

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 6th October, 2004

The House met at 9.00 a.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### POINT OF ORDER

COMMITTEE TO DECIDE ON MANNER  
OF DRESS IN THE CHAMBER

**Mr. Keter:** On a point of order, Mr Deputy Speaker, Sir. Is Mr. Ndile properly dressed? He is seated next to Mr. Wamwere!

**Mr. Deputy Speaker:** Well, as hon. Members are aware, the Chair ruled last time that a Committee of this House would decide on a matter of dress. So, until such a time that this has been done, I make no ruling on that matter!

*(Applause)*

*(Messrs. Angwenyi and Wanjala  
stood up in their places)*

Order! Hon. Members, the Chair spent a lot of time yesterday talking about upholding the dignity of the House. The matter that has been raised has been addressed. I have made a ruling on that matter! Nothing else should follow after that. So, let us move on!

**Prof. Olweny:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** On the same matter?

**Prof. Olweny:** No, Mr. Deputy Speaker, Sir!

**Mr. Deputy Speaker:** Then what is it, Prof. Olweny?

**Prof. Olweny:** Mr. Deputy Speaker, Sir, as we were praying, Mr. Mungatana was sitting down. Is he in order to do that?

**Mr. Deputy Speaker:** Order! Again, if that is the case, the Chair did not see Mr. Mungatana do that. However, if that is how he wishes to honour this House, so be it; if it is true that he sat down while we were praying.

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

**Mr. Deputy Speaker:** It should be the last, Mr. Angwenyi!

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, you uphold the dignity and the rules of this House. We have not allowed hon. Members of Parliament to put on the attire of prisons and come to this House!

*(Loud consultations)*

This is the attire that is worn in our prisons, and Mr. Ndile saw the Vice-President and Minister for Home Affairs wearing that dress in prison!

**Mr. Deputy Speaker:** That is enough, Mr. Angwenyi!

**Mr. Ndile:** Mr. Deputy Speaker, Sir, this is a national dress!

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

**Mr. Wanjala:** On a point of order, Mr. Deputy Speaker, Sir. How can he say that the Vice-President and Minister for Home Affairs wears prison clothes?

**Mr. Deputy Speaker:** Order! That is enough! Hon. Members, I have made a ruling with regard to how Mr. Ndile is dressed. This is the last time I am entertaining that!

We will now move on to the first Question by Mr. Mwanacha!

## ORAL ANSWERS TO QUESTIONS

*Question No.066*

OFFICES FOR CHIEFS/ASSISTANT CHIEFS

**Mr. Mwanacha** asked the Minister of State, Office of the President what steps he is taking to ensure that chiefs and their assistants in Kitutu Masaba have offices where they can serve the public.

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

All the chiefs in Kitutu Masaba have offices except the assistant chiefs. However, due to financial constraints, the Government has encouraged citizens to pull resources together and put up offices where they can operate from.

**Mr. Mwanacha:** Mr. Deputy Speaker, Sir, all the chiefs in my constituency do not have offices except a few. In fact, some are requesting funds from the Constituency Development Fund (CDF) to build offices which is not regular. Could the Assistant Minister consider providing funds to construct offices for those chiefs who do not have offices?

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, Kitutu Masaba Constituency has two divisions namely, Rigoma and Manga. Manga Division has three locations which, according to the information I have, and subject to what my colleague has said, have permanent and functional offices. However, I am willing to consider his request when funds become available.

**Mr. Abdirahman:** Thank you, Mr. Deputy Speaker, Sir. It is a known fact that billions of shillings have been spent by the Government on shady deals. This problem does not only affect Kitutu Masaba Constituency but the whole nation. District Officers (DOs), in some of our districts, leave alone chiefs, do not have offices. We would like the Assistant Minister to tackle this problem because our communities have many issues already at hand which they cannot handle. Could the Assistant Minister tell us the plans they have put in place to set up offices for the Provincial Administration officials?

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, the hon. Member will remember that, in the last Budget, there was a specific Vote Head under which we provided for construction of offices for divisional headquarters and some district headquarters. Provision was made for renovation of existing office blocks and construction of new offices. However, because of rationalisation and reduction in budgetary allocations, the Office of the President did not get all the money we had requested from the Treasury. So, we request the understanding of the House that construction of offices for chiefs and assistant chiefs is in our plan. When we get adequate budgetary allocation, we will do it for the rest of the country.

**Mr. Mwanacha:** Mr. Deputy Speaker, Sir, as they plan to do it for the rest of the country, could the Assistant Minister assure me that funds will be availed soon for the construction of these offices in my constituency?

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, we will forward the request to the Treasury for inclusion in the next Budget. If the House approves the Budget, we will do it next year.

**Mr. Deputy Speaker:** Next Question, Mr. Kipchumba!

**Mr. Kipchumba:** Mr. Deputy Speaker, Sir, before I ask the Question, I would like to inform you that I have not received the written reply.

*Question No.386*

## GOVERNMENT CONTROL OF BANK CHARGES

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

- (a) whether he is aware that the Government policy on control of bank charges has not been implemented; and,
- (b) when he will fulfil his promise to control them as outlined during the 2003/2004 Budget Speech.

**Mr. Deputy Speaker:** Ministry of Finance, the hon. Member has complained that he has not received the written answer to the Question.

*(Mr. Katuku passed over a copy of the written answer to Mr. Kipchumba)*

**The Assistant Minister for Finance** (Mr. Katuku): Mr. Deputy Speaker, Sir, I had forwarded a copy to the Clerk of the National Assembly. I have just passed over a copy to the hon. Member.

However, I beg to reply.

(a) There is no Government policy on control of bank charges. However, according to Section 44 of the Banking Act, no bank is allowed to increase banking rates or other charges without the approval of the Minister for Finance.

(b) I have not promised to control bank charges. In a free market economy, it is not practical to control prices for one service only. However, I have required banks to operate under the law by obtaining approval of their charges. In this regard, I am happy to inform the House that, effective June 2003, any intended increases in bank charges have been forwarded to the Minister, through the Central Bank of Kenya (CBK), for approval. The CBK has, without exception, obtained the Minister's approval for all such requests before any increase was implemented. The CBK continues to confirm that the law is observed through routine on-site inspection of the institutions. Perhaps on the enforcement, institutions are now required to submit their charges to the CBK on a regular basis. In turn, the CBK discloses all these charges to the public through the print media to make the public aware of what the various banks charge. This information assists the public to make informed decisions on which institutions they should do business with. As the public gets better informed, this will create more competition and bring down bank charges.

**Mr. Kipchumba:** Mr. Deputy Speaker, the fact that there is law in place regarding bank charges, means that there is some control of the same. The problem is that the difference between the amounts charged by the various banks is so wide. Some banks charge Kshs20, while others charge more than Kshs100. What criteria does the Minister use in approving these wide variations? Some banks are a bit exploitative!

**Mr. Katuku:** Mr. Deputy Speaker, Sir, as I have said, we approve reasonable requests by banks. However, we ensure that the public knows which bank charges what by printing the approved charges in the media, so that individual customers can decide which bank to go to. If you charge more, you cannot get customers. We periodically publish approved bank charges in the local media, so that customers can know which bank is charging what.

**Mr. Kajwang:** On a point of order, Mr. Deputy Speaker, Sir. The question has not been answered. The question was: "What was the rationale of approving these varied bank interest rates?"

What benchmark does the Ministry use to determine whether a request should be granted or rejected?

**Mr. Katuku:** Mr. Deputy Speaker, Sir, this is a free market economy. It is upon each bank to decide on the charges. So, we cannot fix the charges to be levied by banks or control their services.

**Mr. Waithaka:** Mr. Deputy Speaker, Sir, if I heard the Assistant Minister right, he said that this is a free market economy and, therefore, they cannot control bank charges. What is the purpose of requiring banks to submit their charges to the them for approval, if it is not to control those charges?

*(Applause)*

**Mr. Katuku:** Mr. Deputy Speaker, Sir, once the Minister receives the charges proposed by the various banks, he looks at them and informs the public accordingly, so that members of the public can make informed decisions on which banks to do business with.

**Capt. Nakitare:** Mr. Deputy Speaker, Sir, I am mesmerised by the answers given by the Assistant Minister with regard to bank charges. This is open robbery! It deprives public interest. Countries in the developed world have controls over bank charges. Why should banks in Kenya - a third world country - be allowed to exploit members of the public? Could he tell us why he collaborates with the banks before telling the public how the bank charges have been raised or reduced?

**Mr. Katuku:** Mr. Deputy Speaker, Sir, I am very clear on this matter. I do not need to make it clearer. We are in a free market economy. Kenyans are free to walk into any bank charging reasonable rates and obtain loans. We periodically publish the interest rates charged by each bank, so that people can know where to go and where not to go.

**Mr. Kipchumba:** Mr. Deputy Speaker, Sir, from the Assistant Minister's reply, you must have realised that the Government has no business pretending and telling Kenyans that it has a role to play in controlling bank charges. The Government should come up with a policy statement to the effect that it has no business in the control of bank charges. Could he tell us the highest and the lowest banking charges, if at all they have control over them?

**Mr. Katuku:** Mr. Deputy Speaker, Sir, that will require me to table a list of the charges levied by the various banks. I will read out the charges levied by one or two banks.

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

**Mr. Deputy Speaker:** Order! The Assistant Minister is on the Floor! What order has he broken? He has not broken any order to warrant interruption.

Continue, Mr. Assistant Minister!

**Mr. Katuku:** Mr. Deputy Speaker, Sir, to answer Mr. Kipchumba's question, I will table a document which shows the charges levied by the various banks.

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

**Mr. Deputy Speaker:** Mr. Manoti, could you sit down? I will give you a chance after the Assistant Minister is through.

Continue, Mr. Assistant Minister!

**Mr. Katuku:** Mr. Deputy Speaker, Sir, for example, on personal loans and overdrafts, the African Banking Corporation (ABC) charges 17 per cent, while Barclays Bank (Kenya) Limited charges 18.54 per cent and the Bank of India charges 19 per cent. I think the highest---

**Mr. Deputy Speaker:** Mr. Assistant Minister, if the list is long, could you table it?

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

**Mr. Deputy Speaker:** Order! I am addressing the Assistant Minister! So, could you, please, hold your peace?

Mr. Assistant Minister, would you prefer to table the list or read all of it? Time is against us!

**Mr. Katuku:** Mr. Deputy Speaker, Sir, the question was on the highest and the lowest charges being levied by banks currently. I was talking about the interest rates, but there are different charges. So, I need time to come up with a list of all charges being levied by the various banks. As of now, I am not able to table such details.

**Mr. Deputy Speaker:** Very well! Mr. Manoti, what was your point of order?

**Mr. Manoti:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to give us the list which has been given by the commercial banks instead of giving us a list from the Ministry?

**Mr. Deputy Speaker:** How do you know where he got the list from?

**Mr. Manoti:** Mr. Deputy Speaker, Sir, the list he is reading is what we see in the newspapers everyday. He is not telling us what the Ministry is doing to assist the customers of the banks.

**Mr. Katuku:** Mr. Deputy Speaker, Sir, my Ministry, periodically, publishes the charges each bank is charging for the public to see. The last time we did this was on 31st July this year.

**Mr. Deputy Speaker:** That Question has already taken ten minutes! We are not going to take more time on it.

Next Question, Mr. M. Maitha!

*Question No.377*

RETIREMENT BENEFITS FOR  
MR. MUNYAO NGOLIA

**Mr. M. Maitha** asked the Minister for Roads and Public Works:-

(a) whether he is aware that Mr. Munyao Ngolia, P/No.607178, who was a driver, retired in 1990 and has not received his retirement benefits to date; and,

(b) what he is doing to ensure he is paid his retirement benefits.

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

(a) It has not been possible to establish the status of Mr. Munyao Ngolia's pension benefits since his file is not readily available. However, all efforts to trace it are being made, but it will help a lot if the hon. Member could advise Mr. Ngolia to provide my office with his letter of appointment; GC24, and the retirement notice. These documents can facilitate the reconstruction of the file.

(b) As soon as Mr. Ngolia's retirement benefit status is established, arrangements will be made to settle any dues the Government may be owing him.

**Mr. M. Maitha:** Mr. Deputy Speaker, Sir, this person worked for the Government until he retired at the age of 55 years. It has taken him 15 more years waiting for his pension. People who are not working face a lot of problems. This is a very old man now and he has been going to the Pensions Department offices for all those years without success. What document did the Ministry refer to when retiring Mr. Ngolia, if his file was not there?

**Eng. Toro:** Mr. Deputy Speaker, Sir, I understand the mood of the hon. Member. I have admitted that the file is missing and we can construct another one if we could be given the necessary information in order to work out Mr. Ngolia's pension benefits. Since the file is not available at the moment, there is very little that we can do.

**Mr. Bifwoli:** Mr. Deputy Speaker, Sir, you brought a very good Bill to this House and we passed it, which provided that any officer should only retire after getting his retirement benefits. What action is the Assistant Minister going to take against the officers who retired Mr. Ngolia before he received his retirement benefits?

**Mr. Deputy Speaker:** Mr. Assistant Minister, 15 years is a very long time!

**Eng. Toro:** Mr. Deputy Speaker, Sir, your Bill was passed just the other day and this man retired a long time ago. The provisions of the Bill affect those who are retiring from the time the Bill became law. If the information I have asked for could be availed, we will know whether the problem is with the Ministry or the National Social Security Fund (NSSF). At the moment, we have no idea where the file is. It could have been taken to the archives by mistake.

**Mr. Deputy Speaker:** Hon. Members, even if we continue with this Question, I think the best way forward is what the Assistant Minister is suggesting to the hon. Member; that he provides information to facilitate the processing of the pension benefits.

**Mr. Ogur:** Mr. Deputy Speaker, Sir, no officer retires and takes away documents from the office. To suggest that we perform miracles and take another file to the Ministry suggests that, that man was "a ghost worker". Who did they retire?

**Eng. Toro:** Mr. Deputy Speaker, Sir, it is prudent that all employees keep copies of their documents safe, so that in case their files go missing, they can prove that they were employed. They can even prove the time they were promoted. It is time the Government computerised all employees records, so that we do not have to deal with files as it is the case now. However, I beg the indulgence of the hon. Member to avail this information to us, so that we can process the benefits without undue delay.

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

**Mr. Deputy Speaker:** Hon. Members, I honestly do not know how far you want us to go on with this Question. Can I allow just one point of order from Mr. Osundwa? We must make progress!

**Mr. Osundwa:** On a point of order, Mr. Deputy Speaker, Sir. I have worked in the Civil Service for 22 years and I know that all employees in the Civil Service have two files. One is an open file and the other one is secret. The secret file is kept in the secret registry. Is the Assistant Minister telling us that both files are missing?

**Eng. Toro:** Mr. Deputy Speaker, Sir, that is exactly what I am saying. No file is available to enable us to pay Mr. Ngolia his benefits. As I said, there is a possibility that the files were taken to the archives by mistake. Maybe somebody thought that the case had been finalised. Nobody knows where the files are at the moment and it will be naive of me to pretend that I know where they are.

**Mr. M. Maitha:** Mr. Deputy Speaker, Sir, at the moment, this man has no money to come to the Pensions Department offices. The department has his personal number. Is there no register which shows personal numbers of all the employees of the Ministry? If the Assistant Minister is suspecting that the files must have been taken to the archives, why can he not write a letter to the person in charge of that department or to the stations where Mr. Ngolia might have worked, for him to get the documents he wants from me? This old man might have misplaced his documents.

**Eng. Toro:** Mr. Deputy Speaker, Sir, maybe the officer has not misplaced his documents. I would like the hon. Member to find out whether Mr. Ngolia has copies of his documents. Even if we know Mr. Ngolia's personal number, we need to see the documents. Knowing someone's personal number is not enough. We need to see his letter of appointment and the other documents that he might be having, so that we can use them.

**Mr. M. Maitha:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order, Mr. M. Maitha! That is the end of the debate on that

Question! You would be doing your constituent a great favour if you could forward the documents. I am sure the Assistant Minister would help.

Next Question, by Mr. Mukiri!

*Question No.689*

CONSTRUCTION WORKS ON  
PIPELINE-MAU NAROK ROAD

**Mr. Mukiri** asked the Minister for Roads and Public Works:-

- (a) what work is currently being undertaken on Pipeline-Mau Narok Road (D320);
- (b) whether he could disclose how many contracts exist and how the tendering was done; and,
- (c) why the Government has relented on its efforts to arrest and charge the so-called "cowboy contractors" who have defrauded the Government.

**The Assistant Minister for Roads and Public Works** (Eng. Toro): Mr. Deputy Speaker, Sir, I beg the indulgence of the Chair that I answer this Question on Wednesday, next week.

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

**Mr. Mukiri:** Mr. Deputy Speaker, Sir, I have no problem with that. This is a very important Question for me.

**Mr. Deputy Speaker:** Very well. The Question is deferred until Wednesday, next week, in the morning.

*(Question deferred)*

Next Question by Mr. Kajwang!

*Question No.376*

MALARIA CONTROL MEASURES  
IN SUBA DISTRICT

**Mr. Kajwang** asked the Minister for Health:-

- (a) how many children between the ages of one and five died of malaria annually between January, 1998 and January, 2004 in Suba District; and,
- (b) what plans the Government has to launch a campaign for containment of the breeding grounds using DDT as was done in the 1970s.

**The Assistant Minister for Health** (Mr. Konchella): Mr. Deputy Speaker, Sir, I beg the indulgence of the House and the Chair that I be allowed to answer this Question on Wednesday, next week.

**Mr. Deputy Speaker:** What do you have to say, Mr. Kajwang?

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, I have a written answer to the Question. So, I do not know why the Assistant Minister does not want to answer the Question. Although, when I look at the figures he has given, maybe, that is the reason he wants to go and look at them again because they are very misleading. Is that the reason?

**The Assistant Minister for Health** (Mr. Konchella): Mr. Deputy Speaker, Sir, I am not happy with the answer, as the hon. Member has said. But, this, it is an issue of policy because the

hon. Member is asking about a subject that has great policy implications to this country. I would like to consult much more and come up with a proper answer.

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

**Mr. Deputy Speaker:** That is okay!

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

**Mr. Deputy Speaker:** Order, Mr. Wanjala! Can I just say this to hon. Members: When you stand up and say, "on a point of order," that should be sufficient. The Chair has seen you! Do not keep on repeating the words, "point of order." So, please, Mr. Wanjala, just stand on a point of order and the Chair will address you. Now, what is your point of order?

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, I rise to seek your guidance. Yesterday, six Questions were not answered by the Ministers. We have been on a two-month recess. Outside there, Kenyans are tired of the Government. They are disillusioned. This Parliament is the supreme organ of the three arms of Government. Today, Ministers are not able to answer Questions that concern Kenyans. The Members of Cabinet are busy fighting one another outside there, instead of coming to sort out the problems of Kenyans. I think it is---

*(Applause)*

**Mr. Deputy Speaker:** Order, Mr. Wanjala! You stood on a point of order and you continued addressing the House. I have not heard your point of order.

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

Order, Mr. Wanjala! For the second time today I am warning you! You cannot just stand whenever you want and make noise in this House! But, Mr. Assistant Minister for Health, please note again that this is a matter that has been with your Ministry for the last two months. You cannot give the House an excuse that it is a policy matter. Yes, it is a policy matter, but you should have an answer. Anyway, I will allow your request that this Question be deferred until Wednesday, next week.

*(Question deferred)*

Next Question by Mr. Ngoyoni!

*Question No.393*

RESUMPTION OF TELEPHONE SERVICE  
IN LOIYANGALANI DIVISION

**Mr. Ngoyoni** asked the Minister for Information and Communications:-

- (a) whether he is aware that Telkom Kenya line No.2097 serving the whole of Loiyangalani Division has been out of order for the last one-and-a-half years; and,
- (b) when the service will resume.

**The Assistant Minister for Information and Communications** (Mr. Were): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The telephone number in question is actually 2426 and not 2097. I am aware that the radio system linking Marsabit and Loiyangalani failed on 26th November, 2003 and the equipment repairs were carried out in Nairobi.



(b) Service was restored on 15th May, 2004, and the line is currently working. It took longer than anticipated to restore the service due to difficulties in sourcing spares.

**Mr. Deputy Speaker:** Mr. Ngoyoni, are you happy?

**Mr. Ngoyoni:** Mr. Deputy Speaker, Sir, I take this opportunity to thank the Assistant Minister because since the Question was put to the Ministry, the line has been restored.

**Mr. Deputy Speaker:** Very well.

Next Question, by Mr. Angwenyi!

*Question No.336*

REGULATION OF PACKAGING  
/SALE OF ALCOHOL

**Mr. Angwenyi** asked the Minister for Trade and Industry:-

(a) whether he is aware that unregulated sale and consumption of alcoholic and other intoxicating substances has impacted negatively on the youths in villages, schools and other institutions of learning;

(b) whether he is further aware that the packaging of these drinks in sachets, which are easily concealable and portable has greatly contributed towards accessibility to these substances by the youth; and,

(c) whether he could, in liaison with the relevant Government departments, urgently outlaw the packaging of these drinks in sachets as one of the measures to address this problem.

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

(a) I am aware that unregulated sale and consumption of alcohol and other intoxicating substances have impacted negatively on our youth in villages, schools, other institutions of learning and the general public.

(b) I am equally aware that these drinks are packaged in sachets and in small quantities which are easily accessible, concealable and portable by the youth and other persons.

(c) The laws, rules and regulations governing the licensing, manufacture, packaging and sale of the various types of liquor are diverse and enforced by different arms of Government. The Government, upon realising the dangers and extent to which consumption of alcohol and intoxicating substances have affected the youth, put in place a task force on Regulatory Framework on Alcoholic Beverages in 2003. The task force has been reviewing 15 Acts of Parliament which relate to alcoholic beverages with a view to sealing any existing loopholes, but also, to harmonise the policy framework for the production and sale of alcoholic beverages. In the meantime, the Government has taken swift measures in accordance with a Motion which was passed in this very House during the last session, and gazettelement is in the process at this particular time.

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, this is a Government that says it is concerned about the welfare of our youth. It states here, for all Kenyans to hear, that they set up a task force last year. We do not know how long it will take before they can come up with their recommendations. But why do we need a task force for something we know is actually hurting our youth? Why can the Government not outlaw the sale and consumption of the alcohol and intoxicating substances by our youth throughout the country? Why can the Government not come up with a policy and outlaw that thing today on the Floor of this House?

**Mr. Syongo:** Mr. Deputy Speaker, Sir, as I have already said, specifically relating to this

Question, a Motion was brought before this House and passed, putting the minimum package size for alcoholic beverages at 250 millilitres. The gazette to effect that particular decision of the House is in the process of being implemented. But, the sale and consumption of alcohol in itself is not illegal in this country. Presently, we have 15 Acts of Parliament and the actual enforcement of those 15 Acts is done by different arms of Government. The purpose of setting up the task force was to go to every single one of them, harmonize them and basically come up with a clear policy framework which will deal with this issue in a comprehensive manner.

**Mr. Kembi-Gitura:** Mr. Deputy Speaker, Sir, pursuant to the Motion that was passed in the House, because I am the one who brought the Motion to the House, my own research shows that the reason why it has not been gazetted is that, the Government, through its parastatals, is having a stock of sachets worth about Kshs15 million. They want this stock to be sold before they can outlaw it. I want a confirmation about that.

Secondly, I want the Government to tell me whether those sachets, worth Kshs15 million, which cannot be packaged otherwise, are worth more than the lives of Kenyans which are being lost everyday because of the sale of alcohol in these sachets. Alcohol is still being sold in those small sachets going for Kshs10; in the villages.

**Mr. Syongo:** Mr. Deputy Speaker, Sir, I cannot comment on the issue of parastatals having stockpiles because I do not have that information. If the hon. Member has that information, I would be quite glad to receive it. I would like to say that the issue of the sizes will not solve the problem we have. There are other factors that we must consider. One of them is that, presently in this country, the youth consider the consumption of alcohol as prestigious. It is also our responsibility, as leaders, to completely change the attitude of our people. Consumption of alcohol is not a status symbol. It is not prestigious and all alcohol, basically, is dangerous.

Mr. Deputy Speaker, Sir, we need to look at this issue very comprehensively. For example, I do not want to pre-empt the findings of the task force, but one of the things we are looking at very seriously is whether or not we should continue to allow advertising and promotion of alcoholic beverages on our mass media. That is just one example. There are many more which I do not think would be appropriate for me to go into at present. In any case, I do not want to pre-empt the findings of the task force.

**Mr. Billow:** Mr. Deputy Speaker, Sir, regarding the other intoxicating substances, I have a problem much wider than this, in the name of a well known drug by the name *miraa*. *Miraa* has been certified by the World Health Organisation (WHO), many years ago, as an addictive drug capable of not only destroying people from many aspects of health, but also causing male impotence. This drug is widely used by youths in schools and other institutions in my constituency. Why does the Government consider this drug more special than the rest and does not ban its use in the same way it has banned the use of other drugs in the country?

**Mr. Syongo:** Mr. Deputy Speaker, Sir, I thank the hon. Member for the comment he has just made. May I encourage him to provide any technical information he may have to the task force or to the National Campaign Against Drug Abuse (NACADA).

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

The task force is being chaired by the Permanent Secretary, Office of the President. Among the other stakeholders are: The Ministry of Health, the Ministry of Gender, Sports, Culture and Social Services, Maendeleo ya Wanawake, the Ministry of Justice and Constitutional Affairs, the Attorney-General's Office, the Ministry of Trade and Industry, the Ministry of Agriculture, the Ministry of Local Government, the Customs and Excise Department, the Kenya Bureau of

Standards, the Kenya Police and a representative of the civil society.

If he should feel that it is appropriate, I would be quite willing to receive his deposition, so that I can forward it to the committee.

**Mr. Deputy Speaker:** What is your point of order, Mr. Munya? It had better be a point of order because you are interrupting the Assistant Minister when he is answering the question!

**Mr. Munya:** On a point of order, Mr. Deputy Speaker, Sir. Hon. Billow is misleading the House that he has a scientific report about *miraa* when we know *miraa* is a herb that even treats certain ailments and he partakes of the same!

*(Laughter)*

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

**Mr. Deputy Speaker:** Order! Order! Mr. Munya, you are out of order!

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, this is a matter of national importance. The other day, there is a family which recited to me about the damage caused to their children who partake of these substances. This family told me that, they drop their kids in school sober but by the time they go to pick them in the evening, they are drunk. It is really pathetic! Could the Assistant Minister tell us when he is going to bring a Bill to this House to outlaw the sale and consumption of these substances and also to fix a time even for adults to consume alcoholic substances in this country?

**Mr. Syongo:** Mr. Deputy Speaker, Sir, the experience elsewhere proves that it is not possible, anywhere in the world, to totally ban the consumption of alcohol. It has never succeeded. But, as a nation, we can set up a legal framework for regulating its production, packaging and consumption through to the sale of the same. One of the things that can be done is to ensure that those who are below a particular age do not have access to the various substances.

Mr. Deputy Speaker, Sir, that is one of the things that are being looked into by the task force. I want to plead, through you, that we give this task force adequate time to complete its work and I guarantee that a clear Policy Paper will be Tabled in this House prior to proposing a Bill to deal with this issue in a comprehensive manner.

#### *Question No.410*

#### LEVEL OF FOREIGN INVESTMENT IN 2003

**Mr. Ndolo** asked the Minister for Trade and Industry:-

- (a) whether he could inform the House how many foreign investors have invested in the country since January 2003; and,
- (b) whether he could further give the names of the investors and their countries of origin.

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

(a) There are about 223 foreign investors who have invested in this country since January, 2003. The number is expected to increase as the Ministry continues the campaign to attract more investors.

(b) The names of the investors and their countries of origin are with me here. I lay on the Table the list of 223 foreign companies which have invested in the country since January 2003.

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

**Mr. Ndolo:** Mr. Deputy Speaker, Sir, I thank the Assistant Minister for that answer. The figure of 223 investors is very impressive. However, could the Assistant Minister tell this House the value of the investors who have invested in this country and the returns?

**Mr. Miriti:** Mr. Deputy Speaker, Sir, that was not part of the Question. If he wants the value, I will go back and provide information. The Question was about the list and the countries the investors come from. It is quite a big exercise to go through all the companies to get the values, but I can do it, given time.

**Mr. Kamama:** Mr. Deputy Speaker, Sir, I want to know what the Ministry is doing to reduce the number of days a foreign investor has to take in order to register his or her company. In South Africa, it takes about 32 days for a foreign investor to register his or her own company. Here in Kenya it takes about 62 days. What is the Ministry doing to reduce the period by almost half?

**Mr. Miriti:** Mr. Deputy Speaker, Sir, we already have the Investments Promotion Bill before the House. I would urge hon. Members to support that Bill so that we are able to reduce the number of days. The Bill will provide for that.

**Mr. Khamisi:** Mr. Deputy Speaker, Sir, the Assistant Minister has promised to bring some information to this House regarding the monetary value of these investments. Could he also bring information about the whereabouts of these investments in view of the Government's commitment to distribute the resources throughout the country?

**Mr. Miriti:** Mr. Deputy Speaker, Sir, that will be done.

**Mr. Deputy Speaker:** Hon. Members, the Question will be deferred--- What is it Mr. Kamotho?

**Mr. Kamotho:** Mr. Deputy Speaker, Sir, since 223 foreign investments are very many, could the Assistant Minister also include the number of new jobs that have been created by the new investments?

*(Applause)*

**Mr. Deputy Speaker:** Mr. Miriti, as per your concurrence, the Question will be deferred so that you can bring to this House information about the value of the investments; the location of the investments; and the estimated number of jobs created. So, how long do you want?

**Mr. Kipchumba:** Mr. Deputy Speaker, Sir, I also would like the Assistant Minister to include the number of investors who have since left as a result of the political environment.

**Mr. Deputy Speaker:** No! No! I think you are taking the Assistant Minister's generosity too far. Please, Mr. Miriti, restrict yourself to those areas. Tell us how long you will take.

**Mr. Miriti:** Mr. Deputy Speaker, Sir, four weeks will be enough for me.

**Mr. Deputy Speaker:** Let us be fair to the Assistant Minister and the Questioner by giving Mr. Miriti two weeks. Is that okay Mr. Miriti?

**Mr. Miriti:** Mr. Deputy Speaker, Sir, we shall try our best.

*(Question deferred)*

*Question No.346*

MISMANAGEMENT OF BUTESERO  
CO-OPERATIVE SOCIETY

**Mr. Oparanya** asked the Minister for Co-operative Development and Marketing:-

(a) if he is aware that Butesero Multi-purpose Co-operative Society in Butere/Mumias District was run down by its management; and,

(b) what action he is taking to ensure that the shareholders get back their money.

**Mr. Deputy Speaker:** The Minister for Co-operative Development and Marketing is not here today and yet yesterday he was dying to answer a Question! What do you want us to do Mr. Oparanya?

**Mr. Oparanya:** Mr. Deputy Speaker, Sir, this is the third time this Question is being deferred.

**Mr. Deputy Speaker:** But this is not the same Question that was deferred yesterday. So, we can defer it until tomorrow in the afternoon.

**Mr. Oparanya:** Mr. Deputy Speaker, Sir, I do not even have a written answer!

**Mr. Deputy Speaker:** Can I defer it until tomorrow in the afternoon?

**Mr. Oparanya:** Mr. Deputy Speaker, Sir, that is okay.

**Mr. Deputy Speaker:** The Question is deferred until tomorrow in the afternoon and may I request Dr. Kulundu to, please, draw the attention of the Minister for Co-operative Development and Marketing that the Question has been deferred until tomorrow in the afternoon. It will have to be answered then.

*(Question deferred)*

## QUESTIONS BY PRIVATE NOTICE

### CLOSURE OF IBNI-TANIYA CHILDREN'S HOME

**(Mr. Bahari)** to ask the Minister for Home Affairs:-

(a) Is the Minister aware that Ibni-Taniya Children's Home in Isiolo town previously funded by Al-Haramin Foundation has closed down?

(b) Is the Minister further aware that the orphans of the said home are now on the streets?

(c) What action will the Minister take to ensure that the orphanage resumes operations?

**Mr. Deputy Speaker:** Mr. Abdul Bahari Ali is not here! The Question is dropped!

*(Question dropped)*

### NON-PAYMENT OF SALARIES TO SUBUKIA POLYTECHNIC INSTRUCTORS

**Mr. Wamwere:** Mr. Speaker, Sir, I beg to ask the Minister for Labour and Human Resource Development, the following Question by Private Notice.

When will the following instructors of Subukia Youth Polytechnic be paid their salaries that have not been paid since October, 2003:

Messrs. David Magembe; Dominic M. Mwangi; Benson Karanga; David Kebira; Francis Waweru; Emerencia Kiriyama; Preciah Mungai; Ms. Esther Wanjiku; Messrs. Evans Njihia Hezekiah and Samuel Gachuki?

**The Minister for Labour and Human Resource Development** (Dr. Kulundu): Mr. Deputy Speaker, Sir, I beg to apologise for not being present yesterday. I was engaged in another function by the Government and---

**An hon. Member:** Do you not have an Assistant Minister?

*(Loud consultations)*

**The Minister for Labour and Human Resource Development** (Dr. Kulundu): I have an Assistant Minister whom hon. Billow knows where he is.

Mr. Deputy Speaker, Sir, I have looked at this Question and I beg to seek the indulgence of the Chair and the House that the Question be deferred and referred to the Attorney-General because it is about the operations of the Registrar of Trade Unions who is an officer working under the supervision of the Attorney-General.

**Mr. Deputy Speaker:** Are we reading from the same script? The Question is about Subukia Youth Polytechnic and I see nothing to do with the Attorney-General!

**The Minister for Labour and Human Resource Development** (Dr. Kulundu): Mr. Deputy Speaker, Sir, I am sorry! I was misled by my officers. I beg to apologise to the hon. Member and assure him that the answer to this Question will be forthcoming tomorrow. There was another Question yesterday which we referred to the Attorney-General and I was assured this morning that the same Question was included in the Order Paper today. I apologise to hon. Wamwere.

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

**Mr. Deputy Speaker:** Order, Mr. Waithaka! What do you want to say, Mr. Wamwere?

**Mr. Wamwere:** Mr. Deputy Speaker, Sir, I guess I have no choice, but I want to point out one thing. The sort of confusion we are seeing in the Ministry of Labour and Human Resource Development is indicative of the fact that the current crop of Ministers are not taking the Questions that Members raise in this House seriously. They came to power upon the promise that they would do better than KANU Ministers. Right now they do not seem to be doing precisely that. In fact, they are doing the exact opposite!

*(Applause)*

Mr. Deputy Speaker, Sir, we are talking about the problems affecting the people of our country and the Government should take such matters seriously. We do not ask these Questions on our own behalf.

**Mr. Deputy Speaker:** Order, Mr. Wamwere! I think we heard you. Yesterday, the Chair dwelt on this matter and I think the Ministers heard it. The Minister has just requested that this particular Question be deferred until tomorrow. Therefore, the Question is deferred until tomorrow in the afternoon.

*(Question deferred)*

**The Minister for Labour and Human Resource Development** (Dr. Kulundu): Mr. Deputy Speaker, Sir, this must be the fifth time that I am answering a Question of this sort in less than six months. If you look at the Standing Orders, if a similar Question has been asked in less than six months, then, the Minister is not obliged to answer it. The Clerks will bear me out that similar Questions have been asked in less than six months in the past. However, because of Mr. Wamwere, I will take the trouble of answering it tomorrow.

(Loud consultations)

**Mr. Deputy Speaker:** Order, Members! What the Minister has said is, indeed, true, but we are now talking about the Question of the Subukia Youth Polytechnic. There might have been another Question relating to another polytechnic. This one here must be related to another polytechnic. If a Question was asked about Mwingi Polytechnic or any other polytechnic, the rule you have just stated does not apply. Unless I am told a Question was asked in less than six months, then you will answer this Question, not because you are favouring Mr. Wamwere, but because it has to be answered since it will not be repeated in six months. That is the end of that matter.

Next Order!

## MOTIONS

### ESTABLISHMENT OF DELEGATED LEGISLATION COMMITTEE

**Ms. Abdalla:** Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, in view of the fact that subsidiary legislation should be consistent with parent statutes; aware that certain authorities have failed to gazette mandatory rules and regulations as required by the parent Acts, concerned that some of the delegated authorities have been abused by the concerned authorities by gazetting regulations that are *ultra vires* to the parent law; this House resolves to establish a Delegated Legislation Committee to scrutinise all subsidiary legislations. Mr. Deputy Speaker, Sir, this Motion intends to provide legislative reform that would ensure that all subsidiary legislations are scrutinised by this House before they are gazetted; to avoid the following. A lot of subsidiary legislations do not comply with the parent Acts in that this House passes Acts of Parliament that provide broad framework on what the law should be and then delegates to the Executive to provide details on those frameworks. This means that the Executive then develops rules and regulations for the implementation of the same.

By their nature, these rules and regulations are very detailed and sometimes complex. The problem is that, in their complexity and the fact that they are not submitted for scrutiny by anyone, these subsidiary legislations tend to be abused. Some of them are very simple in that they are just dates on when a portion of an Act should come into effect or it changes levels of penalty of offences and so on. The ones that are most critical and are highly abused is when they are filled in the broad framework such that they provide rules and regulations on how that Act should be implemented.

The problem is five-fold. One is that the Executive has been able to abuse these powers. This means that in the long run, we end up spending time at Committee Stage amending Bills so that they are perfect in serving our people. Afterwards, bureaucrats in a particular Ministry bring up a detailed document that provides hurdles for the implementation of the same. A good example is the Local Government Act. Every local authority comes up with their own by-laws sometimes increasing taxation on an already overburdened citizenry and nobody scrutinises those rules and regulations of by-laws to see whether they are compliant with the parent Act. In the long run, this House remains a talk shop that produces beautiful Acts that are not implementable.

The other aspect is that if a parent Act is contravened by a subsidiary legislations, the only remedy that we have is to go back and amend that subsidiary legislations. Knowing our time-table and the fact that we are unable to pass as many legislations as we should, we should be looking at

ways of ensuring that we reduce the number of amendments to parent legislation.

Mr. Deputy Speaker, Sir, another problem is that the untimeliness of the enactment of those subsidiary legislations is also a problem in that it can create a legal vacuum or increase the number of litigations that would come up as a result of wishing to interpret very detailed, complex and sometimes contradictory subsidiary legislations. In very few cases we have seen subsidiary legislations that is totally not supported by primary legislation. I will in turn be giving examples of that.

I would like to go into two main Acts that have thoroughly been abused. I have already mentioned the Local Government Act, Cap.265 which has been abused. In terms of devolved governance, we truly need to have a way of ensuring that our people at the grassroots are not abused by these by-laws, especially in relation to taxation.

The other bit is that within this House, we do not have a mechanism to scrutinise the increased taxation that the Minister for Finance presents to this House. He increases Income Tax or Custom Duty. He lays it on the Table and if nobody objects within seven days then it becomes law. Then what is our function as a Parliament when we do not have mechanisms to ensure that the increase in Income Tax or Custom Duty on goods that are required by the poor in our society are not amended accordingly to assist us in poverty alleviation? We will then be failing in our responsibility. This proposed Delegated Legislation Committee would then be sitting down and scrutinising all these taxation recommendations made by the Minister and then amending them if need be rather than just having the law saying that if nobody objects to it in seven days it becomes law permanently. I am proposing the set up of a mechanism to ensure that we are able to scrutinise things so that we do not pass beautiful Acts that are not implementable.

The other Act that I would like to be looked into is the Public Health Act. This Act provides a lot of powers to the Minister for Health to come up with subsidiary legislations. The first interaction that most of us as Members of Parliament have with all subsidiary legislations is when we read them in a Gazette Notice. By that time, it is already too late especially if it is a public health issue that is a matter of life and death. The other person that really needs to be controlled through the scrutiny of delegated legislation is the Attorney-General. He is the power unto himself in that he can come up with any directive and that goes because nobody scrutinises what he has recommended or gazetted.

The other one that is now increasingly becoming a litigation matter is that of the Armed Forces Act. The delegated legislations related to this are shrouded in secrecy and are not scrutinised by anybody. In the long run, abuse of power by those who have been given that delegated legislation is very litigative and there are several cases pending in our courts regarding the abuse of powers in that area. Had we had a Delegated Legislation Committee in this House, it would have discussed those delegated legislations suggested by the armed forces and ensure that they do not infringe on the rights of the individual.

This morning, I had a Question relating to the Pensions Act. I was present and aware of the much effort put in amending that Pensions Act so that we are able to have our pensioners paid on time and that their right to their pension is not infringed. A delegated legislation provided by the Treasury did exactly that in that it had an adverse effect on the existing rights and/or interests of the pensioner by deciding to deduct amounts from a pensioner's pension when it was their own inefficiency that they were trying to curb. They want to save money at the expense of the pensioner and use delegated legislation to do the same. Some of those delegated legislations such as the Pensions Act should also modify the rules of fairness and this case also purports retrospectivity meaning that somebody is being punished for retiring at a particular time.

This delegated legislation would ensure that the spirit of the Acts we pass in this House is



maintained. They should be scrutinised so that they are not lost in the process of discussion and bureaucratic red tape or trying to save money.

If you leave the authority to come up, for example, with the rules on how many licences an investor should have, that would be a loophole to engage in corruption because, in our case, he would give you many days for you to acquire a licence, which means that in the long run, you would rather give a bribe so that your licence is issued on time and you are able to invest and reap your profits in a timely manner. So, that delegated legislation would ensure that we are able to address those matters.

In addition to preventing abuse of office, another problem with the enactment of delegated authority is timeliness. A good example of untimely enactment of subsidiary legislation is on the Children's Act. Whereas the Chief Justice has provided rules and regulations for several sections of that Act, he has left out the most important area that he needed to provide rules and regulations on. That is Section 22 of that Act, which provides for the enforcement of the rights of the child as provided under Sub-Section 3 of the same Act.

Mr. Deputy Speaker, Sir, in that Section, the Chief Justice is required to come up with practices and procedures for the High Court on how to enforce those rights. But because those rules and regulations have not been enacted, there is a danger of the courts providing contradictory rulings such as the case with the rulings related to Section 84 of the Constitution, which is also on the fundamental human rights, where one judge in 1986 indicated that he would be able to enforce the fundamental rights whether the Chief Justice has given the rules and regulations or not. Then in 1989, another judge said that there was no way you could enforce those fundamental rights because there were no rules and regulations.

Mr. Deputy Speaker, Sir, we need a mechanism to ensure that those individuals, agencies or offices that we delegate these legislations to are able to provide those subsidiary legislations on time, so that we do not have a case like in the case of Section 84 of our Constitution where it took our Chief Justice 38 years to come up with those rules and regulations.

Finally, Mr. Deputy Speaker, Sir, I would like to look at the area of subsidiary legislations that are not supported by primary law. A good example of this was in the gazettment of the Standing Committee on Human Rights. A gazette notice was provided to set up this body, but because there was no Act of Parliament to support that, it rendered that Committee impotent, and it was hence not able to achieve its objectives. So, this Subsidiary Legislation Committee would be a monitoring and evaluation tool for this House to ensure that the Executive does not exceed its powers and enact things that do not exist in the parent law. Then, the other one is on amendments. I have already mentioned that, but if we had subsidiary legislations which were scrutinized or amended before they were passed, we would not be able to have that kind of problem.

So, Mr. Deputy Speaker, Sir, the next item that I wanted to look at is on how this Subsidiary Legislation Committee will work. The Committee will look at all draft subsidiary legislations from the Executive and then forward that to the House and say:-

"This legislation does the following:"

- (a) It is contemplated by an empowering legislation;
- (b) It does not contain provisions that should better be contained in a full Act;
- (c) It does not affect the rights or interests of any person(s) that had already been provided for in the Constitution or other Acts of Parliament;
- (d) It also does not modify the rules of fairness;
- (e) It does not purport any retrospectivity; and most importantly,
- (f) It is not *ultra vires* to the parent Act.

Finally, Mr. Deputy Speaker, Sir, it is my hope and wish that Committee will be able to

provide an annual report that monitors the Executive does enough subsidiary legislation in a timely manner; makes sure that the subsidiary legislation complies with the parent Act and accurately interprets the spirits of the parent Act; it is not gazetted in a vacuum and, finally, does not result into unnecessary litigation.

I have been asked by several of my colleagues to explain whether that Committee would conflict with the existing Departmental Committee on Administration of Justice and Legal Affairs. Those are two totally different committees, in that the Departmental Committee on Administration of Justice and Legal Affairs would look at a Bill in a draft form until when it becomes an Act, whereas this Committee is a postmortem activity where an Act has already been passed and we are dealing with secondary legislation to ensure that it does not contravene the contents of the primary Act.

The other issue is that whereas the departmental committees can have an opinion or could discuss the merits or demerits of a legislation, this one will just be looking at the technical aspect of the subsidiary legislation. It is not going to say:-

"This Act establishing the Kenya Anti-Corruption Commission (KACA) is not good because you did not give the President the powers to do this---"

But what it would say is that this subsidiary legislation that was eventually developed contravenes the KACA Act in this and that manner, so it should not be passed and it should be amended to read this and that. So that once it is gazetted as a gazette notice, it does not come up with the necessary litigation or does not then require an already overloaded Parliamentary calendar to amend the primary legislation.

The other thing is that whereas the Departmental Committees are assigned particular Ministries, this Delegated Legislation Committee will be broad. It will discuss and look at subsidiary legislation related to customs from the Treasury, public health, Local Government, trade and industry, among others. It will, basically, ensure that we remove bureaucratic hurdles in our subsidiary legislation. So, I see no conflict between the Departmental Committee on Administration of Justice and Legal Affairs and the Delegated Legislation Committee.

Mr. Deputy Speaker, Sir, eventually, this House will require to enact a Bill that will be able to govern all the activities of this Delegated Legislation Committee to, for example, provide procedures on which type of delegated legislation requires scrutiny.

For example, if a delegated legislation basically says:-

"This is the date, from now henceforth, we are going to ensure that disabled persons have been provided access to all public buildings---".

That will probably not be part of what you would be discussing under the Delegated Legislation Committee, but things that have major economic or personal and fundamental right issues will then have to go through the same. The British Parliament discovered the need for this delegated legislation in 1946.

Thank you, Mr. Deputy Speaker, Sir. I beg to move and ask the Seconder to second the Motion.

*[Mr. Deputy Speaker left the Chair]*

*[The Temporary Deputy Speaker*

*(Mr. Ethuro) took the Chair]*

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, I rise to second the Motion and, at the outset, declare that by passing this Motion, Kenya will be joining other nations around the world which, over the years, saw the need to have a Committee of their Parliaments scrutinising what

Parliament passes.

The Legislature does the legislative work. It will enact laws which will specify various things to be done or not to be done, and the Executive goes to implement that law. More often than not, the laws passed by Parliament contain, among other things, the policies that the Government of the day would want to implement. It is one thing for Parliament to come and accept the policy and another for the civil servants to implement that policy within the statute. What tends to happen is that very good laws are passed by Parliament, but like is the tradition all over, where there are functional Parliaments, a mechanism is provided for by which the Executive, through either the Minister responsible or the various statutory bodies that may be created by that parent law, to make rules and regulations for the better implementation of the policy and the law.

Mr. Temporary Deputy Speaker, Sir, it has been found, the world over, that it is in that area of implementation where problems abound.

Mr. Temporary Deputy Speaker, Sir, this House is aware of the amendments to the Pensions Act which was moved by the Deputy Speaker, with very good intentions. The intention was that by the time a person is about to retire and the Government has not prepared that person's pension, then he should not be required to go on retirement, and he should be retained in employment, earning a salary until such time as the Government will have prepared his pension dues. That is what Parliament passed. But how was it implemented or interpreted by civil servants? They went and made regulations that if for whatever reason you have not retired or you have not been paid your retirement benefits by the time you are due to retire, then you will continue in the service, earning a salary, but the first salary after your due date of retirement, will be deducted from your pension dues. Obviously, you can see, with the stroke of a pen, the civil servant goes and makes absolute nonsense of the policy direction which this House as a whole had intended that piece of legislation to address.

Mr. Temporary Deputy Speaker, Sir, in very many Parliaments, and specifically the Parliaments of Canada, Australia and England which are very active in this area, they have all adopted this policy, not because Parliaments want to stifle Government, but because it is Parliament that retains legislative authority. Parliament must, therefore, retain a residual authority to monitor and evaluate the subsidiary rules and regulations that are made by the Executive in the implementation of the laws that Parliament passes.

It is for that reason, as it was quite appropriately pointed out by the Mover, that the Parliament of England saw the need to enact what they call--- Indeed, I am quoting from *The 22nd Edition of Parliamentary Practice and Procedure*, Chapter 23 on delegated legislation, pages 574 to 577. The Parliament of England saw the need to enact the Statutory Instruments Act (1946), which came into force on 1st January, 1948, specifically to address this issue. At that time, they saw the need for the Civil Service to be monitored by the parent of legislative power, which is Parliament. This is to ensure that what Parliament, which embraces Government as well, has passed, is not mutilated at implementation stage by the civil servants.

Mr. Temporary Deputy Speaker, in a lot of our laws, we say "The Minister shall have powers to do this or the other." But we all know that indeed, the Minister relies on the inputs of the civil servants. We may pass very good investment laws, very attractive here in Parliament, but when they go to what procedures would be followed by a prospective investor, it is the civil servants who will go and make rules and have them gazetted, signed by the Minister, that the investor will do this, he will apply, he will see the area councillor, *et cetera*.

It is for that reason that today, the Committee on Subsidiary Legislation is actually addressing the issue of legislative reform the world over, with the sole aim of attracting and retaining investments in their countries, and ensuring that the Civil Service at all times moves in

tandem with the spirit of their respective legislatures.

Mr. Temporary Deputy Speaker, Sir, I want to say that this Ninth Parliament, pursuant to a Motion by Eng. Muriuki on the Constituency Development Fund (CDF) Act, saw the need for Parliament to be involved in the promulgation of subsidiary legislation. Specifically, I want to read Section 49 (1) and (2) of the CDF Act which says:-

"The Minister may make regulations for the smooth running of the Fund and such regulations shall be approved by Parliament before implementation."

It is this very Parliament that saw the need to put this requirement. The second part says:-

"The Minister may amend any of the schedules through a notice in the Gazette, provided that such amendments shall first be approved by Parliament before implementation."

Mr. Temporary Deputy Speaker, Sir, by this Motion, we are seeking to provide the mechanism by which this kind of approval will be sought, and, among other things, provide a way through which Parliament will pro-actively look through the various Acts constantly because the need will always be there, and monitoring every piece of legislation passed in the House to see what rules or regulations are made by civil servants while implementing what Parliament has passed, and where need be, this House to give such a Committee the need to bring before the House such regulations and propose amendments for the better implementation of the various regulations that the civil servants may come up with.

Mr. Temporary Deputy Speaker, Sir, looking at the Kenya National Human Rights Commission (KNHRC) Act that was passed in 2002, specifically Section 35, you will see again that power has been given to the KNHRC and the Minister to make rules which may exclude any sections of the community from application of these rules. When you talk of race, tribe and sections of the community not to be covered, it is important that the House as the overall watchdog organ should be kept informed of what is intended to be done.

The same is found in the Children's Act of 2001 where the Minister is also given powers. By this Motion, we are seeking that this House gets the power; its own residual power to scrutinize and monitor what the Civil Service is doing with effecting legislation.

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

*(Question proposed)*

**Mr. Munya:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion. I rise to oppose this Motion because it is very poorly thought-out; its objects are not very clear.

The role of this House is to legislate. The House realizes that it is not possible to make legislation on everything. That is why we have the power of delegating certain roles to other bodies that play the role of coming up with subsidiary legislation. In fact, all local authorities, almost on a daily basis, make subsidiary legislation. Therefore, to set up a committee to scrutinize all those authorities would be humanly impossible because Parliament cannot legislate on everything. That is why we have the power of delegation. So, the Mover of the Motion does not understand the object of the principle of delegation.

Secondly, before a subsidiary legislation has been gazetted, it is not law. Once it is gazetted, it becomes law and, therefore, a committee will not need to look at it. If you are not happy with a subsidiary legislation that has been passed, the remedy lies with the courts. If that is the role of the branch of administrative law, to look at the powers that have been given to a body by Parliament, if that body has exceeded those powers, those powers are challenged in court. So, if we go ahead and

set up a committee to scrutinize and supervise what those bodies are doing, we are trying to usurp the powers of the courts. In any case, if we want to do that we cannot do it through a mere Motion. We would need to bring a Bill in this House, one that would take back those subsidiary powers that we have already given away. To take away powers which have already been delegated through an Act of Parliament to various bodies would be defeating the purpose for which we are here.

Mr. Temporary Deputy Speaker, Sir, again we also have a Departmental Committee of Parliament on Administration of Justice and Legal Affairs that would be able to scrutinize legislation and advise. Once we have delegated through a parent legislation, the Committee can only advise the relevant body if that body has not passed the law. However, once that law has been passed and gazetted, the only remedy remains with the courts. So, I would like to urge this House not to try to bite more than it can chew. I need the House to realize that it is not possible to supervise every legislation that is passed. All local authorities have powers to pass legislations on various matters that may be local, specific and peculiar to them. If you look at the laws that have been passed, most of them delegate certain powers to various bodies. It would become a very onerous task for this House to create a committee to attempt to do the impossible.

Mr. Temporary Deputy Speaker, Sir, again, this House is not an executive body. Our role is to pass laws; not to execute them. So, we pass laws, delegate and tell Ministers to do certain things. So, most of the subsidiary legislations that we are talking about relate to the actual execution of the law. That is why we delegate to the arm of Government that is best equipped to execute. We delegate and give directions on the execution of that specific law. So, if we move into that area; if we move beyond our role of legislating and enter the arena of execution, we will be usurping powers that we may be ill-prepared to carry out.

Mr. Temporary Deputy Speaker, Sir, if you look at the principle of separation of powers, the role of Parliament is to pass laws; to draft, scrutinize and pass these laws. Once these laws are passed, we leave the role of interpretation to the courts. It is the courts that need to look at the parent and subsidiary legislations and see whether the authority that was supposed to gazette the subsidiary legislation has exceeded its powers or not. Now, if we set a body in Parliament to try to look at whether a Minister has exceeded his powers or not, we will be going into the arena of interpretation. This role, again, lies with the courts. The courts are well equipped to look thoroughly at a legislation and a subsidiary legislation that have been passed to see if an officer has exceeded his powers under the legislation and act accordingly. That is why even when the Mover of the Motion was trying to explain the role that the committee will be playing, it was not very clear. Once the committee has scrutinized, what will it do? Once the courts scrutinize the legislation and declare it null and void, will the committee of Parliament have the same powers to declare a law null and void once it has been gazetted? That is not possible because we have already delegated. We are now running away to look for what we have already given. We are trying to bring it back before we give the courts powers to look at the interpretation and enforce---

**Mr. Osundwa:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. Munya is misleading this House when he dwells on the principle of separation of powers. We know very well that Ministers are first elected as hon. Members of Parliament---

**The Temporary Deputy Speaker (Mr. Ethuro):** Mr. Osundwa, what is your point of order?

**Mr. Osundwa:** Mr. Temporary Deputy Speaker, Sir, is it in order for Ministers to serve in the Executive when we know they are first elected as hon. Members of Parliament?

**The Temporary Deputy Speaker (Mr. Ethuro):** Mr. Osundwa, that is not a point of order!

Mr. Munya, proceed!

**Mr. Munya:** Mr. Temporary Deputy Speaker, Sir, Mr. Osundwa has limited understanding of the subject of law. That is why he is venturing into area that he is ill-equipped to handle.

The concept of separation of powers is a broad concept, but I am looking at its specifics. If we give a committee of Parliament the powers to scrutinize the law which we have already passed vis-a-vis a subsidiary legislation, if it finds fault with it, does it have the powers to declare it null and void? It does not because those powers lie in the courts. So, could we give the courts, which are manned by judges who are specialists of interpretation of law a chance to play their role once we have passed those laws so that they have the capacity to declare certain legislations null and void if they are *ultra vires* to the parent law? These courts are doing this on a daily basis; every day individuals who are not happy with certain actions that have been taken by the Executive go to court. That is why we have a big body of administrative law on those actions or situations where bodies that are supposed to enforce delegated legislations have exceeded their powers. So, Parliament is not well equipped to appoint a committee of Parliament to interpret the law again because that is the preserve of the courts.

I do not want to belabour my point, but I am trying to say that let us not turn this House into a busybody that is biting more than it can chew. Let us confine ourselves to the role that we know best; that of legislation. Let us leave the role of interpretation and enforcement of the law to the Executive and the courts.

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

**Mr. Wario:** Ahsante Bw. Naibu Spika wa Muda. Nimesimama kuiunga mkono Hoja hii. Kwanza kabisa, ningependa kuchukua fursa hii kumshukuru Bi. Abdalla, kwa juhudi aliyofanya kuileta Hoja hii hapa. Huu ni uzalendo, na kuweka wazi wajibu au nguzo za Serikali ikiwemo utawala, mahakama na Bunge. Bunge lina wajibu wa kutunga sheria. Tunapotunga sheria, ama unapotaka kurekebisha Hoja au Mswada, huwezi kuibadilisha au kuleta marekebisho ambayo yatapoteza maana halisi ya Hoja au Mswada ulioko mbele ya Bunge. Lazima maana ya kwanza ya Hoja ibaki. Iwapo Bunge ambalo lina mamlaka na uwezo wa kutunga sheria haliruhusiwi kupoteza maana, ama maudhui ya Hoja, sioni ni kwa nini mtu yeyote katika utawala au mahakama anachukua fursa ya kupoteza maana halisi ya Mswada au Hoja ambayo imetafsiriwa kuwa sheria.

Sisi hatukatazi utawala kufanya kazi yake. Ni kweli tume na Waziri wanaweza kutunga sheria, lakini, sheria wanayoitunga haifai kupoteza hali halisi ya sheria iliyotunga sheria ndogo. Ninasema hivi kwa sababu inaonekana Waziri wa Utalii anapozungumza na *council*, na anatenga sehemu fulani kuwa sehemu ya kuhifadhia wanyama wa pori--- Waziri huyo anatangaza kesho yake katika *Kenya Gazette* na hauruhusiwi kuingia mahali hapo tena.

Lazima Bunge liwe na wajibu, na Waziri aruhusiwe kubadilisha sheria kwa kutangaza katika *Kenya Gazette*. Inafaa sheria hiyo ipate ruhusa ya Bunge. Sheria ya *Constituency Development Fund*, kifungo cha 49 (I) na (II) kinasema: "Iwapo Waziri atabadilisha maana yeyote ya kifungo hicho, atakwenda Bungeni aombe ruhusa." Waziri asipewe fursa au tume isipewe fursa ya kubadilisha sheria inapotaka. Tukifanya hivyo, hakutakuwa na maana ya sisi kuwa katika Bhumba hili. Pia, hatutakuwa na sababu ya kujiita Wabunge katika nchi hii ya Kenya.

Ningependa kuwaambia wale ambao wanaipinga Hoja hii wafahamu madhumuni yetu. Sisi, hatupingi utawala wa kutunga sheria. Tunataka wajibu wa utunzi wa sheria ubaki katika Bunge. Iwapo Waziri yeyote anataka kutoa notisi katika *Kenya Gazette*, kwanza, ailete Bungeni, Kamati hii ikae, iipitishie halafu aendelee na shughuli yake. Ningependa kuwakumbusha Mawaziri walio katika Serikali--- Wahenga husema, "Mwenda tezi na omo, marejeo ni ngamani." Kabla ya wewe Naibu wa Spika wa Muda kuwa Waziri ulikuwa Mbunge. Tumeona Mawaziri wengi, baada ya miezi kadhaa, wakiambiwa warudi *Back bench*. Hapo ndipo wajibu wako unatakikana. Huwezi kuwa Waziri kila mara. Inafaa ulinde wajibu wako kama Mbunge.

Nchi kama vile Canada, Uingereza na New Zealand ziko na sheria hii. Sheria hii imekuweco tangu mwaka wa 1946, kabla ya Kenya kupata Uhuru. Nchi hizi ziko na kamati hii.

Hata ujenzi wa Bunge hili unafanana na ule wa Bunge la Uingereza. Sheria na mwongozo tunaofuata, na vazi tunalovaa ni la kizungu. Leo, kwa sababu Waziri fulani anaona kwamba tutamyang'anya mamlaka--- Anasahau kwamba sheria hii ikipitishwa, Bunge itapata uhuru. Hatutawaacha watu watumie mamlaka vibaya ilhali sisi tuna wajibu katika Bunge hili.

Kwa hayo machache, ninaiunga mkono Hoja hii.

**The Assistant Minister, Office of the President** (Mr. Mungatana): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make my contribution. The formal Government response will be given by Mr. Githae, who will be around in a short while. However, I want to contribute to this Motion.

I have looked at this Motion and I am impressed by all the contributions that have been made. But on a point of principle, I wish to state my opposition to this Motion.

In my opinion, we are governed by the principle of separation of powers in this country. It is parliamentary democracy. In this democratic system, Parliament is supreme as far as making law is concerned. When it comes to execution, we give power to the Executive. This includes the Ministers and the civil servants who carry out Government duties. When it comes to the interpretation of the law, we have given those powers to the courts. I have listened to some of the arguments which the Mover of this Motion has made, and I have to state my difficulties in accepting the role of this Committee.

The Subsidiary Legislation Committee, according to the Mover, will look at all the draft legislations which are proposed by the Executive and, yet it is the Executive which is supposed to do that. The Judiciary may also look at all the draft legislations if it is the one which is supposed to implement them. An example was given of Clause 94 of Constitution of Kenya, where the Chief Justice is supposed to have made subsidiary rules as far as implementing fundamental human rights, which are provided for under that clause are concerned. The Mover said that it took 38 years before the Chief Justice made those rules. All of us who were outside this Parliament were crying to the Chief Justice to make those rules. I understand the frustration of the Mover. However, what is the role of the Subsidiary Legislation Committee? Did the Mover intend to mean that in such a situation, that the Subsidiary Legislation Committee would push the Chief Justice to make those rules? Are we not exceeding the powers of the Constitution which establishes this House? I would like to say that, that cannot be correct. I do not believe that Parliament can do anything if, for instance, the Chief Justice says that according to his administrative powers, he has to wait before this law is enacted. The Mover has listed the Local Government Act, the Public Health Act, the Ministry of Finance, Attorney-General, the Armed Forces Act, and the Pensions Act which are supposed to have been abused.

Mr. Temporary Deputy Speaker, Sir, you can actually list all the Ministries of the Government because every Minister has got the powers to issue subsidiary legislation. The power of discretion is necessary so that the Government can run. I believe that we will be going beyond the calling of Parliament. I believe that we will be going beyond what is expected of us as Members of Parliament because the moment we now start moving as was mentioned by one of the hon. Members, into the areas of subsidiary legislation--- I am saying that if the Minister or the Chief Justice is giving a rule, it must be cross-checked by Parliament, then how does the Government run in that situation?

Mr. Temporary Deputy Speaker, Sir, I believe this Committee will not serve the interests of this country. We will have a situation where we have stagnation. People will be going backwards and forwards because when the rule is not being made, they will ask the question: "What is the Subsidiary Legislation Committee doing"? They will go back to the Minister and ask him: "What are you doing"? So, we will have created another bureaucracy level, which will not help this country

to move properly.

Mr. Temporary Deputy Speaker, Sir, therefore, the point is being made here that we are trying to take powers which are not ours and it is an unconstitutional move. However, I also wanted to suggest that although the intentions may be noble actually, as we have it now, there exists other avenues and physically the court which addresses any abuse of power, which were some of the things which were being addressed by the Mover. She said that there could be abuse of power. The Motion talks about *ultra vires* powers, misuse of power or using power, in excess of what is provided for.

Currently, there exists the avenue of the High Court and the administrative law arm. You can always go to court and say: "The Minister exceeded his powers in doing this", and indeed the courts have ruled against the Government. I remember I had filed a case against the Chief Justice. So, the courts can adjudicate and interpret rules and say: "This is beyond the powers that you are supposed to act". If we say that now Parliament is going to take the powers of the courts to supervise regulations that are *ultra vires*, the power of the courts to supervise abuse of office, the powers of the courts to do all these things, then what we are doing is that we are creating a parliamentary autocracy so that Parliament makes its laws, interprets them and makes sure those laws are implemented. If we do that, then we are not having a parliamentary democracy; we are having a parliamentary autocracy.

Mr. Temporary Deputy Speaker, Sir, I would want someone to persuade me of the relevance of this Committee. I would want someone to tell me that they are not going to be crossing over powers. I would want someone to convince me that it is not against the constitutional theory of Government. I am not persuaded. I have sat here listening to these arguments and I do not believe that it is necessary to create this Committee of the House. The House is already bogged down with a lot of responsibilities which are at hand. We have got a lot of substantive legislation to deal with. Our Members have a lot of things in their hands. I believe that if we do not stick to the core business which brought us to this House, and that is to make the laws, then we are going to end up scattered. We will be scattering all our efforts and powers, and if we are not focused then we are going to let the people of Kenya down.

Mr. Temporary Deputy Speaker, Sir, I also wanted to make a point. Hon. J.B. Muturi seconded this Motion and he gave us an example of the Constituency Development Fund, where we made it very clear that all the subsidiary legislations must be passed and cross-checked with the approval of Parliament, and that is what was done. So, if that avenue was able to work, do we really need another committee to sit in the House to keep on doing the same thing? We can even make it a standard regulation that in every Act that we pass, there must be this provision that subsidiary legislation be done in conjunction with Parliament, so that we can have a feel of what is done by whichever authority that is supposed to carry out the subsidiary legislations.

Mr. Temporary Deputy Speaker, Sir, I am saying that I cannot fail to see the good intention of this Motion, but I am just wondering whether this good intention is not going beyond what it is constitutionally capable. For that principle reason, I do not speak for the Government, I speak for myself, but I do not believe it is a Motion that we should support as a House.

Thank you, Mr. Temporary Deputy Speaker, Sir. I oppose the Motion.

**Dr. Godana:** Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me the opportunity to contribute to this debate and I think I will be very brief. I want to congratulate the Mover of this Motion for finding the way to bring this very appropriate Motion. I am a bit surprised that my learned friend from the opposite benches who has just spoken last, while conceding the good sense and good intention behind the Motion, has taken a very obstinate position. It looks like he has done it so for the sake of opposing what is from the Opposition.



Mr. Temporary Deputy Speaker, Sir, the authority to legislate for the people of this land rests in the sovereign Parliament of this land. That is why Parliament is the maker of laws. There is no violation of the principle of separation of powers. If Parliament says: "Parliament must have proper scrutiny over all laws made in this land", then it should be so. The whole purpose of parliamentary legislation is that as often happens in practice in nearly 100 per cent of cases, where statutes or laws passed in this House originate from the Government of the day, the Parliament has the mandate of the people to adopt its own programme for the duration of its tenure in office. When those proposals for laws are brought, Parliament has the opportunity to scrutinise the detail and every provision therein, to accept those laws in whole or in part and to amend them as need be.

Mr. Temporary Deputy Speaker, Sir, the problem with subsidiary legislation is that there are two competing needs. On the one hand, the need for urgency, speed, flexibility and for adaptability of efficient decisions by the Government, which require that indeed those who are responsible for implementing Government laws and policies and in particular the Executive, should have opportunity for speedy, effective decisions. On the other hand, that kind of concession erodes the very principle of Parliament as the ultimate authority for legislating for this land. The problem with subsidiary legislation, and I am talking from experience, is that the people who draft them within the Ministries usually draft them with a view to exploiting the bureaucratic realm in which they are, and actually enjoy it.

In practice, it has been found even in developed democracies that in practice, not infrequently, administrators or civil servants will draft these legislations for the signature of Ministers who often may not even read them; or may not understand them if they do read them; often do it with a view to actually changing and amending the parent statutes. In legal theory, we have the opportunity for reference to court to strike it down and there are cases where courts have struck down subsidiary legislation for being *ultra vires* to the parent statute. However, I can assure you, and I am sure my learned colleague knows from his days in practice, courts do not take their own initiative to question, examine or scrutinise the legality of subsidiary legislation. Courts have their hands tied. They have to wait until Mr. Godana, the hon. Member or some other citizen takes the courage, cost or risk of financial burden to go and say this particular rule is actually against the substantive statute.

Mr. Temporary Deputy Speaker, Sir, all that the Motion proposes is that when the Government of the day wants to pass a subsidiary legislation, when those rules are drafted, they should be given to the Parliamentary Committee which can have an opportunity to scrutinise them. That is not the same as saying that Parliament would be administering the law. That is only to say that we shall have an opportunity to look at it and say: "This is not what Parliament intended". Normally, in practice, it would amount to a process of statutory notification that every subsidiary legislation, before it is gazetted, would have gone through the procedure of appearing before the committee. If the committee feels that there are particular rules it is not convinced about, it could give the Minister an opportunity to come and explain. As it is now, when subsidiary legislation is being gazetted, there are no explanatory notes. Presumably, once this requirement of a reference to a Parliamentary Committee is made compulsory, the Ministers and the civil servants who draft them will be obliged to give reasons behind each and every one of those rules.

Mr. Temporary Deputy Speaker, Sir, I am talking from experience. When I was at the Ministry of Agriculture I had an opportunity with many proposed subsidiary legislation, particularly when we were adopting the new Coffee Act. Fortunately, I happened to be a lawyer, and I do remember that in many cases, I had to argue with my own legal draftsman and sometimes return some of the rules to the Attorney-General's Chambers, because I felt that they violated the law. How many Ministers in the Government are lawyers and would take the initiative and scrutinise those

rules and say: "Here, you were acting against *ultra vires* the rules?" As an hon. Member said earlier, in most complex societies, government systems and more burdensome civil service systems like Britain, Canada and so on, it has been found useful to have this one more opportunity to ensure that civil servants do not exceed the ambit of the powers granted in the parent statute. I think the argument that we will be creating unnecessary bureaucracy is not valid.

I wish, therefore, to appeal to hon. Members to support the Motion which is founded on very good sense. Thank you.

**Mr. Muchiri:** Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this opportunity to contribute on this Motion. I have heard good arguments for and against this Motion. Therefore, it is really not easy to realise where the cut-line is.

I would like to start by saying that this House has a lot of business that it has not transacted. There are a lot of things which we ought to have done because of lack of time and space. I would like to cite one important aspect of our oversight duties. We have the Public Investments Committee (PIC) and Public Accounts Committee (PAC). You would be surprised that those Committees are now looking at the accounts of yester-years and they have not been able to come to the accounts of the current years. I am, therefore, persuaded that this House does not have capacity and time to really scrutinise delegated legislation as alluded by this Motion. From that argument, I do not think that this Parliament would be able to scrutinise the subsidiary legislation as has been intimated by the Mover of this Motion. If this Parliament was to be subjected to scrutinising the by-laws emanating from the local authorities, I do not think we shall ever finish.

Mr. Temporary Deputy Speaker, Sir, all local authorities in this country work through the by-laws. Once they have made them they present them to the Ministry of Local Government for gazettment. If these by-laws are part of the delegated legislation, and our local authorities work by these by-laws, it may not be possible. For that argument alone, I may not be persuaded to support this Motion.

We know that delegated legislation could be disallowed by the court if it is inconsistent with the parent law and if it is unreasonable, vague or *ultra vires*. There are avenues to check the subsidiary legislation and I do not think it is wise for us to bother Parliament in scrutinising it again. We would rather leave it to the courts to do that. That has been said, but I would like to add my voice to it. We should leave it to the courts, especially if those subsidiaries legislation are affecting Kenyans.

Mr. Temporary Deputy Speaker, Sir, where Parliament thinks that the subsidiary legislation should be scrutinised by Parliament, it is necessary for Parliament to say that in the parent law. A lot of our subsidiary legislations in this country are archaic. They were made long time ago. I would like to call upon the Nairobi City Council (NCC) to look at their by-laws relating to buildings and review them. We are now utilising subsidiary legislation regarding planning and construction of buildings in this city which were made in 1968. From 1968, the NCC should have known that they need to change some planning parameters in terms of plot ratio; how much development you need to build or construct on your plot. There is a lot of illegal development because of old by-laws. I would like to call upon the NCC to do something about it. The building code, for example, is a subsidiary legislation by the Ministry of Local Government and the Ministry of Public Works and Housing. That legislation is not doing any good to our building industry. The materials that are being prescribed are just too expensive and that is why we have an acute shortage of housing in this country.

Mr. Temporary Deputy Speaker, Sir, if we are persuaded to agree that this House has enough on its hands, then why extend things that would not be accomplished in good time? By opposing this Motion, we are not advocating for the Executive to exceed their powers. That

argument was put by the proponents of this Motion. We do not want to advocate that the Executive must be able to use their pen to go beyond what the parent legislation has stipulated. We want the Executive, through its administrative channels, to come up with rules and regulations. Subsidiary legislations are rules and regulations to assist the administration of that Act. So, we do not expect them to digress into matters that are not law. We do not expect them to make law but we expect them to set up rules and regulations to assist the administration of the Act so that it could be workable. There is no other reason why subsidiary legislation is to be brought about. It is to assist the legislation to be properly administered.

Most of the Acts that we have in our statutes books give powers to the Ministers to do this and that. I would like also to call upon our Ministers to look at the Acts and see what they have not done. However, I also want to call upon our Ministers to look at their various Acts. For example, we have various Acts of Parliament which, perhaps, have been promulgated in this House and are not doing any good to this country. We have a law called "Registration of Estate Agents" in this country, but it is like a dead "letter". We have not seen anybody, the so-called briefcase estate agents, being brought to book. Could the Minister for Justice and Constitutional Affairs look at the Act, see what he has not done and put up proper delegated legislation which will assist in the administration of that Act?

Mr. Temporary Deputy Speaker, Sir, we also have an Act called the "Rent Restriction Act". One time, the Attorney-General set up a task force to look into that Act. That task force spent a lot of money going round collecting views from Kenyans. However, the Attorney-General has not told us what that task force advised him. So, I also call upon the Attorney-General to look into that Act and bring a Bill to this House that will make the Act look reasonable in its administration.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to oppose the Motion.

**Mr. Kipchumba:** Mr. Temporary Deputy Speaker, Sir, I want to support this Motion by saying the following. The spirit of this Motion is very clear. All we are saying is that we do not want to make new regulations or rules, but we want to petition the various authorities to ensure that delegated legislation is, in fact, carried out.

Listening to some of the hon. Members who have just spoken, it is very interesting that hon. Members of this House can say that they do not have adequate time to do what Kenyans have voted them to do in this House. This House has three basic responsibilities; namely, legislation, representation and oversight. You will agree with me that hon. Members have done very well in terms of representation, but very poorly in terms of legislation and oversight. I want to emphasise here that the major role of Parliament--- The Chair will agree with me that after Question Time, you will always tell us that we are moving to the business of the House. The business of the House is basically legislation. It is unfortunate for hon. Members of Parliament to rise in this House and tell us that they do not have time to do what they were voted to do in this House. Is it that we do not have time, capacity or the will to do our job? Kenyans will, therefore, have a right to accuse hon. Members of Parliament of failing to undertake their responsibility. Now we can understand why they say that. When an hon. Member of Parliament tells us clearly that he does not have time to do his job, then which other business does he have time to do?

Mr Temporary Deputy Speaker, Sir, we are not saying that we should establish a committee elsewhere. That will be a committee of the House established under our Standing Orders. Therefore, this Motion calls for the amendment of the same. We must amend the Standing Orders of this House so as to allow for the establishment of this Committee. This is because we all know that the Standing Orders Committee has been very inactive and it has done almost nothing. We will give this job to that committee.

The Chair will agree with me that when we tell the Minister for Trade and Industry that we

want him to establish regulations that will govern investment in this country, he will probably establish the required legislation or establish rules which are *ultra vires* and which are not consistent with the parent law.

When hon. Members talk of authority, we are not talking of "local authorities", but we are talking of authority, including the Government, local authorities and all those charged with the responsibility of managing affairs of this country. We know in many cases, when we allow the Government to go and make subsidiary legislation, in most of the cases, it does not make them. The committee to be established will oversee the establishment of the same, petition the Government, the responsible Minister or authorities, to ensure that whatever has been passed in this House is, in deed, implemented.

There is no point of hon. Members to rise here and talk about local authorities, or complain that various Acts have not been implemented. Why should Parliament look helpless when it has the power to do anything that it wants? The other departments of Government, like the Executive, can be helpless because, probably, it does not have power to change the rules. The Judiciary can be helpless because all it does is to interpret the law. However, Parliament must never look desperate because it can do anything. It can amend rules, establish new regulations or amend an Act. Therefore, hon. Members of Parliament should not rise here and say that they now want to request certain authorities to do what we can petition them to do by establishing a committee of this House. That committee can follow up that and ensure that the rules that we want are, in deed, implemented.

Mr. Temporary Deputy Speaker, Sir, in the energy sector, we have given the Minister for Energy power to regulate the industry, but what does he do? The powers are misused and the Minister will publish rules and regulations that are inconsistent with good business management of this country. The result is that Kenyans will be made to pay for the sins they have not committed. In order to avoid a situation where this august House will pass rules and is either helpless when it comes to the implementation of the same, or the Minister, probably, ignores them--- This has been done all over the world. I do not see why this Parliament cannot do a very simple job of ensuring that subsidiary legislation is implemented.

Just to conclude, because I think this is a very simple matter, we are not saying that we want to usurp the role of a Minister or a certain authority. All we are saying is that, first, we want a committee that will follow up to ensure that there are subsidiary legislations, and secondly, ensure that the subsidiary legislations are not *ultra vires*. Basically, we are saying that the Committee--- This is because we have a committee to take care of oversight in this House; the Public Accounts Committee (PAC). Hon. Members of Parliament can ask questions in this House and, therefore, play their role of representation. But in terms of legislation, all of us have failed very badly. If we establish that committee, it will assist us because all of us cannot scrutinise the same. That committee will be focused, it will do its job and, therefore, make our work very easy. So, I request hon. Members to support the formation of the committee. We do not want to take away any power from the Government. We want to give Parliament its power, so that we do not look like we are helpless in the control of the laws that we make here. We, should, therefore, make hon. Members understand that we are asking for the establishment of a committee under the Standing Orders.

Mr. Temporary Deputy Speaker, Sir, therefore, I want to move an amendment to the Motion.

**The Temporary Deputy Speaker** (Mr. Ethuro): Have you filed an advance notice of your intent to move the amendment, Mr. Kipchumba?

**Mr. Kipchumba:** Yes.

Mr. Temporary Deputy Speaker, Sir, I beg to move that the Motion be amended as follows--

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Order, Mr. Kipchumba. Just conclude your contribution and ask another hon. Member to move the amendment on your behalf.

**Mr. Kipchumba:** Thank you for your guidance, Mr. Temporary Deputy Speaker, Sir. Let me conclude my contribution and let another hon. Member move the amendment to the Motion, so that hon. Members can understand that we are not talking of forming a committee outside the Standing Orders of this House.

With those few remarks, I beg to support.

**Mr. Omingo:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to support this Motion.

I beg to move that the Motion be amended as follows.

THAT, in view of the fact that subsidiary legislation should be consistent with the parent statutes---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Order, Mr. Omingo! Before you took the Floor, I made some remarks to the effect that you cannot propose any amendment to the Motion before you have put it in writing.

**Mr. Omingo:** Mr. Temporary Deputy Speaker, Sir, I have put the amendment in writing.

**The Temporary Deputy Speaker** (Mr. Ethuro): It has to come before the Chair. That is what putting an amendment in writing is all about. It is not written for your own consumption.

*(Mr. Omingo submitted the amendment  
to the Clerks-at-the-Table)*

**Mr. Omingo:** Mr. Temporary Deputy Speaker, Sir, the written and signed amendment is now being brought to your attention.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Omingo! You may proceed on other issues until I allow you to move the amendment.

**Mr. Omingo:** Mr. Temporary Deputy Speaker, Sir, in the meantime, let me support the Motion as it is, with the anticipated amendment in mind.

Mr. Temporary Deputy Speaker, Sir, as Parliament, we pass laws, and the Ministers are supposed to make subsidiary legislations for gazettment. We have had cases where Parliament has been embarrassed. It pains us and our constituents when we make laws here only for Ministers to contradict them through. When we pass a law that ends up becoming inconsistent with the Constitution, we look like we are not serious in our legislating role. So, I suggest that, as Parliament, we refine our ways of doing things. By doing so, we will not be taking over the function of Ministers in that regard. We want to ensure that whatever law is passed here is implemented in consistence with the Constitution, and that any subsidiary legislation arising from the particular law is consistent with that law.

We have seen many cases where Ministers' decisions have been challenged. For instance, sugar importers have gone to court to challenge the Minister's decision on importation of sugar. So, the proposed committee will assist in harmonising the thinking of a Minister, *vis-a-vis* the intent of a particular law. That will lead to smooth application of the laws we pass.

Mr. Temporary Deputy Speaker, Sir, I beg to move that the Motion be amended as follows:-

THAT, in view of the fact that subsidiary legislation should be consistent with the parent statutes; aware that certain authorities have failed to gazette mandatory rules and regulations as required by the parent Acts; concerned that some of the delegated authorities have been abused by the concerned authorities by gazetting regulations that are *ultra vires* to the parent law, this House resolves to establish a Delegated

Legislation Committee under the Standing Orders to scrutinise all subsidiary legislations.

This is to allay the fears of the Executive that it may not be able to work independently and exercise its powers as given to it after the law has been passed. We also want to help the Executive through the Committee. We want to have a similar thinking input with the Executive in the subsidiary legislations that will be gazetted, so that we do not become a laughing stock. We are suggesting that, after a law comes into force, its refinement is authenticated by the House before a Minister formally gazettes it. So, this is not an issue of gagging the Executive or taking powers from it. We are saying, in line of our thinking of having to work together, we need to pass this amendment, so that Parliament can refine whatever was in the law. If the laws we pass here are not implemented effectively, then Parliament will be put to disrepute. That is how we become a laughing stock to the public when legislations contradict each other.

Mr. Temporary Deputy Speaker, Sir, I suggest, therefore, that we pass the Motion as amended, so that the proposed Committee can be established to harmonise the thinking of Parliament with that of Ministers in implementation of the laws that we make here, and ensure that such laws are consistent with the Constitution.

With those remarks, I beg to move and request Mr. M. Kariuki to second the amendment.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Order! Mr. Omingo, if you have read the Standing Orders, you should have realised that it may not be necessary for an amendment to be seconded. The Chair may find it unnecessary for an amendment to be seconded.

Hon. Members, for your own benefit, before I propose the Motion as amended, I would like to bring your attention to Standing Order No.47, which reads as follows:-

"The proposer of an amendment shall, before moving it, hand the amendment in writing, signed by himself, to the Clerk."

*(Question, that the words to  
be added be added, proposed)*

**The Assistant Minister for Foreign Affairs** (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, I wish to support the Motion as amended.

The legislative authority, under Section 30 of the Constitution, is vested in Parliament. All the other organs that make subsidiary legislation do so under the delegation of Parliament. Therefore, the power to supervise that delegated authority cannot be taken away from Parliament. It is a constitutional authority and nobody or organ can take away that particular authority from Parliament. As proposed, the Motion only enhances the powers of Parliament to carry out its constitutional mandate under Section 30. It does not do any harm to anyone or any particular institution.

Mr. Temporary Deputy Speaker, Sir, I am aware that subsidiary legislation is a whole body of law. Indeed, 90 per cent of our law is subsidiary legislation. Under Chapter 2 of the Interpretation Section of our law, the definition of subsidiary legislation is so broad, and I beg to refer to it. It states:-

"Subsidiary legislation means any legislative provision including a transfer or delegation of power or duty made in exercise of a power in that behalf conferred by a written law, by way of by-law, notice, order, proclamation, regulation, rule, rule of court or other instrument".

Mr. Temporary Deputy Speaker, Sir, almost the entire content of the Legal Notices contain subsidiary legislation. Therefore, the Parliamentary Committee that is proposed to assume this

particular responsibility will really have a tall order in terms of scrutinising every subsidiary legislation that appears in the *Kenya Gazette* issues. I am aware that the issue of capacity has been raised here, but capacity or no capacity, Parliament must assert its place in this country. Its place is to ensure that it takes the steering wheel in the direction of all legislation in this country, notwithstanding that there are other inferior authorities or tribunals that have been vested with those particular powers. They derive their power from Parliament and, therefore, Parliament is supreme in this regard.

This particular Motion puts the spotlight on our Standing Orders. It is time for us to wake up because for a long time, the Standing Orders have not met the expectations of this House. We have a Committee dealing with matters of the Standing Orders. This is a wake up call for them. They must wake up and realise that Parliament is now alive to its responsibility and we require to be empowered. We are taking this early opportunity to empower ourselves and give the way forward as far as our mandate in the Constitution is concerned.

Mr. Temporary Deputy Speaker, Sir, I was worried before the amendment that perhaps there was no clarity as to whether the so-called Delegated Legislation Committee was going to a statutory body, in which event leave would have to be sought, first, by way of a Motion to bring that particular legislation. Now it is not necessary any more because the Standing Orders are under the control of this particular House. As the Chair has properly said, this is not a matter that requires secondment. It is a matter that even on the face of it, all of us should support as hon. Members of this House. There is need to empower Parliament. Our Committees require to have legal experts who should assist in the deliberations of the Committees and give proper information. I agree that hon. Members are not all lawyers and they do not have the benefit of the law, but with proper assistance from experts, which this Parliament can hire, they should be able to identify flaws.

Mr. Temporary Deputy Speaker, Sir, there is really nothing new in this particular authority being granted to Parliament. Section 10 of the Preservation of Public Security Act provides that---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. M. Kariuki! We are running into the critical time of the Government Responder and the Mover to reply. Before that, I need to put the question of the amendment, so that we may proceed.

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

*(Question of the Motion as amended proposed)*

**The Assistant Minister for Justice and Constitutional Affairs** (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to respond.

It is true that quite a number of pieces of subsidiary legislation have not been enacted by the relevant Government authorities. That failure is not deliberate or malicious. It has been because of the need to consult as many people as possible. There has been need to consult all the stakeholders concerning the relevant Act of Parliament and that has been the cause of the delay. The cause is not malicious. It is also important that the relevant Government authorities are given power to propose the subsidiary legislation because at the end of the day, they are the ones who will be implementing the main Act. Therefore, if the concerned Ministry is given the power, first, to propose the subsidiary legislation, which is then scrutinised by a Committee of Parliament under the Standing Orders, that appears to be the best way.

Mr. Temporary Deputy Speaker, Sir, the issue of subsidiary legislation being *ultra vires*

should not be emphasised. There are enough legal provisions for challenging *ultra vires* subsidiary legislation and it has been done on a number of occasions. That in itself cannot be the main reason for proposing that we have a Committee of the House under the Standing Orders to be looking at the subsidiary legislation. It is also important to note that before any Ministry comes up with a subsidiary legislation, it consults all the stakeholders and a number of people who are going to be affected by the subsidiary legislation itself. Therefore, I would like to assure this House that, the system of consulting all the stakeholders and all the people who are affected or concerned with a particular subsidiary legislation will continue. This is the only way in which we can come up with proper subsidiary legislation.

There is a feeling that this may tie up Government hands in the sense that it is the Government that will be implementing the subsidiary legislation. It is important that the Government is given the first priority of proposing the subsidiary legislation, so that the officers in the Ministry know how they will implement the Act. There is nothing wrong with the House looking into the subsidiary legislation. But my fear is that, if to date we have not been able to enact all the various Bills that have already matured, the House may also fall into that problem of having no time to come up with subsidiary legislations. So, if the intention is that, first of all, the Government will come up with a proposed subsidiary legislation and then hon. Members are given an opportunity to look into the subsidiary legislation that the Government has come up with, there is nothing wrong with it. It only widens the consultations which have always been done before the Ministries come up with subsidiary legislations.

Mr. Temporary Deputy Speaker, Sir, the Motion talks of delegated authorities having been abused by the concerned authorities. Throughout the debate, not a single hon. Member gave instances of where the Government Ministries have abused their mandate of proposing subsidiary legislation.

**Mr. Muturi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Assistant Minister who was not present during the contributions by various hon. Members to stand up and state that no instances or examples have been given when, indeed, the clear one of the Motion by the Deputy Speaker, Mr. Musila, was one of the key examples given here?

**The Assistant Minister for Justice and Constitutional Affairs** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, the incidence given by hon. Muturi was not an abuse of the---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Githae! You were not present during the debate. I think you should just accept that because there was more than one incidence, including the one from the Assistant Minister, Mr. Mungatana.

Please, proceed!

**The Assistant Minister for Justice and Constitutional Affairs** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I have been fully briefed on the discussions that took place in the House. What I am saying is that, the cases that were cited do not show any malicious intent on the part of the Government authorities. It could have been a genuine omission or mistake. But I hope that by doing this--- I do not want to go against the consensus that has been arrived at, because that is what we are now trying to do in this Parliament; to do things by consensus and not by opposing the wish of the majority. Therefore, the Government will accept this Motion provided that, one, the relevant Government Ministries will be, first of all, charged with the responsibility of coming up with a draft subsidiary legislation, which is then looked at by the Committee, under the Standing Orders of this House, so that the House then would have an opportunity of looking at the subsidiary legislation that has been proposed by the Ministers. Then, that is now looked into and scrutinized by the House. If that is the intention of the Motion, then we have no objection, subject to the amendment so that we do not delay the enactment of the subsidiary legislation. If you look at the



Bills that are pending before the House, and which we have not been able to finalise, the fear is that we may also include the subsidiary legislation among them.

Mr. Temporary Deputy Speaker, Sir, since this will be done under the Standing Orders, then this fear may not come into fruition. Therefore, we will support the Motion. At the same time, we must also commend the relevant Government Ministries which have, without having the benefit of the subsidiary legislation scrutinised by the House, made substantial and very effective subsidiary legislation. The few instances that have been cited, as I said, were not done through malice. It was just an omission and delay. This is because there are so many other matters outstanding.

I would like to give assurance to this House that subsidiary legislation is now being vetted even by the Attorney-General's Chambers. Before it is prepared, all the stakeholders and other interested groups are consulted. So, there is wide consultation before any subsidiary legislation is enacted and it is not done secretly by the Minister. So, the few instances that have been cited do not show that the current system has broken down. We must always be prepared to adopt a system which improves things and not one that worsens them.

If this system is going to improve things and expedite the enactment of subsidiary legislation, and make sure that under the parent Act, subsidiary legislation will not be forgotten, then it needs to be supported. At the end of the day, what Kenyans want are services from the Government. They want subsidiary legislation that is effective and practical. Therefore, if they are scrutinized by as many people as possible, I think we may give Kenyans the services they want.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, subject to the amendment that has proposed and seconded, I beg to support.

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Members! I call upon the mover to reply now!

**Ms. Abdalla:** Thank you, Mr. Temporary Deputy Speaker, Sir. I beg to reply.

I wish to thank the Assistant Minister for Justice and Constitutional Affairs for seeing the need for this legislative reform that intends to focus on systems rather than the persons in the Government of the day. By not scrutinising subsidiary legislation, what we have, in fact, been doing is not providing for means of amending the subsidiary legislation which in the end turns the master into the servant. The Executive branch of the State is supposed to serve the people and if it comes up with legislation that is not scrutinised, then, we shall be turning that arm of the State into a master and not a servant. I am very happy that the Government side has seen the light and thereby supports this Motion with the amendment.

Mr. Temporary Deputy Speaker, Sir, I wish to note that there was initial argument that the creation of a Delegated Legislation Committee would infringe on separation of powers. However, I want to point out that the Delegated Legislation Committee will have a database that would be included in its annual report. Agencies that will not have come up with delegated legislation will, therefore, be put on notice. Just like the Act providing for the Constituency Development Fund (CDF), there is already parliamentary scrutiny in the use of the money. We have not put up a mechanism to ensure that this is done within known rules and regulations.

Mr. Temporary Deputy Speaker, Sir, when we were approving the names of the Kenya Anti-Corruption Authority directors, instead of using the laid-out mechanisms, we used the Floor of the House to discuss individuals. In the long run, we did not do a good job. So, the Delegated Legislation Committee will put in place a mechanism that will ensure that a good job is done outside the House and, later on, the detailed discussion tabled in the House for approval.

There has been argument put forth that this House is too busy given its heavy calendar and we need not burden ourselves further. It should be noted that the Delegated Legislation Committee will save time for this House. All the Ministries will be required to do is to come up with their drafts, table them and then the Committee would discuss the technical aspects of the subsidiary legislation outside the House and present it as a report that would then be approved in this House. That way, we will save a lot of time.

Mr. Temporary Deputy Speaker, Sir, without belabouring too much, I beg to move that this Motion be adopted.

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly:*

THAT, in view of the fact that subsidiary legislation should be consistent with parent statutes; aware that certain authorities have failed to gazette mandatory rules and regulations as required by the parent Acts; concerned that some of the delegated authorities have been abused by the concerned authorities by gazetting regulations that are *ultra vires* to the parent law, this House resolves to establish a Delegated Legislation Committee under the Standing Orders to scrutinize all subsidiary legislation.

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

ESTABLISHMENT OF A RESEARCH  
FUND TO ASSIST SCHOLARS

**Prof. Olweny:** Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, in view of the fact that research work in public universities is under-funded; considering that most scholars in the universities partly depend on foreign donor support for their research undertakings; this House urges the Government to establish a Research Fund to assist scholars in all local universities.

Mr. Temporary Deputy Speaker, Sir, this Motion touches on one of the most serious aspects of our development and that is research. The importance of research in development across the world cannot be underscored. One thing which nobody has doubts about is that research is the mover of development. It is the source of knowledge. Traditionally, universities have been the centres of research and training. Across the world, even today, universities have two major roles to play, that is conducting research and training. They also generate ideas and the knowledge required to train manpower that helps in development. Currently, that is the trend across the world.

Research institutions across the world, unlike ours, have very strong linkages with the universities across the world. The scientists in research institutions in various countries are either researchers or lecturers in the universities. Therefore, the support they have for research institutions is in one way or another used for research and training in the universities. That is something that is lacking in developing countries, particularly Kenya.

The achievements of scholars in research is one thing that speaks for itself, particularly in our universities. Our universities have achieved a lot despite the meagre resources that they have. They do not have much support. The conditions under which they do their research are very inappropriate, but what they have achieved in terms of training and the knowledge developed, is a

lot. Some of that knowledge is lying in the university libraries. There is nobody to take it out simply because our scholars do not have the necessary support to extend the knowledge that they have developed. Training in universities is conditioned on research; otherwise, universities would be like any other institutions, such as high schools, secondary schools or even primary schools. Both undergraduate and postgraduate scholars need to undertake research.

Today, we have over 4,000 postgraduate students in the University of Nairobi alone. They are in the parallel degree programmes, or sponsored by the university. Those ones sponsored by the university actually get their support from external donors and very little from our Government. Most of the postgraduate work that those students do is research and it is donor-supported. The Government provides very little funds for this research.

Tangible development, as I have said, is conditioned on research. All the modern technology that has been developed, even the social science and the running of Governments, are based on research. For us to have a well-run Government, our Government also needs to depend on researched ideas. In this country, we do not know why people are fighting one another in terms of ethnic clashes. We do not know how to sort out our problems during disasters. Who is carrying out research about floods? All these problems could be well taken care of by the universities. So, development-wise, the generation of knowledge and technology and training in the universities are a must and we can only do it with proper support. That is what is lacking in this country. At Independence, there were signs that there was some good support for research in the universities, particularly in the University of Nairobi when they had strong research activities in Institute of Development Studies and other departments in the university. The amount of support that we get in the universities from the Government for research activities has gone down. So, the major problem that we have in our universities today is lack of adequate support for the scholars.

Mr. Temporary Deputy Speaker, Sir, lack of support of research obviously leads to inadequate research, and when you have inadequate research, we have poor development. Look around the world; the clothes we wear, the vehicles that are moving in, the aeroplanes that are flying, name it, are products of research. When we have inadequate support for research, there is weak linkage between the research institutions and the universities and, of course, extension work weakens. That is why, today, we have very poor agricultural extension services. This is because knowledge is not being generated the way it should. Even if it is generated, it is not going outside there because of lack of support.

I remember when I was a student in the University of California, the Government had a research wing based in the university for agricultural research. That wing would extend the knowledge to the farming community, and the people who were involved were themselves professors and researchers. They were doing research and at the same time linking with the Government's extension wing. So, the knowledge that was generated would be taken out very comfortably and easily to the farming community. We do not have that in this country. With inadequate support for research, there is very little contribution to development. So, development without home-grown knowledge which, of course, should be supported by Government funds, has no foundation.

So, as I have said earlier, we have no research on even how to run our Government. What is the reason for the existing corruption in this country? Can someone carry out research on that? For someone to do research on that, he needs money. What is the reason for people fighting in Likia? Can someone carry out research on that? We had ethnic clashes 10 years ago also. Did you find out why we had those ethnic clashes? That is simply how to run a Government. Someone needs to find out for the Government why we are having these clashes. We do not have to do research on medical or agricultural sciences alone! We need research on everything and in all areas. So, we are lacking

adequate support to do research in all areas; in arts, social sciences, name it! But for us to do effective research, the Government must come out and provide money for that. Even domestic violence; why are people beating up their wives? Why are some wives biting off---

*(Laughter)*

The gentleman was complaining that he lost his manhood because it was bitten off. Why? Someone should do a research and tell us why all this is happening.

This poor state of research is making us lag behind in terms of development, running our country and our houses. In this country, the Government spends less than 0.1 per cent of Gross Domestic Product (GDP) on actual research activities. You cannot compare it with India which spends 5.6 per cent of its GDP on research activities. China spends 14 per cent of its GDP on research activities. When the former Prime Minister of India, Indira Gandhi, took power, she brought all the researchers from the universities and told them, "I have given you four years to make this country self reliant and be a research giant in this world; otherwise, you will go home." But then, she provided support. Today, India is self-sufficient in food production. It is one of the countries that has quite advanced nuclear research facilities. It is one of the giants when it comes to scientific work.

Well, we have some money budgeted for Kenya Agricultural Research Institute (KARI), Kenya Medical Research Institute (KEMRI), Kenya Industrial Research Development Institute (KIRDI), Coffee Research Foundation (CRF), Tea Research Foundation (TRF); all these are research institutions. Most of it goes to salaries, management and so on. But actual research activities for those research institutions get very little money. In fact, when you look at all those institutions, the actual money that goes to every research activity is just about US\$1,000, leave alone the universities which are not given any money for research activities. But what can US\$1,000 do for research in a year? Research is a very expensive undertaking, and for us to develop, Government must pay attention. So, as I have said, the Government is giving salaries to our universities, but nothing for research. The Government is giving bursary for university fees and other things, but no research money. There is no money for post-graduate training budgeted for by our Government.

So, at the end of the day, our scholars depend on donor funding. For example, at the University of Nairobi, the money that has been provided in form of external research grants from Ford Foundation is slightly over Kshs12 million for the year 2003/2004. The Rockefeller Foundation had given them about Kshs51 million, CIDA about Kshs38 million, the Netherlands, about Kshs2 million, DAAD about Kshs2 million, World Health Organisation, Kshs4 million, International AIDS Vaccine Research, Kshs142 million, World Trade Organisation, Kshs53 million, CIAT, that is for agricultural research, about Kshs10 million, Centre for Disease Control (CDC), Kshs70 million, US Embassy which has given Prof. Nyagah of Veterinary Faculty about Kshs27 million, National Institute of Health, Kshs10 million, Elizabeth Glaser Paediatric AIDS Foundation, Kshs24 million. This is donor money. Where is our Government's contribution? So, donor funding plays a crucial role in research, but one wonders, where does our Government come in? It is unfortunate that the Government is not supporting research projects.

The external donor support is always inadequate; it is too little for our scholars in this country. This is also because we have several universities, both private and public. The donor support is too competitive for upcoming scientists who are not yet able to come up with good proposals. We could train them using Government money. They could be trained on how to access research funds. Donor support is accessed more often by senior researchers who are well versed and

experienced in developing good proposals. Usually, such donor funds also have pre-determined objectives which may not be relevant to us. So, our scholars have no option, but to go for that money because they need to carry out research. It is important to note that their promotions at work are based on the research that they carry out, and not the teaching that they do.

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

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

Mr. Temporary Deputy Speaker, Sir, we have a few local organizations that are also supporting research in our institutions. I would like to congratulate them for that, though the funds they give may sometimes be inadequate. A few notable organizations supporting our universities are the Chandaria Foundation, Rattansi Trust and the Aga Khan Foundation. It is unfortunate that we do not have any support from companies such as Kenya Breweries Limited (KBL), which also depends on research on barley research, and British American Tobacco (BAT) company which also needs research in tobacco farming.

Mr. Temporary Deputy Speaker, Sir, my proposal is that this House supports the creation of a universities Research Fund which will help in soliciting proposals from our scholars in universities. This fund will also help in coming up with a body or board to review the proposals which are submitted by our scholars and then give funds to support the proposed research projects that they think are well written. Such a fund should be supported through a budgetary allocation so as to support research in all areas, including biological, physical, earth and social sciences so that we have real development.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to move and request Prof. Oniang'o to second my Motion.

**Prof. Oniang'o:** Mr. Temporary Deputy Speaker, Sir, let me take this opportunity to thank Prof. Olweny for moving this Motion and for giving me the opportunity to second it.

Let me start by saying that research is so crucial for the development of any nation and of a people. Also, it is crucial for industrialization. However, research needs to be demystified. Many people associate research with the academia who sit in the ivory towers talking to themselves, many of them in the laboratories or offices reading books, and not necessarily linking up with development or with the ordinary person. I wish to put this responsibility to the researchers themselves, that they need to demystify research. As Prof. Olweny has said, some of the very common issues we see of violence or even more positive ones of why Kenyans go to church every Sunday could be researched into. There are different forms of disseminating research findings, for example, through publications in journals. However, when you want to link research to development, you have to sell your findings to the Government from whom you are seeking that funding.

Mr. Temporary Deputy Speaker, Sir, we need to sell research study findings to members of the public because it is taxpayers' money which goes into funding research studies. Therefore, the mode of dissemination of research findings becomes different, depending on the target population one is talking about. Some people have argued that we already have research studies going on and wonder why we have to concentrate on universities. I would like to tell Kenyans that the Asian "tigers", for example, Malaysia, Thailand, and recently, I was in South Korea, have nuclear technology because of research studies.

Universities are epicentres of knowledge generation. They are supposed to set the agenda for any country's research, and other research institutions just follow. Researchers can actually market a country internationally by generating their own research studies. However, when you have research studies being funded by outsiders without substantial Government input, then you are saying that those who fund the studies can take the research findings away from Kenya, document them, share them outside this country, patent them and Kenyans stand to lose. My travel experience outside this country shows that it is easier to find information about Kenya outside Kenya than within Kenya. Why is this the case? It is because we do not have well-funded strategies in this country. We also do not have proper laboratories, good and well-stocked libraries.

Right now, we are not connected to the internet to make sure that our research findings are put on the internet so that they can be shared with the rest of the world. We have equipment, for example, in the Faculty of Engineering, which I heard one of the Professors call a mortuary of equipment because it is so archaic that it cannot generate proper research findings which can stand the test of international scrutiny.

Universities have always had a research fund. In my younger days when I was working on my masters and PHD degrees, I benefited from a research fund which came from the Government kitty. At that time, apparently, the Government realised the importance of research.

For some reasons, our universities are now in a management crisis. Students demonstrate and demand all kinds of things which have nothing to do with scholarly engagement. We need strategic support for our universities. We need universities which can market themselves so that even people from the West and other African countries can say that they will do their university education in Kenya. Why should they say this? It is because not only will they be taught well, follow a particular programme and finish at the right time, but they can also be associated with internationally renowned researchers. They can also be part of innovations, be recognised and be awarded an international prize for what they have come up with.

I want to support this Motion and, in deed, say that we need to establish a university research fund. We should make sure that our universities are run in such a way that our lecturers have time to do research. We need to have an environment which can lure Kenyans who are outside the country or those who go to study abroad to come back knowing that there are facilities where they can continue with their research studies that they started elsewhere. We need to have our research institutions within universities to be engaged in competitive research and to generate knowledge which is uniquely Kenyan and which we can market and say: "As a country, this is where we are". I just want to remind hon. Members that 25 years ago, Kenya and Korea were at the same level as far as development was concerned. I was in Korea recently and I was amazed to see where it is right now, all because of investing in research. My student is there in a Korean university and I wonder what that young girl will come back to Kenya to do when she has that kind of laboratory in Korea at her university and we do not have anything like that here in Kenya.

Mr. Temporary Deputy Speaker, Sir, so with those few remarks, let me support this Motion and I urge my colleagues to support it so that we reinstitute and restore our University Research Fund, and that it should be properly supported first by the Government.

Thank you, Mr. Temporary Deputy Speaker. With those few remarks, I support the Motion and second it.

*(Question proposed)*

**Capt. Nakitare:** Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to support this Motion with an overwhelming encouragement. Speaking about higher education, our country was

rated second during the First Generation of Kenya's Independence. Our universities were few. Our students were few. The privileges they had from the Government were overwhelming. You may understand the outcry here and why the lecturers strike. They do so because they are underpaid. They are not being used. Research is a science and science can only be reactivated. It is like igniting fire so that you can get both the heat and the results out of that.

Mr. Temporary Deputy Speaker, Sir, it has been a discouragement in the faculties in universities by professors and students who are doing research and pursuing higher education because they had high expectations which they do not have. I say this because I would first of all start with the academicians themselves. Professors and lecturers at the universities are under-utilised because the Government has not given them enough moral support. It has not given them enough funds.

Mr. Temporary Deputy Speaker, Sir, a professor does not go to sit in a chair in an office to read books. Most of his work is spent in finding the solution and to find a solution is what we call research. I have been to developed countries where education is given the first priority. We have not done enough research in mathematics as a science, and that is why you find most of our students are scared of taking mathematics as a course.

Mr. Temporary Deputy Speaker, Sir, physics and chemistry are the fields that we need to emphasize in. We are telling the Government that the Kshs949 million set aside for all the universities is not enough. If you look at the syllabus, research is not included. We have research centres which are dormant and the scientists are not involved in any research because of lack of funds. This includes the Kenya Medical Research Institute (KEMRI), the Kenya Agricultural Research Institute (KARI) and the Kenya Forestry Research Institute (KEFRI). These institutions are supposed to produce young scientists for our country. If you take a country like Northern California where they use nuclear energy to produce electricity, it is out of the science of the University of Berkeley. When you visit the observatory station, it is not the professors who are doing the research, but the students.

Kenya is one of the countries that were earmarked by international organisations to conduct research. They have taken our information. History tells us that they have come to study cases here and taken them overseas and used them so well as raw material, and then brought them back as finished material. That is why they are called consultants. We could also produce consultants from our universities. Recently, I visited Southern Africa and I spoke to one of the professors. He told me that the reason why people do not come to Kenya is because universities are on and off. You cannot discontinue your education. You cannot switch off the light and expect to see in darkness. The demonstrations that have been going on must be researched. That is a science. We want to know the problems that we are facing in our universities, so that we could enhance education and develop Kenya. In this 21st century, Kenya should be the first developed country in Africa. If we are given the will, there is hope for development. The Government should turn round and say, "Yes, we need to revamp our educational system by giving privileges to the universities". I congratulate our Head of State for giving the universities power to appoint their own chancellors. Although they were political appointees, currently, the chancellor is not appointed by the Head of State. If we allocate more funds for research, we will benefit as a country---

With those few remarks, I beg to support.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Khamasi): Order! Capt. Nakitare, you still have four minutes to contribute when the Motion resumes next week.

Hon. Members, it is time for the interruption of business. The House is, therefore, adjourned until this afternoon at 2.30 p.m.

The House rose at 12.30 p.m.