hear is that the Gachiengo ruling is bad law. Parliament has continued to cry about the fight against corruption. The Attorney-General tells us: "Bad law!" But what do we see after bad law?

Mr. Speaker, Sir, first, I would agree with him that it is bad law because you can imagine if the powers of the Attorney-General or the Commissioner of Police to investigate were exclusive to themselves, how many Kenyans would rush to courts to seek redress for having been investigated and/or prosecuted by persons other than the Attorney-General himself?

Indeed, as I said, I agree with him that, that decision was bad! But what we see now, after he realised that the decision on Gachiengo was bad--- What do we do? Then, they came up with the Constitution of Kenya (Amendment) Bill, 2000.

Mr. Deputy Speaker, Sir, on page 107, the second paragraph of the Memorandum of Objects and Reasons states:

"The Bill proposes to amend Section 26 of the Constitution to limit the Attorney-General's powers to take over or discontinue proceedings instituted or undertaken by the Commission".

The Commission referred to here is the Kenya Anti-Corruption Commission, proposed to be established if this Bill

will ever see the light of the day. It is important to see the implications of the Bill. This is very clear. I am reading the Bill which is published as *Kenya Gazette Supplement No.13*.

**Mr. Deputy Speaker:** Mr. Muturi, you are right. Just avoid addressing unknown persons. Address the Chair.

*(The Attorney-General smiled)*

**Mr. Muturi:** Mr. Deputy Speaker, Sir, I do not mind the smiles of the Attorney-General.

We are told that the Bill seeks to, among other things, limit the powers of the Attorney-General. There was a Bill which was published on 15th January, 2003, but it has been superseded by the Bill which was published on 29th January, 2003, bearing the same title as the first Bill.

**Mr. Deputy Speaker:** Mr. Muturi, you are right. We are debating the Bill that was published on 29th January, 2003.

**Mr. Muturi:** Mr. Deputy Speaker, Sir, we are debating the Bill which was published on 29th January, 2003. I suspect that some of the older hon. Members may not have visited their pigeon holes because they are now busy in Government offices. We will keep refreshing each other's memory.

The powers of the Attorney-General which are specifically sought to be limited are the ones contained in Section 26, Subsection 3, paragraphs (b) and (c). These powers are:-

"To take over and continue any such criminal proceedings that have been instituted or undertaken by another person or authority, and to discontinue at any stage before judgement is delivered, any such criminal proceedings instituted or undertaken by himself or another person or authority".

These, specifically, are the powers of the Attorney-General sought to be limited. The manner of limitation is shown on page 95, Section 1 of the amending Bill, which refers to Section 26 of the Constitution. Section 26 of the Constitution is amended by stating that:-

"Nothing in paragraphs (b) and (c) of Subsection 3 applies in respect of proceedings instituted or undertaken by the Kenya Anti-Corruption Commission, except that the Attorney-General may take over and continue such a proceeding at the request, or with the consent, of the Commission".

Mr. Deputy Speaker, Sir, as you can see, this does not need a lot of elaboration. The Attorney-General's powers are limited on matters of corruption, which are matters of the law.

I will demonstrate why I am emphasising this point. The Attorney-General's powers will be limited to the extent that he can only make a request. **The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead this House? He has misinterpreted the phrase "may take over and continue such a proceeding at the request, or with the consent, of the Commission". Is it in order for the hon. Member to impute that the request will come from the Attorney-General, when the said paragraph specifically states that it will come from the Commission?

**Mr. Muturi:** Mr. Deputy Speaker, Sir, the Commission may request the Attorney-General to take over or institute a proceeding, or the Attorney-General may request the Commission to do that. But he cannot do it as of right.

Let me demonstrate another point. The point of law, which is initial here is one. Section 26(2) of the Constitution, which is not being amended by this Bill, states:

"The Attorney-General shall be the principal legal advisor to the Government of Kenya".

The proposed Kenya Anti-Corruption Commission will be a body established within the Government of Kenya, which must also be among the bodies to receive such legal advice from the Attorney-General. But as you can see, it is very clear that it is the proposed Commission which will be instructing the Attorney-General on which cases to investigate and which ones not to investigate.

**The Minister for Transport and Communications** (Mr. Michuki): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Mr. Muturi to mislead the House? He has given the impression that the Attorney-General is being chased out of his office? Is he in order?

**Mr. Muturi:** Mr. Deputy Speaker, Sir, I have not said anything like that. I did not say that the Attorney-General is being chased out of his office, but the full implications will become very clear very soon, whether he will be chased from his office or not. The Bill, in Clause 113C, Subclause 5, paragraphs (a) and (b) reads:-

"The Commission shall have powers in any case which it considers advisable to do so:-

(a) to take over and continue any criminal proceedings in respect of corruption, economic crimes or a related offence instituted or undertaken by another person or authority, including the Attorney-General".

I do not think I need to belabour the point, that the proposed Kenya Anti-Corruption Commission will be a body superior to the Attorney-General. As you can see from these two provisions, it is the proposed Commission which will have the authority over the Attorney-General. I have no quarrel with that. These provisions exist in a different format in the new draft Constitution. We have created in the draft Constitution an elaborate prosecution machinery. Why are we having piecemeal amendments to the Constitution? The Bill is confusing Kenyans that the proposed Kenya Anti-Corruption Commission will not chase the Attorney-General out of his office. We could hold the National Constitutional Conference and debate these things. That is the point I am making.

Mr. Deputy Speaker, Sir, some of the definitions you find in this Bill, for example, the definition of a "public body", are confusing. A public body includes among other things the Government and the Cabinet.

**The Assistant Minister for Justice and Constitutional Affairs** (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead this House by saying that as soon as any other body takes over prosecution instituted by the Attorney-General, then the Office of the Attorney-General ceases to exist?

**Mr. Muturi:** Mr. Deputy Speaker, Sir, the Attorney-General is the Principal Legal Advisor to the Government. That section of the Constitution has not been amended.

The other point I wanted to state is that the definition of "public body" includes the Cabinet and the Government. The definition of the "Cabinet" in Section 17 of the Constitution is that it is composed of the President, Vice-President and other Ministers. Some of the people are saying that we can prosecute even the President when we have not amended Section 14 of the Constitution, which puts him above the law.

Mr. Deputy Speaker, Sir, I beg to oppose.

**The Minister for Transport and Communications** (Mr. Michuki): Thank you very much, Mr. Deputy Speaker, Sir, for granting me this opportunity to contribute to this Bill. In the first place, I think we should have some background information on this piece of legislation. In that context, we ought to know and accept that the fight against corruption was one of the platforms on which the NARC Government was elected overwhelmingly by the people of Kenya. Therefore, the tabling of this Bill is meant to reflect that will of the people of Kenya. Therefore, let it not be said that this legislation is an afterthought as some speakers appear to be saying when it is not. This is a legislation which arises from the will of the people of Kenya. That will of the people of Kenya is that they are now a new nation. That new nation wants to send the message all over the world that corruption is not a way of life of the people of Kenya. That is the reason why instead of even bringing a separate legislation to enunciate the manner in which the Commission will work, it is prudent to actually embed it in the Constitution; to show that the people of Kenya have rejected corruption altogether.

Therefore, I am saying that the amendment to Section 26 of the current Constitution is being carried out not in defiance to what the Attorney-General is expected to do, but rather on two issues, namely corruption and economic crimes. The rest of the world is in the hands of the Attorney-General. The amendment which is before us now is so clear as to its intent and purpose, which is that it covers corruption and economic crimes which have impoverished the people of Kenya. The people of Kenya, by show of their votes have rejected this. Therefore, it would be naive to pretend that, that overwhelming support of the people of Kenya can be rejected on the Floor of this House.

The specific areas which the Bill deals with, namely corruption and economic crimes have necessitated that amendment to Section 26 of our Constitution so that the Commission has the power to originate prosecution in these two areas. It is quite clear that this Commission will be a friend of the Attorney-General because the Constitution will provide that it can even ask the Attorney-General to take over some cases. It is discretionary for the Attorney-General, if he is requested by the Commission, to prosecute or investigate a particular crime within those two areas, namely corruption and economic crimes.

This amendment does not take away powers from the Attorney-General. The Attorney-General will still have the powers. The Constitution will actually make it clear that in these two areas there is this body called the "Commission". Therefore, I am saying that this Bill is one which comes from the grassroots of this country. I think it would be naive for anybody to state otherwise. If the people of Kenya, as some people are trying to pretend here, were to reject this Bill, they would have rejected it during the campaign period last year. This is because it was stated quite clearly that we shall pursue with vigour the elimination of corruption.

Contrary to what is, again, believed, this is not a Bill by the Bretton Wood institutions. Indeed, if the Opposition here wants to know, we have held intensive discussions with the Bretton Wood institutions and they trust us unlike they trusted the Opposition when they were in power. I would like to state here, for example, that

the privatization of Telkom Kenya is not a condition of the resumption of aid as of now because they know what we are saying is what we mean. So, we are not bringing this Bill to the House because of them. It happens to be incidental to the major purpose. Therefore, I would like to urge that this House stops to impute improper motive as to the intention and origin of this Bill.

As we were discussing various matters - and I think this is a point which cannot be sufficiently emphasized - with potential donors, for example, the World Bank and others--- There is an expression and I cannot be tired of repeating it because I believe in it so much that almost in all my discussions I must repeat it. For this country to be able to resume economic growth; achieve the level of investments it can handle and progress forward, it must reduce the cost of doing business in Kenya. The cost of doing business in Kenya is so high that it has acted as a deterrent to investments. Apart from anything else, even if there are crimes and other forms of behaviour and deviant sort of manifestations, the most important of this is the cost of doing business in Kenya.

Mr. Deputy Speaker, Sir, because of corruption that has been rampant in the last ten years, no significant investment or prudent investment have taken place. Let me use the word "investment" because investors are supposed to be prudent people. It is only the imprudent investors who invested during that period of ten years. Because of the high level of corruption that prevailed, the people of Kenya have rejected corruption and they do not want it to be part of their national behaviour. That is why the Constitution must provide for this new behaviour of rejection of corruption and economic crimes so that they can move forward and prepare for the future of their children.

Mr. Deputy Speaker, Sir, therefore, I am trying to persuade this House and I think I have succeeded in doing so, that we must accept that in order to reduce the cost of doing business in Kenya, we must pass this law. We must reject corruption and economic crimes, just like Christians reject satan and all that pertains to him.

Mr. Deputy Speaker, Sir, who amongst Kenyans would like us, our children and our grand children to continue suffering because of something we can discard from our lives because the people want us to do so? So, let this Bill not be rejected just because my friend here, hon. Maj. Marsden Madoka, is in the Opposition. He should consider this in the light of the need for this country to move forward. By all means, if he thinks corruption will move this country forward, he can say otherwise. Surely, the people of Kenya have suffered enough from the effects of corruption including Members of Parliament who are here, their own voters and friends and this is what will reflect the will of the people because it is what is contained in this Bill. If this Bill is passed, the Attorney-General will be able to function. These are just two specific areas; two items in myriads of crimes in Kenya and the items are corruption and economic crimes. Give that to the Kenya Anti-Corruption Commission (KACA), and the rest will be left in the hands of the Attorney-General. At times, he may even handle corruption and economic crimes in consultation with the Commission if he may do so.

Mr. Deputy Speaker, Sir, there are other aspects which make the conduct of business in Kenya too expensive compared to other countries. For example, our Minister for Energy is now considering, very seriously how to reduce the cost of electricity. I do not subscribe to the idea of sacking people so that reduction this reduction can come about. I think it can come about through some other ways. It can come about by including other suppliers of electricity and by even looking at the agreement which has been concluded by energy suppliers or even by revising those agreements in order to make the price of using energy from Kenya Electricity Generating Company (KenGen) more amenable and acceptable to the economy.

Mr. Deputy Speaker, Sir, I have already emphasised that this Bill is proclaiming or telling the world that we, as Kenyans, will not deal with corruption through subsidiary legislation. It is telling the world that since the Constitution is the document that regulates our life and culture, we, as Kenyans, will incorporate the method to fight corruption and economic crimes within our document that spells our culture, behaviour and way of life because we have rejected corruption as a nation; it is not part of us. To make a further point, from now on after we pass this Bill, where crime or corruption and economic sabotage occur, it will be attributed to the individual concerned and not us as a nation because we, as a nation, will have through this document, rejected all that goes with those satanic forms of behaviour.

Mr. Deputy Speaker, Sir, therefore let us tell the world that as a nation, we have rejected corruption in all its forms and economic crimes in all forms that they present themselves by passing this Bill so that it becomes part and parcel of our own way of life within the Constitution.

Mr. Deputy Speaker, Sir, I also want to say that we, as Kenyans, have chosen to use the rule of law to deal with corruption and economic crimes rather than pursue that easier way of witch-hunting. Instead of continuing to accuse each other, the law will now take its own course and I think the debate on who has committed which crime, should cease, in my opinion, so that the law can take its own course. We are providing a new law because witch-hunting is not sufficient. It is not enough to say so-and-so misappropriated this and that. Let the machinery of the law do so. In order that this area is dealt with more comprehensively, let us pass this

law and I am urging this House to accept that this law is necessary. It will represent our character and our psyche as a nation. The national psyche is going to be contained in this law. Once it has been passed, it will also require a very high majority to change it and that shows the seriousness with which we are facing this aspect of our life.

Mr. Deputy Speaker, Sir, I, therefore, wish to support.

**Mr. M. Kilonzo:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill.

With your kind permission, I wish to take this opportunity to associate myself with the remarks made by the hon. Minister Kiraitu Murungi, on the sad history of legislation against corruption in this country. The Minister did mention that since 1957, it has been almost impossible to produce legislation that would create the atmosphere of zero-tolerance against corruption in this country. In fact, he mentioned the old case of Shimechero.

I would also like to associate myself with the remarks of my learned friend, Senior Counsel, hon. Muite, the MP for Kabete; on the question of supremacy of Parliament. However, notwithstanding agreeing with those gentlemen on those issues, it is my very respectful submission, that amending the Constitution is not a historical or supremacy issue. It is a matter that must be undertaken with extreme caution. It is my very respectful submission that whilst Parliament is supreme in this country, it must be appreciated that, its supremacy is not to be expressed through shallow criticisms of judges and their decisions. That supremacy must and should be expressed only through good legislation, and only after Parliament passes good legislation can that supremacy be recognised and respected in this country.

Mr. Deputy Speaker, Sir, I would like to say, without fear of contradiction, that one of the greatest achievements of the former KANU Government is the production of lawyers in this country.

*(Applause)*

Since Independence, this country has produced some of the brightest lawyers in this continent. Indeed, as I speak here, the fact is that Kenya is now the most litigant country, which produces the most expensive and far reaching litigations in the continent. Therefore, arising from that, in fact, I believe, very soon this country will overtake countries like Germany, and others in Europe in serious litigation. Therefore, I urge this House, as I contribute to this Bill, to consider a very basic rule that is taught to law students on their first day in law school. That question is, "how will it sound legal in court?" If the answer is that, "it will not sound in court", this House, distinguished as it is, must restrain itself from passing legislations that are only going to be slaughtered in the theatre of litigation in this country!

*(Applause)*

Mr. Deputy Speaker, Sir, I dare say again that the Gachiengo case that has been criticized by people on both sides of the House has been very badly misunderstood. I would like to remind this House that the Gachiengo case was started by a Kenyan citizen and he is the one who instructed his lawyer to file a reference of constitutionality in our High Court, and he followed the procedure that is laid down. I would like to add that the case was ably represented. Therefore, it must be understood again by this House, following the same principle of, "what will it sound in court", that judges cannot make orders that have not been paid for because they have no jurisdiction. The opposite of that coin is that, judges also cannot refuse orders, if evidence is tabled before them by the able lawyers that this country has produced. Therefore, I have listened with extreme disquiet to criticisms of judges.

Mr. Deputy Speaker, Sir, without parallel criticism, all the---

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

**Mr. Deputy Speaker:** What is it, Mr. Githae? Do you have a substantive point of order?

**The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae):** Yes, it is substantive, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead this House by saying that hon. Members have been criticising the judges who presided over the Gachiengo case? Hon. Members have been criticising the judgement, not the judges!

**Mr. M. Kilonzo:** Mr. Deputy Speaker, Sir, I am sorry, I am not responsible for the English Language. I am using it in simple terms; a judgement can only come out of the mouth of a judge.

*(Applause)*

Therefore, if you stand up in this august House and say that, a judgement of a judge is fallacious, what are you saying? You are saying that the judge is full of fallacies. The point is that, as long as lawyers go and present arguments in a court of law, this House must be prepared to accept the interpretation of the law by our courts, for the simple reason that, by virtue of the principle of separation of powers; Parliament cannot pass a given law and interpret it. Now then, if we accept those principles, let me show you the problems with this Bill.

**Mr. Angwenyi:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead this House that you cannot criticise a decision made by another body of Government?

**Hon. Members:** He did not say that!

**Mr. M. Kilonzo:** Mr. Deputy Speaker, Sir, I have not said anything of the sort, and if you allow me, I will continue.

**Mr. Deputy Speaker:** I am allowing you to proceed, and I am cautioning hon. Members that, for the sake of the smooth flow of this debate, unless you have a serious point of order, please stop interrupting hon. Members when they are contributing.

**Mr. M. Kilonzo:** Much obliged, Mr. Deputy Speaker, Sir. I would like to open this attack, and it is a spirited and a very honest attack on this Bill; by reminding this august House that the most serious offence in this country is the offence of treason. It is the offence where a person plots to overthrow the Government by unlawful means. As I address this House this afternoon, that offence is not stated or described in the Constitution.

*(Applause)*

The most serious offence is described in Section 40 of the Penal Code. There is a good reason that, whenever a person is charged with treason, he can be tried without the creation of the constitutionality of the offence.

Mr. Deputy Speaker, Sir, I would like to remind this House that under Sections 67 and 84 of the Constitution; whenever a Kenyan is accused of an offence, and it appears or raises issues about constitutionality, then the magistrate is under obligation to feign issues for interpretation by the High Court. The reason being that, the interpretation of the Constitution of the Republic of Kenya is vested in the High Court, and the High Court only. So, when the Minister and the Attorney General present this law by which they are describing the definitions of corruption and the economic crime, they are creating a conundrum that will be impossible to resolve in the next generation, if this law is passed.

*(Applause)*

It simply means that the moment an accused person in this country, and the people who are going to be charged with corruption--- I would like to remind the Government that, they are not poor people; they can afford those very good lawyers I have described. The moment a person is prosecuted for corruption, first of all, the charge will read, "You are accused of corruption contrary to Section 113 of the Constitution." It means automatically that charge cannot be presented or even prosecuted conclusively, before the magistracy which is the primary area for prosecution of criminal cases. It means that by the very mere mention of Section 113(a) of the Constitution, "every charge sheet presented in a court of law, will automatically invoke the application of Sections 57 and 84." That is the constitutionality, because it is obvious you cannot accuse a Kenyan of corruption and refuse that word being interpreted. It is in the process of interpreting the word "corruption" that you can find out whether a person has committed an offence or not. I dare say, without fear of contradiction, that the proposal of the NARC Government to describe offences in the Constitution is the first attempt of its kind in the Commonwealth. There is not a single constitution where you will find crime described. The reason is simple. If being in possession of a bottle like the one Prof. Kibwana brought into the House the other day becomes corruption, by application of public policy and perception of the public we would need to come back to this House and seek to obtain a mandate of two-thirds majority of the House to amend this clause in order to make that offence corrupt-free.

Again, I dare say that the definition of offences must be left to ordinary statutes in order to offer the country reflexivity that Mr. Michuki was talking about. If we want to attract investors into the country, they must understand that our law is flexible.

I am happy and also sad to say that the procedure for amendment of our Constitution is inflexible to a large degree. That is why it has taken us nearly 12 years to amend the existing Constitution. That is why you heard the Leader of the Official Opposition say that we would prefer, as a party, that we do not have piecemeal



amendments to the Constitution.

The other problem with this definition is the fact that the word "extortion" has been left out. So, even before we finish this debate, this Bill is out of date. Hon. Members have said, including the Minister for Justice and Constitutional Affairs, that the people who propagate corruption are PCs, DCs and so on, forcing members of the public to contribute to Harambees. Technically, that is extortion. I submit if it is not there, we already have a problem.

Moreover, Mr. Deputy Speaker, Sir, you will find that they have described breach of trust as a corrupt act.

But the hon. Attorney-General, senior counsel, who is here would tell you that -he is assuming the House does not know that - one of the most complicated areas of law is the law of trust, because you do not know how to define it. It comes in various classes. There is express trust, implied trust, resulting trust and so on. Again, I say, if an accused person of this Republic is taken to court for corruption arising from breach of trust, you would be in court for a generation while the judges and the lawyers try to interpret whether it was a resulting trust, or an express trust. I dare say, if the history of corruption legislation is bad, what the hon. Minister for Justice and Constitutional Affairs, and the Attorney-General are offering this country is even worse. In fact, it is amazing that we have to debate it because they ought to withdraw it. They need to go and consider these issues.

Mr. Deputy Speaker, Sir, the definition of economic crime reads as follows:-

"(a) An offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue;

(b) An offence described by law to be an offence constituting economic crime for the purposes of this Chapter".

So, economic crime is defined by repeating itself. Lawyers make a fortune out of that sort of drafting. I urge this House to take cognisance of the fact that this country has moved forward and it will continue to move forward, and if this Bill becomes law, it will be slaughtered.

Mr. Deputy Speaker, Sir, you heard my colleague, Mr. Muturi talk about the problems of the confusion between an Attorney-General, the Commission and the directors. But there is an even more fundamental issue. For a reason only known to Mr. Murungi and the Attorney-General, the director envisaged by this Bill has no security of tenure. He can be dismissed at whim. Moreover, the director and the commissioners are subjected to only reporting to Parliament. But this Parliament, as I have seen, comprises Ministers and Assistant Ministers who are responsible for sourcing for funds for this director and so on. If the powers of the Attorney-General have been limited by giving some of them to this super-director who does not enjoy security of tenure - I appreciate in recent times that expression has lost some element of meaning. But to me, as a trained lawyer, I respect it because the problems we have as a country will not always remain. As democracy takes root, security of tenure is going to be respected and the next KANU Government will respect the principle of security of tenure. I urge that side of this House to take a look at this side and open their eyes. This is new KANU and we are going to fight and support security of tenure so that when a person enjoys it, we appoint a tribunal. We do not organise demonstrations. If the Attorney-General has security of tenure, and the director does not have, but they can criss-cross and take-over their final responsibilities, who is the boss here?

I urge hon. Members not to pass this Bill if they love this country. I am prepared to give you even 2,000 lawyers of this country to sit down and draft you a Bill that will stop corruption completely on its feet, but not this sort of legislation.

Mr. Deputy Speaker, Sir, Clause 113F provides for the appointment of the director and performance of the commissioners. The NARC Government promised transparency and accountability. It promised this country a new way of doing things. I welcome that, but they are not doing it. In this Bill, they have not offered Parliament the opportunity to vet the appointment of this director or the commissioners. The way this country is moving and the problems we are having all over the place--

**Prof. Kibwana:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Member, whom I respect greatly, is misleading the House because if he was to look at Clause 113D---

**Mr. Deputy Speaker:** Prof. Kibwana, that is a point of argument. If you want to respond to what he has said. But if it is a point of order, go straight and raise the point of order.

**Prof. Kibwana:** On a point of order, Mr. Deputy Speaker, Sir. Clause 113D(3) says that, the director and assistant directors shall be persons recommended by the Advisory Board and approved by the National Assembly for appointment to their respective positions--

**Mr. Deputy Speaker:** Order! Prof. Kibwana, that is not a point of order. It is a point of argument. You are advancing your point of view on that. Please, wait.

**Mr. M. Kilongo:** Thank you, Mr. Deputy Speaker, Sir. I take the same position---

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to mislead this House that Parliament is not going to be involved in approval of the appointment of the director and assistant directors, when, as a matter of fact, Clause 113D provides that the director and assistant directors shall be approved by the National Assembly? Is he in order to mislead the House?

Mr. Temporary Deputy Speaker, Sir, I am not misleading the House. I am actually talking about the Commissioners who have been left out of this Clause. It says that the Director will receive approval of the National Assembly, but you do notice that the method of effecting that approval has not been stated. The procedure to be employed for that approval is not stated. The method of the nomination of those directors has not been stated, and yet this is the Constitution.

May I even go to a more serious area, and that is the area under Section 113(J). There is a concept which has been introduced, called "unexplained assets". In fact, Section 113(J) Sub-section 2(b) states:-

"Unexplained assets mean assets of a person whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation".

Mr. Deputy Speaker, Sir, when this provision reaches our courts, it will be interpreted by the lawyers to mean that this amendment is seeking to kill Kenyans' rights and to remain silent when confronted in a criminal offence contrary to Section 77 of the Constitution. I tell you, and I plead with the hon. Members of this House to appreciate that this is a contradiction of the express provisions that a Kenyan should not be denied the right of challenge. In fact, he is required to be recognised that he is innocent until proven guilty. So, why would a Kenyan be required to offer satisfactory explanation in the same Constitution that requires him and empowers him to remain silent?

Mr. Deputy Speaker, Sir, if there is a conflict between this Section and Section 27, under the statutes of interpretation and procedures that have been employed by Judges for generations and centuries, it is the earlier Section that will be held to prevail. Therefore, those who are criticising the Gachiengo case, prepare yourselves again to have this law shot down under the fact that in amendment of the Constitution, the original Constitution has been amended beyond recognition.

Mr. Deputy Speaker, Sir, moreover, you notice that the same Section states as follows:-

"Whether the alleged corruption or economic crimes took place and whether the assets concerned were acquired before or after the commencement of this Chapter".

The Constitution we now have clearly prohibits the establishment of a law that declares an offence which was not an offence at the time the act occurred. It is called retrospective application of law. We saw this recently over the Donde Bill. It has been interpreted and lawyers will be out there waiting for this legislation to be passed. I can assure you that the amount of cutting up of this Act will be irretrievable.

Mr. Deputy Speaker, Sir, under our existing Constitution before this proposed Bill, the law says that no Kenyan shall be forced to incriminate himself, apart from the right to remain silent which is constitutionally guaranteed. No Kenyan should be forced to self incriminate. He should not, in fact, make statements that appear to transfer guilt of a criminal nature to himself.

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead the House that there is a certain section in the Constitution which specifies something called the right to remain silent?

**Mr. M. Kilonzo:** Mr. Deputy Speaker, Sir, I have the Constitution here and I welcome the comments, because obviously it arises from inadequate study of the Constitution. It is certainly there and I welcome the hon. Minister to study the Constitution and he will find---

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): On a point of order, Mr. Deputy Speaker, Sir. I was listening to the hon. Member very carefully, and when he talked about the right to remain silent, he quoted Section 27 of the Constitution. That Section has to do with the Presidency of the Republic.

**Mr. M. Kilonzo:** Mr. Deputy Speaker, Sir, I stick to the point that I have raised, and I stick to the fact that---

**Mr. Deputy Speaker:** Proceed, Mr. Kilonzo!

**Mr. M. Kilonzo:** Thank you very much, Mr. Deputy Speaker, Sir. The question which arises when you say Sub-section (ii): "Assets for which there is no satisfactory explanation", it is like this Director and this Commission will walk to me and say: "Mr. Kilonzo, I have known you all your life, you have this beautiful tie and I do not believe that you have ever earned enough income to be able to buy it". He should be able to offer an explanation. I am happy to say to this august House, and for the benefit of the hon. Minister that the law of this

land has no provision or requirement for me to start explaining myself to someone over some property that I already own. I ought to be prosecuted and investigated to the satisfaction of the court, while I do not open my mouth. Therefore, the use of the words "satisfactory explanation" is subjective and requires the person; the citizen of this country to be explained to.

Mr. Deputy Speaker, Sir, I would like to urge this House to consider adopting the famous motto taught in law school which says: "It is preferable that 1000 guilty people go scot free than one citizen to be unfairly convicted for an offence he did not commit". I say so again because the NARC Government committed itself to democracy and the rule of law. It has the entire machinery of law enforcement in this country. It has an Attorney-General, who is a Senior Counsel. It has a Minister for Justice and Constitutional Affairs who has enormous experience and nearly 15 lawyers on its side. Why should a Government armed with so much wealth require a citizen who has been charged to explain himself?

Mr. Deputy Speaker, Sir, I very carefully studied Chapter 17 of the proposed Constitution that has been prepared and drafted at enormous expense by the Kenya Constitution Review Commission. That Chapter makes provision for better elaborate methods of handling issues like corruption, and I urge this House not to accept this piecemeal legislation because the Attorney-General, as it has been reported time and time said that he does not want piecemeal amendments to the Constitution. So, let us wait. The reason being that we have only three months before June when NARC has promised us a new Constitution to be in place. That time is not even enough for the Director to hire workers, order stationery, have investigators or even start the investigations. So, three months between now and June, I believe this country, if it has survived since 1957 against this legislation on corruption can wait for the remaining 90 days. I am giving NARC the benefit of doubt because they promised to put a new Constitution in place within the first 100 days. They ought to wait so that we bring them the law under Chapter 17 of the proposed legislation, because it has a better method of handling this big problem.

Mr. Deputy Speaker, Sir, I would like to conclude by saying that I oppose this legislation for the reasons I have given, and I support the Leader of Official Opposition for the reasons that he advanced and the other hon. Members on my side who have spoken. I would like to urge that this Bill should be thrown out with the contempt that it deserves.

**Prof. Kibwana:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute on a very important piece of legislation for our country. I would like to begin by congratulating the hon. Minister who moved this Bill. I would also like to congratulate Mr. Kenyatta, the Leader of the Official Opposition, because I think I am getting convinced by and by that it is an *unbwogable* debate.

I would also like to congratulate Mr. Murungi for introducing the Constitution of Kenya (Amendment) Bill, 2003, as well as the attendant ordinary Bill which will come later on for debate.

First, before one discusses substantively the Constitution of Kenya (Amendment) Bill, it is important to state that there are three important elements that define a successful anti-corruption law. These elements need to be present in terms of the Constitution of Kenya (Amendment) Bill as well as the attendant laws that will follow later on. First of all, if we are to successfully attack corruption it is important that we mobilise the political will to combat corruption. This is something that previously has given us problems. To do this successfully, we need to mobilise this political will at top leadership level in the public service and also within our citizenry, including the private sector. If the question of political will is not handled well, we can have good legislations which will not help us.

Since 1956, we have had an anti-corruption law which has been described by commentators as "a horse without a rider". Secondly, in terms of the elements of a successful anti-corruption law, we must establish standards and institutions. We must revamp the old laws and institutions. We must create new laws and institutions. Something else which becomes more apparent as we move on and which is critical is that professional bodies should develop codes. I am aware that Parliament is in the process of developing an anti-corruption code. Some of the debate in this Parliament has also been about the establishment of a Truth and Reconciliation Commission which will also, among other things, help us in the fight against old corruption.

Critically, in terms of the element of combating corruption, we need to develop an anti-corruption culture. This is where education, promotion of citizen activism and institutional compliance with whatever laws we have developed become very critical. Mr. Mutula Kilonzo emphasised the issue of effective prosecution.

Accompanying effective prosecution is the prevention of unjust enrichment. That means that people who have been previously corrupt need to return proceeds from such corruption to the public.

Finally, in terms of the element of a successful anti-corruption law, we need to have an evaluating and monitoring anti-corruption strategy where there can be self-monitoring of institutions, official monitoring through the Controller and Auditor-General, non-official and semi-official monitoring by NGOs and anybody else who wants to do so. Before I go into a critique of the Bill, it is important to underscore the fact that there are some

important principles that we need to consider when embarking on this fight against corruption. I think the NARC Government is very much interested in ensuring that these principles are looked at carefully.

One of the principles is; enforcers of anti-corruption law must be exemplary. If you want to successfully enforce anti-corruption law, you must ensure that you are exemplary so that you will not be accused. One important principle which we are almost losing sight of as a Parliament - and I hope I will not be criticised for stating this - is that when we are dealing with corruption, we can very easily introduce McCarthyism or even the *Mwakenya* syndrome where you were accused and everybody accused you and you were jailed. There was actually public lynching. If people cannot come here and defend themselves, we should be careful about how we accuse them. We should accuse people in fora where we know they will be able to come and defend themselves. I have been very much in the forefront in the fight against corruption, but I also have to protect those who require to go through proper processes.

Another principle is that there has to be equal treatment of all in terms of anti-corruption law. Everybody must be subjected to that law. I think even this Bill does emphasise that fact, as well as targeting all sectors whether they are private, public, educational or religious because corruption can actually hide anywhere, even in a clergy person's breast. We have known some people in churches and so on to be corrupt. Another principle is that there has to be eternal vigilance when we are fighting corruption. We must fight corruption everyday. If we leave this fight for a moment, then corruption will come back. We must also know that the fight against corruption will be resisted. Therefore, the law must protect those who are at the forefront of fighting corruption.

Another very important principle is that if the fight against corruption is mishandled, it can bring down a system. Therefore, we need to be careful in terms of how we fight it so that we have a win-win situation where people do not feel unfairly threatened and so on. The seventh principle is that we have to be pragmatic. We should also deal with corruption in such a way that there is finality. People need to know that they can proceed with their lives and that the country can do its business. There should not arise a situation where we pursue a person forever and they do not know whether the issue has ended or not.

One can go on and on enumerating important principles which we need to have at the back of our minds, if we want to construct an effective anti-corruption regime. These principles have to be part and parcel of the law that we create. I am persuaded that this Bill does create a sound basis and framework for the fight against corruption. When fighting corruption - and this has been the problem of the past - we tried to do so through ordinary legislation. This was challenged because it had to be fought from the first instance within the Constitution. This Bill is trying to begin the fight against corruption from the constitutional angle, and I think this is important.

Also, both sides of the House have kind of conceded that this Bill establishes an independent commission. Unlike the defunct KACA, the police authority and so on, the proposed Commission can investigate and prosecute cases against corruption. There is also the issue of the concurrent prosecution of corruption cases by the Attorney-General that I will address. The Attorney-General can also prosecute corruption crimes under the Penal Code and other laws, and the Commission should not interfere at all in that aspect of his work. One of the contentious issues that was pointed out by the opposite side is that the Attorney-General, if called upon, can assist the Commission in cases that fall under its mandate. This is an attempt to try and eliminate the clash that existed previously.

Mr. Deputy Speaker, Sir, the opposite side asks us why we do not trust the Attorney-General. We are told that the Attorney-General smiles a lot and so on. I think it was a good strategy for the Attorney-General to be smiling most of the time when he was the Attorney-General under KANU. When it was very painful for him to do certain things, he smiled and life was a bit okay. But the substantive question is: Do we not trust the Attorney-General as far as this Bill is concerned? If, of course, the Attorney-General and the Commission work well, then there will be no problem because they will complement each other.

Mr. Deputy Speaker, Sir, it is true as the Minister said when he was moving the Bill, that there are many countries in the world where there are special prosecutors for corruption offences. These are independent entities. Therefore, there is no turf war between the Attorney-General and the special prosecutors.

Mr. Deputy Speaker, Sir, KANU argues that the Constitution of Kenya (Amendment) Bill, and the Public Officer Ethics Bill should be postponed until we conclude the constitutional review process. One must accept that this can be a powerful or persuasive argument. It is common knowledge that members of the public have prioritised the Constitution. Because members of the public have prioritised the Constitution, the argument advanced by KANU will be well received by the public, from the point of view of KANU. However, one thing that makes me pause in terms of this debate and ask myself whether this is not a major Bill which both sides of the House should support is the following: Kenya requires to move, decidedly and now, on the anti-corruption front to gain credibility in the world community. It is obvious that we cannot gain access to the international financial

systems if we do not begin to clean our house. Although, I do not support and appreciate "KANU bashing" I have to say that it was KANU's previous qualities which led us into our sorry situation in which the international community isolated us.

(Applause)

Therefore, KANU must begin to pay its part of the national debt by supporting *bona fide* Government efforts to take Kenya back to the international orbit. I think even the Leader of the Official Opposition came close to saying that this could be done if he was consulted in terms of the original drafting of the Bill.

It is also common knowledge that if international support will be factored in our June Budget, then we need to do the needful in terms of the legislative fight against corruption, latest by April. Although the Senior Counsel Mr. M. Kilonzo, said we can wait until June, I think we also have to be technically informed whether this will not mean that there will be no international support coming to the June Budget because we have postponed something that is important for the international community. Of course, if there will not be such support, and we cannot generate it domestically, then it means jeopardising this Bill at this juncture is tantamount to jeopardising our economic revival. Economic revival is good for all of us, especially lawyers who want to make a lot of money in a new environment outside this Parliament.

Mr. Deputy Speaker, Sir, as a constitutional lawyer - and I have invested a little time in terms of reading constitutional law - it is true that I can technically fault this Bill. It is very detailed like ordinary legislation. Under normal circumstances, when you are creating an organ within the Constitution, like the Kenya Anti-Corruption Commission, you first define its relationship with the Attorney-General, and then you say that ordinary law will provide the rest. Normally, that is what happens. I have also to concede what Mr. M. Kilonzo said. He is not listening to me although I listened to him very carefully. I am not a Senior Counsel like him. I do concede that the draft Constitution deals with anti-corruption. Section 15 is on Leadership and Integrity, especially Sections 276 and 289 are detailed. There is even the Fifth Schedule on Leadership and Integrity Code of Conduct. There is also the Eighth Schedule; in rule 18 there is focus on past human rights abuses, including corruption, work and so on. My argument is that if this Bill was passed, it would create a framework which would be improved upon in the Constitutional National Conference.

By passing this Bill, we shall be sending a signal to the international community that we have started doing serious work against corruption. Then within the national conference, we shall improve on what we have done so far. What is common between this Bill and the draft Constitution is that both of them seek to establish an anti-corruption commission. If an anti-corruption commission is established through this Bill, it means that it can be improved subsequently when we deal with the draft Constitution.

Mr. Deputy Speaker, Sir, I am a bit concerned that we are already beginning to deal with corruption in an haphazard way. For instance, the Ministry of Roads, Public Works and Housing has created a task force to deal with corruption. There is something happening within the Ministry of Local Government. We have had *ad hoc* attempts to control this problem. That tells me that there is serious demand for an anti-corruption law. Therefore, the attempt by the hon. Minister to actually give the country an anti-corruption law is definitely in the right direction.

However, the KANU side must be given a guarantee that this will also be discussed in the constitutional review process. This week we will establish a Select Committee on the constitutional review process. This means that the anti-corruption provisions will be discussed. The moment that Select Committee starts this work, the NARC Government will not stop it. So, in a way what the Opposition are asking for is guaranteed. This is a comprehensive review of the Constitution, including looking at the provisions of anti-corruption within the Constitution. Therefore, that should not be used as an excuse to kill this Bill. However, KANU should not revenge because when the NARC was in the Opposition, they killed the constitutional amendment Bill which KANU introduced in this House

In many ways, they are very similar. In actual fact, I think the Minister used what the Attorney-General had proposed before.

Mr. Deputy Speaker, Sir, in all seriousness, this is a matter which even at this stage, needs a lot of input and consultation with KANU so that there can be an agreement about how we can move forward on this Bill while we work on the comprehensive constitutional review. There should be a mechanism and a way of ensuring that there is consultation between us and the Opposition side. I also think that, that is a matter which can be brought before the Select Committee on the Constitution of Kenya Review Process, which will sit on Friday, so that it can also advise.

Mr. Deputy Speaker, Sir, I am a staunch supporter of the National Rainbow Coalition (NARC). As such,

I should be the last person to oppose a constitutional amendment that has been brought here by the Government. However, I have looked at one aspect of this Bill, which I thought Dr. Godana and Mr. Kilonzo should have looked at, that worries me. I, therefore, thought it fit to highlight this particular point, so that we see whether there should not be further consultation. If I am wrong, then it would mean that further consultations would be along other lines.

The proposed amendment to Section 26 of the Constitution reads as follows:-

"Section 26 of the Constitution of Kenya is amended by inserting the following new subsection immediately after subsection 3-

3A Nothing in paragraphs (b) and (c) of subsection 3 applies in respect of a proceeding instituted or undertaken by the Kenya Anti-Corruption Commission (KACC) except that the Attorney-General may take over and continue such a proceeding at the request, or with the consent, of the Commission".

I believe that the intention of the drafters of this Bill was to address the loopholes that were used to declare unconstitutional, the defunct Kenya Anti-Corruption Authority (KACA) through the infamous Gachiengo case. The confusion arose from the concurrent power of both the Attorney-General and the defunct KACA to prosecute criminal cases. So, on the face of it, this amendment seeks to provide that if the KACC starts a proceeding, then the Attorney-General cannot move in unless he or she is asked to take over and continue such a proceeding.

On the face of it, it would look as if that problem will be solved with the passage of this Bill. However, inadvertently, we could be introducing another problem. That problem worries me, and I thought that Dr. Godana and Senior Counsel Kilonzo should have raised it. The KACC may go ahead and prosecute cases that are not of corruption nature, and argue that the Attorney-General cannot stop it from doing so, unless it asks him or her to do so. This would, therefore, mean that if the KACC decides to do more work than it is required to, it can go ahead and prosecute cases outside its mandate and then tell the Attorney-General: "Unless we ask you to take over these cases, you cannot move in". This is where the real danger lies.

*(Applause)*

Mr. Deputy Speaker, Sir, if you look at the Anti-Corruption and Economic Crimes Bill, which is not before the House but which has been published, you will realise that one of the functions of the KACC will be to institute and undertake criminal proceedings against any person for corruption, economic crimes and related offences. So, in discharging its mandate of prosecuting cases related to corruption, the KACC could proceed into areas that will not be covered by other proposed legislations that will be debated in this House shortly. Therefore, if I am right in terms of seeing that danger of the Kenya Anti-Corruption Commission actually going outside the law that will guide it, and trying to go into other areas, and then saying that the Attorney-General cannot move in until they say so, then there will be a true conflict between the Commission and the Attorney-General.

So, to conclude, I would really, even if NARC - and I think we can muster the 145 votes and pass this law - but for Kenya to say how it wants to proceed against corruption as one group; as both NARC, the Government, KANU and other Opposition parties, I think we need to develop by-partisan support on that.

Truly, even some of the arguments that were introduced by Mr. Kilonzo should not be wished away. That is to say that in spirit, all of us support the fight against corruption. All of us should support these laws. If I am right in some of the things that I said and Mr. Kilonzo is right in some of the things that he said, I think we do require to examine this important piece of legislation, so that we agree together and the country gets the message that all of us are fighting corruption. I am happy to say that when that fight is eventually truly won, I will be one of the persons who will not have sleepless nights. That is because, fortunately, as a lecturer at the University of Nairobi, I have never had an opportunity to be tempted into some of those things.

With the few suggestions that I have made, I fully support this law that intends to initiate the very real fight against corruption, which His Excellency President Mwai Kibaki vowed to eliminate and stated it to be his number one priority, together with free primary education and so on.

Thank you for the opportunity to contribute.

**Mr. Wario:** Ahsante sana, Bw. Naibu Spika. Ni muhimu sana kuunga mkono vita dhidi ya ufisadi. Ingawa ni muhimu, kila kitu kina wakati wake. Kuna mbinu mahususi ambazo zitawezesha Wakenya kufaulu katika harakati za kupigana na ufisadi.

Bw. Naibu Spika, unakumbuka kwa uzuri kwamba Mswada ulio mbele ya Bunge hivi leo si mara ya kwanza kuletwa hapa. Ni jambo la kawaida kwa maisha ya mwanadamu kubadilika. Jana, wenzetu walioko upande wa kulia wa Bunge hili walijizatiti kuhakikisha Mswada huu usipitishwe na kuwa sheria katika nchi hii. Sisi ambao tuko katika upande wa kushoto wa Bunge hili tulikuwa tukiwaomba kwa unyenyekevu watusaidie, ili

tuweze kupigana na ufisadi. Sasa, mimi hujiuliza: Je, hatua ambayo imeamuriwa na NARC sasa imetoka wapi? Hiyo ni kwa sababu msimamo wao wa jana ulikuwa kuhakikisha Mswada huu usipite. Leo, wamegeuka tena na wanatuomba tupitisha Mswada huu. Je, wanaeleza Wakenya nini? Ni sikitiko kubwa kwa sababu pengine KANU ilifanya makosa kwa kutopitisha Mswada wa sheria mpya. Siku ile wao wanataka sheria mpya, sisi hatukuwa tunataka sheria mpya. Siku ile tulitaka kupitisha Mswada huu, wao hawakutaka! Leo, tamaa na tegemeo la Wakenya kwa kusuluhisha matatizo yanayowakumba liko katika Katiba mpya.

Bw. Naibu Spika, wakati wa kutunga sheria bila kujali maslahi ya Wakenya ulikwisha. Kutunga sheria ya kufurahisha wafadhili ili upate msaada kunasikitisha. Hii ni kwa sababu sheria tutakayopitisha leo ndiyo itakayokuja kuhukumu nchi hii. Tukishawishiwa na wafadhili ili tugeuze sheria yetu kila kukicha, nchi hii itakuwa katika hali mbaya.

Mimi ninahofia Mswada huu kwa sababu mbili. Sababu ya kwanza ni kuwa Mswada huu ukipitishwa, mkurugenzi wa tume inayotarajiwa kuanzishwa atakuwa na uwezo wa kuendeleza au kusimamisha kesi yeyote. Jambo hili litaleta mzozo wa Kikatiba baina ya mkurugenzi huyo na Mkuu wa Sheria. Kwa hivyo, kutakuwa na mzozo wa kudumu katika sheria ya nchi tutakapitisha Mswada huu. Pili, ningependa kuzungumza kuhusu yaliyoguziwa na mhe. M. Kilonzo. Alisema kuwa ufisadi ni jinai, na jinai haiwezi kutafsiriwa katika Katiba ya nchi. Alifafanua jambo hili kwa kirefu na waliobahatika kumsikia wameelewa.

Kwa hivyo, sikitiko letu ni moja. Makosa ambayo yalifanya Serikali ya KANU kutochaguliwa na wananchi yalikuwa kutopitisha sheria mpya. Ninasikitika kwa sababu kuna mtu katika Serikali anayestahili kuhimiza Serikali katika kila hatua ambayo inachukua. Mtu fulani aliihimiza Serikali ya KANU vibaya na akaambia isipitishwe sheria mpya na hali Wakenya walikuwa wakitaka Katiba mpya wakati huo. Hii ni sababu moja ambayo imefanya KANU iwe mahali iliko leo. Huyu mtu amelivua koti la KANU, akavaa koti ya NARC, na anaketi upande wa Serikali. Wakenya kule nje wanasema wanataka Katiba mpya. Mhe. Wako anaambia Serikali iwachane na mambo ya Katiba mpya na ilete Hoja inayohusu ufisadi. Ningekuwa Bw. Wako, ningepitishwa kwa sababu amaleta tahayari kubwa baina ya Serikali na wananchi wa Kenya. Ningetaka kumhimiza kwa upole ajiuzulu. Inafaa apumzike.

Mwisho, ningetaka kusema kuwa tabia ya Serikali kushurutishwa na International Monetary Fund (IMF) na World Bank kutunga sheria ambayo inawadhulumu Wakenya inafaa ikomeshwe. Awali, tulishawishiwa na mashirika haya kufanya soko letu huru. Soko huru limechangia kuvunjika kwa viwanda vingi sana. Hili ni shurutisho baya. Wale waliotushurutisha kufanya soko letu huru wanaaishi ng'ambo wakituangalia tukihangaika na umaskini.

Ukiangalia sekta ya utalii katika nchi yetu utaona kuwa inatawaliwa na wageni. Gari inayoenda kumchukua mtalii kutoka uwanja wa ndege huwa ni ya mgeni, ndege mtalii anayasafiria ni ya mgeni na hoteli anamolala ni ya mgeni. Hii ni dhuluma kubwa dhidi ya nchi hii. Wenzetu wa IMF na World Bank wametuwekea vikwazo ambavyo vitavunja viwanda vyetu. Nilifikiri kuwa tabia hii ilikuwa ya Serikali ya KANU. Nilifikiri kuwa Serikali ya NARC ingekuwa bora kushinda Serikali ya KANU, lakini kumbe afadhali Serikali ya KANU.

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to imply that the NARC Government is passing this law to please the World Bank and the International Monetary Fund (IMF), when he knows---

**Hon. Members:** Yes! Shame!

**Mr. Deputy Speaker:** Order! Order!

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, is the hon. Member in order to imply that the NARC Government is passing this law to please the World Bank and the IMF when he knows [**The Minister for Planning and National Development**] pretty well that the NARC Government made this commitment in the NARC Manifesto before it formed the Government, and when KANU was busy looting this country?

**Dr. Galgalo:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Wario, do you want the information?

**Mr. Wario:** Yes, Mr. Deputy Speaker, Sir.

**Dr. Galgalo:** Mr. Deputy Speaker, Sir, Mr. Murungi told us that this Bill before the House is word for word what KANU had brought to the House in the last Parliament. We know that at that time, we were under pressure from the World Bank and the IMF to bring this legislation before the House. I would like to inform the hon. Minister that we know that they are under the same pressure which we were under before the elections to bring this Bill before the House and that is why they have brought it in a hurry.

*(Applause)*

So, this Bill is the same. They have inherited the problem, and we are in the same position as they were in when they were opposing it.

**Mr. Deputy Speaker:** Dr. Galgallo, you were supposed to inform Mr. Wario and now you have started informing Prof. Anyang'-Nyong'o.

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

**Mr. Deputy Speaker:** Dr. Galgallo, you are out of order!

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to stand on his feet to inform his fellow KANU Member of Parliament and begin imputing improper motive against the hon. Government of the National Rainbow Coalition?

*(Dr. Galgallo stood up in his place)*

**Mr. Deputy Speaker:** Order! Dr. Galgallo, you were not the man on the Floor! Please, sit down!

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Dr. Galgallo to mislead this House that I said that this Bill is word for word what KANU introduced in this House last year, when the HANSARD can bear me out that I never uttered such words in this House?

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

**Mr. Deputy Speaker:** Order, Dr. Galgallo! I will not allow you back on the Floor!

**Mr. Billow:** On a point of order, Mr. Deputy Speaker, Sir. We have been told by several speakers in the Government and NARC that part of the reasons why this Bill has been brought in this House so quickly at the expense of Constitution review is because it is a donor-driven requirement. It is a requirement that the Budget cannot be written until they have it.

**Mr. Deputy Speaker:** Order, Mr. Billow! That is not a point of order! I would like to urge hon. Members to distinguish between points of argument and points of order. Mr. Billow, that is not a point of order. You just want to argue. Wait until your time comes and I will give you time to argue.

**Mr. Wario:** Ahsante, Bw. Naibu wa Spika. Tatizo ambalo tuko nalo ni kwamba Mawaziri wetu hawahudhuri Bunge. Kama wangekuja, wangesikia, akiwemo Pro. Anyang'-Nyong'o, Waziri akisema kwamba wanaleta Mswada huu kwa sababu ya misaada. Kulikuwa na wimbo maarufu katika nchi ya Kenya ambao ulikuwa unasema: "Yote yawezekana bila Moi". Bw. Moi hayuko uongozini tena! Wapi katiba mpya?

*(Applause)*

Bw. Naibu wa Spika, mambo ambayo tunazungumzia leo yakupigana na ufasadi yako katika Katiba mpya kwa ufasaha kabisa. Tatizo lilitokea wakati uliopita kwa sababu tulikuwa na kamati kama hii ya kupambana na ufasadi lakini mtu fulani alienda kortini akaibomoa. Kwa hivyo, tukiibuni tena leo, itabomolewa.

Kwa hivyo, Katiba mpya itakuwa tatizo kwa maradhi yanayokumba nchi hii. Ningependa kuwaambia wenzangu wanaokaa katika upande wa kulia wa Bunge hili kwamba kamati imebuniwa na Wakenya wanangojea kwa hamu Katiba mpya. Ni vizuri Wakenya wapewe kile kitu wanachokitaka si kingine bali ni Katiba mpya.

Bw. Naibu wa Spika, kwa hayo machache, ninapinga Mswada huu.

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o):

Mr. Deputy Speaker, Sir, I rise to support this Motion to bring to this House a Bill to amend the Constitution to enshrine the Economic Crimes and Anti-Corruption Bill in the Constitution of the Republic of Kenya. The arguments raised by the KANU Members of Parliament are as ridiculous as asking the question: "How many angels can dance on the tip of a pin?"

Mr. Deputy Speaker, Sir, I have listened very carefully to hon. Members on the other side making the argument that the Bill is too detailed and that it should not have in its body definitions. I was a student of constitutional law and I have studied the Constitution of the Republic of Kenya very carefully. I was a member of the Select Committee on Anti-Corruption and Economic Crimes. We did draft the Economic Crimes Bill. We did bring the Bill to this House. We did bring the full report of the Select Committee on Anti-Corruption. I would like to inform this august Ninth Parliament that it was the KANU Government which refused the Economic Crimes and Anti-Corruption Bill to be passed by this House, although it had adulterated the report of the Select Committee on Anti-Corruption and Economic Crimes. It is the same Members now sitting on the other side, either



as real Members or as apparitions, who are again playing with a filibuster game trying to delay the enshrining of the Economic Crimes and Anti-Corruption Bill into the Constitution of the Republic of Kenya.

Mr. Deputy Speaker, Sir, if you look at Sections 86 and 123 of the Constitution of the Republic of Kenya, you will find that there are definitions in the Constitution. Indeed, this Bill is doing the same with no more details or no less details as they exist in Sections 86 and 123 of the Constitution of the Republic of Kenya. The Attorney-General and the Minister for Justice and Constitutional Affairs have performed no travesty whatsoever, either in drafting the Bill or intending to include the same Bill when it becomes law into the Constitution of the Republic of Kenya.

Mr. Deputy Speaker, Sir, therefore, we should dispense with forthwith any argument that says that this Bill should not be passed because it is too detailed or because definitions should not be included in the Constitution of the Republic of Kenya. This is because they are by their very nature false arguments meant to bring a filibuster in this House to delay the enshrining of the law on Economic Crimes and Anti-Corruption into the Constitution of the Republic of Kenya.

Mr. Deputy Speaker, Sir, I have listened very carefully to the other side making the argument that we should not pass a law enshrining the Economic Crimes and Anti-Corruption Bill into the Constitution simply because in a couple of months time we are going to have a new Constitution. The NARC Government is committed to the rule of law and ensuring that on a daily basis this National Assembly discharges its duty as laid down in this Constitution. This Constitution says that it is the responsibility of this House to make laws on a daily basis without any caveat whatsoever and that caveat includes the coming in of a new Constitution whether today, tomorrow or in three months time.

As we enter this House we look at those words: "For the welfare of society and the just Government of persons."

**An hon. Member:** And what about men?

**The Minister for Planning and National Development** (Prof. Anyang'-Nyong'o): "Persons" includes men if you understand English. It states: "For the just Government of persons". That means that "a just Government" must mean that on a daily basis this House has the power to make laws for that just Government. One of the powers is to ensure that any law made in this House, is not in any way sabotaged by the same Government, by quoting the Constitution or diverting from that Constitution.

Mr. Deputy Speaker, Sir, by enshrining this law in the Constitution, it obliges the Government to ensure that, that law is obeyed on a daily-basis, with respect to this Constitution. There is no contradiction whatsoever, in enshrining the law in the Constitution, and then coming up with a new Constitution in three months time. There is absolutely no contradiction.

The NARC Government is prepared to work for 24 hours a day, on a day-to-day basis. Our motto is that, when KANU prefers to walk, we in the NARC Government must run; and part of the running is to do those things which KANU refused to do when they were in power. The NARC Government is now prepared to do those things even if it means doing them today, and in three months time, we have a new Constitution. There is absolutely no contradiction! The responsibility is on the Government that does the work. On the other side, as a royal Opposition, you must co-operate with the Government to ensure that there is a just Government of men in this country.

Mr. Deputy Speaker, Sir, I know that on the other side there are people who do not want the Economic Crimes and Anti-Corruption Bill to become law, because as they see it - and if you dare me to substantiate, I can do it - we know that there are people in this nation who have acquired false properties, avoided paying taxes, sold air to the Government of the Republic of Kenya, and who are on the list of shame. Such people will not want this law to be enshrined into the Constitution. The NARC Government is determined to enshrine this law in the Constitution of the Republic of Kenya, and we shall do it.

Mr. Deputy Speaker, Sir, if you refuse to vote, the conscience of the people will be on you. The blood of the people of Kenya, those who have suffered in the Nyayo House will be on you, because the people of Kenya are watching you as you filibuster against the law that the people of Kenya would like to enshrine in the Constitution, and against the law that is intended to ensure that this country develops doubly and quadruply, within a short time.

Mr. Deputy Speaker, Sir, it has been said by the other side of the House that the NARC Government is bringing forward this law to please donors. The word "donor" does not exist in our vocabulary! We call such people "development partners"! If the other side insists on using the word "donor", that word no longer exists in the vocabulary of the National Rainbow Coalition.

I have been responsible, together with the Minister of Finance and other Ministers of the NARC Government, of holding discussion with our development partners. At no time have they said that the NARC Government must pass any law so as to get development support. What they have said is that "we want you to

fulfil the promises you made in your manifesto, and we can see that you are fulfilling them quickly, and you are working day and night to fulfil those promises." We shall do it, whether or not the other side filibusters; you can filibuster! It is, indeed, within your freedom to filibuster, but it will not stop the NARC Government from fighting corruption, and for putting behind bars those people who have stolen public funds and stopped this country from developing, and who are responsible for the high domestic debt and high interest rates in this country, that is crowding out investors. We shall make sure that we reduce domestic debt, and ensure that the interest rate comes down so that accumulation of capital can go up in this country, and we can achieve rapid economic growth. The Opposition will not stop us, either by filibustering or by-- There is an argument in this House, which I say is like asking the question, "how many angels can dance on the tip of a pin?"

We are determined to ensure that this law is passed by this House. But if it is not passed, that will not stop the NARC Government from bringing to this House the Anti-Corruption and Economic Crimes Bill. We shall bring it and we have the majority to pass that Bill. The other side of this House will not stop the NARC Government from bringing to this House the Government Procurement Bill. We shall bring it and we shall pass it. It will not stop the Government from bringing to this House the Public Officer Ethics Bill. We shall bring it and pass it. After they become law, those who had committed those travesties will be put behind the bars where they belong.

I have heard the argument by the other side that the Government said that we should declare our wealth and that they want a law on declaration of wealth to be brought to this House before this Bill is passed. We are prepared to bring into this House the Public Officer Ethics Bill today, or even tomorrow. This Government sets the order of business in the House Business Committee of this Parliament, and that part of the House sits in the House Business Committee of this Parliament. In that House Business Committee of this Parliament, there is no record whatsoever that members of the House Business Committee from that other side ever opposed the bringing of this Bill to this Parliament. If they did not, why the contradiction when they come to the Floor of the House? We can only interpret that as a filibuster meant to ensure that the Bill is not enshrined in the Constitution of the Republic of Kenya, and that the NARC Government does not emphasize and instil the rule of law on the other side so that they understand what the rule of law is. They are not used to behaving in accordance to the rule of law.

Mr. Deputy Speaker, Sir, we would like to dispel once and for all that what we say we shall do whether the law exists or not, because it is good for the people of Kenya. We will declare our wealth by administrative order from the President because we know it is right that we declare our wealth. We are ready to declare our wealth and enter it into the register even without being prescribed in any law because it is good for the people of Kenya. So, this filibustering in this House must be exposed for what it is. The other side is filibustering. This side wants to make law. That is the difference. There is a clear contradiction in this House between the other side and our side. The other side wants to politic and filibuster. We want to go ahead and make laws. That is a clear contradiction. When the vote is taken, the filibusters will vote against it and those who want to make good laws will vote for it. That is the truth and it must be stated. We are not going to be intimidated whatsoever about a constitution we are going to make.

Thirdly, Mr. Deputy Speaker, Sir, the other side has said that we should have brought the new constitution to this House. There is something called the rule of law. The Constitution of Kenya Review Commission was established by an Act of Parliament. That Act stated that by 3rd January, 2003, that Commission will not be in existence. Therefore, another law must be brought to this House to start the process. The Attorney-General, and the Minister for Justice and Constitutional Affairs have said that they are going to bring a Bill to this House to start the process of constitutional review. They have also said that a select committee of Parliament to look after the review process must be established, where the other side will be represented.

A day has 24 hours, a week has seven days and a month about 30 days. The NARC Government has been in power for about two months. Within those two months we have done a lot. Within those two months we have said that we are setting in motion the process to restart the Constitution of Kenya Review Process. There is absolutely no contradiction or delay. But if the hon. Members on the opposite side of the House believe in filibustering, obviously when we bring that Bill to this House to start the process of constitutional review of Kenya Commission, they will filibuster in the same manner by finding certain clauses in the Bill and raising questions as if they want to answer the question: How many Angels can dance on the tip of a pin?

Mr. Deputy Speaker, Sir, hon. Members on the opposite side of the House are engaged in a game of chasing a yellow logarithm which does not exist. If you chase it, you will never find it. That is why we will listen to them, but we will not take into account those accusations because we do not want to chase a yellow logarithm in this House. What we want is to make law that will lead to the welfare of the Kenyan society and the just Government for the Kenyan people.

Last year when I was in this Parliament, Kenyans said loud and clear that they would like the Economic

Crimes and the Anti-Corruption Bill to be enshrined in the Kenyan Constitution. If you looked at the newspapers last year and the opinion polls, that was very clear. In our own manifesto and post election action programme we said so. On the basis of that manifesto, we won an election with a landslide; with a sea slide; with a notion slide. All the slides were there. So, with all those slides we must remain faithful to the people of Kenya. Being faithful to the people means that we must do what we said. Part of what we said is that we will enshrine this Bill in the Constitution of the Republic of Kenya, and we are prepared to do it. I must tell the Opposition side that we need their vote. But if they vote against us, the Kenyan people are out there; they will judge you harshly. You can quote all kinds of niceties, which when examined do not really make much meaning, but the Kenyan people will judge you harshly out there. These are the people who refused to enshrine the Bill establishing the Economic Crimes and Anti-Corruption Bill in the Constitution of Kenya, which Kenyans wanted.

Mr. Deputy Speaker, Sir, I listened to Mr. Kilonzo very carefully, and I will spend time demolishing any argument he made if indeed, it was worth demolishing the arguments. But he should put up his arguments while asking the question: How many Angels can dance on the tip of a pin? That question cannot be answered because it is a question you cannot answer, and it is not necessary to answer it. Because Angels are not seen neither can they dance on the tip of a pin. I would like to add that the comprehensive review of the Kenya Constitution is necessary and is needed. This Government side of the House is the side that came up with a comprehensive review of the Kenya Constitution when the other side of the House played the game of filibustering.

The Government is ready to go ahead with a review of the Constitution of the Republic of Kenya, but it cannot abdicate its responsibility of making law on a daily basis. We must make law on a daily basis. That is the responsibility of this House. So, bringing to this House an argument which says: Let us sit tight and pity until we review the Constitution comprehensively, is abdicating our responsibilities as hon. Members of this House. It is like saying, "Next weekend my father in-law will slaughter a bull for me, so today I will not drink tea and tomorrow I will not eat dinner, because I must starve myself to next weekend when my father in-law will slaughter me a bull". That indeed, is a ridiculous argument. The Government side is saying: Yes the bull is there, but we must take breakfast today and eat lunch tomorrow because as human beings we are responsible to ensuring that we are alive.

The Bible says that if you do not look after your own body, you are offending God. God created you, not just to look after other animals and all beings on this earth, but after yourselves as well. Please, read the book of Genesis Chapter 1 in the Bible. It says that when God had created all these wonderful things, he looked at his creation and saw man and woman. He looked at them and said that they were very good. In their goodness he charged them with the responsibility of looking after that goodness as well as God's creation. This House is very good. We must look after ourselves by ensuring that we pass laws on a daily basis, and then when next weekend comes when our father in-law slaughters the bull, we shall pass the comprehensive Constitution that we all want. But please, do not stop us today from passing this Bill. That is our responsibility and that is why we are here. We cannot abdicate that responsibility whatsoever. The argument from the opposite side of the House amounts to filibustering or an act of abdicating responsibility and buying time so that those who have committed crimes---

#### ADJOURNMENT

**Mr. Deputy Speaker:** Prof. Anyang'-Nyong'o, you will have ten minutes when debate resumes. Hon. Members, it is now time for the interruption of business. The House, is therefore, adjourned until tomorrow, 13th March, 2003 at 2.30 p.m.

The House rose at 6.30 p.m.