

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 22nd May, 2007

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:-

Hon. Kombe Harrison Garama

(Applause)

COMMUNICATION FROM THE CHAIR

RESCHEDULING OF WORKSHOP ON STANDING ORDERS

Mr. Speaker: Hon. Members, last Thursday, the Deputy Speaker invited hon. Members to a workshop on Standing Orders to be held the coming Friday. The Deputy Speaker and his Sub-Committee duly presented the proposed amendments to the Standing Orders Committee, which I chaired this morning, and we think that the coming Friday will be too soon.

We have consequently, rescheduled the workshop to 22nd June, 2007. The workshop will be held on 22nd, June, and on the first half of 23rd June, if we will not have gone through the process in one day. This requires the consideration of hon. Members in detail because the Standing Orders are the pillars of the procedure of this House. So, the workshop will be on 22nd and 23rd June, 2007.

Thank you.

Hon. Members: In Mombasa?

Mr. Speaker: It will be in Nairobi!

(Laughter)

PAPERS LAID

The following Papers were laid on the Table:-

The East African Community election of Members of the Assembly Draft Rules, pursuant to the provisions of Article 50 of the Schedule to the Treaty of the establishment of the East African Community Act, 2000.

*(By the Minister for
East African Community)*

Mr. Sungu: On a point of order, Mr. Speaker, Sir. According to information available publicly, we understand that this same document has been presented to another forum elsewhere outside this House. I seek your guidance on whether that is the proper procedure; that a Paper to be laid before the House, is laid before another organisation elsewhere.

Mr. Speaker: Was I present there?

Mr. Sungu: It is public knowledge, Mr. Speaker, Sir!

Mr. Speaker: As far as I am concerned, that organization is amorphous. What I preside over is this House. I do not know what happens elsewhere.

Dr. Manduku: Mr. Speaker, Sir, I want to lay the Labour Bill, but before I do that, I want to make a few remarks.

An hon. Member: You cannot do that!

Mr. Speaker: What? Dr. Manduku!

(Laughter)

Report of the Departmental Committee on Health, Housing, Labour and Social Welfare on the Labour Institutions Bill, 2007.

Report of the Departmental Committee on Health, Housing, Labour and Social Welfare on the Occupational Safety and Health Bill, 2007.

Report of the Departmental Committee on Health, Housing, Labour and Social Welfare on the Work Injury Benefit Bill, 2007.

(By Dr. Manduku)

NOTICE OF MOTION

APPROVAL OF EAC DRAFT RULES
ON ELECTION OF EALA MEMBERS

The Minister for East African Community (Mr. J.K. Koech): Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, Pursuant to the provisions of Article 50 of the Schedule to the Treaty for the establishment of the East African Community Act, 2007; this House approves the East African Community election of Members of Parliament Draft Rules, laid on the Table of the House on Tuesday, 22nd May, 2007.

QUESTIONS BY PRIVATE NOTICE

CAUSE OF CRASH OF FLIGHT
KQ507 IN CAMEROON

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

(a) What circumstances led to the crash of Kenya Airways Flight KQ507 upon departure from Douala International Airport, Cameroon in the early hours of Saturday, 5th May, 2007?

(b) Could the Minister give an undertaking that the accident report will be tabled in the House as soon as it is finalised and not shelved like it happened after a similar accident involving the national carrier in Abidjan, Ivory Coast, in 2000?

The Minister for Transport (Mr. Mwakwere): Mr. Speaker, Sir, I beg to reply.

(a) The circumstances which led to the crash of Kenya Airways Flight KQ507 are not yet known. Article 26 of the International Civil Aviation Organisation Convention provides that:-

"The State in which the accident occurs shall institute an inquiry into the circumstances of the accident".

A commission of inquiry was initiated on 18th May, 2007, by the Government of Cameroon. Kenya as the State of registry and State of operator has accredited the Director of Accident Investigations Department in my Ministry to the inquiry. The final report of this inquiry will enable stakeholders and interested parties, including the public to know the circumstances which caused the crash of Flight KQ507.

(b) Yes, I hereby give an undertaking that the accident report of Kenya Airways Flight KQ507 will be tabled in the House as soon as it is finalised and officially presented to the Government of Kenya by the Government of Cameroon.

Regarding the Kenya Airways Flight KQ431 accident, which occurred in Abidjan, Cote d'Ivoire, in 2000, the Government of Kenya did not receive the final report from the Government of Cote d'Ivoire. Chapter 6, Annex 13 of the International Civil Aviation Organisation (ICAO) Convention gives guidelines on how the investigating authority will handle the final report.

In the case of Kenya Airways Flight KQ 431, the investigating authority was, and is, the Government of Cote d'Ivoire Clause 6.4 of the same Convention provides as follows:-

"The final report of the investigation of an accident shall be sent with a minimum of delay by the states conducting the investigation to the state that instituted the investigation, the state of registry, the state of operator, the state of design, the state of manufacture, the states having suffered fatalities or serious injuries to its citizens and any states that provide relevant information, significant facilities or experts."

In this case, Kenya is the State of registry and State of operator.

Mr. Speaker, Sir, whereas we are yet to receive the official report on the accident involving Kenya Airways Flight KQ 431 in accordance with the ICAO convention, we strove, as a country, and succeeded to get the French version of the accident report.

Mr. Odoyo: Mr. Speaker, Sir, while accepting that a report of an accident involving an aircraft may take some time, I take note of the fact that during the last seven years, 283 persons have perished in Kenya Airways aircraft on roughly similar routes. The first one, as indicated by the Minister, occurred on 31st January, 2000, during which 159 people perished, many of whom were Kenyans. The last one occurred on 5th May, 2007, in which 114 passengers perished.

Mr. Speaker, Sir, could the Minister confirm or deny that as we talk now very little of the accident investigation is going on because of the differences between the Kenya Government and the Cameroon Government, first, on where the Black Box is to be taken, as the Cameroon Government insists that it should go to France? Secondly, could he confirm that the manufacturers, M/s Boeing, of the ill-fated aircraft have withdrawn, and so have other stakeholders? Could he confirm that, indeed, the accident investigation is moving ahead, as he has specified today on the Floor of this House? The information that we have is that, indeed, very little is happening, and it may take another seven years.

Mr. Mwakwere: Mr. Speaker, Sir, I would like to confirm to the House that there are no differences between the Government of Kenya and the Government of Cameroon in respect of the investigations that are going on, on the aircraft that crashed in Douala. I would like to further confirm that the International Civil Aviation Authority has specific guidelines, which are used by

all member countries, or party countries, whenever an accident, or an incident, involving an aircraft occurs. Everything is being done systematically. I have every confidence that the report will be forwarded to us at the earliest possible moment, in accordance with the standing regulations.

Capt. Nakitare: Mr. Speaker, Sir, the Minister's answer leaves a career pilot baffled. The ICAO has rules and guidelines. We know very well that one of those rules says that the country in which an accident has occurred takes responsibility. The equivocal question is this: Why did the beacon at Jomo Kenyatta International Airport (JKIA), Nairobi, Control Tower pick the SOS signal from the Black Box seven hours before it was responded to in Cameroon? Point number two---

Mr. Speaker: Order! Order!

Capt. Nakitare: The question of passengers---

Mr. Speaker: Order! Order! Will you sit down?

Mr. Minister, would you like to respond?

Mr. Mwakwere: Mr. Speaker, Sir, I would like to inform the professional pilot that I have before me the ICAO Convention. There is no part of the convention that confirms what he has said. I have read it from cover to cover. Although I am not a pilot, I would like to confirm once again that investigations are done in accordance with the Convention.

The country that is authorised to conduct investigations and form a commission of inquiry is the country in which an accident occurs. In this case, that country is Cameroon.

Mr. Bahari: On a point of order, Mr. Speaker, Sir. The only pilot we have in this House asked a very simple question, which the Minister, perhaps, did not respond to. Would I be in order to ask the Minister to respond to the question, which was: Why was the SOS signal of the ill-fated aircraft received here in Nairobi, and not in Cameroon? Or, why was it received in Cameroon later, contrary to what the situation should have been? That is what the professional pilot asked.

Mr. Mwakwere: Mr. Speaker, Sir, that is part of the investigation that is going on. If there is anybody with useful information, one should feel free to channel the same to Cameroon, through the Ministry or directly.

Mr. Lesrima: Mr. Speaker, Sir, given the very poor communication in Abidjan and Douala, could the Minister consider advising Kenya Airways to cancel those two routes?

Mr. Mwakwere: Mr. Speaker, Sir, I am not aware that communication between Abidjan and Douala in Cameroon is poor. Therefore, I am not in a position to give the advice he is asking me to give.

Mr. Speaker: Final question, Mr. Odoyo!

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

Mr. Speaker: Order! Order, hon. Members! I do understand the gravity of this matter, but we must also take into account that investigations into issues like this one cannot be completed overnight.

The Minister has given an undertaking to come here---

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

Mr. Speaker: What is it?

Mr. Sungu: Mr. Speaker, Sir, I come from an airline background. I know most people who work at Kenya Airways because I have worked with them. The Minister is, obviously, misleading the House. He was in Cameroon for only one day. The Kenya Airways specialists who were supposed to investigate this matter were denied access to the scene for three days.

The families of the crash victims were also denied access to the mortuary for over three

days. He was mistreated by the Cameroonian authorities. So, there is no way in which---

Mr. Speaker: What is your point of order?

Mr. Sungu: Mr. Speaker, Sir, is the Minister in order to mislead this House that he is satisfied that the conditions at Douala International Airport are all right when the airport does not have a radar? The airport in Douala is not of international standard. Is he in order?

Mr. Speaker: That is a supplementary question!

Mr. Mwakwere: Mr. Speaker, Sir, allow me to make a clarification. I was not mistreated by the Cameroonian Government and its people. I travelled to Cameroon on the day we got information of the accident. I was received very well. We interacted effectively with my colleague, the Minister for Transport, in that country and even had audience with the Prime Minister of that country on the same subject. We are satisfied with the co-operation we are getting from Cameroon.

Mr. Speaker: Very well! Last question, Member for Nyakach!

Mr. Odoyo: Mr. Speaker, Sir, this particular plane fell head first into a swampy area that turned out to be just five kilometres from the airport, far away from the 100 kilometres that we were originally informed. The last plane accident occurred in 2000.

Mr. Speaker, Sir, on the basis of what is available today in the internet if the Minister could just use the google search engine to locate information on the Kenya Airways accident flight 431, he will note that the full report is available to the international community but not to Kenyans and hon. Members of this House. I take note that the accident occurred on an Airbus A310. The Kenya Airways has not bought a single Airbus from that time.

Mr. Speaker: What is your question?

Mr. Odoyo: Mr. Speaker, Sir, the question is this: Can the Minister recall that there was a Mozambican President who was lured to his death by the South African Apartheid regime through movement of the airplane and false reading of the instruments? Can we be assured that there is no competitive interest among the major plane manufacturers that has caused the delay in the release of this report? Is it the reason why the Kenya Airways today is not buying any Airbus? They are purely buying Boeing.

Mr. Mwakwere: Mr. Speaker, Sir, the hon. Member has posed many questions. In that multiplicity of questions I really do not know exactly what he wants me to respond to. However, I would like to confirm one thing once again, that the investigation is being carried out professionally and in accordance with the International Civil Aviation Organisation's Conventions relating to investigations and accidents.

Capt. Nakitare: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! That is the end of that Question.

Capt. Nakitare: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: You cannot listen to me, Capt. Nakitare? What is it?

Capt. Nakitare: Mr. Speaker, Sir, is the Minister in order to mislead the House that investigations are going on professionally and yet the Black Box has not been found? Could he tell this country---

Mr. Speaker: That is part of the investigation. I suspected you were not standing on a point of order!

(Laughter)

Next Question!

WORKERS BY SONY SUGAR COMPANY

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that anxiety has gripped South Nyanza Sugar Company Limited over the impending June, 2007, lay-off of all casual workers and some permanent employees?

(b) In view of run-away unemployment and poverty levels in the area, could the Minister direct that the intended lay-off be put off?

(c) What plans does the Minister have to ensure that the original objective of SONY Sugar Company limited, namely to provide employment and create wealth, is maintained?

Mr. Speaker: Order! Just to remind the House, one Question has taken half of our Question Time! I want to tell the House that I will not go beyond 3.30 p.m. So, we will have to make use of the balance of Question Time.

Proceed!

The Assistant Minister for Agriculture (Mr. Kaindi): Mr. Speaker, Sir, I beg to reply.

(a) South Nyanza Sugar Company casual workers are hired in line with the provisions of the Employment Act, Cap. 226(2) Laws of Kenya and the company has no immediate plans to lay off any of its permanent employees.

(b) In view of part "a" above, part "b" does not arise.

(c) The Government has instituted

prudent recovery strategies to resuscitate the company, which has been under-performing, to enhance its productivity and profitability. Among the measures are:-

1. Modernisation and expansion of the factory.
2. Improvement of cane harvesting and transport.
3. Management and financial structuring of the company.

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, the only way people who gave away their land for this factory to be put up can get employment is through being hired as casual workers or permanent workers. Part "a" of the Question says that there is a plan to lay off all the casual workers.

Could the Assistant Minister unequivocally confirm whether in the budget of the company, which will be there in June, all casual workers will be laid off?

Mr. Kaindi: Mr. Speaker, Sir, I want to confirm to the hon. Member that there are no plans to lay off any of these casual employees. At the moment, we have 626 casual workers, but the number fluctuates depending on the needs of the organisation. We have absolutely no reason whatsoever to lay off the current crop of casual workers.

Mr. Omingo: Mr. Speaker, Sir, this Government undertook to modernise and improve agriculture, being the backbone of the economy of this country. What is the Assistant Minister doing in line with the expansive programme and possibly with regard to writing off debts that have burdened this company to the extent that their budget is overstretched, they cannot pay farmers and the expansion programme cannot go on to increase employment in the area?

Mr. Kaindi: I did point out in this House before, that we have been able to retire most of the arrears owed to the farmers. The Government has put in a restructuring plan to ensure that the debts that bedevil most of those organisations are written off. That is the line we are pursuing with the other relevant Ministries.

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, in his reply to part "c" of the Question, the Assistant Minister talked of modernisation, expansion and other forms of improvement.

Could he tell us how much money has been set aside for this modernisation, expansion and all these improvements? When will these activities commence?

Mr. Kaindi: Mr. Speaker, Sir, various components within the factory have already been

addressed. We have already acquired an 80-tonne batch pan and a vertical crystallizer to ensure that the juice clarifier has been commissioned. We have also acquired three graders and tippers for road maintenance costing Kshs65 million. We have also constructed bridges costing Kshs25 million to ease transport problems.

Mr. Speaker, Sir, finally, we have also put a request to the Kenya Sugar Board for a loan of Kshs180 million in order to buy 25 tractors, five trailers, five loaders and five winches in order to address some of the concerns.

Mr. Speaker: Very well, next Question!

ORAL ANSWERS TO QUESTIONS

Question No.231

AMOUNT OF OUTSTANDING PENDING BILLS

Mr. Ojode asked the Minister for Finance:-

(a) how much money is still outstanding as pending bills; and,

(b) whether he could table a list of the firms owed money to date and how much has been paid or recommended for payment following Kenya Gazette

Notice No.297.

Mr. Speaker, Sir, I beg to ask this Question for the second time.

Mr. Speaker: Mr. Ojode, what was left in this Question?

Mr. Ojode: Mr. Speaker, Sir, last week the Minister did admit that he is corrupt, but not as those who were asking this Question.

Mr. Speaker: Order!

Mr. Ojode: I am telling you what was left of this Question!

Mr. Speaker: Order! You know Mr. Ojode, of late you are developing very strange tendencies which I cannot understand!

(Laughter)

I have known you for a long time. I do not know why you are regressing. Why are you regressing?

Mr. Ojode: Mr. Speaker, Sir, I have the HANSARD here!

Mr. Speaker: Order! Mr. Ojode, please, let us treat this House very seriously. Every hon. Member must do the same. By the way, you had better be warned that the Chair does, in fact, have a copy of the HANSARD of last week. So, please, Mr. Ojode, take this House seriously and more so the Chair!

Mr. Ojode: Mr. Speaker, Sir, I have the HANSARD here and I want to read to you what was said. On page 1263, Mr. Kimunya said the following:-

"Mr. Deputy Speaker, Sir, I am not as corrupt as some of those hon. Members who are raising this issue".

Mr. Speaker: On what page is that?

Mr. Ojode: It is on page 1263. He was challenged to name those who are corrupt.

Mr. Speaker: What HANSARD do you have?

Mr. Ojode: I am concerned about the phrase "those who are more corrupt than him". That

is what made this Question to be deferred.

Mr. Speaker: Order! I am asking you: What page is that?

Mr. Ojode: Page 1263, Mr. Speaker, Sir.

Hon. Members: *Patia yeye! Pelekea yeye!*

Mr. Speaker: I have it.

*(Mr. Ojode laid a copy of
the HANSARD on the Table)*

Mr. Speaker: Do you have another copy?

Mr. Ojode: Mr. Speaker, Sir, that is the only copy I have.

Mr. Speaker: We do not have to take the time of the House on a matter that we should deal with in a straightforward manner. I am simply asking: This matter came to the House on 10th May and it was deferred. I am asking for the reason for deferment.

Mr. Ojode: Mr. Speaker, Sir, I have tabled the HANSARD! There is a portion where the Minister said that he is not as corrupt as those hon. Members who have raised this issue of outstanding bills. So, he was casting aspersions against hon. Members. He denied it when he was challenged by one hon. Member by the name of Paul Muite. It is there in the HANSARD!

Mr. Speaker: Order! Do I take it as follows: I happen to have had an extract of the HANSARD requested immediately by the Deputy Speaker after he left the Chair. I think the contentious issue was on the introductory remarks of the Minister. Those introductory remarks by the Minister were as follows:

"Mr. Deputy Speaker, Sir, you may recall that this Question was raised here last year. Mr. Speaker, in the Chair, cautioned hon. Members about turning this House into a debt-collection agency by asking Questions on behalf creditors because they have personal interest in those. However, for the purposes of this House the Question is as follows---

He proceeded to reply. Later at some stage the hon. Member for Kabete rose on a point of order and said:

"Before the Minister can explain to this House as to whether a stone building, double storey can be described as temporary or not, before he can do that, did you hear him say that hon. Members in this House are paid to come and ask Questions by contractors and that they are corrupt? Is that parliamentary?"

That was the issue that the hon. Deputy Speaker was supposed to go and find out.

Mr. Ojode: But---

Mr. Speaker: Order! Will you listen? None of you is mandated to run the affairs of this House! It is me and I am running it in accordance with my ability and the mandate given to me by this House.

(Applause)

I have discussed this issue with the Deputy Speaker who was in the Chair then. I have looked at the HANSARD, particularly the matters that have been alleged that the Minister did state; that the hon. Members are corrupt. I think the only thing I can say about the remarks by the Minister is that, he was reminding the House, without being asked to do so by the Chair, of what the Chair had previously said. The Chair had said--- And I have the HANSARD of what the Chair had said on November 15th, 2006. The Chair said:-

"Hon. Ojaamong, why are you using this House as a court? Will you use this House as a court to collect debts?"

He was reminding the House of what the Chair had said. Whether or not he was entitled to remind the House is a different issue. So, I suppose you can now ask him any question you please. But he did not call you corrupt!

Mr. Sungu: He did!

Mr. Ojode: Mr. Speaker, Sir, as much as you would want to defend the Minister---

Mr. Speaker: Order! Order! Order! There is a growing tendency by some hon. Members on my left. They have grown a tendency of every time challenging the Chair that he is protecting the Executive. Let me tell you the following: The Executive has the ability to protect itself!

(Applause)

Let me tell you the following further: The Chair will not allow itself to be intimidated by any person or group of persons under any guise of thought! You must apologise to the Chair for that insinuation. You must do that!

Mr. Ojode: Mr. Speaker, Sir, before I apologise---

Mr. Speaker: Order! Order! It is under my authority that you speak! Until you recognize and respect my authority, thou shall not speak!

Mr. Ojode: Mr. Speaker, Sir, I apologize for the insinuation. But let me say the following also. I have given you the HANSARD indicating where the Minister said that he is not as corrupt as hon. Members who are raising that issue; and you have it there!

(Applause)

Mr. Speaker, Sir, even if we have to go by what you have just said, what you were informing the House about Mr. Ojaamong, you were referring to a quote that, this is not a court where the court orders for the debt to be collected. The Minister did not refer to that---

Mr. Speaker: Order! Order, Mr. Ojode! Order! I want to caution and I will repeat: This House will not be used as a debt collector! I wish Mr. Ojode to come here and point to the Chair which section exactly, the Minister said that, because I am not seeing it.

*(Mr. Sungu, Prof. Olweny and Mr. Odoyo
stood up in their places)*

Order! Order! What is your name?

Order! Order! Hon. Members must understand that we do not run the affairs of this House by all the time being---

I think I will leave that issue, but you understand what I mean. I think the House understands what I mean. Some hon. Members think they must always defend the positions of one of their own.

(Applause)

I think it is time that some hon. Members are disabused of that fact; that you do not win by hunting in packs!

(Applause)

Let hon. Ojode handle his Question! He is capable of doing so! Will you approach the

Chair and show the Chair exactly what page you are referring to, because I have not seen it?

*(Mr. Ojode was applauded as
he approached the Chair)*

Order! Order, hon. Members! The document that was given to me by the hon. Member has the following remarks by the hon. Minister, I suppose, under his artillery of fire:-

"Mr. Kimunya: Mr. Deputy Speaker, Sir, I am not as corrupt as some of those hon. Members who are raising this issue".

(Applause)

I think the issue, if that is the correct version of the HANSARD and I have not had the opportunity to have it pointed out to me--- There are two issues arising out of that: Mr. Minister, you are not as corrupt as some of the hon. Members; meaning that you are not as corrupt as some hon. Members.

(Applause)

Order! Order! I think my understanding is the following: The Minister admits that he is corrupt, but some hon. Members are more corrupt than him!

(Applause)

Is that what you meant?

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I never meant to imply that I am corrupt. I meant to imply that some hon. Members are corrupt.

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

(Loud consultations)

Mr. Speaker: Order, Members! Order! I understand the provisions of the relevant Standing Order that no Member shall impute improper motive on another. I suspect that the Standing Order gives an hon. Member the right to self-admission. You may admit what you please. However, it certainly disallows you from imputing improper motive on other hon. Members without a substantive Motion.

Mr. Minister, to the extent that you have breached that Standing Order, as far as it relates to the other hon. Members, I have not properly directed my mind as to your own admission, but you must now withdraw the allegation against hon. Members being corrupt without a substantive Motion.

(Loud consultations)

The Minister for Transport (Mr. Mwakwere): Mr. Speaker, Sir, is it in order for hon. Members to take one interpretation of that statement? If one says: "I am not as stupid as you", it does not mean that one is stupid. So, "I am not as corrupt as you" need not mean that you are also corrupt. It could be the other meaning!

(Loud consultations)

Mr. Speaker: Order, Members! Order! Let us make this very plain. I think the Chair will only deal with aspects relating to other hon. Members. If you wish, Mr. Minister, you may withdraw the whole statement, which I think is the better course. If I were the Minister, I would withdraw the whole paragraph and apologise to the House and sit down.

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I take seriously counsel from the Chair and hereby do wish to withdraw the entire statement.

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

Mr. Speaker: Order, Members! You will sit down! Why do you, hon. Members, always love to torment?

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I also would like to apologise for that. However, could I also add---

(Loud consultations)

Mr. Speaker: Order, Mr. Minister! I think all is well, that ends well. The apology has been tendered and the Chair does accept.

Now, was there anything left on that Question? Not on that aspect any more.

*(Prof. Olweny and Mr. Sungu stood
up in their places)*

Mr. Speaker: Order, Members! Will you sit down?

Mr. Ojode, except for that bit, which we have now sorted out, the Question had been dealt with. Is that not so?

Mr. Ojode: Mr. Speaker, Sir, I asked him last week to table the list of the claimants, that is, those who are claiming money.

Mr. Speaker: That is legitimate!

Mr. Ojode: Mr. Speaker, Sir, he has not yet done that!

Mr. Speaker: Mr. Minister, what is your response?

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I had addressed that in part (b) of my answer. I replied that in view of the fact that the investigations are still going on, it is not possible to table the list of all the creditors who are still owed money by the Government. I answered that last week.

Mr. Speaker: I think that is reasonable.

Next Question!

Question No.234

DISMISSAL OF KENYA
ARMY OFFICERS

Mr. Mwandawiro asked the Minister of State for Defence:-

- (a) whether he is aware that Messrs: Edward Njenge Mwanyika, John Njeru Munene, Joseph Nguku, Silvester Ngatia Kaniaru, and Isack Mutheni Mirongo, who were soldiers serving in the Kenya Army, were unlawfully dismissed from service at Kahawa Barracks in August 2006; and,
- (b) if he could order their reinstatement.

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

(a) I am not aware. However, I am aware that, as is the requirement of the recruitment procedures of the Armed Forces, it is mandatory that the fingerprints of all successful candidates for enlistment are taken and forwarded to the CID Headquarters to determine any previous criminal involvement. In the case of the named constabularies, they were found to have criminal entries after they had retired from the Armed Forces and, therefore, could not be retained in the service.

(b) Considering the gravity of the matter, I wish to state that the concerned officers cannot be reinstated back into the Armed Forces as constabularies since their conduct borders---

(Loud consultations)

Mr. Rotino: On a point of order, Mr. Speaker, Sir. As much as we would like to follow the business of the House, there is a lot of loud consultations in the House.

Mr. Speaker: Order, Members! Order! Last week or last week, but one, I asked this House to give me directions on how to proceed. This is because the House cannot possibly allow its business to be transacted. Hon. Members will recall that there is a provision in the Standing Orders for the Speaker to interrupt business if there is disorder and adjourn the House temporarily. I have never thought of resorting to that Standing Order, but I may have to do it very soon.

I will just disrupt the business for the time being and go to my office back here so as to allow hon. Members to talk as much as they wish. When they are satisfied and having given me notice that they have had enough talk, then I will resume the Chair. I do not think that is a possibility we all look forward to.

I certainly, as your Speaker, do not relish that prospect. I know that in your hearts of hearts, you do not want it to happen. So, please, let us not have it happen. Let us listen to one another so that the business of this House can be transacted. Will you, please, keep quiet now?

The Assistant Minister, Office of the President (Mr. Tarus): Thank you, Mr. Speaker, Sir. With regard to part (b), I would like to say as follows:

Considering the gravity of the matter, I wish to state the concerned officers cannot be reinstated back into the Armed Forces as Constabulary Officers since their conduct bordered on dishonesty and lack of integrity, which is quite unacceptable in a disciplined force.

Mr. Mwandawiro: Mr. Speaker, Sir, you have just sworn in a new hon. Member of Parliament. In the Oath, there is a pledge that this House must defend the Constitution. That means that we should defend the Constitution as a right of every Kenyan and ensure that justice is done to all.

The officers concerned were honest soldiers who were actually invited to serve again in the Armed Forces. However, upon reaching Kahawa Barracks, for one reason or another, they were declared to be suspects by the CID. Later on, a letter from the CID cleared them that they were innocent and clean people. The answer actually lies in a letter written to the Armed Forces Commander by the CID. The letter's reference number is: CID/1D/1/FDU/---

Mr. Speaker: What is your question, Mr. Mghanga?

Mr. Mwandawiro: Mr. Speaker, Sir, I want to request the Assistant Minister to lay on the

Table the letter from the CID to the Armed Forces Commander. That is exactly what will help us in addressing this Question. Otherwise, the answer that he has given us will have no meaning. It will not help anybody and it is just aimed at defeating justice that we are seeking.

An hon. Member: Table it!

Mr. Mwandawiro: Mr. Speaker, Sir, I do not have the letter! I am requiring the Assistant Minister to demand that the letter dated 28th February, 2007, from the CID Headquarters and written to the Armed Forces Commander be brought to Parliament.

Mr. Speaker: Who told you that the letter exists?

Mr. Mwandawiro: Pardon me, Mr. Speaker, Sir?

Mr. Speaker: Mr. Assistant Minister, does that letter exist?

Mr. Tarus: Mr. Speaker, Sir, the information I have here is meant to assist the hon. Member understand that the recruitment and retention of officers within the Kenya Army must meet certain requirements. I have indicated in my answer that after investigations, it was found that the said officers had criminal entries in the Criminal Investigations Department, something which is not allowed. We cannot have those kind of people in the Armed Forces for the interest of this country. That is why they were discharged. We found out that the person who the letter is purporting to be saying--- The person who gave the recommendation was influenced by the same officers. We have since discharged that officer for that malpractice.

Mr. Speaker: Mr. Tarus, which officer?

Mr. Tarus: The Criminal Investigations Department (CID) officer who gave those people a clean record while they had criminal entries.

Mrs. Kilimo: Mr. Speaker, Sir, the Assistant Minister has said that those people were criminals. As an Assistant Minister in the Ministry of State for Administration and National Security, how could he allow criminals to be at large and roam our streets? Why did he not have them arrested if they were criminals and retain them in prisons?

Mr. Tarus: Mr. Speaker, Sir, if people have criminal entries, they have been punished. They have gone through the process of arrest in the past and discharged. The entries are not destroyed. They remain as records of the CID.

Mr. Speaker: Last question, Mr. Mwandawiro!

Mr. Mwandawiro: Mr. Speaker, Sir, this country is ruled by the rule of law. If the CID clear people and say: "These people are innocent of the charges that were preferred against them", why should we continue to condemn them? This House can provide justice to the people of Kenya!

Mr. Tarus: Mr. Speaker, Sir, before I respond to that, could I ask the hon. Member to declare his interest? Is one of the persons his brother or not?

Mr. Mwandawiro: On a point of order, Mr. Speaker, Sir. Unlike him, I have always defended the interests of all Kenyans, and I have suffered for it! I am not like you who is getting all these things!

(Laughter)

Mr. Speaker: What did the hon. Member say? I did not follow!

Mr. Tarus: On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to impute improper motives on me; that I never struggled for the liberation of Kenyans when we were together during our university days?

Capt. Nakitare: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Yes, what is it?

Capt. Nakitare: Mr. Speaker, Sir, you certainly heard----

(Loud consultations)

Mr. Speaker: Order, hon. Members! You are making it absolutely very difficult to run this House! I plead with you! It does not hurt to keep quiet! Please, do so!

Capt. Nakitare, what is your problem?

Capt. Nakitare: Mr. Speaker, Sir, the Assistant Minister should address this issue properly because those are soldiers---

Mr. Speaker: Order, Capt. Nakitare! That is not a point of order!

Capt. Nakitare: Mr. Speaker, Sir, is the Assistant Minister in order---

Mr. Speaker: Order, Capt. Nakitare! That is not a point of order! That is your view!

Capt. Nakitare: It is my point of order, Mr. Speaker, Sir.

Mr. Speaker: Your point of order is invalid!

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

Mr. Speaker: What is it?

Mr. Mwandawiro: Is it in order for the Assistant Minister to fail to answer my question? I had asked: If those people were cleared by the CID and given letters to that effect, why should we continue condemning the same people? How will they find justice?

Mr. Speaker: Mr. Mwandawiro, I do not know whether you heard the Assistant Minister right. If I heard him right, he said that the CID officer who wrote that letter did so in a manner that was not authorised or proper. As a result of that, that officer was dismissed.

Did you hear him say that?

Mr. Mwandawiro: No, Mr. Speaker, Sir.

Mr. Speaker: If you did not, now I tell you that is what he said!

Hon. Members, that marks the end of Question Time. The balance of the Questions are deferred until tomorrow, in that order!

Question No.258

LAND REGISTRAR FOR
WEST POKOT DISTRICT

(Question deferred)

Question No.282

IMPLEMENTATION OF REP IN
URIRI CONSTITUENCY

(Question deferred)

Question No.240

AMOUNT OF MONEY COLLECTED FROM
"NGURUMA TENA" PROMOTION

(Question deferred)

Question No.273

SUPPLY OF PIPED WATER
TO MARAGUA TOWNSHIP

(Question deferred)

Question No.100

AMOUNT OF KESSP MONEY
ALLOCATED TO TESO SCHOOLS

(Question deferred)

Mr. Speaker: Order, hon. Members! I think Mr. Angwenyi had seen me. He wants to seek a Ministerial Statement.

Proceed, Mr. Angwenyi!

POINT OF ORDER

ARREST OF CONTRACTORS AND
ENGINEERS ON ORDERS OF
GOVERNMENT SPOKESMAN

Mr. Angwenyi: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Roads and Public Works regarding an incident that occurred on Thursday, 17th May, 2007, when the Government Spokesman, Dr. Alfred Mutua, ordered the arrest of the Provincial Roads Engineer in the Coast Province, Eng. Ogege, and some contractors who had done some shoddy jobs in Mombasa.

I would like to know the following:-

(i) Whether the work was shoddy. If it was shoddy, whether it was supposed be inspected by the Government Spokesman.

(ii) What is the job description of the Government Spokesman?

(iii) Has the Ministry abrogated the mandate to inspect the quality of work on our roads such that the Office of the President has taken over?

If that has actually happened, I will ask the Government Spokesman to come and inspect a road which has been done poorly in Kitutu Chache Constituency!

(Applause)

Finally, I believe we have systems of governance in this country. We also have mandates that are given to various Ministries in this country. I want to know whether that system has collapsed and, therefore, I can expect to be arrested by the Speaker or somebody else in the country!

Mr. Speaker: Order, Mr. Angwenyi! Order!

Mr. Angwenyi: No! No! Not the Speaker! I mean by any Minister, the Government Spokesman or a Government officer.

Mr. Speaker: Mr. Angwenyi, are you referring to Dr. Mutua?

Mr. Angwenyi: Yes, Mr. Speaker, Sir. Dr. Mutua, the Government Spokesman. He was frog-marching people in Mombasa. I remember he did a similar thing a month ago in Nyeri. I am confused!

Mr. Speaker: Mr. Minister, what do you have to say?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Speaker, Sir, I am not quite clear whether I will be able to answer the long questions that have been raised. But let me say this:-

First, the contractors have a contract signed between them and the Government through the Ministry of Roads and Public Works. The Ministry of Roads and Public Works has got resident engineers. On the particular incident that is being mentioned, we are aware. We had already told the contractor who is still doing the work--- The work is not finished for us to blame him! A particular spot, which was considered by the resident engineer as 0.8 in size, needed to be repeated. The contractor was given specific days under the contract to correct that. Those days had not elapsed.

Mr. Speaker, Sir, quite frankly, the Ministerial Statement which is being sought should be given by the Office of the President. As the Minister in charge, when I saw the incident, I contacted the Permanent Secretary and the Chief Engineer and asked them: "Why has the Provincial Roads Engineer, Mr. Ogege, and the District Roads Engineer been arrested?" I also asked: "What is the mistake of the contractors?"

Incidentally, one of the contractors had nothing to do with that particular road. He was also taken there and marched to the Provincial Commissioner's office with *askaris*. Mr. Ogege was also arrested. To date, nobody has given me an answer as to why they were arrested. I am not, therefore, responsible and will not answer this question. The people who did it should be able to give an answer and that office has got a Minister.

(Applause)

There is no office in the Government which does not have a Minister. If there is a mistake committed by either the contractor or the engineer, I am prepared to answer it here. However, if something is done outside my portfolio, I cannot take responsibility. This has happened more than once. It has happened in Meru where the same officer arrested our own people. All that I would seek although it is not for this House is that if the Chief Engineer, Permanent Secretary, Provincial Engineer and, therefore, the Minister cannot do it, why do they not take it?

(Applause)

Mr. Speaker: Order, hon. Members! This is a very perplexing issue; absolutely perplexing! I think it needs some addressing whether or not a Minister or a civil servant, say a Permanent Secretary, can go round the country arresting people or whether that is the job of the Commissioner of Police. Is the Government Spokesman the Commissioner of Police? Mr Munya, what do you know?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, this is the first time I am hearing of this matter. We need time to investigate it, so that we can give a comprehensive reply.

Mr. Speaker: Order! I think the request is reasonable, but how long do you want? You can see it is a grave matter. Forget even about the public or even the House, but when you hear the Minister responsible for this job talk the way he does, and if it continues to happen and it may go

through all the 18 to 30 Ministries, and you [**Mr. Speaker**] may wish to have all the Ministers say: "Let them do what they wish", then I do not know what "they" refers to. You can see the gravity of the matter. Mr. Munya, could you do it on Thursday since it is an urgent matter? Will you do it?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, Thursday is okay.

Rev. Nyagudi: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Is it in relation to this issue?

Rev. Nyagudi: Yes, Mr. Speaker, Sir.

Mr. Speaker: No! We have to wait until Thursday.

Rev. Nyagudi: Mr. Speaker, Sir, but, in the meantime, why do you not give me audience because as the Assistant Minister said, why do we not have the Minister apologising to these contractors as we wait for Thursday?

Mr. Speaker: Which Minister? Order, hon. Members! I think hon. Members must recognise the value of patience. It does pay to have some patience. We have a given a very weighty issue to Mr. Munya. Right now as I stand here, I want to inform this House I would not be quite happy to be in his shoes on this particular issue. He has a very weighty responsibility, or at least, his office has. So, let us be patient until Thursday. For those who do not know, Thursday follows Wednesday and Wednesday is tomorrow. So, please, it is the day after tomorrow. Thanks.

(Laughter)

Dr. Kulundu!

Mr. Ogur: On a point of order, Mr. Speaker, Sir. I think this is the moment and the right time for the Office of the President to apologise to *Mzee* Nyachae directly now.

(Laughter)

Mr. Speaker: Proceed, Mr. Minister. Mr. Minister, are you issuing a Ministerial Statement?

The Minister for Labour and Human Resource Development (Dr. Kulundu): No, Mr. Speaker, Sir, I am giving a response.

Mr. Speaker: To?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Speaker, Sir, to the Bill that is on the Order Paper since you are the one who called me.

Mr. Speaker: Order! Just before I called Mr. Angwenyi, I saw you stand up and I thought that you had a Ministerial Statement to issue because that was the occasion. If you want to deal with the matters before the House which is Order No.7, then again I remind the hon. Members that patience pays. We have just one more second before we get there. We will get there in a second.

Next Order!

Mr. Arungah: On a point of order, Mr. Speaker, Sir. Last week, hon. Osundwa did ask a question regarding the appointment or non-swearing-in of certain judges. That question was deferred. We were told that the answer will be brought today. It is missing from the Order Paper. I seek your guidance on it.

Mr. Speaker: Yes, my guidance is the following: It was not the Question coming. It was for the Chair to give guidance to the House. I have just looked at that issue and I am not ready with it yet. In due course, I will.

Mr. Ojode: What do you mean?

(Laughter)

Mr. Speaker: I mean exactly that! Order! Is that Mr. Ojode again? Are you the one?

Mr. Ojode: No, Mr. Speaker, Sir. I am not the one!

Mr. Speaker: Who is it?

Mr. Ojode: Mr. Speaker, Sir, I do not know!

(Laughter)

Mr. Speaker: Next Order!

BILLS

Second Reading

THE LABOUR INSTITUTIONS BILL

*(The Minister for Labour
and Human Resource
Development on 17.5.2007)*

*(Resumption of Debate interrupted
on 17.5.2007)*

The Minister for Labour and Human Resource Development (Dr. Kulundu): Thank you very much, Mr. Speaker, Sir. This is my response to the remarks made by hon. Members on the Labour Institutions Bill.

Mr. Speaker: Order, hon. Members! I have just been informed that actually it was Mr. Ojode who was again talking out of tongues with the Chair. When asked whether he is the one, the hon. Member disowns himself. Mr. Ojode, you bear the title rightfully being honourable. Now, as an hon. Member, you must be truthful to the Chair, yourself and your colleagues. Please, do the honourable thing; admit what you have done. Do that!

Mr. Ojode: Mr. Speaker, Sir, it was not Ojode, but I do apologise, if you insist. It was not me. There is the HANSARD and you can refer to it.

(Laughter)

Mr. Speaker: Order, Members! Apologies are always accepted by the Chair; it is hereby accepted.

(Applause)

All right, let us proceed!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Thank you, Mr. Speaker, Sir. This is my response to the contributions made by hon. Members to the Labour Institutions Bill.

Mr. Speaker, Sir, I thank the hon. Members for the reception given to the Labour Institutions Bill and their constructive comments and criticisms, as well as proposed amendments. I am grateful to hon. Mungatana for seconding the Bill, and for his detailed analysis of the proposed labour institutions.

Mr. Speaker, Sir, the National Labour Board is envisaged to strengthen stakeholders' participation in policy formulation. Through dialogue over labour employment and social issues, assessing the labour market, the mandate of the Board, quality and relevance of its composition, will influence the Public Service Commission in the appointment of an officer at an appropriate level of expertise and remuneration to facilitate its proper functioning. It is envisaged that the Board will have a secretariat comprising officers with diverse expertise on labour matters and issues. I am encouraged by the support of Members on the establishment of the National and Subordinate Labour Courts.

Mr. Speaker, Sir, I have also taken note of the views expressed on Clause 16 of the Bill relating to assessors. I appreciate very pertinent observations made by hon. Members on issues relating to legal drafting. Certainly, the reference to "subordinate labour courts" is an error, and will be corrected in line with the provisions of Part IV of the Bill. This section will also be streamlined to reflect the titles of officers of the judiciary.

On the issues touching on members of the National Labour Court, it is anticipated that, ultimately, the current number of five judges in the court will be raised to eight. Each sitting judge of the court will be assisted by two assessors. On the basis of this structure, the court is envisaged to have 16 assessors.

Mr. Speaker, Sir, I take note of the emphasis on the need to ensure that the labour institutions and functional measures will be put in place to facilitate the full functioning of the institutions. The concerns raised on the rights and obligations of the worker are well noted. I assure the House that the Employment Bill, which has gone through the Second Reading in this House, adequately provides for issues on obligations of workers and employers under the contract of employment. I promise to delete the last clause which states that the enactment of this Bill will not occasion additional expenditure of public funds. As seen from the provisions of the Bill, there will be need for additional funds to enable the proposed institutions to operate.

Finally, I thank Members for their overwhelming support for the Labour Institutions Bill and request the House to pass it.

I beg to move.

(Question put and agreed to)

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

Second Reading

THE OCCUPATIONAL SAFETY
AND HEALTH BILL

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Speaker, Sir, I beg to move that the Occupational Safety and Health Bill be now read a Second Time.

This Bill makes provision for the safety and health of people who are legally at the place of

work, or who are within its vicinity, besides regular employers of that workplace. The principal object of this Bill is to repeal and replace the Factories and Other Places of Work Act, Cap.514. The Bill makes provision for the safety and health of workers in all workplaces in Kenya.

Mr. Speaker, Sir, Part I of the Bill provides for preliminary matters. It extends the application of the Bill to every workplace, including offices, institutions of learning, factories and plantations. It also establishes codes of practice for the youth at work places.

Mr. Speaker, Sir, Part II of the Bill specifies the general obligations placed on employers, employees, self-employed persons, designers and suppliers, in order to achieve a safe workplace.

Part III contains the administrative aspects of the Bill. It establishes the National Council for Occupational Safety and Health, which will replace the National Advisory Committee for Occupational Safety and Health. The Council will advise the Minister on occupational health-related deaths and injuries.

Part IV sets out the powers and duties of enforcement. It provides for workplace safety advisers, who will carry out safety and health audit of a workplace.

Part V empowers the Minister to exempt some classes of workplaces from registration, where it is specified that adequate arrangements are in place to protect employees.

Part VI sets out the obligations on the occupier of a workplace to plan and arrange the production processes, to ensure that the workplace is not crowded.

Part VII provides for the safe use of machinery. Part VIII provides for evacuation procedures, in the event of an emergency in the workplace.

Part IX deals with safe handling, storage and use of chemicals in the workplace.

Part X makes provision for basic welfare facilities at a workplace.

Part XI requires an employer to issue a permit for work in hazardous work processes, such as the repair of electrical energy installation, work in confined places, maintenance and repair of steam boilers.

Part XII provides for safety measures in building, which are put up at separate workplaces, safety in dock works, hoists or lifts and platforms erected over water.

Part XIII provides for penalties and legal proceedings against offences.

Part XIV empowers the Minister to make rules and regulations. It also establishes the Occupational Safety and Health Fund.

Mr. Speaker, Sir, the benefits of Occupational Safety and Health Bill are as follows: It replaces the current Factories and Other Places of Work Act, Cap.514. It also makes provision to secure the safety and health of workers in all work places in Kenya.

The Bill provides safety and health coverage to persons who are legally at a place of work, or within its vicinity, besides the regular employees.

The Bill also provides measures to ensure that workplace accidents and occupational diseases are minimised. It defines the roles---

*(Mr. Kamama consulted
while standing)*

Mr. Speaker: Order! Order! Hon. Kamama, you know that the Standing Orders say that if you are not transiting, you should sit down.

In the meantime, to be able to be shown that particular Standing Order, approach the Chair! Proceed!

*(Mr. Kamama approached
the Chair)*

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Speaker, Sir, the Bill provides safety and health coverage to persons who are legally at a place of work, or within its vicinity, besides the regular employees.

The Bill also provides measures to ensure that workplace accidents and occupational diseases are minimised. It defines the roles of various actors and stakeholders, and the interface between other law enforcement agents, whose mandate may touch on other workplaces or general environment.

The Bill prohibits the employment of children in hazardous workplaces. It protects workers in occupations which previously were not under the jurisdiction of the Factories and Other Places of Work Act.

It mainstreams relevant International Labour Organization (ILO) conventions on occupational safety and health. It also promotes safety and health in all workplaces, and encourages entrepreneurs to set achievable safety targets for their enterprises. It promotes reporting of workplace accidents, dangerous occurrences and cases of ill health, with a view to finding out their causes and prevention of similar occurrences in the future. This will reduce the man hours lost due to accidents and cases of ill health.

Finally, the Bill promotes education and training in the field of occupational safety and health in order to create a safe workplace culture.

Mr. Speaker, Sir, with those few remarks, I beg to move and ask the hon. Dr. Wekesa, the Minister for Science and Technology, to second the Bill.

Thank you.

(Dr. Kulundu handed over his spectacles to Dr. Wekesa)

Capt. Nakitare: On a point of order, Mr. Speaker, Sir. Did you see an exchange of eyeglasses between the two Ministers?

Mr. Speaker: What is wrong with that?

Capt. Nakitare: Do they have the same eye sight?

Mr. Speaker: Please, there is nothing wrong with that! You can even lend me yours if I can see through!

The Minister for Science and Technology (Dr. Wekesa): Mr. Speaker, Sir, I wish to second this Bill.

I want to commend the Minister for Labour and Human Resource Development for bringing it before this House. As we are aware, most of our Acts - including Cap.514 - were passed in this House close to 30 years ago. Indeed, many things have changed since those days. At the time of Independence, Kenya had a population of seven million. Today, we are close to 30 million. What it means is that, correspondingly, many of our factories have enlarged. The number of factories has gone up and there are more workers now in those factories. Therefore, there is need to update some of these Acts. The Minister has done right to bring this forward.

Mr. Speaker, Sir, also, with the technology that is now used in many factories in many of the undertakings, it calls for new measures to be put in place in order to protect our workers. The health and welfare of our workers is important because if we want to produce, we want healthy people. We want to safeguard our workers so that they are working in a proper environment. Therefore, this Bill is going to address some of the issues that have been a cause of many deaths.

You are aware that we have lost many Kenyans in poorly-constructed buildings; buildings that have collapsed and caused a lot of suffering to the bereaved. As I said, with the technology, we

now have many chemicals being used in various factories. For instance, in the agricultural and industrial sectors, there are many different chemicals that are being used.

Mr. Speaker, Sir, we have had reports of fires that are either caused by poor maintenance of buildings or poor inspection of those buildings. We have also have had deaths from this cause. This is not only an issue that has caused death only but even the employer has lost, not those lives alone but a lot of money because goods have gone up in smoke. Therefore, the Minister is bringing this Bill to ensure that the worker is protected from toxic chemicals, fire and collapsing buildings. There is also need for the industrial sector and farming community to ensure that the workers have proper attire. Many a time, we have been to factories where people are handling chemicals with their bare hands. Therefore, we need to make sure that they have proper attire. They should have masks, boots and aprons that actually protect the body from coming close to some of these harmful chemicals and also machinery. This will also address the issues of the equipment and machinery that is being used. If the machinery is not properly supervised, if industries are using old machinery, there is a danger for some of these to cause a lot of damage and even death.

This Bill also gives the Minister power to walk into a factory and close it down if he is satisfied, indeed, that proper measures have not been taken. Also, the Minister is now going to have a new authority where the people who are charged with making sure that the clauses of the Bill are adhered to, will make sure that they are qualified people. Education is very important. We expect that the inspectorate, in particular, will hire people who have been trained in safety and health measures.

Mr. Speaker, Sir, I want to congratulate the Minister for bringing this Bill. I hope that hon. Members are going to contribute positively.

With those few remarks, I beg to second.

(Question proposed)

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

Mr. Sungu: Thank you, Mr. Speaker, Sir.

Mr. Speaker: By the way, where is the Official Opposition Responder?

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

Then do it straightaway!

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

Mr. Speaker: Order, Mr. Sungu! I will come to you! Mr. Muturi has more ranking than you do!

Mr. Muturi: Thank you, Mr. Speaker, Sir. I thought that Mr. Sungu would speak before me because I just got the Bill. However, let me begin by saying that I support this Bill. I believe that it is yet another addition to our labour laws or the laws relating to the workplaces of Kenyans.

Like I have done in the last three such Bills that have been debated in the last two weeks, I have been supportive of the Minister. However, again, we go to the form. We do not know whether by the enactment of this Bill, additional expenses which may or may not be provided for will be occasioned. Will the enactment of this Bill occasion additional expenditure? If so, we need to get a statement from the Minister at the appropriate time. However, we just needed to point out to him that it is important that he indicates that for the House so that as we pass the law, we do not then

later come to find problems.

Mr. Speaker, Sir, going to the preliminary, Part I of the Bill, I do know that, what is described as class or description in relation to a workplace is said to include a "group of workplaces, described by reference to a locality". I would hope that this, even though I appreciate, in the way it is crafted, it means the definition is not exhaustive, but I would wish that we get such workers as drivers of buses, *matatus* and such like other vessels--- I hope that their workplace would be covered by reference to the locality. Locality here may have some interesting meaning in that a driver is not in any one fixed place. The fact that his workplace needs to be secured is important to be captured in that definition section. In some countries we have seen requirements that a driver of a bus or truck must undergo, after ever 12 months. It is mandatory that they must go for examination about their health. They must be examined to establish that they are still in good health and capable of controlling vehicles. In some of those countries, particularly in South Eastern Asia and some areas of the United States of America, that requirement is important because buses and other modes of transport are all fitted with air-conditioning devices. These devices, affect the health of people who handle those vehicles on a continuous basis.

Mr. Speaker, Sir, after every 12 months, it is mandatory that they go for a medical check-up to see that the air-conditioning has not affected their health so much as to make it impossible for them to have proper control of the vessels that they handle.

I think that in relation to this definition of locality, bus, truck drivers and so on, will be part of the requirements of this Bill, which says that the occupier or the employer will take certain actions to prevent or to ensure the safety of the employee. There will be provision specifically to take care of that.

[Mr. Speaker left the Chair]

*[Mr. Deputy Speaker took
the Chair the Chair]*

Mr. Deputy Speaker, Sir, in the case of our public transport system, it has always baffled me that we keep blaming the police, and yet, we have not quite found out whether the people who are engaged in handling our public transport vehicles are actually fit health-wise to handle those vehicles and whether the conditions of their health at all times, could not be a contributor to the numerous accidents that occur on our roads.

It is important that, as we debate this Bill, we actually extend the definition of the responsibilities. This is captured in Part II of this Bill; the duties of the employer or occupier. I believe that whoever is referred to as "occupier" that definition should extend to any such employer as the employer of a *matatu* or bus driver.

Mr. Deputy Speaker, Sir, like in the Employment Bill, which we have already discussed, I welcome the requirement for registration. Employers and occupiers, as defined here, are supposed to keep general registers. I only hope that those registers will be documents to which the Ministry and their staff will have regular recourse to, especially when giving instructions and giving inspection reports; so that a mere fact that there is requirement to keep a register is not taken by any employer or occupier, as the case maybe, as a mere requirement which is not regularly used. I would like to make a case about some of the provisions, not all of them, because I want to give time to my good brother and junior counsel, Mr. Mungatana to say a few other things. I will only cover a few of the parts in the beginning because I just began reading a few minutes ago.

It is important that, when we are making these provisions, we bear in mind that the documents that we are requiring that they be kept, will be kept as a matter of law. It must be a

statutory requirement, so that if a person does not keep such records, there will be recourse to the justice system. I find that the definition about who an owner is, a bit interesting. The occupier is defined as "the person or persons in actual occupation of a workplace, whether as the owner or not." I am not too sure that if we go by this definition, then those who are in the transport business will be captured by it. In light of my proposal that they too be required to keep those records on safety of their workers, there will be need to re-look at this definition so that it captures as many people as possible. The owner is defined as:-

"The person for the time being, receiving the rent or proceeds of premises whether on his own account, as an agent or trustee of another person."

To me, this definition is very narrow. The owner is not just a person receiving profits or rent. The owner must be the one owning. If I am the owner of a bus, I may not just be described as a person who is receiving profits. I think we need to extend it to include many more people so that all manner of employers are captured.

Mr. Deputy Speaker, Sir, I move on to Clause 3, Sub-clause (2) which provides that:-

"The purpose of this Act is to:-

- (a) secure the safety, health and welfare of premises at work; and,
- (b) protect persons other than persons at work against risks to safety and health, arising out of, or in connection with the activities of persons at work."

I will not pick any quarrel with that, especially with regard to the provision of safety, health and welfare of persons at work. It seems to protect even those who are not necessarily employed in a place of work.

Clause 4(1), states:-

"For the purposes of providing practical guidance with respect to any provisions of this Act and of safety and health regulations, the Director may approve and issue codes of practice as are in his opinion suitable for that purpose."

The only thing that I would like to add is that the Director may not act on his own volition. To avoid caprice setting in certain situations, the Director should be compelled to consult with the relevant discipline so that whatever safety regulations he may propose, have the acceptance of the particular discipline. Where he thinks that they may not serve the purpose, he can withdraw them.

Mr. Deputy Speaker, Sir, moving on to Part 2 of the Bill - General Duties, it is the most critical part of this Bill. Every occupier is required to ensure that there is safety, health and welfare at work of all persons working in his workplace.

Mr. Deputy Speaker, Sir, I only have a small issue to raise with regards to Clause 6. Sub-clause 3 says:-

"Every occupier shall carry out appropriate risk assessments in relation to the safety and health of persons employed and, on the basis of these results, adopt preventive and protective measures to ensure that under all conditions of their intended use, all chemicals, machinery, equipment, tools and processes under the control of the occupier are safe and without risk to health and comply with the requirements of safety and health provisions made in this Act."

I just wanted to add the following and I hope the Minister will take it into account. It is a very good obligation placed on the occupier. But experience has shown that, if the occupier is the one to make the assessment in relation to his own premises, without the report of such assessment being filed with a relevant Government body established under this Act or this law, we run the risk that when an accident occurs at a work place, or an employee working at a particular place suffers injury or harm to his health or person--- When a complaint is raised, that is when the owner or the occupier will rush to provide some assessment report. Then, they will argue that they had already provided that. I think there is a need to put a rider that such assessment report by the occupier must

be filed with the relevant department or arm of the Government. In that way, when an injury occurs to a worker, if there is a labour inspector or an officer appointed under the Workmen's Compensation Act, they go to the place. They carry the assessment report made by the occupier, which he had filed with the department. If somebody complains that he or she has been injured and he or she is an employee of the Kenya National Assembly, the Parliamentary Service Commission will have filed a report saying: "This is an assessment report of our area. We have provided this to our employee." The labour department or whatever office would have something. So, by the time they come to assess the complaints, it is not something that is been made after the accident has occurred. That is becoming wise after the fact! So, what I am proposing is that there should be a requirement that, that assessment, for purposes of safety and security of workers, be filed and kept so that workers can feel safe and secure. It should be displayed at the work place. Assuming that it is a factory, it must display those safety measures.

Indeed, it says, and let me read it once again:-

"---appropriate risk assessment in relation to the safety and health of persons employed---

That safety assessment and health of the persons working there should be displayed in a conspicuous place within the work place, and be filed with the department in a manner that I have already proposed, so that it is not changed after an accident has occurred.

Mr. Deputy Speaker, Sir, this duty, in my opinion, is a very serious and onerous one on the occupier to the extent that, in Clause 6, Sub-clause 6, I think we should provide for a specific penalty for failure to undertake that. That is because the way it is now, it reads:-

"It shall be an offence for a person on whom a duty is imposed under this section to fail to carry out such a duty."

That is a very good deterrent, but it is not good enough! That is because it will await the operation of Section 109, Sub-section (1), which provides for general penalties for violations of the entire Act, for which no specific penalty is provided. What I am saying is that, because of the importance of this duty imposed on the occupier, I am appealing to the Ministry to consider providing for a specific penalty so that, even as the occupier makes the assessment and files with the Ministry and displays there, they will know that the penalties for not doing that are A, B, C, D. We do not need to leave it for the general penalty clause, which is Clause 109 of the Bill. I hope the Ministry will consider that. I am appealing for something which is similar to Clause 8, Sub-clause 2, where we have provided a penalty for the offence. It reads:-

"An occupier who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months or to both."

That is what I am say about Clause 6, Sub-clause 6. We should have something specific for that particular offence, which is not general to the other Clauses.

Mr. Deputy Speaker, Sir, with regard to Clause 9, I find that a welcome provision. It reads:-

"Every occupier shall establish a safety and health committee at the work place in accordance with regulations prescribed by the Minister if-

(a) there are twenty or more persons employed at the work place---

Those are the kind of new provisions in our laws that we want to encourage. I think it is good. But I think the Ministry will look at the merits or demerits of providing for the composition of that Committee. I think the Committee should comprise both the occupier's representative and the worker's representative. It should go ahead and provide that nothing done by an employee, who is a member of such a committee, in furtherance of the objects of that section, shall be held against him or her by the occupier. I think we need to get something like that. When workers in a place are 20 and above, they need to feel that they are involved in the way their conditions of work are

formulated. In Sub-clause 2, I seem to pick an issue with a small thing.

"The Minister may make regulations to provide for the organisation, functions and activities of the safety and health committees, including the election of safety representatives, their rights and duties, and for the training of the members of the safety and health committees and safety and health representatives."

I think that is the kind of composition I was referring to. But since we are making it merely permissive, what happens if the Minister does not make those regulations? It means, therefore, that a work place, where the Minister has not made any regulations, can remain hazardous to the workers. I think we should provide that, in all situations, where there are 20 or more employees, the Minister shall make regulations to provide for the organisation, functions and activities of the safety and health committees.

We are looking at the safety of workers in this country. I have seen recent trends where even when we quote the figure of 20, some employers--- I am no racist. However, it is unfortunate that this trend is mainly traceable to the caucasian race. They have developed very interesting methods of ensuring that they continue to exploit workers in this country.

Mr. Speaker, Sir, in some instances, they have devised methods whereby they give you work for five days and then you are told the work is finished. The next five days you have no work and they tell you that they may recruit after about one week. After one week, you will be employed for another five or seven days. Again, you are terminated. I do not know what we will do. I am saying this because I have seen it, particularly in road construction companies. They do this because they want to avoid paying certain dues.

Mr. Deputy Speaker, Sir, I hope that keeping of records will not be defeated by that kind of practice. In the end, it makes absolute nonsense of the whole concept of employment.

Mr. Deputy Speaker, Sir, I find Clause 12 welcome. I must commend the Ministry for the provisions of Clause 11 too. It is a very good clause. Clause 11(1) says:-

"The occupier of a workplace shall cause a thorough safety and health audit of his workplace to be carried out at least once in every period of 12 months by a safety and health advisor, who shall issue a report of such an audit containing the prescribed particulars to the occupier on payment of a prescribed fee and shall send a copy of the report to the Director"

I think this Clause is very good. However, again, if you remember what I said when talking about drivers; the period of 12 months becomes irrelevant. I believe that this can be carried by omnibus general penalty clause. A person who contravenes any provisions of this Act shall be liable to pay a fine of, upon conviction, Kshs100,000 or imprisonment for a term of three months. I will leave it to the Ministry to see the wisdom of leaving it as a general penalty clause as opposed to providing specifically for it.

Mr. Deputy Speaker, Sir, I have a comment on Clause 12. It says:-

"Every self employed person shall:-

(a) take all necessary precautions to ensure his own safety and health and that of any other person in his work place or within the environs of his work place".

What does it provide for failure to comply with that?

"A self employed person who contravenes the provision of this section, commits an offence"

So, the penalty is not prescribed. I was just thinking loudly about this clause. How about if a self employed person fails to take such precautions to ensure his own safety and health and as a consequence of that, death results? Will he have committed a crime? The clause says:-

"A self employed person who contravenes the provision of this section commits an offence."

If he or she will have died, what becomes of him or her? I think we should go ahead and say, "he commits an offence if, as a consequence, injury does not arise upon him that results into his death." If he is dead, whether he has committed a crime or not, he will be punished by his maker and not ordinary mortals like ourselves.

Mr. Deputy Speaker, Sir, I will move on to Part III on Administration, page 440, Clause 28. This looks to me like the council will be the size of the Kenyan Parliament today. The council is described as:-

"There shall be established a National Council for Occupational Safety and Health."

Who comprises it?

"The Council shall consist of a Chairman and members specified in Subsection II which shall be appointed by the Minister by a notice in the gazette. The members of the Councils shall be:-

(a) One representative from each of the following Ministries:-

- (i) health;
- (ii) agriculture;
- (iii) livestock development;
- (iv) industry;
- (v) water development;
- (vi) local authorities; and,
- (vii) education;

(b) one representative from each of the following organisations and Government departments:

- (i) the Government chemist;
- (ii) the Kenya Bureau of Standards;
- (iii) the Central Bureau of Statistics;
- (iv) the commissioner of Insurance;
- (v) the Association of Kenya Insurers;
- (vi) the public universities;
- (vii) the National Environmental Management Authority;
- (viii) the National Council for Science and Technology---

Mr. Deputy Speaker, Sir, these are 11 members and the others were seven members. Those are 18 persons plus the Chairman.

"three persons with the relevant qualification and experience in occupational safety and health who shall not be public officers".

I do not know! How will the Minister determine a representative of the public universities? I imagine that, at some point, there will be so many public universities in this country. Will it be right for the Minister to just pick one person to represent them? How will he or she be chosen and, or, nominated? That gives us some food for thought. I think we need to guide the Minister in the manner that he would appoint that representative. The others are well specified and I think it is clear.

Mr. Deputy Speaker, Sir, we should also give the Minister some latitude to co-opt such "other persons of high moral integrity as will in the opinion of the Minister, help in the furtherance of the work of the Council." I think this is important. The Minister should be able to get a few more people from outside the Government to help in the running, or even adding value to the work of the council.

Generally, as I said earlier, I welcome this Bill and wholly support it. I hope that when it gets to the Committee Stage, we will see some amendments. Some will go to address the issue of typographical errors.

We are tired of having to point this out. We have just pointed out that there is no clause--- As we always say, the enactment of this Bill will occasion expenditure of public resources, or will not occasion any additional expenditure of public resources. It is always good to provide for it. So, I hope that when we get to the Committee Stage, because this is the fourth of these Bills which have come here for debate without the benefit of a report from the departmental Committee concerned, indicating what the Members of that Committee may have thought of the Bill - although I believe that whatever the Departmental Committee may have found - this is a welcome Bill. It updates our law, and is in keeping with modern trends.

With those few remarks, I beg to support.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Mungatana): Mr. Deputy Speaker, Sir, I thank you for giving me an opportunity to also contribute to the debate on the Occupational Safety and Health Bill, 2007. I want to state from the outset that I support this Bill. I have said before that the effort by the Minister to bring our labour laws to the 21st Century must be supported by all.

Mr. Deputy Speaker, Sir, when we talk about occupational health and safety, we are talking about a cross-disciplinary area whose main concern, really, is the health, safety and protection of workers. Looking at the reasons as to why we should have protection of workers, first of all, is because of our own morals. It is important that the worker, who is engaged in productive activities, feels safe - and must be safe - at his work environment. Not only the worker but also the whole environment associated with the place at which he is engaged in productive work must be safe.

The other important reason is economic. We want to have safe, clean and good environment for workers. because economically speaking, we need to have good workers continuing to produce in the economy. We also want to avoid costs in terms of treatment. Employers also would want to cut their costs and expenses in terms of paying for damages when accidents happen. So, this is a kind of legislation which should be supported by all, in terms of Government, employer associations as well as employed people. We need this kind of legislation.

Mr. Deputy Speaker, Sir, what I find very good about this piece of legislation is that it has embraced the modern type of approach towards occupational, health and safety for the worker by emphasising more the protection of the worker - preventing the possible accident instead of, simply, setting out rules to be followed. The Bill tries to focus on the prevention of possible accidents that may happen. I want to congratulate the Minister for making special efforts to focus the entire Bill towards avoiding the possible happening of an accident.

For instance, under Clause 11, there is the requirement that we must have health and safety audits. This makes it mandatory for the people who are involved in industry to make sure that they look at anything that might, possibly, happen and file a report on it, so that it can be prevented before it happens. I think the Minister needs to be congratulated for that provision.

The Minister also went ahead, under Clause 9, to make a requirement that there be committees of health and safety for workers in every place where there is employment of more than 20 people. This is a wonderful provision, because, again, it goes to the same modern concept of trying to prevent accidents from happening. If people exist within an establishment, then we shall prevent the happening of any such accident, and we will not be treating what has already taken place.

Mr. Deputy Speaker, Sir, having said all these nice things, we can only add a few things to the Bill to make it a better law for the Minister and the country as a whole. Very quickly, because this is not a contentious Bill, starting from the very Clause 4, the Minister has proposed that the safety and health regulations be approved by the director. The director is supposed to approve and issue codes of practices which are, in his opinion, suitable for that purpose.

I believe that we can improve this Clause by requiring that there be consensus in the

industry affected. The director should not have too much powers. What might happen is that he might set up very high standards - and nobody will question him - or very low standards and, therefore, our workers will be exposed to injury and unsafe working environment. So, I propose that the director should not have all the powers. There should be a provision for him to consult and build consensus within industries affected.

For instance, if we are talking about the standards required in the marine industry, the director, who will be seated in Nairobi, cannot set up the standards of marine environment, determine how workers should dress and what protective gear will be required. What about those who are involved in research, especially research that has something to do with technical things, which might even expose people to hazardous waste? There must be a provision to make it mandatory that the director consults with the industries concerned before coming up with the codes he intends to put in place.

Mr. Deputy Speaker, Sir, again, Clause 9 is very good, but it only talks about the Minister setting up committees at the work places. It says that the only requirement for setting up such a committee at any workplace is 20 people or more. It would have been wonderful if guidelines for such committees could also be provided for, so that the Minister can set up some basic rules for such committees, so that functioning committees in particular industries can have general guidelines within which to operate, which might be useful to all of us.

Mr. Deputy Speaker, Sir, there is the proposed Council that is set up under Clause 28; that is where I go again. The membership of this Council that is supposed to advise the Minister is too Government-heavy; it is top-heavy. The functions of this Health Occupation Council that is being set up are seriously fundamental to the welfare of workers. If you look at the provisions of Clause 28, they set out in detail what they are supposed to do. This cannot be left just to Government officers. If you look at the membership of that Council:-

"one representative from each of the following ministries-

(i) health;

(ii) agriculture---

You know, all these are Ministries. It sounds like the Government is coming to one place again without the benefit of expertise from outside.

So, Mr. Deputy Speaker, Sir, I think we could improve this particular Clause, Clause 28, by providing for experts to be brought in, who will advise the Minister properly and will be part and parcel of this membership. So, even if it is increased to something like five more, these are experts in the field of safety for workers; they should be included and this will make this law a better law.

Mr. Deputy Speaker, Sir, we could also improve on the proposed Clause 26, which provides for the appointment of the occupational safety and health officers. These are the people who are given a lot of powers, and if you look at Clause 32, they have powers to enter into industries, order the industry to be closed or whatever work you are doing stopped. They have powers to say that what you are producing is dangerous and hazardous to workers and, therefore, they can order the destruction of whatever you are involved in producing. So, these are people with immense powers! The only qualification that is being put in this law under Clause 26 is the qualification that they will be gazetted. Gazettement! This is not a good law! We must set qualifications for occupational safety and health officers. There must be proper qualifications set up in law so that we know the person who is going to exercise so much power under Clause 32 will be a person who is properly qualified; a person in whom we have confidence, to protect and take care of workers.

Mr. Deputy Speaker, Sir, there is one more issue that the draftsmen of this law need to look into, and I will give a quick example of Clause 36. You find a very, very long and circuitous kind of drafting that is there; one sentence that takes a whole quarter page. Surely, the drafters can

improve! Create more sections if it is necessary so that the law is clear and when people go to court, they are able to quickly understand what their duties are and how this law is supposed to be applied.

There is one point that I think is a very good point and I need to mention it here; to congratulate the Minister for thinking about it. Clause 40 talks of the protection of the person who makes a complaint to the officer in charge of occupational safety and health. Many workers out there work under horrible conditions, and many times, they are afraid to say so, because if they do, they lose their jobs! When we have a provision like Clause 40 that protects workers who are able to talk, and when the occupational safety and health officer comes, he is not under any duty to disclose where he got that information from. I think this is something that is wonderful and we should congratulate the Minister for it.

I also want to congratulate the Minister for the establishment of the fund that will be for occupational safety and health. That this law is making a provision under Clause 126 that we will have to be setting aside money which will be utilised for purposes of improving the occupational safety and health of our workers at their workplace. This is wonderful and I want to congratulate the Minister because it will provide for proper research of health standards and codes; it will provide for proper training of staff that will be employed in this industry; and, it will provide for future development in this area. This is one of those provisions that we really need to thank the Minister for.

Mr. Deputy Speaker, Sir, in sitting down, I just want to say that, I am very happy that, general health standards have been set from Clause 47 all the way to Clause 54; standards on cleanliness, overcrowding, ventilation and everything that concerns what we would want to see happening to workers. But the one thing that I would like to urge the Minister to also think of is; there is no clear provision for workers who are suffering from various physical disabilities. We need to have this somehow put in. In a manner, I was proposing that the Minister must have some leeway which will give him power to come up with rules and procedures--- You know, wide powers that will enable him to make provisions where disabled people might be working. That should be able to take care generally of all those workers who are disabled and working in various industries.

Mr. Deputy Speaker, Sir, there is the final thing of the doctor notification. Under Clause 22(I), there is the provision that says that if a doctor finds that there is some industrial disease, he is supposed to report this matter. He is supposed to give notification if he suspects it is one of the scheduled industrial diseases under Schedule Four. But we know that our doctors are very busy people and we do not have the required doctor-to-patient ratio. We know that they may not take this issue as seriously as they should. In the manner in which this Clause proposes, they may not take it as seriously as we would want them to or as the intention of this legislation is targeting.

So I would want the Medical Practitioners and Dentists Board to be mentioned in one of the sub-clauses to provide that if the doctor in question fails or negligently fails, he should be subject to disciplinary action by the Medical Practitioners and Dentists Board. This will make the doctors to fear more than the provisions that we have put here to deal with doctors who fail to give us what we want them to do; which is to notify us when there is an industrial disease which might spread, not only to affect workers, but the entire environment. So, I propose that, under Clause 22, we should add a provision that should bring the doctor who is negligently failing to register a possible industrial disease to be subject to the discipline of the Medical Practitioners and Dentists Board.

Otherwise, Mr. Deputy Speaker, Sir, I want to say again that this is a Bill that is bringing us from the old dispensation of labour laws to the new dispensation of labour laws. It brings our country in keeping with the International Labour Organization (ILO) standards as far as workers' safety is concerned and I would urge the House, of course, with all the necessary amendments, to

support this Bill and bring us to another era altogether.

I thank you, Mr. Deputy Speaker, Sir.

I beg to support.

Mr. Boit: Mr. Deputy Speaker, Sir, I stand here to strongly support this Bill. I am very pleased, indeed, to announce that I have been associated with the occupational safety and health issues half of my life when I was teaching in the Kenya Medical Training College (KMTC). Therefore, I am very much biased and in love with this Occupational Safety and Health Bill. I am also very much interested in it.

Mr. Deputy Speaker, Sir, the House should be happy to note that the purpose and essence of this Bill is to actually update the old one which has been in existence, particularly with regard to compensation of workers who have been injured in the factories. The old regulations and standards did not really cater for that, but this Bill has catered for that. There are so many things that happen in the factories and people have been suffering for too long. I think that this country--- I want to congratulate the Minister and his very strong and educated staff for having brought this Bill at this time.

Mr. Deputy Speaker, Sir, with regard to some of the Acts that we are trying to repeal, honestly speaking, if you visit some of our factories and see how workers suffer, you will actually wonder how we have, all this time, allowed this Bill to take too long to be prepared. I think we should have prepared this Bill a long time ago.

We are talking about the occupational safety and health of human beings. These things surround the health of the workers. The Bill talks about the environment of every factory. If you take Nairobi alone, I think it has over 100,000 factories. How many people are working in those factories? It is nearly a quarter of all the people working in Nairobi! If you go to other parts of this country where factories abound, there are so many workers and the factories occupy so many people and, therefore, it is our concern. In fact, that is why this Bill talks of a Council.

Mr. Deputy Speaker, Sir, the previous speaker talked about there being so many people in the Government. Honestly speaking, where else can we get experts apart from the Government? The Government has spent a lot of money training officers and so on. If you go to the Ministry of Health---

Mr. Deputy Speaker, Sir, if you look at Clause 28, really, I could not have gone anywhere. All the experts are in the Ministry of Health, Ministry of Agriculture, Ministry of Livestock and Fisheries Development, Ministry of Trade and Industry and all other Ministries and Government Departments such as the Kenya Bureau of Standards (KEBS) and the Central Bureau of Statistics. That is a very fertile ground from which we can get experts for this Council.

I would like to congratulate the Minister for having included all those people. If we have to add other people, I do not really mind, but I think too many cooks will spoil the soup.

Mr. Deputy Speaker Sir, the Occupational Safety and Health Bill talks about caring for people in the factories who may suffer from diseases or as a result of poor conditions in the factories. There are some conditions in factories that make workers develop diseases. It is sometimes even difficult for doctors or anybody to tell that so-and-so is suffering from a chest problem and so on. Sometimes they do not even talk about it. Later on, when the worker has retired, that is when he or she becomes sick and it becomes difficult to compensate the worker.

Mr. Deputy Speaker, Sir, this is the kind of law that we would like to pass in this House so that we can capture what we can do about people who are not discovered to be sick when they are working. Without this kind of law, it will be very difficult to identify them. However, now, if somebody's hand got cut or if one contracted tuberculosis or a problem to do with his breathing system or hearing--- That is why we call it occupational. This Bill is meant to take care of the ears of workers. For example, there must be optimum sound in the factories, or with regard to

protecting the workers' eyes, they must put on goggles. For instance, when we visited a fish factory in Mombasa, we found workers working in the cold rooms. It was very cold and if you looked at their hands and feet, some of them had developed some scales. Those guys did not bother! They are so used to it that they did not realise that they had actually lost their skin sensitivity. They had all the rights to take that factory to court. I wish to challenge the inspectors and the management of that factory--- Why have they allowed such things to happen?

Mr. Deputy Speaker, Sir, we need to have inspectors visiting these factories regularly so that they can discover the occupational problems that occur to workers. You have heard and it is, in fact, mentioned in this Bill, the overcrowding and size of working places. The Bill also talks about the optimum temperatures in a factory, that is, whether they are too cold or too hot. All these things are taken care of in this Bill and ours is only to approve. We have gone through this Bill very carefully.

I am privileged to have got this information because I am a Member of the Departmental Committee on Health, Housing, Labour and Social Welfare. We have gone through this Bill; we have also been educated on it. Mine is just to wish that all the hon. Members in this House be educated and made aware about the precautions mentioned in this Bill. We really require that information. I wish the whole House would go into a conference that would address these issues in depth. This is because it is very interesting and it involves a lot of things. The health education required for the understanding of this Bill is very interesting.

Mr. Deputy Speaker, Sir, somebody talked about penalties. I know that the penalties given in this Bill are friendly. We are trying to encourage people to do their businesses comfortably. We are not going to set penalties that will scare them from their businesses. We have health educators and officers from the Ministry who should be giving lectures and educating the management and workers. They should educate them on the necessary precautions that they need to take so that they do not get sicknesses or face hazards that they could easily encounter in the course of their working time. I think that it is the Ministries concerned--- I was a Public Health Officer and I visited many factories during my time in the Ministry. I gave free health education to factory workers. We have here in Nairobi, for example, the Ministry of Local Government and they have public health officers. They have all the necessary information that they can give to factories even before they are licensed. These factories must meet some standards which are mentioned here. Therefore, if somebody has constructed a building without following the law, that is carelessness on the part of the Government. However, the provisions are given so that if somebody wants to open a factory of any kind, then he must follow the laid down regulations. Before the factories are licensed, they should have met those requirements. So, one wonders how a building, like the one we visited in the Industrial Area recently, was licensed where some unscrupulous businessman locked up people in the factory and when fire broke out, people could not escape. They all perished because of the fire. That was carelessness. How do you lock people inside the factory throughout the night? This guy goes to sleep in his house and locks up people in the factory! They cannot escape in case fire breaks out or there is an accident! I believe this is carelessness on the part of those concerned officers from the Ministry of Health, the Ministry of Local Government or even the factory inspectors who should have discovered the problem beforehand.

Mr. Deputy Speaker, Sir, I think we need to support this Bill very strongly, indeed. With those few remarks, as I said, I am privileged to have a lot of information on this Bill because I have discussed these matters in the Departmental Committee on Health, Housing, Labour and Social Welfare, I beg to strongly support this Bill.

The Assistant Minister for Information and Communications (Mr. Wamwere): Asante sana, Bw. Naibu Spika, kwa kunipa fursa hii ili nichangie machache kuhusu Mswada huu ambao utasimamia usalama pamoja na afya ya wafanyakazi. Najua swala la njaa halijatiliwa maanani

katika Mswada huu. Lakini naamini kwamba shibe au njaa ya wafanyakazi ni swala muhimu sana kuhusu afya yao. Nasema hivyo kwa sababu utakuta wafanyakazi wengi ambao wamefanya kazi hata miaka kumi bila kulipwa mishahara yao. Ukikutana na wafanyakazi hao, ni watu wa kuombaomba. Wanaomba chakula cha msaada. Wanafanya hivyo kwa sababu hawalipwi mishahara yao. Utawezaje kuongea juu ya afya ya mfanyakazi ambaye anashinda kazini na ifikapo mwisho wa mwezi, mwajiri wake hamlipi mishahara? Atahifadhi afya yake namna gani? Itawezekanaje?

Nikisema hivyo, nafikiria zaidi juu ya wafanyakazi katika mashamba ya makonge katika Wilaya ya Nakuru na sehemu za Pwani. Katika mashamba ya Banita, Majani Mingi, Alfega, Wakamundu na mengine mengi, Waziri ana habari ya kwamba wafanyakazi hao wanawadai waajiri wao Kshs150 milioni. Pesa hizo hazijalipwa kwa zaidi ya miaka kumi. Tumeongea na Waziri juu ya swala hilo mara nyingi. Nimemwomba na kumpigia magoti afanye kila kitu kusuluhisha swala hilo. Lakini kila mara, ni kama anasahau. Sasa, tunampatia nguvu zaidi za kuweza kuitisha mishahara hiyo. Sijui kama atazitumia nguvu hizo au atakuwa mlegevu tena. Ukweli wa mambo ni kwamba, ikiwa Serikali hii itamaliza kipindi chake na iondoke kabla ya wafanyakazi hao kulipwa mishahara yao, sijui tutapata wapi kura. Bw. Waziri, kura hazitapatikana! Wafanyakazi hao wana uchungu mwingi. Siyo eti wanasingizia. Wanasema ukweli! Hawajalipwa mishahara yao! Sasa wanadai Kshs150 milioni. Mzungu na Mgiriki wameruhusiwa kukaa na pesa hizo kwa miaka kumi.

Utashangaa ya kwamba miaka mitatu iliyopita, Mhe. Raisi mwenyewe aliamrisha wafanyakazi hao wawe wakilipwa mishahara yao. Miaka mitatu baadaye, hakuna kitu kimefanyika. Tunashindwa ikiwa kuna Wizara au sheria za kumlinda mfanyakazi au hakuna.

Ikiwa Wizara haiwezi kumtetea mfanyakazi, atatetewa na nani mwingine? Vyama vya wafanyakazi viko. Ijapokuwa tunamskia Bw. Atwoli akiwaka moto, ameshindwa kuwasaidia wafanyakazi wapate mishahara yao. Kwa hivyo, hatuwezi kusimama hapa kuongea juu ya afya na usalama wa wafanyakazi na tunajua kuna wafanyakazi ambao wamenyimwa mishahara yao na hatufanyi chochote.

Bw. Naibu Spika, swala hili linagusia heshima ya Mhe. Rais. Ikiwa aliamuru mishahara hiyo ilipwe, sioni ni nani anaweza kukaidi amri hiyo. Ikiwa kuna mtu amekaidi amri ya Mhe. Rais, mtu anayestahili kumtetea Mhe. Rais ni Waziri. Waziri anatakiwa kusimama aseme: "Mhe. Rais aliamurisha mishahara ilipwe! Nataka ilipwe mara moja!" Ikiwa watu hawawezi kuamini ya kwamba Mhe. Rais akisema jambo litafanyika, wataamini nani mwingine mwenye uwezo?

Mr. Osundwa: On a point of order, Mr. Deputy Speaker, Sir. Our Standing Orders rule out irrelevancies. This Bill talks about occupational safety and not the workers' wages.

Could the Assistant Minister come back on course?

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Spika, labda Bw. Osundwa hakuelewa ni kwa nini naongea juu ya mishahara. Naongea hivyo kwa sababu ikiwa mfanyakazi halipwi mishahara wake, hawezi kuhifadhi afya yake. Atahifadhi afya yake namna gani? Afya ya mtu inahitaji chakula!

Mr. Deputy Speaker: Bw. Wamwere, nakubaliana na wewe.

Endelea!

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Spika, jambo lingine ni kwamba, wafanyakazi katika mashamba ya makonge wanafanya kazi hatari. Wanashinda katika maji ya makonge katika karakana ambazo zinatengeneza majani ya makonge. Maji hayo yamejaa sumu. Wafanyakazi wanalazimika kuingia katika maji hayo bila viatu na mipira ya mikono. Bw. Boit alisema ya kwamba wafanyakazi wanaokata mikonge, mikono yao imepindika inaka kama hii--- Huwezi kuamini! Mtu hawezi kukunjua vidole vyake vikakunjuka kwa sababu amevikunja miaka nenda, miaka rudi, mpaka maumbile ya mkono wake

yamebadilika. Hakuna fidia wanayolipwa. Hata mishahara wananyimwa. Unashindwa hao tunaoambiwa ni wakaguzi wa wafanyakazi wanafanya kazi gani? Hawazunguki katika karakana hizo kuona hali ya hatari inayowakumba wafanyakazi wakairekebisha. Kazi yao ni kuketi ofisini tuu! Zamani walikuwa wanavaa mavasi rasmi. Siku hizi hawana sare! Wanakaa tu kama--- Sitaki kusema kama wahuni! Wanakaa kama raia! Zamani, walikuwa na sare zao ambazo ziliwapa nguvu ya kufanya kazi. Sasa, wanakaa hivi hivi! Unaweza ukasema, bila uoga wa jambo hili kukanushwa ya kwamba, wakaguzi wa wafanyakazi hawafanyi kazi! Katika hii sheria, lazima tuone vile tutailazimisha idara ya wakaguzi wa wafanyakazi ifanye kazi yake, au iwaachie watu wengine ambao wako tayari zaidi kufanya kazi hiyo.

Bw. Naibu Spika, kwa nini matajiri wanakaa kama miungu? Kwa nini hakuna wa kuwaambia: "Fanyeni hiki?" Ni kwa nini tunawafanya waajiri wakae kama miungu? Ni kwa sababu wana ngozi nyeupe, pesa nyingi au ni kwa sababu tunawaogopa? Hili ni jambo la kutisha. Wafanyakazi wanakaa kama watumwa. Hali yao ni ya kitumwa kabisa.

Sitaki kusema ya kwamba namtolea yeyote changa moto, lakini ukitembelea mashamba yanayokuza maua katika sehemu za Naivasha, utashangazwa na namna wafanyakazi wetu wanavyowekwa katika hali mbaya. Ukiangalia uso wa mfanyakazi ambaye analipwa mishahara na uulinganishe uso huo na mtu ambaye anangoja mlangoni kuajiriwa kazi katika shamba hilo, utakuta ya kwamba uso wa anayengoja kuajiriwa kazi una afya zaidi kuliko aliyeajiriwa. Sura ya aliyeajiriwa imechunjuka na kukaa vibaya kwa sababu ya kemikali ambazo wanatumia. Wanashinda wakinusa kemikali hizo na hawapewi chakula wanachofaa kupewa - kwa mfano, maziwa. Pia, hawalishwi vizuri. Wakiugua, hakuna matibabu. Unashindwa ni kwa nini Waziri hajachukua jukumu la kutembelea mashamba hayo na kutazama vile wafanyakazi wanavyokaa, na kutafuta suluhisho la matatizo yao. Mtu anayefanya kazi anastahili kuonekana kama mtu anayekula vizuri. Mtu hawezi kuwa anafanya kazi na sura yake inazidi kuwa mbaya. Sura yake inachunjuka mpaka unadhani amekatakwatwa uso au amekwaruzwa uso na kitu fulani.

Ni lazima Waziri aelewe ya kwamba haitoishi kumpatia nguvu za kisheria, ikiwa hatakuwa tayari kutekeleza sheria hii. Mpaka sasa, tunaweza kusema ya kwamba zile sheria ambazo tumekuwa nazo, hakuzifanyisha kazi. Swali ni: Atatekeleza sheria hii au ataendelea kulala? Nasema "kulala" kwa sababu mambo hayo hayana msuluhishi. Hakuna mtu mwingine ambaye anaweza kufanya kazi ya Waziri! Kazi aliyopewa ni yeye tu pekee anayeweza kuifanya. Lazima aamke na aamke na Wizara yake, atermke kule kunapofanyiwa kazi na awapatie wafanyakazi wetu ulinzi. Wanastahili ulinzi. Ni haki yao!

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Mr. Koigi Wamwere to suggest that we have been asleep when, in fact, it is the law that empowers us to punish the flower growers and so forth? There was no such law. Now, we have made a provision in these new Bills to recover money for things like what he is talking about.

Mr. Deputy Speaker: Mr. Minister, that was a point of information. You simply informed the hon. Member.

Mr. Raila: On a point of order, Mr. Deputy Speaker, Sir. The speaker on the Floor is an Assistant Minister in the Government. He is talking as an ordinary Backbencher whereas he is part of the Frontbench which has brought this Bill here. Is it not a shame and a contradiction that in this Government the left hand does not know what the right hand is doing?

Mr. Deputy Speaker: No, I think the hon. Member is entitled to speak his mind since he represents a constituency. Whether he is contradicting the doctrine of collective responsibility, it is up to him. The Chair will not intervene.

Perhaps, I just want to inform the Minister that since he will have an opportunity to reply towards the end of the Bill, he could respond to some of the points raised by Mr. Wamwere when

time comes.

But for now, Mr. Wamwere, you have the Floor.

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Spika, ni ajabu ya kwamba mheshimiwa anayedai ninafanya upinzani nikiwa Serikalini, yeye alipokuwa Serikalini alikuwa mpinzani mkubwa kuliko mimi.

(Laughter)

Bw. Naibu Spika, lakini jambo muhimu ni kwamba Serikali dhabiti haiogopi kukosolewa. Ninaiunga mkono Serikali hii kwa sababu ya uhuru wa kusema. Ninaweza kuikosoa bila ya kutimuliwa. Kama ingekuwa tofauti, mheshimiwa Mbunge angesema ya kwamba hii ni Serikali ya kidikteta. Tunajua ya kwamba kuna wanaokalia viti vya mbele ambao wana maoni tofauti, lakini hawawezi kuyaeleza kwa sababu wanaogopa kutimuliwa. Sasa hakuna uoga huo. Hili ni jambo la kusifiwa wala si la kukosolewa. Kwa hivyo, ninachosema ni kwamba---

Mr. Deputy Speaker: Bw. Wamwere, unaendelea kukaribisha maoni tofauti kutoka kwa waheshimiwa Wabunge.

Mr. Raila: Jambo la nidhamu, Bw. Naibu Spika. Sasa hatujui Serikali ni ya akina nani na wapinzani wake ni nani kwa sababu Mhe. Wamwere anaongea kama mpinzani wa Serikali. Sasa hatujui kama yeye ni fisi au ni kondoo.

Mr. Deputy Speaker: Bw. Wamwere, mjibu mheshimiwa na uendeleo kuchangia Mswada.

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Spika, sijakuwa fisi na sitakuwa fisi milele. Mimi hulka yangu ni ya kondoo na ndio sababu nimejiunga na Chama Cha Mwananchi (CCM) ili kutetea kondoo wengine. Hata Serikali inaweza kuwa ya kondoo nikimaanisha ya kwamba jukumu lake kubwa litakuwa ni kutetea kondoo wasije wakaliwa na fisi.

Bw. Naibu Spika, nilichokuwa nasema ni kwamba Wizara hii imekuwa katika usingizi. Ni sawa Waziri kusema sababu yake hawakuwa na sheria ambayo ingewawezesha kuwalinda na kuwatetea wafanyikazi. Sasa tuna sheria hiyo. Vile tumempa sheria na uwezo---

Mr. Deputy Speaker: Vile tutampa. Hatujampa bado.

The Assistant Minister for Information and Communications (Mr. Wamwere): Haya, Bw. Naibu Spika. Lakini tunaelekea kule. Tutakapompa sheria hiyo basi aamke pamoja na maofisa wake. Anasema ukosefu wa sheria ulifanya walale kazini. Tukipitisha Mswada huu sioni sababu ya wao kuendelea kulala. Ni lazima waamke na kuwatetea wafanyakazi. Hakuna Wizara muhimu kuliko hii katika maisha ya wafanyakazi. Ninakumbuka vizuri Wizara hii ilikuwa maarufu sana ilipokuwa ikisimamiwa na marehemu Tom Mboya. Umuhimu wake umekuwa ukididimia. Ni lazima Waziri awatetea wafanyakazi, hasa wale wanyonge. Kwa sababu yeye ndiye mwenye uwezo, ni lazima afanye kazi zaidi.

Capt. Nakitare: Jambo la nidhamu, Bw. Naibu Spika. Tumeongea kwa mapana juu ya Mswada huu. Tumesikia maoni tofauti. Kuna wale wanaoukosoa na wanaounga mkono. Ninaomba Waziri ajibu maswali yetu kwa sababu matatizo ya wafanyakazi ni mengi.

Mr. Deputy Speaker: Basi wewe umetoa maombi yako. Maoni yangu ni kwamba Wabunge wengi wanataka kuendelea kuchangia Mswada huu. Kwa hivyo, nitawapa muda zaidi.

Endelea, Bw. Wamwere!

The Assistant Minister for Information and Communications (Mr. Wamwere): Asante sana, Bw. Naibu Spika. Ninashangaa kwa nini mheshimiwa anaogopa Mswada huu. Tuko hapa kuongea na hiyo ndio kazi yetu. Dunia nzima inalia ya kwamba tunalipwa mishahara mikubwa sana halafu tena tuogope kuongea? Tutashitakiwa kwa ufisadi. Tunakuja hapa tunakula pesa na

wakati wa kuongea, hatupatikani.

Bw. Naibu Spika, sitaongea zaidi. Kuna makampuni ambayo yamekuwa na sifa mbaya kwa muda mrefu sana. Hii ni sifa ya kutojali afya na usalama wa wafanyakazi wao. Mfano ni kampuni ya Eveready. Nakumbuka zamani sana kama miaka 20 iliyopita nilipokuwa mhe. Mbunge hapa, nilikuwa nalia juu ya wafanyakazi wanaolazimika kupuliza kemikali wakati wakufanya kazi katika kiwanda hicho. Wanapougua unakuta kampuni badala ya kuchukua jukumu la kuwasaidia inaajiri wakili ili aseme wafanyakazi hao hawakupata ugonjwa hapo kiwandani. Si vizuri kuona mfanyakazi hawezi akasaidiwa na madawa au matibabu mpaka ashitaki kampuni.

Jambo mbaya zaidi ni kwamba waajiri wengi huepa kuwasaidia wafanyakazi kupata matibabu kwa kuwatimua kazini wanapokuwa wagonjwa. Wakiwa kule nje, hawana nguvu za kushitaki makampuni au waajiri wao. Utamkuta anakimbia kwa waheshimiwa Wabunge, diwani au anatamauka na kungojea kifo. Hii sheria lazima ionyeshe wazi ya kwamba mwaajiri hatakuwa na haki ya kumfukuza mfanyakazi kazini kwa sababu ameugua ugonjwa. Hakuna mfanyakazi anayeugua kwa mapenzi yake. Hakuna mfanyakazi angetaka kuwa mgonjwa. Ni makosa makubwa kama vile tunavyosema hata waliougua ugonjwa wa UKIMWI, hawawezi wakafutwa kazi kwa sababu ya ungonjwa huu. Wale wengine ambao afya yao inadhoofika wakiwa kazini, ni lazima sheria iwalinde. Sheria hii inatakiwa ilazimishe matibabu kwa mfanya kazi aliyepata ugonjwa akiwa kazini. Inafaa iseme kwamba mtu akipata ugonjwa kazini, atatibiwa mpaka apone. Hilo lifanyike kama haki, si kama kitu ambacho unapata mwajiri akipenda na hupati kama hapendi. Ni lazima iwe kuwa mtu akiugua akiwa kazini hawezi kufutwa kazi, na atashughulikiwa kimatibabu mpaka apone bila ya kukatwa mshahara au kusumbuliwa kwa namna nyingine, kwa sababu hivyo ndivyo kuwasaidia wafanyakazi kufanya kazi katika hali ambayo ni ya usalama na afya.

Bw. Naibu Spika, nitamalizia kwa kumkumbusha Waziri lile nililoongea kuhusu namna wafanyakazi hawawezi kuhifadhi afya yao kama hawana mshahara. Ningemkumbusha Waziri kwamba wafanyakazi wa mashamba ya Banita, Alfega na Majani Mingi sasa wamekaa miaka kumi wakimdai mwajiri wao, ambaye Waziri anamjua vizuri, zaidi ya Kshs150 million ambazo hazijalipwa. Ninamwomba Waziri, ili aonyeshe kwamba atakuwa mfanyakazi tofauti, kwa sababu yeye pia ni mfanyakazi. Namwomba atafute nafasi mwishoni mwa wiki au mwanzoni mwa wiki ijayo, atembelee mashamba yale ili ahakikishe kwamba mwajiri yule amewapa wafanyakazi wake mishahara yao. Si haki mheshimiwa Waziri. Si haki. Wewe mzigo huu utaubeba kwa dhamira na pia kwa mabega yako. Tunakubebesha mzigo huu kwa sababu wewe ndiye mwenye nguvu. Unatazamwa na wafanyakazi hawa. Serikali inakutazama wewe. Usipotimiza hili, utakosa kuingia Mbinguni.

Kwa hayo machache, naomba kuunga mkono.

Prof. Oniang'o: Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to support this Bill, and to add on to the so many good points that have been brought forward by colleagues, and, really, compliment the Minister for the series of Bills on labour that he has been bringing.

Mr. Deputy Speaker, Sir, I am contributing to this particular Bill on occupational safety and health and saying that for starters, we have not even defined health, and that is why we are questioning what hon. Wamwere is talking about, when workers do not earn their salaries. I am a food and nutrition scientist, and know that if you do not feed workers well, you will not get the best out of them and, in fact, you are endangering their health and lives.

So, when we talk about the low-income earners in this country, I want to describe the low-income earner. The low-income earner, whether in agriculture or in the city, live and sleep in sub-standard conditions. The worst mistake they can make is to become sick. Let them lose a relative, and they cannot even afford to go back home. When they are in the city, they walk long distances to go to work. They reach there, they have no food. The kind of research I used to do, going from home to home in low-income areas, you find even where they go for sewage or sanitation is not

there. They cannot afford to bring their families to live with them. So, their mental, emotional and spiritual health is actually affected. When you ask somebody what age they are, you discover that a 45 year old looks like a 60-year old. This is not fair; I think it goes against human rights. So, I am happy that we have been given a chance to talk about the low-income earners in this country. I am happy to see that these Bills have been worked on so comprehensively, but at the same time, somebody who writes, it does not matter what you write, somebody else reading it will be able to add, subtract or even correct something.

Mr. Deputy Speaker, Sir, when we talk about the kind of diseases that come out of occupational health--- I have been looking at them in Schedule 524. I would just like to add the kind of disability that comes out of repeated use of a computer. That is a new occupation, and we have so many secretaries who are always by the computer, they virtually become disabled. We would like to see that added here. We have not even talked about eyes. I am telling you that they will become disabled, nobody knows how to treat that at the moment, and it is very unfortunate. This labour used to come out of the old typewriter.

I have had to take students to factories, and then you find when machinery is used, where they need protective facilities for their eyes, they are hammering away, chemicals are coming out, chips are coming out and their eyes are unprotected. It is a shock. When you ask them whether they have protection clothing, they go and bring it, because nobody bothers to ensure that they actually use protective clothing. Whose fault is that?

The employer should ensure that if a worker does not use a protective outfit, they actually should be made to lose their job, because they are going to become disabled and a liability unto themselves, to the employer and to their families. We go to many places where fire could break out, and you discover there are no fire extinguishers, yet even the old law had required that there be a fire extinguisher.

So, we are talking about enforcement. It is all right to have all these nice sounding statements, to have legislation. I find that many Kenyans, even where legislation exists, do not even know that it exists. So, I would like the Minister, just as the previous speakers have said, to make sure that when you have such good a law, and you have spent a lot of man hours on it, that, indeed, it is actually enforced.

We know that many of the chemicals, especially in agriculture, in education, in the biological sciences, anywhere where chemicals are used like in Webuye Paper, in factories where effluent is actually disposed of, cause cancer. But you cannot tell that, in fact, somebody with a cancer which they develop years later and they have even left the job, actually they get it at their place of work. So, it becomes a long-drawn court case, and we are talking of workers who do not have the capacity to even employ a lawyer to follow up this issue. So, they end up dying quietly. We have so many Kenyans dropping dead, and we do not do post-mortems, and we have no idea what they have died from. There are so many cancers and we keep wondering where all these cancers are coming from. But when you trace it, you will find that this person, in fact, worked somewhere where this could have been contracted. But to pin down the employer, or the factory or company, and say that this cancer was caused when this person was working here is a nightmare. So, many workers are dying unnecessarily without compensation. So, when it comes to these issues affecting our workers, I think it is time for us to enact a legislation, to show that we care for the very many workers in this country.

Unlike what hon. Wamwere said, I would request the Minister to visit workers on sisal, rice, tea and white settlers' farms. I was shocked when we were travelling to Naivasha recently, to realise that the one-roomed grass-thatched houses still exist, since the colonial days. Kenyans, more than 40 years after Independence, are still living in these little and tiny houses. This is not fair!

Therefore, we should support the Minister by passing this Bill. But, Mr. Minister, you

should not wait for the legislation to be enacted. You should go round and see where the workers are living right now. Many of their representatives, often, live well, like us. But I am personally aware of the conditions of the workers, because my research work has taken me to many areas. It makes me sad to realise that we are an independent Kenya, yet, we have workers living in substandard conditions.

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

The Assistant Minister, Office of the President (Mr. Tarus): Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to contribute to this very important Bill.

I want to congratulate the Minister for having managed to bring a Bill on occupational safety and health. For a very long time, we have developed, as a country, but we have never taken a lot of interest in ensuring that the conditions and environment under which the workers of Kenya work are conducive. If you evaluate both the public and private sectors, you will realise that the Kenyan workers have actually been working under inhuman conditions. Even within public institutions, you will find that, for example, a driver can be retired on medical grounds after being involved in an accident. To add pain to that injury again, that person is not paid his terminal dues. This is an experience I got recently. Naturally, we would expect that if there is an occupational accident that has occurred as a result of the person being at the work place, the institution would ensure that, that person is treated and compensated.

I know that we have laws relating to workers' compensation, but I think that this Bill is very important not only for the workers, but also for the general public. We have different companies and institutions in the country, for example. They have under their own development---

For example, Baraton University in my constituency, has developed a sewage without putting in place proper mechanisms to ensure that it does not pose any occupational hazards to the people living there. Even the workers who work there are not given the appropriate protective equipment. Therefore, I want to congratulate the Minister for bringing this Bill. It is long overdue. It should have come much earlier.

Mr. Deputy Speaker, Sir, I also want to thank the Minister for having specified the responsibilities of every employer or the so-called occupiers referred to in this Bill. I only hope that with the passage of this Bill, this information will be made available to every institution. I also hope that it will be mandatory for every institution to observe these laws. I am happy that the Minister has said that in every institution, there should be committees established on occupational health and safety, because you will realise that whenever workers are involved in accidents at their work places, they are the ones who always lose.

Capt. Nakitare: Jambo la nidhamu, Bw. Naibu Spika. Nasimama nikizingatia Kanuni ya Bunge Nambari 87. Tumesikia mengi kuhusu Hoja hii kutoka kwa waheshimiwa Wabunge, kwa lugha ya Kiswahili na Kiingereza. Hata hivyo, wanarudia yale ambayo yamesemwa. Kwa hivyo, naomba kupendekeza kwamba aliyewasilisha Mswada huu ajibu.

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

Mr. Deputy Speaker: Order, Mr. Sungu! That gentleman had stood up on a point of order!

Mr. Sungu: There is no quorum!

Mr. Deputy Speaker: Mr. Sungu, if you wish to draw the attention of the Chair to such a matter, you should stand on a point of order; you do not shout! I was just telling you that the hon. Member stood on a point of order, and I was going to respond to it. You interrupted and, therefore, I had to ask you to sit down. Are you assuming that you have given me any notice? Can you now stand up?

QUORUM

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir. I rise under Standing Order No.24, to draw your honourable attention to the fact that there is no quorum in the House!

Mr. Deputy Speaker: Very well. It is true, there is no quorum. Ring the Division Bell.

(The Division Bell was rung)

Mr. Deputy Speaker: Order, hon. Members! We have a quorum now! Please, sit down! In view of what Capt. Nakitare had said, I will now put the Question.

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

The Minister for Labour and Human Resource Development (Dr. Kulundu): Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity to respond to hon. Members' remarks regarding this Bill. The contributions by hon. Members were good and educative. We promise that we shall include them in our final document.

I am happy to give my response to the lively debate on the Occupational Safety and Health Bill, 2007. I thank hon. Members for the immense support and the recommendations proposed. I am grateful to Dr. Wekesa for seconding me and his well detailed analysis of the proposed Occupational Safety and Health Bill.

I have also taken note of the views and observations made by hon. Members on various issues. It must be noted that prior to coming to Parliament, I, personally, worked in the flower industry and if anybody knows about the toxicity of the chemicals used in the flower industry, maybe, very few people in Kenya beat me in that. We were always at loggerheads with the management because there is also this habit of using us in Africa as human guinea pigs; in that the chemicals used or recommended for use for pest control in Kenya have long been banned in their countries of origin. I call upon all the multi-national companies and especially those manufacturing agro-chemicals to ensure that only those chemicals that are used in their own countries are brought here or only those chemicals that have data sheets detailing anti-toxins are brought to Kenya. There are nearly 120 chemicals in use in the flower industry. It becomes very difficult sometimes to know what to do when a particular individual is poisoned.

Mr. Deputy Speaker, Sir, on behalf of the Ministry of labour and Human Resource Development, I am extremely happy that hon. Members have grasped the content of this Bill and previous Bills. There is only one Bill remaining which we hope to introduce and get equal co-operation from hon. Members.

With those few remarks, I beg to move.

Mr. Deputy Speaker: Hon. Members, I now wish to put the Question, which is that the Labour Institutions Bill, Bill No.9, be read a second time.

(Question put and agreed to)

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

Next Order!

Second Reading

THE WORK INJURY BENEFITS BILL

The Minister for Labour and Human Resource Development (Dr. Kulundu): Thank you very much, Mr. Deputy Speaker, Sir. This Bill makes provision for compensation of employees for work related injuries and diseases in the course of employment.

Mr. Deputy Speaker: Mr. Minister, please, move the Bill.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, I beg to move that the Work Injury Benefits Bill be now read a Second Time.

Mr. Deputy Speaker: Are we there? Is that Order No.8?

An hon. Member: We are in Order No.9!

Mr. Deputy Speaker: Order No.9? Continue, Mr. Minister! Sorry, for interruption!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, the existing legislation and compensation of workers for work injuries is outdated. The Workmen's Compensation Act, Cap.236 was enacted in 1948; that is nearly 60 years ago. It commenced on 1st October, 1949. Though this Act has been amended on numerous occasions to adjust its coverage and the amount of compensation payable to injured workers, it still has many deficiencies. The principal object of this Bill is to repeal the Workmen's Compensation Act, Cap.236 and it seeks to introduce a legal framework which is compliant with the International Labour Organisation (ILO) standards related to the compensation of employees injured at work or who contract work-related diseases. Part I provides for preliminary matters. Part II provides for obligations of an employer to obtain an insurance policy to cover the employer's liability, to register with the Director of Work Injury Benefits and to keep records and make annual returns to the Director. Part III provides for an employee's right to compensation. Part IV provides for procedure for reporting accidents which occur; the limitation period for reporting.

Part V provides for compensation for disablement and death. Part VI provides for notification of occupational diseases and compensation for an employee who contracts an occupational disease. This Part also provides for the appointment of a multi-sectoral advisory panel to advise their Director on matters relating to occupational diseases and compensation.

Part VII specifies medical facilities to be provided by an employer. Part VIII provides for appeal to the National Labour Court against the Director's decision. Disputes over compensation shall be referred to the National Labour Court.

COMMUNICATION FROM THE CHAIR

QUESTION ON OCCUPATIONAL SAFETY
AND HEALTH BILL NOT YET PUT

Mr. Deputy Speaker: Order, Mr. Minister! Hon. Members, there appears to have occurred a mix-up in that I put the Question to the wrong Bill. My assumption, since I sat on the Chair, was that we are debating Order No.7. Therefore, you will recall that I put the Question on the Labour Institutions Bill, Bill No.9. This one had already been completed. We were actually debating the Occupational Safety and Health Bill, Bill No.10. Therefore, procedurally, I have now to put a Question to the right Bill because I put a Question to a wrong one. I will now put the Question to the right Bill.

(Question put and agreed to)

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

To put the record straight, Mr. Minister you are now properly moving the Work Injury Benefits Bill.

Proceed!

*(Debate on the Work Injury
Benefits Bill resumed)*

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, do I proceed from where I left?

Mr. Deputy Speaker: Yes. Just proceed from where you were. I just corrected the Chair's mistake.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, the tenets of the Work Injury Benefits Bill are as follows:-

(i) The Work Injury Benefits Bill replaces the current Workmen's Compensation Act which is Chapter 236.

(ii) The Bill modernizes the legislation and brings it up to date with current circumstances and realities of the work-place.

(iii) It makes the legislation compliant with the international labour standards on occupational safety and health and work injury compensation.

(iv) It eliminates ambulance chasing.

(v) It ensures adequate compensation for employers injured or who contract work related diseases.

(vi) It extends insurance cover for work related injuries and diseases to all employees.

(vii) The Bill ensures that a work related accident victim is compensated regardless of the employer's solvency.

(viii) It places responsibility and powers of supervision on a specific office.

(ix) It covers new occupational diseases, not included in the obsolete Act.

(x) It provides for disputes over compensation to be referred to the National Labour Court.

(xi) Common law claims involving employees who have suffered occupational accidents and diseases, will not be tenable in law once paid compensation.

(xii) An injured person who requires constant assistance from another person will be entitled to additional payment.

With those few remarks, I beg to move and ask the Assistant Minister for Justice and Constitutional Affairs, Mr. Mungatana to second.

Mr. Deputy Speaker: Mr. Mungatana are you able? Proceed!

The Assistant Minister for Justice and Constitutional Affairs (Mr. Mungatana): Mr. Deputy Speaker, Sir, may I take this opportunity to thank the Minister for moving the Work Injury Benefits Bill.

In many ways, this Bill moves us again towards very quick settlement of compensation cases that may arise, should workers have the unfortunate incidents of work injury. This Bill must be supported by all.

Regarding Clause No.7, it puts important obligation on the employer. The employers are given compulsory obligation to obtain an insurance policy by an insurer who is certified by the

Minister and approved to be capable of carrying out his duties. This is a very important requirement because we have known very many cases where insurance companies have gone under and have failed to pay workers when they have suffered injury in the work-place. So, the provision that the insurance companies must be certified by the Minister is a commendable provision.

The insistence that employers must get insurance cover for the workers whom they have employed is also commendable. This will force, amongst many other things, workers or employers to come up to the standards because there will be no insurance company that will be willing to insure a company that has not met certain specific standards of work safety. That will give teeth to the requirements that we have put under previous Bills that we have discussed in this House. Therefore, the proposed Clause 7 is very good.

There is also the certainment of the right to compensation by any person who is injured at the work-place. That has been enumerated very clearly in Part X. That is an important provision for the simple reason that outside there, there are very many workers who work in factories that are engaged in production of various things. So, they get injured and in many occasions when their claims go to court, you will find that they are dismissed for one reason or the other. As a result, many workers who have been employed in various industries have suffered loss of compensation. This right is important and it is good. It should be enforced and recognised within this law.

Regarding Clause IX which makes it compulsory for all the employers to keep proper records of workers, again, this is commendable. The reason is that in many of these factories, especially the factories where casual workers are employed, I am looking at factories which have mass casual worker employment force, like the industry that deals with *makonge*. The sisal industry employs a lot of people but when you go to look at the records, they are not properly kept. The first thing that the worker needs to prove when they go to court is whether they are truly employed in that industry. In many cases, a lot of cases of compensation have been dismissed in court because many employers' lawyers have taken the position that those workers were, in fact, not employed by the particular industry. That has caused a lot of suffering and loss to the workers who were injured at the places of work.

In general, I support this Bill and I am here to second it. However, it does no harm to ask for enrichment to the drafting of this Bill. It is important to state it here that as the Minister was moving the Bill, he stated very clearly that one of the reasons for moving this Bill is to replace the Workmen's Compensation Act which, he said is outdated and has outlived its usefulness. It has been there for over 20 years.

Mr. Deputy Speaker, Sir, the Workmen's Compensation Act was, in fact, a very raw deal to workers in this country. It was an inheritance from the colonial past that we suffered from sometimes ago. However, the whole Bill did not set aside the rights of workers to seek compensation in court under the normal claims that people file in courts in keeping with the English law. For instance, what used to happen under the Workmen's Compensation Act is that, if someone lost his hand while working in a factory, he was given a ridiculous award. Under the Act, the Government is mandated to pay a meagre Kshs50,000 to somebody who has lost the use of his hand. When you look at that, it was grossly unfair. It was totally not in keeping with the practical realities of the time. Therefore, the Workmen's Compensation Act left it open. If somebody opted to go and make his claims under the normal courts, he or she had the right to do that. I think that was a good thing which needs to be retained in this proposed law.

The proposed Clause 16 seems to be substituting compensation of any other form to prevent people from going to court. That may bring a lot of suffering to workers. It may also bring unnecessary suffering to those who are supposed to enjoy compensation.

(The Minister for Labour and

*Human Resource Development
(Dr. Kulundu) consulted
with Mr. Mungatana)*

Mr. Deputy Speaker: Dr. Kulundu, you cannot interrupt the hon. Member. If you wish to pass a message, there are other ways of doing it.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Mungatana): There are a number of things that one would like to bring up at this stage. But we support this Bill in principle. There are many things that need to come out and we will bring them up during the Committee Stage. But in principle, we support it.

With those few remarks, I beg to second the Bill.

(Question proposed)

The Assistant Minister for Health (Dr. Kibunguchy): Thank you very much, Mr. Deputy Speaker, Sir, for giving me a chance to contribute to this Bill. I would like to join my colleagues and say that this Bill is timely. It has come at the right time. We want to repeal the Workmen's Compensation Act.

When I look at the Bill and the way the disabilities that come from accidents have been graded, I would like to say that, at least, they have used a scientific way of grading the levels and degrees of injuries that can be sustained by workers at their places of work.

Mr. Deputy Speaker, Sir, I know that many things in this Bill can be agreed to unanimously by this House. It is a Bill we have been waiting for. I think that its time has come.

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

Mr Deputy Speaker: Is there any other hon. Member who wants to contribute?

Hon. Members: No! No!

Mr. Deputy Speaker: Is there any other hon. Members who would like to contribute to this Bill?

Hon. Members: Put the question!

(Mr. Muturi stood up in his place)

Mr. Deputy Speaker: Mr. Muturi, do you want to contribute?

Mr. Muturi: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Go ahead and do so!

Mr. Muturi: Mr. Deputy Speaker, Sir, I had not contributed to this Bill. However, I can see the anxiety that is there to go pass it. I want to add my voice to those who support the enactment of this new Bill to replace the Workmen's Compensation Act. Mr. Deputy Speaker, Sir, it is important to add that we do not have to wait to be prompted by the International Labour Organisation (ILO) in order to bring such a Bill. I believe the Ministry knows the pains that various employees suffer at their places of work. The process is so tedious that, indeed, I am surprised that the Government could even own up. It is commendable that the Minister owned up and said that they were prompted by the ILO to come up with this Bill.

Mr. Deputy Speaker, Sir, I intend to raise issues at the Committee Stage and in order that the Minister may have time to reply, I beg to support.

Mr. Osundwa: Mr. Deputy Speaker, Sir, I want to thank the Departmental Committee which handled this Bill. Indeed, we have gone through the report and are in agreement.

I, therefore, beg to support.

Mr. Deputy Speaker: On that note, I call upon the Minister to reply.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, I wish to take this opportunity to, very heartily, thank the whole House for deliberating on this Bill in a very positive manner. The criticisms raised will be taken on board.

Mr. Muturi said that we are being pushed by the ILO, however, that is not the case. This Bill is for the good of Kenyans.

With those few remarks, I beg to move.

(Question put and agreed to)

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

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 23rd, May, 2007, at 9.00 a.m.

The House rose at 6.30 p.m.