

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 1st April, 2003

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

The Report of the Parliamentary Select Committee on the Constitution of Kenya Review on the extension of the mandate of the Constitution of Kenya Review Commission.

(By the Chairman (Mr. Muite))

NOTICES OF MOTIONS

TASK FORCE TO REVIEW BAHARI SETTLEMENT SCHEME PROGRAMME

Mr. Khamisi: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-
THAT, while appreciating the commitment of the Government in solving land issues, especially in relation to the problem of squatters, and cognisant of the fact that an estimated 70 per cent of the people of Bahari Constituency are squatters, this House urges the Government to appoint a task force to review all allocations of land under the Settlement Scheme Programme in Bahari Constituency with a view to nullifying irregular transactions and providing land to indigenous landless persons, and that a report of the task force be availed to the House within three months after its appointment.

LEAVE TO INTRODUCE NCPB (AMENDMENT) BILL

Mr. Samoei: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-
THAT, this House doth grant leave to introduce a Bill for an Act of Parliament to amend the National Cereals and Produce Board Act, Cap.338, Laws of Kenya, in order to provide for the election of the Board of Directors by maize and wheat farmers, replace the appointees of Kenya Grain Growers Co-operative Union with appointees of the Kenya Farmers Association, empower the Board to fix the minimum purchase price of maize, wheat and other scheduled agricultural produce, and to introduce a new Part A to provide for the establishment of a Cereals Development Fund, and for matters incidental thereto and connected therewith.

ADOPTION OF PSC REPORT ON EXTENSION OF CKRC MANDATE

Mr. Muite: Mr. Deputy Speaker, Sir, on behalf of the Minister for Justice for Justice and Constitutional Affairs, I beg to give notice of the following Motion.

Mr. Deputy Speaker: Mr. Muite, as the Chairman of the Select Committee, you should give the notice

of the Motion on your own behalf, and not on behalf of the Minister.

Mr. Muite: Mr. Deputy Speaker, Sir, the wording on the document provided to me by the Clerk of the National Assembly indicates that the Notice of Motion is supposed to be given by the Minister, but I will now give the notice on my own behalf.

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

THAT, this House adopts the Report of the Select Committee on the Constitution of Kenya Review on the extension of the mandate of the Constitution of Kenya Review Commission.

Mr. Deputy Speaker: Very well. Let us proceed to the next Order.

ORAL ANSWERS TO QUESTIONS

Question No.011

ABOLITION OF DDCs

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

- (a) under what law and for what purpose District Development Committees were formed; and,
- (b) in view of the current Government's stated policies, when these committees will be abolished.

Mr. Deputy Speaker: Mr. Sungu, has this Question not been answered?

Mr. Sungu: Mr. Deputy Speaker, Sir, I made a mistake. I thought that the Question was answered, but I realised later that, indeed, it has not been answered. I am sorry for having misled the Clerk of the National Assembly in this regard.

Mr. Deputy Speaker: That is interesting. The Question was answered, was it not?

Mr. Sungu: Mr. Deputy Speaker, Sir, there was some confusion in my mind. The Question that was answered was the one about the Public Service Commission versus the Directorate of Personnel Management, and not this one. So, I confused this Question with the other one and advised the Clerk of the National Assembly that the Question had been answered.

Mr. Deputy Speaker: Mr. Sungu, you are right. I was in the Chair when you asked the other Question. So, could the Minister responsible answer the Question?

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

(a) District Development Committees were formed administratively under the District Focus for Rural Development Strategy to address shortcomings of centralised planning and to accelerate development in rural areas by ensuring local people participation.

(b) The District Focus for Rural Development Strategy, within which the DDCs operate, is in the process of being reviewed in order to be in line with current Government policies.

Mr. Sungu: Mr. Deputy Speaker, Sir, as we all know, DDCs have been used by the previous administration to unnecessarily reward some areas at the expense of others. The creation of the DDCs has given too much powers to District Commissioners, leading to corruption.

Mr. Deputy Speaker, Sir, so, could the Assistant Minister give us a specific time frame within which this review will be done, since the policy is not in line with this country's laws?

Mr. Dzoro: Mr. Deputy Speaker, Sir, I would like to stick to what I have said. The review is ongoing, and the House will be informed accordingly.

Hon. Members: When?

Mr. Muturi: Mr. Deputy Speaker, Sir, the Question really asks under what law the District Development Committees (DDCs) were formed, and the Assistant Minister has not addressed himself to that. He has said that they were formed to do this and that! Could he tell us under what law, if any, the DDCs were constituted?

Mr. Dzoro: Mr. Deputy Speaker, Sir, they were not constituted under any law. It was an administrative decision.

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

Mr. Deputy Speaker: Order, Mr. Sungu! If you want to ask a question, just stand up and I will see you! You do not have to shout "point of order"! If I ask you what your point of order is, you will have none!

Proceed, Mr. Angwenyi!

Mr. Angwenyi: Mr. Deputy Speaker, Sir, the Assistant Minister has clearly stated that the DDCs are illegal and they were formed to oppress politicians and the people. Could he consider reducing the powers of the chairmen and make sure they are not the DCs of the districts concerned?

Mr. Dzoro: Mr. Deputy Speaker, Sir, I did not say that the DDCs were unlawfully established. I said

that the decision to start them was administratively taken, so that they could carry out development in the districts.

Mr. O.K. Mwangi: Mr. Deputy Speaker, Sir, the Assistant Minister has said that the DDCs are being reviewed by the current Government to see whether they will continue or not. Could he, therefore, suspend all the operations of the DDCs pending the review and outcome?

Mr. Dzoro: Mr. Deputy Speaker, Sir, I have said that the DDCs are in the process of being reviewed, in order to be in line with the current Government policies. I am saying that if the previous Government made some suggestions or policies which can be reviewed, the House should be in a position to let the NARC Government review those policies, so that they can be implemented accordingly.

Mr. Kaindi: Mr. Deputy Speaker, Sir, the import of the Question, apart from the legality of it, is to whose interests were the DDCs formed. Could the Assistant Minister explain to this House, since the inception of the DDCs, what amount of development has been initiated in the areas in question equitably?

Mr. Dzoro: Mr. Deputy Speaker, Sir, the DDCs were formed by the previous Government. We are saying that there is a review of the DDCs and you will be told the outcome accordingly.

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. The Speaker ruled that we must ask supplementary questions and get good answers. Last time, when I said that some of the answers were like *mitumba*--

Is the Assistant Minister in order to give us the same answers for every question which is raised? He is giving us *mitumba* answers!

Mr. Dzoro: Mr. Deputy Speaker, Sir, as far as I am concerned, I am not giving the same answers!

Mr. Sungu: Mr. Deputy Speaker, Sir, I am sure the Assistant Minister is aware that, that was the policy of the previous Government!

Now that the NARC Government is in place and has got powers to abolish the DDCs immediately, like Mr. Maitha does every other day, I would like to request him to abolish the DDCs immediately. He has got the powers!

Mr. Dzoro: Mr. Deputy Speaker, Sir, the statement of the hon. Member will be taken into consideration accordingly!

Question No. 126

UTILISATION OF SDL FUNDS

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

(a) how much money the Government has collected through the Sugar Development Levy (SDL) since its inception; and,

(b) whether he could explain how those monies have been utilised showing in each case, what each factory/outgrower received.

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

(a) The SDL Fund was started in 1992. As at 31st December, 2002, Kshs8,298,877,544.01 had been collected.

(b) The money has been utilised as follows:-

(i) Cane development.

(ii) Factory rehabilitation.

(iii) Roads and infrastructure rehabilitation.

(iv) Kenya Sugar Board Administration.

The money has been disbursed to the following factories as loans to carry out the above functions as follows:-

FACTORY/OUTGROWER

KSHS

Chemelil Sugar Company	498,455,382.40
Muhoroni Sugar Company	1,201,208,154.30
Mumias Sugar Company	102,635,527.70
Nzoia Sugar Company	836,371,542.05
SONY Sugar Company	635,795,355.90
Western Kenya Sugar Company	203,664,420.00
Busia Sugar Company	323,656,302.35

Mumias Outgrowers Company	283,824,187.60
Nzoia Outgrowers Company	304,597,384.20
SONY Outgrowers Company	367,693,877.60
Miwani Sugar Company	403,207,880.90

Mr. Deputy Speaker: How long is it going to take?

The Minister for Agriculture and Livestock Development (Mr. Kirwa): I still have got about six more to go! But I presume the Questioner has the information and I can rest my case there!

Mr. Shitanda: Mr. Deputy Speaker, Sir, according to the figures availed by the Minister, you will notice that the factories that have received the highest amounts of money are those that have the most problems at the moment. I would like to know from the Minister whether he is satisfied that those monies, which were given to those factories, especially for factory rehabilitation--- I can see you gave Busia Sugar Factory Kshs5,030,226.05 for factory rehabilitation and we all know there is no factory in Busia. Are you satisfied that those monies were utilised for the stated purposes?

Mr. Kirwa: Mr. Deputy Speaker, Sir, I am far from being satisfied that the money was spent for the intended purposes. This is because further investigations reveal that some of the money has not been utilised as initially intended.

Prof. Olweny: Mr. Deputy Speaker, Sir, it is interesting for the Minister to say that some of the money was not utilised as was intended. What specifically was the money used for? For example, in Muhoroni Sugar Company, the Minister has stated that Kshs1 billion was used. What was done in Muhoroni Sugar Company with this kind of money?

Mr. Kirwa: Mr. Deputy Speaker, Sir, what has been stated here is what the company alleges to have used the money to do. But as to whether the company actually did what it alleges to have done, my Ministry is carefully studying the issue with a view to taking an appropriate position.

Mr. Kosgey: Mr. Deputy Speaker, Sir, could the Minister similarly give the details of Chemelil Sugar Company?

Mr. Kirwa: Mr. Deputy Speaker, Sir, Chemelil Sugar Company was the first one I read out in my list. For the benefit of the hon. Member for Tinderet Constituency, Chemelil Sugar Company spent Kshs298,555,382.40.

Mr. Shitanda: Mr. Deputy Speaker, Sir, the Minister has confirmed that this money was not utilised for the intended purposes. In fact, the Ministry commissioned the Efficiency Monitoring Unit (EMU) to carry out an audit of the disbursement of this money by the Kenya Sugar Board (KSB). Could the Minister tell us what action he will take? He should also tell us when he will make public the report of the EMU.

Mr. Kirwa: Mr. Deputy Speaker, Sir, in response to the hon. Member's question on what action I will take, I want to say that I have already instituted the requisite administrative machinery to ensure that the information availed to me is properly acted upon. As to when I will release the report of the EMU, I am still studying the document and I will make known my position and the position of the Ministry as soon as I am through with the findings of the report.

Furthermore, as the Minister in charge of that particular portfolio, I am not satisfied with the report of the EMU alone. I have, therefore, instituted a committee to look into the sugar saga and all issues incidental to the sugar problem.

Question No.152

ESTABLISHMENT OF FISHERIES AUTHORITY

Mr. Deputy Speaker: Is Mr. Syongo not here? We will leave his Question until the end. Let us move to the next Question!

Question No.057

REVIVAL OF BURA IRRIGATION SCHEME

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

- whether he is aware that tenants of Bura Irrigation Scheme are facing starvation due to the collapse of the scheme;
- what action he is taking to revive the project; and,
- what steps he has taken to address food security in the area.

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

to reply.

(a) The Government is aware that Bura Irrigation Scheme has not been fully operational for several years now.

(b) The Government has been concerned with the plight of the people of this area. To alleviate this problem, there have been plans to revive the irrigation scheme. Towards this end, the Government has carried out feasibility studies for the rehabilitation of the same. The recommendation was that the pump-fed irrigation system be replaced with a gravity-fed one for sustainability.

(c) The rehabilitation of the scheme will ensure long-term sustainability of food security in this area. The Government is negotiating with our development partners for funds to finance the major rehabilitation works.

Mr. Wario: Mr. Deputy Speaker, Sir, I appreciate the Minister's answer. But we are talking about starving farmers. The food-for-work programme is not the immediate solution to the suffering of these people. Could the Minister consider liaising with the relevant arm of the Government to solve the problem of the starving farmers?

Mr. Kirwa: Mr. Deputy Speaker, Sir, I have activated the machinery. I have informed the relevant arm of the Office of the President that deals with disaster management and food provision to take care of the problem.

Dr. Ali: Mr. Deputy Speaker, Sir, a lot of money was allocated to rehabilitate Bura Irrigation Scheme a long time ago, but it all went to waste. What amount of money is required to revive the scheme as shown in the feasibility study?

Mr. Kirwa: Mr. Deputy Speaker, Sir, I must admit that a colossal amount of money is required to rehabilitate the scheme. For the total rehabilitation of the scheme, it is estimated that Kshs3.2 billion is needed. The Government is currently negotiating with development partners to finance the rehabilitation of this particular project.

Mr. Wanjala: Mr. Deputy Speaker, Sir, the Government has made Kenyans to believe that agriculture is the backbone of the economy of this country. If this is true, why have all irrigation schemes collapsed? Could the Minister tell this House what urgent measures he is taking to ensure that all irrigation schemes, for example, Bura, Bunyala, West Kano, Ahero, Mwea and Pekerra in the former President's constituency, are revived?

Mr. Kirwa: Mr. Deputy Speaker, Sir, we must recognise that the role agriculture plays in this country is important. The total revenue collected from the agricultural sector is 40 per cent of all Government revenue.

In keeping with the Government desire to revive the agricultural sector, we are interested in revitalising the National Irrigation Board (NIB), giving it a new management, and also allowing it to initiate programmes that are manageable, so that we do not spend a lot of money in grandiose projects that at the end of the day will not be beneficial to the people of this country.

Mr. Wario: Mr. Deputy Speaker, Sir, could the Minister tell this House how he has prepared farmers to take advantage of the revival of Bura Irrigation Scheme, for example, the 1,000 hectares which is to be revived in April, 2003?

Mr. Kirwa: Mr. Deputy Speaker, Sir, as I have said in answer to part "c" of the Question, we have been encouraging farmers. Apart from the food-for-work programme, which tries to attract farmers to this particular opportunity, we are also using the extension service in the Ministry to ensure that farmers are mobilised to take advantage of the new situation.

Question No.151

REVIVAL OF BUSIA COTTON INDUSTRY

Dr. Ojiambo asked the Minister for Trade and Industry:-

(a) what plans he has of reviving the cotton industry in Busia District;

(b) whether he could inform the House what action he has taken to restore the ginning machines, which were taken from Luanda Ginnery by a private investor, to *wananchi* in Funyula and Budalangi; and,

(c) whether he could assure the House that the members of Luanda Co-operative Society are not going to repay the loan they had taken to acquire the ginning machines.

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

(a) The Government has the following plans towards the revival of the cotton industry in Busia District.

1. A feasibility study for the entire cotton industry was commissioned by the Government in September, 2002. It has just been completed, having been undertaken by an American consultancy firm called "M/s Progressive Agriculture" of Georgia. The study, which has covered Busia District and other areas, aims at reviving cotton and textile industry, upgrading of ginneries and textile milling.

2. My Ministry, through the African Growth and Opportunity Act (AGOA) initiative, has a ready market

for finished textile products. The Government is, therefore, continuing to encourage private investors to seize this opportunity and revive the cotton industry in Busia District and other cotton growing areas in the country.

(b) The ginneries in Funyula and Budalangi were leased by Luanda Co-operative Union to a private investor, Mr. Rina Shah, on a yearly renewable lease since 1999. The terms were further re-negotiated to cover a term of five years from November last year. It is, therefore, upon the union to revisit their lease agreement with Mr. Rina Shah.

(c) The loan which had been acquired by the union for purchase of ginneries had accumulated to Kshs27 million as at December last year. The loan was obtained under private arrangement between the union and the Co-operative Bank of Kenya. The union is, therefore, advised to consult with the bank to address the issue.

Dr. Ojiambo: Mr. Deputy Speaker, Sir, is the Minister aware that AGOA only benefits the industrialists at the Export Processing Zone (EPZ) here in Nairobi? Is he also aware that it is only those people who spin the yarn, turn it into fabric, stitch cloths and export them that benefit from AGOA? Could the Minister tell us how the farmer who is supposed to grow the cotton and run the ginnery benefits from AGOA?

Dr. Kituyi: Mr. Deputy Speaker, Sir, notwithstanding the fact that, that question is different from the original Question she has asked, I would like to proceed to answer the gracious lady. I am aware that what she thinks is the case is contrary to what is tenable evidence to me. The AGOA is a law, and I think it is important that hon. Members of this National Assembly try to understand a bit more than the average person in this country about what it entails. The AGOA is just a law which was enacted by Mr. Bill Clinton's Congress in 2000, which allows for a range of 1,900 Kenyan products, unlike from another 37 countries, to enter the American market without quota and duty. What has happened is that because of the ease of access to the American market, many manufactures of garments (apparel manufactures) have moved shop into the EPZ and are doing roaring business. So far, the main beneficiaries have been those who have invested in the apparel manufacture, rising today to the tune of US\$150 million as at the end of last year. But these are not the only beneficiaries.

An important consideration is the fact that because of the ready market for textiles, which had been destroyed by *mitumba* trade in the 1990s, more than 70 per cent of the stalled textile manufacturing capacity in this country has been revived. As I speak here now, my Ministry is in negotiation with a potential investor to open RIVATEX, which will be the third and last of the three textile factories in Eldoret to open up. Similarly, we are encouraging Kenyans to access soft credit under AGOA to buy or rehabilitate the existing ginneries. It is not good enough to sit back and say that people in the EPZ are benefiting more than others. This is true, but there is an opportunity for you to benefit more; there is an opportunity for the cotton farmers to benefit from the opportunity created by AGOA. So, the challenge to hon. Members is: Can they not help our people to benefit more than they have so far?

Mr. Twaha: Mr. Deputy Speaker, Sir, recently, we read that there was a facility for US\$45 million for the development of our cotton industry. The Minister is aware that Lamu District produces 10 million kilogrammes of cotton per year. What can the farmers do to get some of the US\$45 million because we require a second ginnery there?

Dr. Kituyi: Mr. Deputy Speaker, Sir, under AGOA, the Ministry of Trade and Industry negotiated for bilateral support to the Kenya Government by the US Government. When the hon. Member talks about US\$45 million, it is part of the arrangements we have made, in addition to the US\$26 million which we spent on the consultant about the value chain, and I am happy to announce that I will receive the final report tomorrow morning. Apart from that, there is the US\$45 million, part of which is building a COMESA-wide centre of excellency in the textile industry to be hosted by Kenya here in Nairobi. We are using the other amount of money to revive ginneries in competitive areas and construct a new textile factory around Nyanza Province.

Dr. Ojiambo: Mr. Deputy Speaker, Sir, my interest is on the farmer. I would like to ask the Minister to also tell us the action they have taken to restore the ginning machines which were removed from Luanda Ginnery in order to control imports of *mitumba*?

Dr. Kituyi: Mr. Deputy Speaker, Sir, if the good gracious lady is interested in the plight of the cotton farmer in Funyula Constituency, the first thing she should do is to find out, with other leaders from the area, why the cotton farmers from that area sell a kilogramme of cotton at Kshs7 to Mr. Rina Shah, when the market price is Kshs27. Secondly, she should find out why they are not paying attention to the unfair contractual arrangement under which they leased out their ginnery. Start at the grassroots; a credential level will help!

Mr. Wanjala: On a point of order, Mr. Deputy Speaker, Sir. The Chair has clearly heard what the Minister has told the hon. Member to go and do. The Minister is in charge of a Ministry which is supposed to help the common mwananchi at home who does not understand these things.

(Applause)

It is the responsibility of the Minister to guide those people, and yet, he is now misleading this House that it is

upon the hon. Member to go and find out what happened in the contract. Is he in order to mislead this House by allowing those crafty Asians to enter into contracts which will destroy our people? Is he in order to do that?

Dr. Kituyi: Mr. Deputy Speaker, Sir, notwithstanding my variance with the hon. Member to understand what a point of order is, I will take the liberty to answer his question. It is not up to the Minister for Trade and Industry to go and tell the leaders of a co-operative society not to enter into a contract in which they are being paid too little for their cotton.

Hon. Members: No! No!

Dr. Kituyi: Mr. Deputy Speaker, Sir, I trained for ten years to do what they are doing and I can stand it! I have volunteered information---

Hon. Members: No! Shame!

Dr. Kituyi: I will give you a chance to heckle and then I can answer!

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

Mr. Deputy Speaker: Order, hon. Members! The Minister must be heard!

Mr. Minister, continue!

Dr. Kituyi: Mr. Deputy Speaker, Sir, I can continue. I have said that the Luanda Co-operative Union closed down its ginnery in 1995, and it was not working up to 1999. This union had an accumulated loan totalling Kshs27 million. Because of the burden of this loan which this union got from the Co-operative Bank of Kenya, it entered into an agreement with Mr. Rina Shah. In that agreement, the union said that it would lease to him the factory and borrowed Kshs1.5 million from him. The union told him that it would sell him cheaper cotton so that he would deduct part of the loan it owed him. In 1999, it extended the lease to a five-year period. In that lease agreement, the union agreed that it would sell cotton to Mr. Shah at below what is a third of today's market price. I am not the Minister for Co-operative Development, and I am not in charge of the farmers' cotton factory.

Hon. Members: No! No!

Dr. Kituyi: Mr. Deputy Speaker, Sir, I would like to inform them of an anomaly they can try to address. They should not run away from their responsibility and ask me to baby sit them. They should go and tell their farmers to re-organise their things.

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

Mr. Deputy Speaker: Order! Let us move on to the next Question by Mr. M'Mukindia!

Question No.127

FINANCIAL POSITION OF MERU
CO-OPERATIVE UNION

Mr. M'Mukindia asked the Minister for Co-operative Development whether he could assure the members of Meru Central Farmers Co-operative Union that the union is in sound financial health and that it is not on the verge of being put under receivership.

The Assistant Minister for Co-operative Development (Mr. Kenneth):

Mr. Deputy Speaker Sir, I beg to reply.

Meru Central Farmers Co-operative Union is not in sound financial health. However, at the moment there is no threat of the union being put under receivership as all the loans and overdrafts are secured through legal charges.

Mr. M'Mukindia: Mr. Deputy Speaker, Sir, I am glad to know that Meru Central Farmers Co-operative Union is not actually going to be put under receivership. Could the Assistant Minister tell this House why it is not in good financial health as he has admitted?

Mr. Kenneth: Mr. Deputy Speaker Sir, as per the last audited accounts for 2001, the net operating loss and the net debt amount to Ksh72,380,820.45. So, from that point of view, the accounts of the society are in the negative and that is why I said they are not in sound financial health.

Mr. Angwenyi: Mr. Deputy Speaker, we have a crisis in the co-operative movement in this country. These type of cases are occurring in all parts of the country. What steps is the Assistant Minister taking to ensure that the co-operative movement is brought on a sound footing?

(Applause)

Mr. Kenneth: Mr. Deputy Speaker, Sir, first of all, the Co-operative Act of 1997 has a lot of shortcomings and we have, as a Ministry, decided that we have to amend it, which will liberalise the co-operative

movement and virtually remove the activities of the co-operative sector from the Ministry. Therefore, we are informing all members that later in June, we shall be able to have an all stakeholders' conference where we can amend the Act and bring more regulatory framework to the co-operative sector within the ambit of the Ministry.

Mr. Kembi-Gitura: Mr. Deputy Speaker, Sir, since the co-operative sector, as the hon. Member says, is in danger, what is the Ministry doing to save those individuals and societies that are on the deathbed from collapse before June?

Mr. Kenneth: Mr. Deputy Speaker Sir, as and when we get various complaints from various societies, we do institute commissions of inquiry, and with regard to this particular society, we have constituted an inquiry team which embarked to work on the 19th March and whose results we expect to get in another two weeks.

Mr. M'Mukindia: Mr. Deputy Speaker, Sir, I wish to thank the Assistant Minister for the speedy action which he has taken to forestall the total collapse of this union, being the economy of Meru Central District as a whole. However, could he confirm to this House that in the event that the inquiry finds that there has been some looting in the union, that the people who may have looted any of the assets, money or otherwise, of the union would be asked to repay or refund those assets very quickly, so that it can be brought back on a sound financial footing?

Mr. Kenneth: Mr. Deputy Speaker, Sir, I want to assure the hon. Member that once the results of the inquiry are out, we will take the necessary drastic action.

Question No. 143

LIQUIDATION OF GATUKUYU CO-OPERATIVE SOCIETY

Mr. Muiruri asked the Minister for Co-operative Development:-

- (a) what the total fees paid to the liquidators of Gatukuyu Coffee Growers Co-operative Society were; and,
- (b) if he could give the breakdown of all assets sold, their value and distribution.

The Assistant Minister for Co-operative Development (Mr. Kenneth): Mr. Deputy Speaker, Sir, I beg to reply.

- (a) The total fee paid to the liquidator was Kshs5,370,000.
- (b) The sale of assets realised an amount of Kshs7,134,400.

Mr. Muiruri: Mr. Deputy Speaker, Sir, Gatukuyu Coffee Growers Co-operative Society was one the best managed co-operative societies in the larger Kiambu. Over a row of four years, it was voted the best marketing society in the Republic of Kenya. This society was not insolvent. It was operating normally. It had assets and good management. Under what circumstances was it placed under liquidation and who was the liquidator?

Mr. Kenneth: Mr. Deputy Speaker, Sir, the society was placed under liquidation on 3rd November, 1995, and a detailed scheme of distribution was submitted and approved by the Commissioner of Co-operative Development on 16th July, 1997.

To complete the liquidation exercise, certain costs were necessary to be incurred. The amount paid was based on 4.5 per cent of the total fixed assets of the society, which at the time were worth Kshs118,233,950. I could get the name of the liquidator who was appointed.

(Mr. Muiruri walked to the Dispatch Box)

Mr. Deputy Speaker: Mr. Muiruri, why do you walk from there? Just stand there and I will see you!

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

Mr. Deputy Speaker: Order, Mr. Muiruri! I am not giving you any permission.

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, many members of co-operative societies have lost their assets through liquidators and receiver managers. I wonder what the Assistant Minister has in place to ensure that there are regulations to regulate these liquidators and receiver managers. This is because, apparently, there are no qualifications for liquidators since any person can be picked to be a liquidator, and that is why many co-operators are losing their assets. Are there any plans to develop regulations to regulate the liquidators?

Mr. Kenneth: Mr. Deputy Speaker, Sir, we hope, with the new Co-operative Act, we will fully address the issue of liquidation and we have earmarked it for the same.

Mr. Muiruri: Mr. Deputy Speaker, Sir, at first I want to stand up on a point of order because the Question I asked the Assistant Minister was: Since Gatukuyu Co-operative Society was not insolvent and

bankrupt, because it had assets and was operating ordinarily, why was it placed under liquidation?

Mr. Kenneth: Mr. Deputy Speaker, Sir, as I said, the liquidation was placed on 3rd November, 1995. There must have been legitimate reasons to place it under liquidation, which I could supply.

Mr. Muiruri: On a point of order, Mr. Deputy Speaker, Sir. If the Assistant Minister is not ready to provide the answers that I want, because, for example, he has said that he does not have the name of the liquidators, or if he does not know under what circumstances this profitable society was placed under liquidation--- It had money in banks and assets like land. It was a very rich marketing society which was put under liquidation. If the Assistant Minister cannot answer my questions, then I suggest that the Question be deferred to give him time to come with the appropriate answer because right now he does not have the answers that I wanted.

Mr. Deputy Speaker: Mr. Assistant Minister, why was it put under liquidation? Mr. Muiruri says it was financially healthy. Secondly, who are the liquidators? If you think you do not have that information, you may seek more time.

Mr. Kenneth: Yes, Mr. Deputy Speaker, Sir, I will be able to address the issue of the circumstances under which the liquidation was done and I will be able to provide the name of the liquidators, maybe, in the next one week. It will be next week on Tuesday.

Mr. Deputy Speaker: Mr. Muiruri, is that okay?

Mr. Muiruri: Yes, Mr. Deputy Speaker.

(Question deferred)

Question No. 137

TERMINAL DUES FOR MUKURWEINI
SOCIETY EMPLOYEES

Mr. Kagwe asked the Minister for Co-operative Development:-

- why the former employees of Mukurweini Co-operative Society (in liquidation) have not been paid their dues;
- what assets the liquidator has sold and how much each asset was paid for; and,
- if he could consider appointing a different liquidator to deal with Mukurweini Co-operative Society assets sale.

The Assistant Minister for Co-operative Development (Mr. Kenneth): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Some of the former employees have not been paid because the liquidator has not sold all the assets of the defunct society.

(b) The assets were disposed of by the liquidator and the amount of money each asset was paid for is as follows:-

	<u>Kshs</u>		
Cows and goats	1,478,950		
Stores	145,000		
Sale of vehicle KAL 161K1	2,000,000		
Sale of vehicle KSP 355	50,000		
Sale of vehicle KAL 162K	345,000		
Sale of vehicle KAA 351 lorry	1,000,000		
Part of woodland	12,600,000	Land to workers in lieu of cash	5,124,000
Waraza Farm	6,000,000		

(c) We do not wish to replace the current liquidator.

Mr. Kagwe: Mr. Deputy Speaker, Sir, this is a very serious matter in this particular area because there are riots going on at the moment over this issue of the sale, and also, because of the liquidator as the previous hon. Member said. If, indeed, there is Kshs27 million, or nearly Kshs28 million that has been made available to the liquidator, where is it? How has it been spent, and why has this money not been used to pay these people?

Mr. Kenneth: Mr. Deputy Speaker, Sir, the employees who were in the payroll at the time of liquidation were 384. Out of these, 231 have been paid in full and signed the certificate of completion. The balance of 153 employees have been paid partially. The liquidator is only going to be there for another three months. He has sold part of the farm for a total of Kshs16 million, which will be sufficient to pay the outstanding

balance of Kshs13,425,182.

Mr. J. Nyagah: Given that the liquidator, Mr. Mburu Mungai, messed up Limuru Dairy Farmers, and another co-operative society in Meru, and now he is messing up the Mukurweini Co-operative Society, would the Assistant Minister take appropriate action and remove him immediately, because Mr. Mburu Mungai is the cause of the problems in Mukurweini, Meru and at Limuru Dairy Farmers? That is why the Institute of Certified Public Accountants (ICPA) deregistered him although he used our court system to be reinstated.

Mr. Kenneth: Mr. Deputy Speaker, Sir, I am not aware of what Mr. Mburu Mungai has done. But it would be more costly if we appointed another liquidator today. He has only about 60 to 75 days to finish the transaction before he goes. He has been able to split the giant Mukurweini Co-operative Union into small societies and they have made money to the tune of Kshs521 million, and those societies appear to be satisfied. All I am saying is that, within another two to three months, he will have completed the transaction. It is not wise to appoint a new liquidator today.

Mr. Kagwe: Mr. Deputy Speaker, Sir, there are very many questions that have been raised with regard to this co-operative society. For example, would the Assistant Minister tell us the total value of this co-operative society? How much money does the liquidator expect? What is the total debt portfolio of the Mukurweini Co-operative Society so that we know whether this money is going to be enough to pay the employees or not? Could he give us a list of the total debtors?

Mr. Kenneth: Mr. Deputy Speaker, Sir, the only items that are outstanding are the members of staff who have not been paid, and also, some dues that are owed to the Sacco. With the last transaction, which is going to bring Kshs16 million, this would be sufficient to clear all the outstanding debts of Mukurweini Co-operative Society.

Mr. Kagwe: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has not answered my question. The question was: "What are the total value of the society's assets? What is the liabilities thereof so that we can see whether we are able to deal with this issue?"

Mr. Kenneth: Mr. Deputy Speaker, Sir, I did, initially, say that the figure of total assets, shares transferred and transfer documents signed by the liquidator and the management committees of the new societies that made Mukurweini Co-operative Society was Kshs521,936,121.

Mr. Deputy Speaker: Next Question, Mr. Syongo!

Question No. 152

ESTABLISHMENT OF FISHERIES AUTHORITY

Mr. Deputy Speaker: Mr. Syongo still not here? The Question is dropped.

(Question dropped)

QUESTIONS BY PRIVATE NOTICE

RECOVERY OF LIVESTOCK SEIZED
BY UGANDAN SECURITY OFFICERS

Mr. Moroto: Mr. Deputy Speaker, Sir, although this Question was on the Order Paper last week, I have not yet received a written reply. However, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Is the Minister aware that security forces from Uganda attacked Kenyan pastoralists grazing their livestock in Kapchorwa District and went away with over 3,000 heads of cattle?

(b) What urgent measures is he taking to ensure the recovery of the animals and provision of food to the victims?

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

(a) No, I am not aware. However, I am aware that Uganda's security forces, who had been carrying out the disarmament exercise in Kapchorwa and Akapiriti district in Uganda, encountered armed contacts with Pokots cattle rustlers who had raided certain villages in Uganda and stole 27 heads of cattle. I am also aware that five people reported at Kacheliba Police Station that they had lost 175 heads of cattle in Uganda.

(b) The affected people are currently living in Uganda with their families. Even those five who had gone to report the loss of their animals at Kacheliba Police Station returned to Uganda the same day and have never been seen again to date. It is, therefore, difficult to assist them with food when they are in another country---

(Loud consultations)

Mr. Deputy Speaker: Order! Order, hon. Members! Consult quietly.

The Assistant Minister, Office of the President (Mr. Tarus): The Ugandan authorities have been very positive about assisting any Kenyan Pokot whose animals could have gone astray as a result of being abandoned by herdsmen escaping from the disarmament exercise or otherwise.

Mr. Moroto: Mr. Deputy Speaker, Sir, I am surprised by the answer given by the Assistant Minister. There are several meetings which have taken place after the incident and they were attended by both Kenyan Government officials; the DC for West Pokot and the DC, Trans Nzoia District, and the Ugandan Government officials. They agreed that they were going to return those animals to Kenya. Could the Assistant Minister tell this House that the Government is not concerned about the lives of Kenyans who are in Uganda?

Mr. Tarus: Mr. Deputy Speaker, Sir, the hon. Member has just informed this House that the DC, Trans Nzoia, has been to Uganda to sort out the problem of cattle rustlers, or of Kenyans who cross to Uganda. It is not true for him to turn around and say that the Government is not concerned.

Mr. Ndambuki: Thank you, Mr. Deputy Speaker, Sir. We have been hearing so frequently that the Uganda security personnel invade Lake Victoria and other parts of this country. Could the Assistant Minister tell us what plans the Ministry has to stop this kind of aggression from the Uganda security personnel?

Mr. Tarus: Mr. Deputy Speaker, Sir, the hon. Member has informed the House that he has heard, but he has not said whether he has confirmed that story. There has been no invasion.

Mr. Ethuro: Mr. Deputy Speaker, Sir, the question raised by the hon. Member for Kapenguria is extremely important. Two years ago, the Turkanas also went to Uganda with their cattle and because of good relationship, we were able to arrest that situation. It is important that the Government recovers those 3,000 heads of cattle and hands them over to the Pokots. In the meantime, they should give them some food because these are Kenyans who are starving. Just like his colleague in the Ministry of Foreign Affairs worked hard to have those Kenyans who were captured in Iraq released, he should ensure that the Pokots are secure in Uganda.

Mr. Tarus: Mr. Deputy Speaker, Sir, the Government has been in contact with its counterpart administrative systems in Uganda with respect to Kenyans who cross the border. I wish to confirm to this House that, indeed, the Kenya Government takes seriously the security of Kenyans who are involved in legal business, either within or outside this country.

Mr. Moroto: Mr. Deputy Speaker, Sir, I am still protesting that the answer given by the Assistant Minister is not satisfying because there were cases of insecurity reported in Kanyarikwat Police Station. I have also mentioned that Kenyan authorities were following the matter because those people were grazing animals in agreement with the knowledge of the Kenyan authorities. Could the Assistant Minister now tell this House that those Pokots whose animals were taken could just go and look for their animals, if the Government is not serious about this matter?

Mr. Tarus: Mr. Deputy Speaker, Sir, the Government is ready to assist Kenyans who may be having any problem. But we also need to have our people made aware that when they are in a foreign land, they should not engage themselves in activities that may jeopardise the relations between Kenya and the other country.

Mr. Shitanda: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to imply that Pokots are cattle rustlers? In his answer from the beginning, he said that Ugandan forces were in routine patrol and that they encountered Kenyan cattle rustlers. Is he in order to imply that Pokots are cattle rustlers, and not Ugandans?

(Applause)

Mr. Tarus: Mr. Deputy Speaker, Sir, I did not refer to Pokots as cattle rustlers. I said that there was cattle rustling where the Ugandan security forces were carrying out disarmaments, and it happened that some people came and reported to the Kenyan authorities about their being mistreated when they were in Uganda. This is just all about the situation.

REMOVAL OF AIR TRANSPORT BARRIERS

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

(a) Why are all aircraft flying to North Eastern Province required to obtain clearance certificates from the Commissioner of Police?

(b) Could the Minister explain why passengers flying from Mandera to Nairobi are subjected to ID card verifications at both the Mandera and Wilson Airports?

(c) Could he consider removing these transport barriers?

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

(a) The certificates are issued after the police have confirmed that the destined airstrips are safe and serviceable for aircraft landing.

(b) This is a normal security and procedural precaution to ensure the security of aircraft and passengers; to detect and prevent illegal entry and movement into and within our country of immigrants.

(c) These measures do not constitute transport barriers. The Government has no immediate plans to review the procedures, given the current threats of international terrorism. We have, indeed, strengthened our vigilance at all entry points.

Mr. Billow: Mr. Deputy Speaker, Sir, this is a very serious Question and it has nothing to do with terrorism. The issue of certificates is a 40-year old problem that has been there ever since Kenya got Independence. It is part of Section 127 of the Constitution that was repealed in 1997, which required that North Eastern Province and contiguous districts are restricted areas and they must obtain clearance. This section was repealed in 1997 and the certificate is issued to the pilot and the aircraft not to the airstrips. There is no certificate issued for clearance of an airstrip, including Marsabit Airstrip.

Could the Assistant Minister answer the question why must the people of North Eastern Province be subjected to measures that have nothing to do with the security of this country? Why should I produce my ID card---

Mr. Tarus: Mr. Deputy Speaker, Sir, I did say that the reason why we have these procedural requirements is for the sake of safety of passengers.

Mr. Haji: Mr. Deputy Speaker, Sir, is the Assistant Minister sincere in his answer, when the ill-fated plane at Busia was not given clearance to go there while it was unserviceable?

Mr. Tarus: Mr. Deputy Speaker, Sir, that is a different question.

Dr. Ali: Could the Assistant Minister tell us pointblank that he is discriminatory the way he handles this issue because Wajir and Marsabit are not border towns? Those people who travel from Kisumu, Mombasa, Busia *et cetera*, are not asked to produce ID cards. Why should anybody travelling from Northern Kenya, Wajir, Marsabit, Moyale, and Mandera be asked to produce ID cards, including Members of Parliament, at Wilson Airport? Could the Assistant Minister tell us the reason for this requirement?

Mr. Tarus: Mr. Deputy Speaker, Sir, hon. Members are aware that Somalia does not have a Government and we must reckon with the fact that our border is susceptible to entry by people of Somalia.

Dr. Ali: On a point of order, Mr. Deputy Speaker, Sir. This Assistant Minister is not being sincere! How can he talk about Somalia not having a Government when, before you enter an airstrip like Wajir, which is a military airstrip; to board the plane, your ID card has to be checked? Is it being sincere?

Mr. Deputy Speaker: That is not a point of order!

Mr. Abdirahman: Mr. Deputy Speaker, Sir, the verification of ID cards is not only with the use of air transport.

Mr. Deputy Speaker: Order! Sit down! That is not a question!

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to tell us that they are carrying out these procedures for the people of North Eastern Province because of security reasons, when we know that the people who bombed the American Embassy here in Nairobi and the Israel Hotel in Mombasa never came from Somalia?

Mr. Tarus: Mr. Deputy Speaker, Sir, I wish to tell the House that I have heard the sentiments expressed by the hon. Members with regard to the problems encountered by the people travelling to North Eastern Province, and that is why the NARC Government has a lot to do to rectify the situation. We shall consider their sentiments seriously.

Mr. Billow: Mr. Deputy Speaker, Sir, I think the answer given by the Assistant Minister contradicts the NARC Government's pledge to develop North Eastern Province. The question here is on the legality of the action

by the police to require a certificate of clearance. Since Section 127 was repealed, under what authority do the police officers require a permit for pilots and aircraft flying to North Eastern Province and for me to produce an identity card at this airport? It is discriminatory and punitive. It has added to the underdevelopment of North Eastern Province.

Mr. Tarus: Mr. Deputy Speaker, Sir, we have heard those sentiments, and the NARC Government will break the record by reviewing those rules.

Mr. Deputy Speaker: Next Question!

MEASURES TO ERADICATE HIGHWAY
BANDITRY IN SAMBURU

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

(a) Is the Minister aware that there is a lot of insecurity along Isiolo-Marsabit Highway, particularly between Merile and Archers Post in Samburu District?

(b) What urgent steps is he taking to eradicate highway banditry and cattle rustling in that region?

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

(a) I am aware that there have been cases of banditry between Merile and Archers Post where vehicles without police escort have been targets of attack.

(b) The Government is appraising itself with the security and development concerns in all the arid and semi-arid regions of the country. Short-term measures to eradicate highway banditry and cattle rustling include police escort for all vehicles plying the route; frequent inter-district security committee meetings involving Isiolo, Marsabit, Samburu and Meru North and increased surveillance and patrol by security personnel at Serolige and Merile. Arrangements are at an advanced stage to establish a General Service Unit base between Merile and Serolige.

Mr. Leshore: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for that brilliant response to my Question. We have just lost two sons of a former KANU Assistant Minister because that area is very dangerous. Could the Assistant Minister tell us when he is going to post the General Service Unit personnel to either Serolige or Merile?

Mr. Tarus: Mr. Deputy Speaker, Sir, I confirmed with the GSU Commandant that they are, indeed, making arrangements to post the General Service Unit personnel to the place very soon.

Mr. Sasura: Mr. Deputy Speaker, Sir, a similar question was raised in this House in the form of a Ministerial Statement. As you can recall very well, when the question arose with regard to the death of three people, the Minister in charge promised to send a Land Rover vehicle for patrols on that road. In the Ministerial Statement, he also promised to put up a GSU post. Between that time and now, ten people have been killed on the same road, and yet the Assistant Minister is still talking to the Commandant. Could the Assistant Minister tell us what it will cost him to transport GSU officers, who are just seated in a camp somewhere and just feeding, to that road to save lives?

Mr. Tarus: Mr. Deputy Speaker, Sir, the establishment of a base will require some financial support. It is only last week when the Supplementary Estimates were brought here, and I wish to confirm to the hon. Member that we are, indeed, serious in addressing the problem.

Mr. Leshore: Mr. Deputy Speaker, Sir, the Assistant Minister has said that he is very serious about sending a GSU platoon to that area. How soon will it be, since we just passed the Supplementary Estimates last week?

Mr. Tarus: Mr. Deputy Speaker, Sir, I may not be able to give a very specific date in this House now, but, indeed, we shall do our level best to ensure that the "soon" does not lead to inconveniencing the people of that region.

Mr. Mwenje: On a point of order, Mr. Deputy Speaker, Sir. The Departmental Committee on National Security will be touring this area on Thursday. May I extend the invitation to the hon. Member from the area to join us so that we can ascertain for ourselves the truth of what the Assistant Minister has said?

Mr. Deputy Speaker: Mr. Mwenje, that is not a point of order.

Hon. Members, as you can see, we have already overshot Question Time by 15 minutes. As much as possible, we should deal with Questions within one hour only. I am going to ask the indulgence of Mr. Haji, Mr. Wamwere, Mr. ole Ntutu and the Ministers concerned to let us defer these Questions to tomorrow afternoon, in view of the time factor.

COMMUNICATION EQUIPMENT FOR
IJARA SECURITY OFFICERS

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

(a) Is the Minister aware that security personnel stationed at Sangailu, Bodhei and Kotile of Ijara District have no communication sets?

(b) What is the Government doing to rectify this anomaly?

Mr. Deputy Speaker: Is that okay, Mr. Haji?

Mr. Haji: Mr. Deputy Speaker, Sir, this is the first Question I am asking since I came to this Parliament, but I oblige.

(Question deferred)

RELEASE OF NJOROGES TITLE DEED

(Mr. Wamwere) to ask the Minister for Health:-

Could the Minister order the release of the title deed of Mr. John Njenga Njoroge, whose daughter Joyce Waringa died while undergoing an operation at the Private Wing of Kenyatta National Hospital, which is the only place where neurosurgery could be done?

Mr. Deputy Speaker: Is that okay, Mr. Wamwere?

Mr. Wamwere: Mr. Deputy Speaker, Sir, it is okay to some extent; I was just wondering whether the Question could be answered in the morning rather than in the afternoon.

Mr. Deputy Speaker: Yes, it is okay! Mr. Wamwere's Question will be answered tomorrow morning.

(Question deferred)

REPOSSESSION OF SCHOOL LAND
FROM PRIVATE DEVELOPER

(Mr. ole Ntutu) to ask the Minister for Education, Science and Technology:-

(a) What action has the Minister taken to repossess land belonging to Nkorinkori Secondary School, which has been fenced off by a private developer?

(b) What is the ownership status of the borehole and water pump on the land in part "a" above?

Mr. Deputy Speaker: Mr. ole Ntutu, is that okay?

Mr. ole Ntutu: That is okay, Mr. Deputy Speaker, Sir.

(Question deferred)

Mr. Deputy Speaker: Very well! I apologise to the Ministers concerned.

POINT OF ORDER

EVICION OF MUTHANGA FARM RESIDENTS

Mr. O.K. Mwangi: On a point of order, Mr. Deputy Speaker, Sir. I would like to seek a Ministerial Statement from the Minister of State, Office of the President, in charge of internal security. This is with respect to the residents of Muthanga Farm in Kambiti Location of Maragua District, who were violently evicted on Friday night by hired gangsters, backed by armed police officers and sanctioned by the District Commissioner of the area.

Mr. Deputy Speaker, Sir, it is a very sad story because despite the fact that the residents of this farm have been there for the last 30 years, the Government found it fitting to evict them at night and burn down 280 homesteads. These houses were razed down at night under the guard of armed police officers.

Mr. Deputy Speaker: Mr. O.K. Mwangi, if you give the whole story, then what will the Minister investigate?

Mr. O.K. Mwangi: Mr. Deputy Speaker, Sir, I would like the Minister to tell the House why those farmers had to be evicted at night because they are said to have had an injunction from court against the eviction; why it was necessary for the DC to sanction the eviction, and where they were supposed to go. Now that their houses have been burnt down---

Mr. Deputy Speaker: Order! Mr. O.K. Mwangi, after the Ministerial Statement is given, you can spare whatever you have for clarification.

Mr. O.K. Mwangi: Mr. Deputy Speaker, Sir, could the Government provide food for the families while they prepare to settle?

Mr. Deputy Speaker: Dr. Murungaru have you taken note of that?

The Minister of State, Office of the President (Dr. Murungaru): Mr. Deputy Speaker, Sir, I have taken note of that, and we will issue a Ministerial Statement on Thursday afternoon.

Mr. Ole Ntutu: On a point of order, Mr. Deputy Speaker, Sir. Three weeks ago I demanded a Ministerial Statement from the Minister for Education and up to now I have not received the reply.

Mr. Deputy Speaker: Is the Minister for Education not here? We will follow up that later.

MINISTERIAL STATEMENTS

RENT DISPUTES IN KAWANGWARE

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Deputy Speaker, Sir, I beg to issue a statement on the landlord-tenant rent dispute in the informal settlement of Kawangware. This statement was sought by a Member of Parliament on Tuesday, last week.

Recently, there have been serious incidents of unrest by tenants within the informal settlements of Nairobi, mainly, Kawangware, Kibera, Kangemi and Mathare. These unrests have been fuelled by tenants protesting alleged high rents charged by landlords. As you might remember, I issued a statement on 5th March, this year, regarding houses in Mathare 4A Project. It seems my statement was misinterpreted to have covered all informal settlements. The statement issued was in relation to the Mathare 4A Project only, whose rents are Kshs200 for unimproved houses, and Kshs400 per month for improved houses.

I would like to clarify the situation on the rent concerning Mathare 4A as compared to other informal settlements. A distinct difference must be drawn between Mathare 4A and other informal settlements countrywide. The uniqueness of Mathare 4A is that it is a slum upgrading project being undertaken by the Kenya Government and the Government of the Federal Republic of Germany, where the Catholic Archdiocese of Nairobi has been appointed as the implementing agent for the two Governments. The rent paid by tenants is as per the tenancy agreement signed between the residents of Mathare 4A and the Amani Housing Trust.

The money realised is used to cover maintenance and administrative costs such as developments of roads, collection of garbage, street lighting and clearing of drainage within the settlements. However, the tenants meet their water costs through communal arrangements. Mathare 4A Project is a pilot project whose results are meant to be used as a blue print of future development and upgrading of slums and informal settlements. The rent paid is subsidised and does not reflect the capital expenditure on the houses. Rents in other informal settlements, therefore, cannot be pegged to the rents charged in the Mathare 4A Project. Rents charged in other informal settlements will continue to be a matter of agreement between the landlords and tenants. These rents are expected to be fair to the tenant while ensuring an economic return to the landlord.

In the event of rent disputes, my Ministry has a regulatory department, namely the Rent Restriction Tribunal, which is legally mandated to arbitrate and adjudicate all rents not exceeding Kshs2,500 per month for residential houses only. Further, my Ministry is in the process of constituting a committee of all interested parties, including the Ministry of Local Government and the Provincial Administration, to deal with the issues pertaining to the landlord-tenant relationship, with a view to reaching an amicable lasting solution.

This committee will also have the mandate to inform the public on the legal procedures to be followed when settling rent disputes. As it has been reported, rent unrests have resulted in unwarranted destruction of private property and injury to innocent people. This could have been avoided if the right procedures had been followed. I would, therefore, like to appeal to all those who may have rent grievances to follow the legal procedures in solving their rent issues and not to take the law into their hands. Destructive action will be met by the full force of the law. All rent grievances should be channelled to the afore-mentioned Rent Restriction Tribunal which is mandated by the law to arbitrate, assess and determine fair and reasonable rents countrywide.

In Nairobi, the tribunal is located at Agriculture House, First Floor, at the junction of Moi and Harambee

Avenues. The tribunal also holds regular sittings in other provincial headquarters and we are in the towns of Malindi, Lamu and Eldoret.

Thank you, Mr. Deputy Speaker, Sir.

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

Mr. Deputy Speaker: Order! Is it related to this issue?

Mr. Wanjala: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Sasura wants clarification, so let us go to him first.

Mr. Sasura: Mr. Deputy Speaker, Sir, when it comes to insecurity in Nairobi, we are all stakeholders and affected parties. The recent pockets of insecurity in Kawangware, Mathare and other areas is causing a lot of concern. While we appreciate the statement made by the Minister, it might be difficult for tenants with rent grievances to keep going to Agriculture House, considering the large population in Mathare and Kawangware. Could the Minister undertake to talk to the residents of those particular areas himself and tell them that he did not tell them not to pay the rents as has been speculated in the media?

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Deputy Speaker, Sir, that is exactly what I have done. However, the most civilised way of resolving this kind of dispute is for the landlords to organise themselves into an association. The tenants should also form their own association. Representatives of the two associations can then negotiate and agree on rent. This is the format that we used in Kibera and Mathare 4A with very positive results. Therefore, I would urge hon. Members to inform their supporters to follow this kind of procedure.

MANAGEMENT PROBLEMS AT THE EAST AFRICAN PORTLAND CEMENT

The Minister for Trade and Industry (Dr. Kituyi): Mr. Deputy Speaker, Sir, following major complaints arising out of management problems at the East African Portland Cement, on 30th January, I appointed a special audit committee to inquire into the areas that were being raised as concerns, namely, award of contracts, selection of distributors, manipulation of quality discounts, staff appointments, promotions and dismissals. This audit team presented their report to me on 10th March this year. Whereas, initially, we just wanted to follow normal procedures and call in the relevant arms of the State to investigate and take appropriate action, there has been very substantial pressure exerted on me by persons saying that I am sacking persons with ethnic bias, and that I am involved in witch-hunting against a certain community.

I find it necessary, and in keeping with transparency in the management of public affairs, that the contents of this report be brought into the public domain. On the basis of that, we have already taken appropriate administrative measures as the Government and informed all other shareholders in East African Portland Cement, particularly after establishing malpractices and failure to account for money. A good example of these malpractices is a case where a managing director bought a company house for himself at Kshs7.5 million shillings below its value; paid Kshs2.8 million for the education of his children in the US; a chairman claimed *per diem* of Kshs1.08 million for attending nine board meetings; Kshs34 million for a contract of exporting cement to Uganda not accounted for; Kshs607 million in production credit to one distributor who was being given discount below production costs and many other exercises that have cost over Kshs150 million of shareholders' money. Due to the aforementioned, I took the liberty of tabling the comprehensive report of the task force for members of the public to scrutinise it after it has been seen by Members of Parliament.

Mr. Deputy Speaker: Mr. Tuju!

Mr. O.K. Mwangi: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Is it related to this issue?

Mr. O.K. Mwangi: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: I have already asked Mr. Tuju to stand on something else.

Mr. O.K. Mwangi: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek guidance from the Chair because when an hon. Member asks for a Ministerial Statement, procedurally, he is given a chance to comment on it. However, this did not happen in respect of the Ministerial Statement given by the Minister for Roads, Public Works and Housing.

Mr. Deputy Speaker: Mr. O.K. Mwangi, what you have said is true. In fact, Mr. Sasura did seek further clarification from Mr. Raila. That is the position!

Let us hear Mr. Tuju in relation to KICC.

BARRING OF KANU MEMBERS FROM KICC

The Minister for Tourism and Information (Mr. Tuju): Mr. Deputy Speaker, Sir, may I from the outset apologise for not being in the House last week to address this particular question.

I have personally apologised to Mr. Sasura for any inconvenience that may have been caused to him when he tried to access the Kenya Commercial Bank (KCB) Branch at KICC. May I state it here that, at no time did I give instructions to the members of the security staff at KICC to stop hon. Members from accessing their bank at KICC. If it did happen, it was inadvertent. I, personally, do apologise to the hon. Member.

Thank you, Sir.

Mr. Deputy Speaker: Mr. Sasura, do you want to seek any clarification from the Minister?

Mr. Sasura: Mr. Deputy Speaker, Sir, I thank the Minister for giving that statement. However, I wish the Minister could assure me that I will not be harassed again, given the fact that today is 1st April, and sometimes people make very serious jokes. Could he assure me that tomorrow he will not say it was just another joke on 1st April?

The Minister for Tourism and Information (Mr. Tuju): Mr. Deputy Speaker, Sir, I wish that was true. However, may I assure hon. Members that they should not expect any harassment at KICC when they access the bank.

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

Mr. Deputy Speaker: Is it on the same matter?

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

Mr. Deputy Speaker: Mr. Angwenyi, what clarification do you want to seek from the Minister?

Mr. Angwenyi: Mr. Deputy Speaker, Sir, you heard the Minister say that the hon. Member will not be harassed when he accesses the KCB branch at KICC. Suppose he wants to access some other facilities, for example, toilets at KICC, will he be barred from them?

(Laughter)

The Minister for Tourism and Information (Mr. Tuju): Mr. Deputy Speaker, Sir, the question was with respect to accessing the bank at KICC.

Mr. Samoei: Mr. Deputy Speaker, Sir, the KICC is a public property. Indeed, there are many offices in that building. I do not know why there are restrictions imposed by the Minister. In fact, what he refers to as security staff are basically goons whom he has imported from some place using taxpayers' money. Therefore, is it in order for him to bar KANU hon. Members from accessing the KICC, which houses offices of international organisations? The KANU Members have a right to visit them. It is not just about the bank at KICC, but the entire KICC which is public property.

The Minister for Tourism and Information (Mr. Tuju): Mr. Deputy Speaker, Sir, I am a little bit of a stranger to the issue of goons. I have never had any; maybe, the hon. Member would be candid enough to clarify.

But I can say that when any Member of Parliament, indeed, any [**The Minister for Tourism and Information**] Kenyan, tries to access KICC for normal business, he or she will not be harassed. And if that did happen, it was inadvertent. I have personally talked to the security team who are at KICC to ensure that they do not harass any Kenyan or hon. Member of Parliament, including Mr. Samoei.

I would like to leave it at that. Any other issue beyond that, I think, is in another domain and I do not want to stray into it.

ATTACK ON KENYAN POKOTS BY UGANDAN
SECURITY PERSONNEL

The Minister of State, Office of the President (Dr. Murungaru): Mr. Deputy Speaker, Sir, on Thursday 20th March, 2003, Mr. Muroto rose on a point of order, seeking a Ministerial Statement on alleged attack of Kenyan Pokots by the Ugandan Army at Kapchorwa District in Uganda.

I have already answered some of the questions raised over the same incident through a Question by Private Notice. However, I wish to add on the following few points.

On the morning of 27th February, 2003, Pokot cattle rustlers were reported to have raided Sabine Village in Uganda where they stole 27 heads of cattle. Later that day, this group of armed cattle rustlers encountered the Ugandan security forces who were carrying out a disarmament exercise in the districts of Kapchorwa and Mikipilit

in Uganda. Attempts by the Ugandan security forces to recover the stolen animals from the rustlers met fierce armed resistance. This forced the Ugandan security personnel to use heavy arms, whose explosion caused fear and panic among the area residents, other herdsmen and the cattle rustlers who fled the areas, some of them abandoning the animals.

Mr. Deputy Speaker, Sir, on 29th February, 2003, at about 4.00 p.m., a group of five people who had come from Uganda reported at Kacheliba Police Station that Ugandan security forces on a disarmament operation had rounded up their animals on 27th February, 2003, at Karita Parish. Between the five of them, they reported having lost 175 heads of cattle and not 3,000 as alleged. To date, that is the only report made to the Kenyan authorities about the loss of Pokot animals in Uganda.

On 3rd March, 2003, Kenyan security officers visited Karita Military Camp with a view to verifying the claim, and if true, to intercede on behalf of the pastoralists.

At the military camp, there were only eight calves that were reported to have strayed and they were awaiting collection upon identification. No other animals were being held at the camp at the time.

This question of the confiscated animals was brought up on 5th March, 2003, at a joint security-cum-leaders meeting between Kenya and Uganda. The meeting was attended by the hon. Member for Kapenguria, among other leaders. The Uganda authorities did affirm that they only recovered stolen animals from Pokot rustlers. They insisted that if there were any animals that were missing, then it was most probable that the animals fled after being abandoned by their owners.

Mr. Deputy Speaker, Sir, I would like to make it clear, once again, for the benefit of the House and the country, that the incident in question took place within the boundaries of Uganda. The families concerned have been living with their children in Uganda prior to this incident. And even after the incident, none of them have reported to the Kenyan authorities that they are lacking food or their children cannot go to school. The correct position is that the families are still in Uganda and they have not come back to Kenya. The children that are alleged not to be going to school as a result of this incident are certainly not attending Kenyan schools. Even the group that reported the loss of their animals at Kacheliba Police Station went back to Uganda the same day and they have never reported back to the Kenyan Government authorities since then.

The Government provides adequate relief food assistance to West Pokot District to cater for any emergencies of that nature. I would like to appeal to any of them; that is Kenyan Pokots, living in Kenya to report to the nearest administrative centre or police station, where they will be advised accordingly.

Finally, the hon. Member had requested my office to assure him that such incident will not recur in future. I would like him to understand that such an undertaking will only be credible if I am equally assured that our citizens who live along our international boundaries will not cross into other countries for the purpose of cattle rustling. Otherwise, the Government will always be ready to protect and promote the interests of our citizens within our country, as well as those who engage in legitimate activities outside the country.

Mr. Moroto: Mr. Deputy Speaker, Sir, you now realise the Question is coming up again. As I said earlier, the answer that was given to the Question was not correct. I am informed that the Departmental Committee on Administration, National Security and Local Authorities, whose Chairman is Mr. Mwenje, will visit Kapenguria Constituency on Friday. So, could the Minister consider the report from these people and bring it to the House so as to clear the air?

The Minister of State, Office of the President (Dr. Murungaru): Mr. Deputy Speaker, Sir, if I receive useful information that contradicts the information that we already have, and which is actionable, I undertake to act on it.

POINTS OF ORDER

STATEMENT ON ISIOLO BANDIT AMBUSH

Mr. Kuti: On a point of order, Mr. Deputy Speaker, Sir. On Thursday, I sought a Ministerial Statement from the Minister of State, Office of the President, concerning an incident where a Land-Rover belonging to the immediate former Member for Isiolo North, Mr. Mokku, was ambushed and five people were killed and seven others injured. Among the dead were two security officers, whose guns were taken away by bandits. As I said, that was the fourth such incident in that area in the last two months. So, could the Minister issue the Ministerial Statement I had asked for?

The Minister of State, Office of the President (Dr. Murungaru): Mr. Deputy Speaker, Sir, I regret the omission. So, I request that I be allowed to issue the Ministerial Statement sought tomorrow afternoon.

Mr. Deputy Speaker: Very well. The Ministerial Statement shall be issued tomorrow.

ARREST OF KETAN SOMAIA SOUGHT

Mr. Wanjala: On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Office of the Attorney-General. The National Rainbow Coalition (NARC) Government has pledged to rule according to the law. So, we do not expect the criminal laws of this country to be applied selectively.

Some while ago, while considering a Report by the Public Accounts Committee, this House learnt that a Mr. Ketan Somaia had received Kshs480 million from the Government for the supply of certain equipment, which he never did. When the matter was subsequently raised, the Attorney-General told the House that he had issued a warrant for the arrest of Mr. Somaia, and that he had asked Interpol to assist in his arrest. I am surprised that even the Interpol have not managed to arrest Mr. Somaia. This man is now in the country; he travels to Naivasha to have lunch as other Kenyans are harassed and arrested for misappropriating only a few shillings belonging to the public. So, I believe that the Attorney-General should come here with a comprehensive report, explaining why Mr. Somaia has not been arrested to date.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I will issue the Ministerial Statement sought.

Mr. Wamwere: On a point of order, Mr. Deputy Speaker, Sir. Last week, I sought a Ministerial Statement from the Minister for Labour and Human Resource Development regarding the plight of workers in Subukia and other areas of Nakuru District. As I speak, workers in flower farms in Naivasha and Subukia are being denied their rights; they are being dismissed for raising complaints, and they do not appear to have anybody who can protect them. The Minister does not answer Questions brought to this House or issue Ministerial Statements demanded from him on protection of workers' rights. So, could I have guidance from the Chair as to who is responsible for protecting workers' interests since the Minister for Labour and Human Resource Development seems to have abdicated his responsibility to give workers that protection?

Mr. Deputy Speaker: Indeed, Mr. Wamwere requested for a Ministerial Statement from the Minister for Labour and Human Resource Development in relation to the problem of sisal workers in Subukia and other areas of Nakuru District. I understand that the relevant Minister and his assistant are not here. So, could the Minister of State, Office of the President, ensure that the Ministerial Statement regarding the protection of sisal workers in Nakuru District is brought to the House on Thursday.

Mr. Wamwere: Mr. Deputy Speaker, Sir, the Ministerial Statement sought is not about sisal workers but rather about workers in flower farms.

Mr. Deputy Speaker: That is all right.

The Minister of State, Office of the President (Dr. Murungaru): Mr. Deputy Speaker, Sir, I will ensure that the Ministerial Statement sought is brought to the House on Thursday as directed.

STATEMENT ON UNCOLLECTED TIMBER SOUGHT

Mr. Mukiri: On a point of order, Mr. Deputy Speaker, Sir. Last week, I sought a Ministerial Statement from the Minister for Environment, Natural Resources and Wildlife, but I have not received any response.

The Assistant Minister for Environment, Natural Resources and Wildlife (Prof. Maathai): Mr. Deputy Speaker, Sir, I do not have any information on the Ministerial Statement sought, but I promise to take up the matter.

Mr. Deputy Speaker: Very well. Lastly, let us hear Mr. Muturi's point of order.

STATEMENT ON ROLE OF ATTORNEY-GENERAL IN THE CABINET

Mr. Muturi: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Justice and Constitutional Affairs on a matter touching on the powers of this House since it is constitutionally mandated to create Ministerial offices. Could the Minister issue a Ministerial Statement regarding the law under which the Attorney-General of the Republic of Kenya, who is described in Section 26(1) of the Constitution as a public servant, like permanent secretaries, attends Cabinet meetings and flies the national flag on his official car, and when he intends to propose legislation before this House to set the age limit for holder of the office of the Attorney-General and that of the Controller and Auditor-General.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Mr. Deputy Speaker, Sir, I undertake to issue the Ministerial Statement sought next week.

BILLS*First Readings*

THE NATIONAL COMMISSION ON
GENDER AND DEVELOPMENT BILL

THE PERSONS WITH DISABILITIES BILL

(Orders for the First Readings read - Read the First Time-Referred to the relevant Departmental Committee)

Second Reading

THE CRIMINAL LAW (AMENDMENT) BILL

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that the Criminal Law (Amendment) Bill be now read a Second Time.

Mr. Deputy Speaker, Sir, this Bill is part of the reform process that has been on-going to reform our laws. Laws are not an obstruction and they do not exist in a vacuum. They are conditioned by socio-economic realities of the time. The criminal justice system is a core activity of any government. The Government can do away with many things, but the reason for the Government to be there is primarily, first and foremost, to establish law, order and peace. In that regard, the criminal justice system becomes very critical and crucial in the functioning of the Government. The criminal justice system is also very much at the forefront of issues related to human rights. In fact, it is when the criminal justice system fails that one gets many complaints about violations of human rights and, in particular, the civil and political rights. In fact, one can go further and say that it is when the criminal justice system breaks down that there is no peace in the country. That affects the economic and social development and, therefore, has an impact on the economic, social and cultural rights of the people.

Mr. Deputy Speaker, Sir, I want to underline the fact that the Bill that we are discussing is a very important Bill. That is because it touches directly on the rights of the people. We all know that the laws in this country have, for a long time, needed reforms. That is why, sometimes in mid-90s, we embarked on a very ambitious legal reform process. I did set up many task forces to make recommendations on the reforms of various aspects of our laws.

Mr. Deputy Speaker, Sir, one of the task forces that I set up was the task force to make recommendations on the reform of our penal laws and procedures. I set up that task force because, if you look at the Penal Code that is in existence today, its date of commencement is 1st August, 1930. Therefore, we have had the Penal Code in this country which began operating from 1930! It may be true that we have carried minor amendments from time to time since that time, but the basic core of the Penal Code system remains the same as it was on 1st August, 1930. Therefore, because of the need to reform these laws, I set up a task force which was chaired by Justice Bena Lutta. Justice Bena Lutta was the first Solicitor-General after Independence and he was the first indigenous African to be a Judge of the Court of Appeal for East Africa. It also consisted of Justice J.F.H. Hamilton, a renowned lawyer who has since passed away.

(Mr. Githae handed Mr. Wako a glass of water)

I thank the Assistant Minister for Justice and Constitutional Affairs for that because I really need water at this time!

It also consisted of renowned senior advocates who are well known in the practice of Criminal Law in this country such as Byron Geogiadis, A. Kapila of the Jomo Kenyatta trial fame and people who have since become Members of Parliament. In fact, one of them has joined the Cabinet. But at that time, he was the Vice-Chairman of the Institute of Certified Public Accountants and has some experience in fraud law; and that is Mr. Amos Kimunya. It also consisted of somebody who has become a Member of Parliament, Mr. Noah arap Too, who, at that time, was the Director of Criminal Investigations Department. It also consisted of the Director of Public Prosecutions at that time, Mr. Bernard Chunga, and legal academicians who were lecturing on criminal law at that time, such as Dr. Oketch Owiti. Eminent sociologists were also members, such as Dr. Filister Onyango. The then Solicitor-General, Mr. Ben Kubo, was also a member. A lecturer by the name of Mr. Issa

Siema was one of the joint secretaries. So, that very high level team was appointed by me to look into the reforms of penal laws.

Mr. Deputy Speaker, Sir, it had a very wide mandate. Its mandate was:-

(i) To review all penal laws, offences and procedures including, but not limited to, the Penal Code, the Criminal Procedure Code, the Evidence Act, connected laws and make recommendations thereon.

(ii) To make proposals for making provisions on, and enhancing control of economic, commercial and environmental crimes.

(iii) To make any recommendations incidental to the foregoing.

Mr. Deputy Speaker, Sir, I am glad that, in their approach to work, they went round the country, undertook overseas trips and submitted a very comprehensive report way back in February, 1997. That report has already been partly implemented by this House, particularly where it relates to environmental criminal law, by the enactment of the Environmental Management and Coordination Act. Some of the recommendations have also been enacted by this House; under the Community Service Order Act. A number of recommendations that they made relating to the powers of detention without trial; relating to the removal of licensing of political meetings, with only notifications to the police, were done under the Statute Law (Miscellaneous Amendments) Act of 1997.

Mr. Deputy Speaker, Sir, a number of recommendations on laws relating to children were done under the Children Act. The recommendations that were made on economic crimes are already before this House under the Anti-Corruption and Economic Crimes Bill. So, the Bill that is before us contains reforms which touch directly on the operational efficiency of the criminal justice system. They also touch directly on providing a legal environment for the better protection of human rights.

Mr. Deputy Speaker, Sir, if I may come directly to the Bill - I will not be long because this is the second time that I am moving this Bill - first of all, you will notice that, in the Bill, we are now doing away with corporal punishment. A number of the sections which are reflected in the Bill are doing away with corporal punishment. They give the magistrate, who has found a person guilty of an offence and he is about to impose a sentence, particularly a custodial sentence, the right to say that: "In addition, the convicted person may get so many lashes of the cane!" So, we are now doing away with corporal punishment. Corporal punishment has been declared as punishment which is degrading and inhumane.

Mr. Deputy Speaker, Sir, corporal punishment qualifies as torture. As we know, torture has been outlawed, not only under our Constitution, our laws or under the Police Act, but also under international and regional instruments, to which Kenya is a party, such as the United Nations Convention Against Torture, the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights. So, on enactment of this Bill, corporal punishment will no longer be a punishment which can be imposed by the court in sentencing somebody who has been convicted of an offence.

The amendments also touch on sexual offences. There has been an inconsistency in penalties for those found guilty of sexual offences. For example, a person found guilty of defilement of a girl under 14 years of age can be sentenced to a maximum of 14 years imprisonment, whereas a person found guilty of rape of an adult can be sentenced to life imprisonment. So, somebody who has committed a very offensive act on a child is sentenced to a maximum of 14 years imprisonment and a person guilty of rape of an adult is sentenced to life imprisonment. This should really be the other way round. We are proposing to rationalise all these sentences so that whoever is guilty of sexual offences under Chapter 15 of the Penal Code can be sentenced to a maximum of life imprisonment.

We are also saying, in this age of gender equality, that whereas our current law is focused only on the female gender, both genders should be treated equally. Therefore, in the wording of the sections which define offences, we are not talking of a girl child. We are being gender-sensitive by giving equal protection to men and boys and not just to women and girls. We have also stated that when the court is hearing a case, it should convict a person if it is satisfied that the child is giving evidence. Up to now, it has been very difficult to prove to the court that somebody has defiled a child. Cases of defilement of minors are heard in secrecy yet the law requires corroboration. If a minor complains and says that she has been defiled, that alone, under our laws, will not be sufficient to convict a person of defilement of a minor. We are now saying that, in order to catch people who defile minors, the court should listen to the minor, and if it is satisfied that the minor is telling the truth, it should convict that person without any further corroboration.

Mr. Deputy Speaker, Sir, as far as sexual offences are concerned, we are also saying that, in trials relating to sexual offences, the identity of the victim should not be published. This is really important because we believe that many cases of defilement and rape are not reported to the police because the victim does not want to be identified through the court process, and then everybody knows that a certain person is a victim of rape. Because of the fear of publicity, not many people feel courageous enough to report rape cases to the police. Also,

even those who feel courageous enough to report rape cases to the police, and the cases are heard in court, they do not want there to be publicity particularly during cross-examination on the intimate details of how the rape occurred in a room. Such details should not be published in newspapers for everybody to read. Publishing such details may be to the amusement of the public, but definitely the victim will be highly embarrassed by that.

Therefore, we have proposed, under Chapter 15 of the Penal Code, particularly in relation to rape, attempted rape, defilement of a girl under 14 years of age and incest by males and females, that those cases should be heard in camera. As you know, one of the requirements of criminal trials is that cases should be heard in an open court so that the citizens of the land can go there, see and hear for themselves the offence committed and form an opinion in their minds whether or not the accused is guilty, hence the purpose of a jury system; that an accused must be tried by his peers. We are saying that trials relating to sexual offences should be treated differently from other trials and should be heard in camera. The identity of the victims should not be published in the newspapers, or anywhere else, so as to protect their dignity.

The other general ground on which we have proposed an amendment is the issue of the Attorney-General's consent to prosecute. The law requires, in certain specified cases, for example, cases of incest, wrongful inducing of boycotts, subversion and corruption, that consent to prosecute must be given by the Attorney-General. This also overloads the Attorney-General with unnecessary work. But more importantly, this contributes in a very big way to the delay in the hearing of cases. This requirement unnecessarily prolongs the prosecution process without enhancing the essence of justice. This delay is not, as the public may think, as a result of a file being delayed in the Attorney-General's office. I can assure this House that a file that is brought to the Attorney-General's office is dealt with within 14 days as far as consents are concerned. So, in my office, we have put in place an expeditious system where consent can be given quickly and without much delay. It is given within 14 days and at most within a month.

QUORUM

Mr. M. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I do not think we have a quorum in the House.

Mr. Deputy Speaker: No, we do not have a quorum. Ring the Division Bell.

(The Division Bell was rung)

Mr. Deputy Speaker: Order! Order! We now have quorum!
Mr. Attorney-General, you may continue!

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I was on the issue of consent. I was saying that the delays do not lie in the Attorney-General's Chambers. The Attorney-General normally gives consent within 14 days or at most one month. The delay lies in the files getting to the Attorney-General's Chambers. Imagine that a crime has taken place in Lamu Island. Through that process, the file has to go through the District Criminal Investigations Officer (DCIO), the Provincial Criminal Investigations Officer (PCIO) and finally to the Criminal Investigations Department Headquarters here in Nairobi before it comes to my office. At times, that process alone can take months. When the file leaves the police station, where the crime was reported and gets to my office, it can take six months. In the meantime, cases are just being mentioned and it is indicated that the files have been sent to the Attorney-General's Chambers. So, this requirement has actually led to the delay in disposing of criminal hearings in court. Therefore, we have proposed to do away with the consent which is required in these cases.

The Attorney-General will still have the control over all the criminal cases, in the sense that if a case has been instituted without sufficient evidence and it comes to his attention, he can call for that specific file and deal with it for the ends of justice to be met. This is because the consent was required primarily to ensure that there was enough evidence on the file for the case to proceed. It also ensured that public interests, in cases of that nature, were taken into account.

We have also proposed to do away with committal proceedings in murder cases. The requirement of committal bundles, under the current law, has caused delays in the hearing of murder cases owing to lack of capacity on the part of the police to prepare such bundles. The requirement for committal bundles, when it was initially introduced, was actually meant to expedite the hearing of murder trials. That was one of the main reasons for having committal bundles. It was also meant to have a cross-check system to show that one is only tried on such a serious offence after the magistrate has found that the file contains enough evidence. But in practice, and this is borne out at all the meetings we have held with the Prisons Department, Police and Judiciary.

The delays in the hearing of murder cases are mainly because the committal bundles are not ready. The committal bundles are prepared by the Police Department. One cannot, again, blame the police because not all police stations have the modern office equipment to type committal bundles and then make six copies in order for them to be sent to court. A number of these police stations still rely on manual typewriters. They also correct what has been typed by actually rubbing it out and so on. Therefore, when they are ultimately ready, they are not worthy enough to be taken before the magistrates to determine whether there is sufficient evidence or not and, therefore, to go to the High Court for the trials.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I would like to say that as far as murder cases are concerned, people have been waiting for years. Five to six years is actually the norm in some police stations. We keep on getting letters asking when their trials will begin, all because the committal bundles are not ready. There is injustice, not only because the case is not heard expeditiously, but there is also injustice to the person who, when the case actually comes up, it is found that there is not enough evidence on which one can sustain a conviction for murder. So, we propose to delete part "viii" of the Criminal Procedure Code, which provides for the procedure of committal proceedings. I have said that these proceedings contribute significantly to the delay in the hearing of murder cases.

We have also touched on confessions. The current law states that confessions can be admissible in evidence if made to an appropriate officer in the Police Department. Now, we are proposing to do away with that so that only confessions which are made in an open court before a magistrate can be taken into account by the magistrate hearing that particular case.

The bulk of complaints of torture, made against law enforcement authorities are related, unfortunately, to attempts to obtain confessions from suspects. In other words, because the law permits confessions before police officers of a certain rank, there is temptation, on the part of these officers, to extract that confession from the suspects to be used in the court of law. Of course, there is a procedure where the suspect can complain to the magistrate or the High Court Judge hearing the case that the confession was obtained under duress, due pressure, after torture and so on, and the court is bound to disregard it. That is a procedure which we call "trial within a trial". But, again, we found that, that procedure is not effective enough because most people even fear telling the court that the confession has been obtained as a result of torture. For some people, when the hearing goes on, and they are still in police custody, they fear the repercussions which will befall them when they return to police custody at the conclusion of a day's hearing and so on. So, a number of them fear. A number of complaints do not actually reach the court from the people who have been tortured because the police were more interested in obtaining a confession. The confession can be obtained from a weak character or even from a person who has not actually committed the crime. That is where the injustice happens because some people confess to have committed a crime which they never committed because of this thing called torture. Therefore, we believe that if confession is removed completely that any confession before a police officer cannot be admissible in court, then only the genuine ones before the open court, without any intimidation, will be able to confess. Indeed, in many cases, people do plead guilty in court without necessarily going through a trial. So, the removal of confession requirement before the police, as admissible evidence in court, is a very important amendment, which, when enacted here, we believe, will go a long way in reducing the torture that takes place when persons are placed before the custody of the police and, thereby, enhance the enjoyment of human rights in this country.

Mr. Temporary Deputy Speaker, Sir, we are also introducing an amendment, under Clause 45, on the issue of supplying harmful substances to children. We are now creating an offence, in relation to supplying harmful substances to children, and in particular, glue and other volatile and organic compounds. I am quite sure hon. Members have witnessed, even on television and so on, a number of street children sniffing glue. If you read the stories written by social workers, who work with street children, on the effect of this glue sniffing on children, you will almost cry because it has the effect of permanently damaging the brain. Consequently, those who have been addicted to it become impossible to rehabilitate; to be useful members of our society. A number of them are now dying when they are only 14 or 15 years old because of this glue sniffing. We are not punishing the street children in this amendment, but we want to really punish those people who supply this glue to children and in particular the street children.

Mr. Temporary Deputy Speaker, Sir, Clause 45 states:-

"Any person who supplies or offers to a child-

(a) any petroleum distillate, glue or other substance consisting of or containing matter having stupefying or hallucinogenic properties; or

(b) any substance which the Minister responsible for health has declared, by notice published in the Gazette, to be a substance to which this section applies, with intent that the child should inhale, consume or otherwise abuse the substance, or knowing or having reasonable cause to suspect that the child is likely to do so, is guilty of a misdemeanour and liable to imprisonment for three years."

We are now dealing with this whole issue of street children and this will be another way in which we can, at least, save the street children from permanent harmful effects to their physical bodies and, therefore, be able through other programmes and so on, to rehabilitate them to be useful members of our society.

Mr. Temporary Deputy Speaker, Sir, we are also proposing what we call victim-impact statements. Criminal law, up to now, has emphasised the rights of the accused person and obviously we have borrowed this from the West. However, the rights of the victim have not been given the due recognition that they deserve in the criminal justice system. So, we are now proposing two things to try to redress the rights of the victim. The first one is the rights of the victim and there are detailed provisions here on who is a victim, who are the family members of a victim and so on. However, the right of the victim where the suspect has been found guilty and convicted of an offence, but before sentencing, the victim will have the right to come and make a statement on how that particular offence impacted on his life or what he thinks about it. This is not compulsory. The victim or his family may or may not exercise that right, but we are now giving that right to the victim, his family, friends and so on to be able to come to the court before the sentence is meted out to say: "This is how it has impacted on us", so that the court, in assessing the sentence, will take those considerations into account.

Mr. Temporary Deputy Speaker, Sir, we have been inundated, in many cases, by numerous letters which have said that the victims and the families of the victims are not happy with the sentence that was meted out by the magistrates. They then go into harrowing stories on how that particular offence impacted on them as victims or as a family of the victim. It may very well be that the magistrate, in the deciding or meting out the sentence, did not have some of those considerations in mind. We are now giving the opportunity to the victim to exercise his right. He makes his statements and the court can take those statements into account. So, this is one way in which we are also trying to bring the rights of the victim, or his family, into the criminal justice system and not just focus on the right of the accused person.

Mr. Temporary Deputy Speaker, Sir, another way in which we are also looking at the rights of the accused person, and in particular where the offence involved is one of injury to the victim, is that when the court has found somebody guilty of an offence, before again meting out the sentence, the court will now have the right to order compensation to that victim. What is happening now is that, for example, if I am assaulted and I lose my eye, the accused person will be charged of, of course, causing grievous harm in that my eye is lost. He will be tried for that offence and he will be given a sentence. Then, if I really want to get damages from him, I have to go separately to file a civil case in the High Court or a magistrate's court depending on the injury. I will separately file that case which is heard and the court determines the nature of the amount of damages which will be paid to me. This is a time-consuming process because I have already been hurt and to be subjected to another long process and as you know there is no quick disposal of cases in court--- To be subjected to that process again, is another harm in itself to me. So, we are now saying that the court, which convicts a person, may order the convicted person to pay to the injured party such sums as it considers could justly be recovered as damages in civil proceedings brought by the injured party against the convicted person in respect of the civil liability concerned. So, the trial court hearing this criminal case can now determine all the issues between the two parties. We are introducing the trial court which was not there before.

The court can also order any, or the whole, or part of the file recovered to be applied to defray expenses properly incurred in the prosecution of the offence. Through these innovations of enabling the courts to order compensation and allowing for victim-impact assessment to be done before conviction, we are now in a way also thinking about the victim rather than at all times thinking about the rights of the accused person. The two should be considered at par.

Mr. Temporary Deputy Speaker, Sir, we are also saying that, 40 years after Independence, we should no longer have recourse to the English Law in interpreting our penal laws. Section 3 of the Penal Code states:-

"This Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England."

We are now saying that we can interpret this in accordance with our ethos and norms, which pertain to Kenya.

We do not necessarily have to have recourse to the English Law. They may come in as subsidiaries, but we must have our own jurisprudence here in this country which we can follow.

The other amendment that we are proposing is to do away with the offences relating to rogues and vagabonds in our Penal Code. We are repealing that.

Mr. Temporary Deputy Speaker, Sir, we are also enlarging the offence of what we call "malicious information". As you have noticed, the police have been very active in tracking down carjackers, robbers and so on. This has been as a result of the overwhelming number of good citizens who, when an offence occurs, telephone the police using hotlines and the police use that information to track down those offenders. They have been fairly successful in that regard. But I am sorry to say that there have been some exceptional minor cases where somebody has deliberately given false information to the police who, acting in good faith on that information, have proceeded and somebody has either been injured slightly or grievously and, at times, even death may result because of that malicious information that was fed to the police, who acted on it immediately. We are now making it an offence that if you give such information to the police, which you know to be false, in fact, which you very well know that the intended purpose will be for the police to act in a particular manner, and in acting in that manner, may very well result in injury or death to that person; if that person dies, you will be guilty of manslaughter. If that person is grievously hurt, then you will also be guilty of assault. Previously, any false information given to the police was treated as a misdemeanour warranting only, maybe, fine, or utmost one-year imprisonment. But because of what has happened, that is not sufficient. Therefore, depending on the gravity of the resultant action on your information, which you must have known and which must have been within your reasonable forcibility, you will be punished accordingly, if found guilty.

So, Mr. Temporary Deputy Speaker, Sir, these are some of the amendments that we are proposing under this Criminal Law (Amendment) Bill. They are urgent amendments because they are going to lead, if enacted by Parliament, to, at least, expeditious disposal of criminal cases in court and reduction of complaints of torture in police custody. They are going to be equitable; particularly the proposed amendments on sexual offences. They are going to enhance human rights particularly by, for example, doing away with corporal punishment and so on. They will also have good social effects in that the culprits, who misuse street children, are now going to be dealt with by the relevant arm of the law.

I do not want to say very much. I only want to bring to the notice of hon. Members that I will be bringing more amendments to the Penal Code and the procedures on many issues which have not been touched on in this Bill. For example, we have the issue, say, of robbery with violence and how to deal with that in court, particularly the trial of it. We have the issue of contempt of court, female circumcision, private prosecutions, sentencing policy, assessor systems, jury and so on. But these are reform proposals which are currently being under-studied and I do hope that we shall also soon be bringing another Bill to deal with those other aspects of the penal reform. But the ones I have brought are the ones that are urgent and which need to be enacted, almost immediately, for the good of our society.

Mr. Temporary Deputy Speaker, Sir, I will call upon my learned colleague, the Assistant Minister for Justice and Constitutional Affairs, Mr. Githae, to second the Bill.

Thank you.

(Applause)

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to second this Bill. Before I contribute to the Bill, I would like to congratulate the Attorney-General for bringing this Bill to the House. It is going to go a long way in expediting the criminal cases which, for a long time, have delayed in courts. I would also like to congratulate him, again, for moving the Bill and for allowing me to second it.

This is one piece of legislation which does not require a lot of discussion because it is straightforward. The amendments basically relate to four Acts of Parliament; one, the Penal Code; two, the Criminal Procedure Code; three, the Evidence Act and the Anti-Corruption Act. I am particularly impressed that we are now going to do away with recourse to the English Law. This has been a shame that after 40 years of Independence, we were still following the English traditions and interpretations. For example, when I was at the university, I asked our lecturer whether he was aware of what Section 261 of the Criminal Procedure Code meant. It states:-

"The practice of the High Court in its criminal jurisdiction shall be assimilated, as nearly as circumstances will admit, to the practice of the High Court of Justice in its criminal jurisdiction, and of Courts of Oyer and Terminer and General Gaol Delivery, in England."

Nobody was aware of what that meant.

So, this is a step in the right direction. But, for the first time, we are now saying that we have enough decency in the criminal law and we do not need to follow the interpretation as provided in the courts in England. To me, that is a very positive piece of legislation.

Going to the main Bill, the first amendment relates to the abolition of corporal punishment. It has become clear that corporal has not reduced the commission of criminal offences. It was thought that, by having corporal punishment and other forms of punishment in our Criminal Procedure Code, that then would reduce criminal activities. It has not reduced criminal activities and, therefore, it is useless to have in our laws something that does not help in the administration of justice.

Corporal punishment is cruel, inhuman, degrading and it amounts to torture. It is surprising that we have had it in our law books for the last 40 years. This is a big shame! We should have repealed this law a long time ago; it has not reduced the commission of offences, it is degrading, inhuman, barbaric; and you can have all sorts of descriptions for it. It is surprising that it has stayed in our law books. It creates fear in the prisoners, it does not help in their respect for the law at all, and we have reports of people who, once they have been sentenced to corporal punishment; when they are taken to their punishment rooms, they scream when being caned. Others urinate on themselves when they are being given corporal punishment.

So, really, I thank the Attorney-General for bringing this amendment. It will do away with those screams that the prisoners were making and the other acts that they were committing on themselves.

Some of the wardens charged with the responsibility of executing the corporal punishment were sadists because they were really caning the prisoners in a very brutal way using very brutal force. There is no way of measuring the force of the cane used and some were utilizing that opportunity to vent the frustrations they had on the prisoners. Since there is no machine so far, that has been invented to measure the force of the cane, I think this amendment could not have come at a better time. Because of that unequal force in the caning, really, we can say that some prisoners sentenced to corporal punishment were not being given equal punishment because some could have been caned harder than the rest, even though the strokes of the cane were the same.

Mr. Temporary Deputy Speaker, Sir, the other very good piece of amendment is the attempt to remove the requirement that before certain cases are prosecuted, the consent of the Attorney-General is required. This requirement has been misused by court prosecutors. Even in offences where the Attorney-General's consent is not required, when they are not ready with the cases, they would blame the Attorney-General and say that, "consent from the Attorney-General has not been received." Therefore, a case which could normally take two months could take a year or even two years because of misuse of this requirement. So, I am a very happy person; to see that most of the unnecessary requirements of the Attorney-General's consent to prosecute are being removed.

QUORUM

Mr. Muchiri: On a point of order, Mr. Temporary Deputy Speaker, Sir. We do not have a quorum in the House! Surprisingly, we have empty Benches on the Opposition side!

The Temporary Deputy Speaker (Mr. Poghisio): Yes, it is true we do not have a quorum. Could the Division Bell be rung?

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Poghisio): Order! Order, Mr. Kombo and company! We have a quorum now.

Proceed, Mr. Assistant Minister.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir.

I was just talking about the necessity of the Attorney-General's consent to prosecute certain cases. I said that this amendment could not have come at a better time because, where prosecutors are not prepared, they blame the Attorney-General, saying that the consent has not been received even in cases where the Attorney-General's consent is not required. So, this amendment would not have come at a better time. So, this amendment would definitely expedite the prosecution and the finalization of criminal cases in this country because, as we say, justice must not only be done but it must also be seen to be done; justice delayed is justice denied.

Mr. Temporary Deputy Speaker, Sir, I am happy to see that the requirement for the Attorney-General's consent under Section 98, the abuse of office, is now being done away with. This is the only Section which the NARC Government is using in the fight against corruption before the passing of the Anti-Corruption and

Economic Crimes Bill. This is where a lot of mismanagement in the parastatals and Government Ministries was done by the Chief Executives and the Permanent Secretaries; by awarding contracts to themselves, their spouses, relatives *et cetera*. They also used single-sourcing contracts without going through the laid-down procedures and without open tendering. This is where a lot of cases of abuse of office have occurred.

I am glad to see that the requirement for the Attorney-General's consent under Section 98 is being done away with. This will expedite all those cases of corruption, because the prosecutors were using it under the pretext that the Attorney-General's consent had not been received, when in fact, they had not even finalised the investigations. This will assist us in the fight against corruption. As the President said, there are no sacred cows in the fight against corruption. If an individual abuses his office, whether in the Opposition or in Government, action will definitely be taken against him or her. This time it will be quick action, because there will be no need of obtaining the consent from the Attorney-General. This is a very good amendment.

Mr. Temporary Deputy Speaker, Sir, the other issue I would like to touch on is the enlargement of the description with regard to making false statements to police officers. It is indicated in the Bill that even malicious information should also be criminalised. There has been a very dangerous habit among Kenyans; particularly jilted lovers and business rivals. There have been cases where even death has resulted in mistaken identity cases. For example, when a jilted lover falls out with a boy friend, she calls the Flying Squad and gives the vehicle registration number of the former boy friend claiming that he has been kidnapped or his car has been stolen, only for the Flying Squad to start looking for the car and even shoot the person driving. It will only turn out later that, that was actually not only wrong information, but malicious information. Now, if a jilted lover gives that kind of information and somebody is harmed, he or she will be deemed to have perpetrated that act. If the harm that occurs is death, then he or she will be deemed to have committed manslaughter. If it is assault, he or she will be deemed to have committed grievous bodily harm.

Mr. Temporary Deputy Speaker, Sir, the other bad habit that has occurred in this country is between business rivals. There are cases where, after they have disagreed, they would call the Flying Squad and also give malicious information which again has resulted in the prosecution of their business rivals. We are now saying that, if an individual falls out with his business partner or lover, he should not involve the police, because if he or she does that he or she will be considered to have given malicious information and will be prosecuted. I support this amendment because we need to stop this bad habit which is emanating from Kenyans.

Mr. Temporary Deputy Speaker, Sir, the other amendment which I think is long overdue is with regard to increasing the age of defilement from 14 years old to 16 years old. Again, I would like to congratulate the Attorney-General for taking cognisance of the fact that our girls are growing faster than their ages; a girl that looks 14 years could actually be 12 years. Raising the age from 14 years to 16 years is a very good move. If a girl under 16 years is defiled, whether it is purported to be a marriage, it is a criminal offence and her consent is immaterial. I would like to take this opportunity to warn those Kenyans who are fond of marrying off their girls below the age of 14 years to be aware that the age has now been raised to 16 years. The girls should be let to grow. There is no point of marrying them at such an early age. Why would somebody want to eat a fruit which is not ripe? Why not wait for the fruit to ripen? That is when it is sweet. Kenyans need to be careful about that, because consent will no longer be a defence.

Mr. Temporary Deputy Speaker, Sir, the other amendment that I would like to support with all my heart is the removal of corroboration on sexual offences. It had actually become impossible to have any conviction in sexual offences, especially if a young girl has been raped and she is supposed to corroborate the evidence. How could a young girl of three or four years get corroboratory evidence? It was really impossible to get any conviction particularly for young persons, because when an individual commits rape, he does not need witnesses. He would like to do it alone. Therefore, this requirement of corroboration will go a long way in having some conviction on sexual offences. If the evidence of a single witness or even the complainant is credible, then conviction can be sought from that, and there would be no need of having any corroboratory evidence.

Mr. Temporary Deputy Speaker, Sir, the other good amendment is with regard to the abolition of committal bundles. If there is any one piece of law which has caused disaster in this country and infringed on the human rights of Kenyans, is the requirement for committal bundles. Police officers are asked to prepare committal bundles when they do not even have typewriters and yet the statements must be typed. Police officers are asked to bring committal bundles when they do not even have typists. I have visited some police stations and I have witnessed the typists using one finger. How can a big document be typed using one finger? It will take ages before even a few pages are typed. There are no computers in the police stations. They do not even have files and other stationery. Therefore, this requirement of having committal bundles has really infringed on the human rights of the accused people who have been staying in police cells, and particularly remand cells, for a very long time. Some people have stayed there for as long as four to five years while still awaiting committal documents. This

amendment could not have come at a better time. The other points were well covered by the Attorney-General and, therefore, I will not repeat them.

With those few words, I beg to second.

(Question proposed)

Mr. Muite: Thank you, Mr. Temporary Deputy Speaker, Sir. In supporting this Bill, I would like to take this opportunity to highlight a few matters on the Report by the Departmental Committee on the Administration of Justice and Legal Affairs.

Allow me to, first of all, thank the hon. Members of the Committee and also the staff of Parliament for their contribution and dedication in assisting in the preparation of this report.

The committee held four sittings to deliberate on the Bill and the minutes of those meetings are annexed to the Report for ease of reference by hon. Members. We have suggested a number of amendments. I will not go through all of them because they are in the report and hon. Members will be able to access them. I believe the report is available in Room No.8.

Let me add my support to the very first amendment, which has been brought by the Attorney-General, before I go to the Committee-proposed amendment; that is the one to do away with corporal punishment. Few Kenyans are aware of what corporal punishment in this country entails. The rules and regulations are laid down under the Prisons Act with great detail. Fortunately, corporal punishment is only meted out to males and not to females. The regulations require the victim to be wholly undressed and he is made to lie down. A cloth soaked in salty water is then placed on the backside of the victim. They select the individuals who administer this punishment. They are normally very tall and muscular people who are by nature sadists. They do not count the first lash; it is considered a warming-up. They start counting from the second lash which is administered with great force.

I have witnessed people cry in court when they are sentenced to corporal punishment. They will tell the magistrate to double the prison term, but not to permit them to undergo corporal punishment. I know what it means to go through corporal punishment. Not a single person who has been subjected to corporal punishment has gone through it without releasing their bladder. It is a brutal, retrogressive and primitive form of action. So, we are all happy that this will now be a thing of the past. If you go to page 200 of the Bill we are discussing, you will see Clause 24 which is amending Section 24 of the Penal Code. Part "H" talks about finding security to keep the peace and be of good behaviour. You will remember the Attorney-General talked about vagabonds in this House, yet part "H" has not been amended. My committee has recommended that part "H" be deleted.

This is aimed at punishing poverty. When the police, anywhere in the country, cannot find an offence with which to charge an innocent person who is poor and does not appear to have any means of livelihood, they will take him to the magistrate and say that they want that person bound to keep the peace. There is no threat that the individual was about to commit any breach of peace and yet he is bound and told to provide security to keep the peace and be of good behaviour. Some of these provisions were introduced in our Penal Code way back in the 1930s. Perhaps the time has now come for us not to punish poverty. Therefore, the committee is recommending that part "H" in Section 24 of the Penal Code, that is so much abused by the police, be deleted.

If you look at the Penal Code of 1948, for example - and I see that recently somebody was convicted of an offence under this section - at that time it had an offence aimed at African males and it was called: "Insulting the dignity of a white woman". Before the native was convicted the white woman would give evidence that she was crossing Government Road when she turned and saw this native undressing her with his eyes. That was enough to get the native convicted. These are some of the cobwebs that we are saying should be removed from our Penal Code.

We took a different view as a committee to the views expressed by the hon. Attorney-General and Mr. Githae with regard to the consent by the Attorney-General to prosecute certain offences. When you look at Clauses 9, 10, 11 and 12, they relate to what truly are political offences. These are subversion and incitement. We deliberated for a long time on this and, as you are well aware, the committee is a servant of the House. So, it is the views of the House which will carry the day. You will find that the offence of incitement has replaced sedition. We repealed the offence of sedition. So, these days the choice offence against politicians by the Government of the day is that of incitement. I would urge both sides of the House to reflect on the interest of the individual who might be the victim of these sort of offences like incitement, subversion and abuse of office.

These can be termed, generally, as political offences. We thought, as a committee, that before anybody is charged with the offences of incitement, subversion or of abuse of office, it is necessary for the Attorney-General to bring his mind to bear on the evidence available and give the okay. He has got a lot of staff. He should ask for

more money from the NARC Government; now that it is allowing him to do his work the way he should be doing it. He should ask for a larger budget. When it comes to these offences, let us remember the liberty of the citizens. We are not saying anybody should not be prosecuted. Everybody who commits a crime should be prosecuted. However, when it comes to political offences, we would like to see liberty and justice being accorded to those victims even when they are Opposition Members of Parliament. They are the ones that I am talking about. Let the Attorney-General call for that file, and let the law remain the way it is because the buck rests on his desk. He should satisfy himself that, indeed, there is adequate evidence to charge a Kenyan with the offence of incitement, subversion and abuse of office.

All these border on political offences. We do not want ordinary police officers to rush people to court and trample on the liberties of citizens.

As a committee, we agreed to Clause 14. However, we would also like the Attorney-General to really reconsider a more appropriate definition of the offence of rape. Our laws are outdated and we would like to update them so that, they can be civilised. Up to now the law requires that before one can be convicted of rape he must prove a degree of penetration. This is ridiculous! If somebody has used violence to advance his cause against a woman, why should she be required to prove a degree of penetration? This is primitive! It places the woman in a very humiliating situation. I was sitting in court when the late Justice Miller was trying a case of rape. You know how it is with our interpreters. The poor girl gave evidence that after the man put his body into her body--- Justice Miller adjusted his wig and told the young lady to tell the court what part of the man's body was put into what part of her body. The young lady just started crying. She could not utter another word. These are serious issues. We want the Attorney-General to update the definition of the word "rape". If a man is using violence to violate the dignity of a woman, let the definition of rape not require this primitive idea of degree of penetration because a crime has already been committed. So, the committee suggested that the Attorney-General should re-look at Clause 14.

Mr. Temporary Deputy Speaker, Sir, the other clause that we recommended to be looked at is Clause 58. This clause relates to fairness to the accused person. The rules formulated under the Court Martial require the person being court-martialled to be given, in advance, copies of all the investigation files, statements and the entire bundle of evidence. We think that for an accused person and his counsel to adequately defend themselves, then they should not be ambushed. Today, as the law stands, a lawyer representing an accused person does not know the next witness the prosecution will call and the list of those witnesses. So, in order for the advocate to adequately represent an accused person, the accused person should be given access to the statements of witnesses who the prosecution will call, and a list of all the witnesses, at least 15 days before the commencement of the trial.

Mr. Temporary Deputy Speaker, Sir, those are the amendments that the Committee proposed. I commend very much the proposal for the victim impact statement. That is to say, if the accused person is told to mitigate before the sentence is passed, sometimes, the victim of the crime is sitting in the court, or the relatives of the victim are sitting in court. Should they not be accorded an opportunity to say whether the accused person should serve a custodial sentence, or whether they have forgiven him and, therefore, he should not be sent to prison? They should be heard because they are the victims. Of course, we know criminal law takes public interest into account. We also felt that the law will become more balanced if the victim of the offence is given the opportunity to express his views before the sentence is passed.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General has abolished committal proceedings. As a committee, we support this. However, the Magistrates' Courts are still trying people and sending them to basement prisons. I am glad we have abolished basement prisons. I suppose they will be sentenced to life imprisonment because of robbery with violence. Why is there discrimination in the application of criminal law? In a case of murder, the accused person is entitled to representation by a lawyer in the High Court, paid for by the State. But when it comes to robbery with violence, it is tried by the Lower Court or the Court of the Resident Magistrate. There is no provision of automatic legal aid to these individuals, although this crime carries the same sentence as murder. That is an aspect that the Attorney-General should look into.

Finally, Mr. Temporary Deputy Speaker, Sir, I wish to take this opportunity to add my voice to the sentiments expressed earlier by Mr. Wanjala, Member for Budalangi, that the criminal law must be applied uniformly. I want to say this to the Attorney-General, through the Chair; that there must never be any selective application of the criminal law. We must never allow our perception of the criminal law to be applied selectively.

It will be recalled that, truly, the Public Accounts Committee told this House and the world, that they were looking for one Ketan Somaia; that he got public money from this country, and they were looking for him. They summoned him, but he refused to appear before the Committee. They even told us that they had actually engaged the services of the interpol; to try and extradite this man. He now arrogantly flew in, first class, in British Airways and he even had lunch at Naivasha Country Club. What happened to the warrant of arrest? If Kenya

does not want to deal with this man, why do they not hand him to Tanzania which is also looking for him for prosecution? We do not want selective application of the Criminal Law.

With those few words, I beg to support.

Mr. M. Kilonzo: Thank you, Mr. Temporary Deputy Speaker, Sir. With your kind permission, I would like to welcome this Bill. This is a timely piece of legislation. I think a lot of principles governing our criminal law have been borrowed from the English Law. I think, for us to wait more than 40 years to remove the requirements of English Law and practices from our statutes, is in itself criminal. This law should have been amended much earlier.

Mr. Temporary Deputy Speaker, Sir, I wish, with your kind permission, to salute the task force that the Attorney-General appointed because it comprised distinguished lawyers. But I would like to take issue with the Attorney-General that the task force filed their report in February 1997. As far as I am concerned, these amendments have already been overtaken by time. The law has changed. The world has changed. Therefore, much as I salute the need to remove this archaic method of punishment called "corporal punishment" which emanated from sugar merchants in America during slavery; much as I salute and welcome the desire to remove torture from our statute books; much as I salute the amendment to the question of confession, the fact remains that this law is still outdated, as I will highlight in a few moments.

Mr. Temporary Deputy Speaker, Sir, the problem this country has faced for many years is this preoccupation with English Law as the only originator of proper law. It is time that we accepted that our own jurisprudence has grown. The task force should have been charged, by the Attorney-General, to update its recommendations to him, as I will illustrate in a few minutes.

One of the problems with the removal of confessions is that the Attorney-General is recommending to this House that we accept that once a confession is made in court, it is the only method acceptable. I regret to say that if a person is confessing in a court then, technically, he is pleading guilty. Therefore, the Attorney-General will introduce an enormous amount of confusion as to at what stage the accused person will either change his plea or tender his confession. I feel that the clause the Attorney-General has introduced, on this confession, while welcome, should be worded in a better way so that it distinguishes between when an accused person wants to confess to an offence and when he wants to change his plea if he had pleaded not guilty previously and so on. At the moment, the picture has been left in a very grey state and it will cause confusion in our courts.

Mr. Temporary Deputy Speaker, Sir, another thing which I welcome very much, and which I wish was better elaborated upon, is victims' rights. Again, because of the way criminal law developed in England, and has been applied in many countries, the tendency has always been that the crime is committed against the State and, therefore, once the State obtains redress by sending the accused person to prison or eliciting a fine, then sufficient redress is deemed to have been achieved. I am afraid that for many years now, that trend has changed. So, I would go a little further and suggest that the Attorney-General looks into this aspect before this Bill reaches the Committee Stage. The Bill should clearly say that victims' rights are recognised under Kenyan criminal law. Apart from the Attorney-General's statement that statements be made by victims of crime, as far as I am concerned, the victims should be given an even greater opportunity to put forward their case, particularly prior to sentencing, so that the actual sufferers of the crime are recognised by our penal system.

Again, I welcome the idea of removal of corroboration in cases involving children. For a long time, this problem has always been there. We require corroboration, and yet the person who is as deprived as to want to injure a young child will always make sure that they do not do it in the presence of witnesses, or where other evidence can be obtained. Arising from this, I am amazed that the Attorney-General is not aware that the world has changed so much that other countries are now introducing law to prohibit pornography on the internet. That is why I am saying, even as distinguished as the panellists were, the fact remains that since this Report was filed in 1997, it is quite possible that the Attorney-General has overlooked the fact that the world has changed. In fact, one of the most serious problems facing the world right now is pornography on the internet. I would not be surprised that there are people in Kenya, abusers of children, who access the internet for the purpose of such pornography. In fact, I insist that the Attorney-General introduces a clause to prohibit pornography, generally and in particular towards young children, so that even as he removes the aspect of corroboration, he also makes it possible for this country to monitor committing of such offences through modern devices such as the internet.

One of the reasons as to why I insist that this law is outdated is that I cannot understand how the Attorney-General can come to this House in this day and age, talk about human rights and at the same time retain the principle of trial by ambush in our statute books. "Trial by ambush" means that police officers arrest somebody who is then taken to the Criminal Investigations Department (CID) offices where he writes a statement. The accused person is then given bail, and he meets with the police in court, say, four months later. By the time the trial is held, the Kenyan citizen does not know what evidence he will be facing.

In fact, I dare say that the Judiciary itself has shown that it is way ahead of the Attorney-General and way ahead of this House, if I may say so. Recently, we have had very forward-looking judges and magistrates ruling that an accused person in Kenya is entitled, as of right, to all statements made by witnesses prior to his trial.

Mr. Temporary Deputy Speaker, Sir, much as I agree with my learned friend, hon. Muite, I will go further and say that in very complicated cases, you will find that the primary evidence is not even the statements that the witnesses have made. There may be a panga that may have been used, which may be blood-stained, and pieces of cloth which may be tainted with hairs, or other material that can be used in modern technology such as DNA verification.

Mr. Temporary Deputy Speaker, Sir, it is my firm conviction that if the Attorney-General is serious about human rights, then our Kenyan citizens must be given equal access to evidence, not just statements by witnesses. They should be shown the panga that is alleged to have committed the offence. They should be given access to examination reports by either specialists of DNA or specialists of handwriting, so that they can hire their own specialists to confront the Government case at the time of trial.

Unfortunately, in this country, the position remains that you have no access to such evidence. If the Attorney-General insists on passing this law the way it is, as much as I welcome it, I will oppose and vote against it, because I believe the cardinal rule about human rights is the right of access to evidence and to confront your accuser. You cannot confront your accuser unless you have been given access to the evidence that is going to be put before you.

I will go further and say this: The present procedure of prosecuting Kenyans by police officers should be abolished. Mr. Muite says that, under the NARC Government, the Attorney-General will be given proper facilities and funds to do his duty. I am challenging him, without fear of contradiction, that trained lawyers should be the ones prosecuting criminal cases in all our courts. That is the only way we will say that, that person has been properly prosecuted. Let me give you an example!

Mr. Wamwere: They must be upright!

Mr. M. Kilonzo: Yes, of course, they will be upright. Thank you, Mr. Wamwere. Let me say this: That the point I am making is so fundamental that very few people have actually seen it in this country. You are arrested by a police officer, your case is investigated by a CID officer who is also a police officer, your file is then forwarded to the Attorney-General for his consent and so on. But in the final analysis, you are prosecuted by a police officer in this country, except in a very few number of cases. The time to stop that ridiculous application of criminal justice system is now!

Mr. Temporary Deputy Speaker, Sir, let me say this: In my experience, most of the accused persons who appear in court before a magistrate in a criminal case end up seeing police officers wearing fancy uniforms with buttons and polished shoes. The majority of them, because they have no access to legal representation, continue to think that those are the same police officers who came to arrest them. To make matters worse, I do not think the Attorney-General, again because of the lapse of time, has realised that the law all over the world, requires that by the time an accused person is arrested, he must be read his rights. He must be told: "You have a right to remain silent! You have a right not to answer a single word! Moreover, you have a right to a lawyer of your choice!" To make matters worse, our law requires that you should be told: "You have a right to make one phone call." You can choose to call your wife or lawyer! That has been buried under this legislation introduced by the colonialists in 1930 for purposes of suppressing Kenyans, and the successive Attorney-Generals have condoned that abuse of the rights of Kenyans. I say, therefore, that the Attorney-General, if he wants us to pass this law, must go back and look at the sections that require that, by the time you arrest an accused person whom you say has committed an offence, you must read him his rights. He must know that under the Kenyan Constitution, he has a right to remain silent. I want the words that the "police officers will read to a Kenyan" to be expressly provided for in this law, so that nobody in this country will be in any doubt as to what a police officer should tell him when he comes to say: "I have come to arrest you!" What has been happening for many years is that police officers arrive at 4.00 a.m. in the morning. I hear now that under the NARC administration, they come at 5.00 a.m. in the morning and most likely on Fridays, so that you can spend Friday, Saturday and Sunday in police cells.

Mr. Temporary Deputy Speaker, Sir, the Chief Justice clearly stated what I have always believed in, that courts of law should operate 24 hours. You cannot tell me that the court is closed now because it is 6.00 O'clock in the evening and, therefore, I cannot be taken to court. The Chief Justice has declared that courts can sit in the evenings. I want the Attorney-General, in this proposed legislation, to expressly state that it is illegal in Kenya to hold any Kenyan in a cell for a period exceeding 24 hours. If you decide to arrest somebody on Sunday morning, you must understand that it is up to you to create extra time so that you have 24 hours within which to take that Kenyan before a magistrate or a judge. I am not saying this because I am on the Opposition side. As I had an occasion to say, today you are in the Opposition and tomorrow you will be in the Government. The bad law that

you condoned and accepted to be passed will be applied to you. Therefore, the time to say enough is enough is now. Therefore, policemen should know that courts can sit at night. If you decide to arrest somebody at 6.00 O'clock in the evening, then you have an obligation to ensure that, within 24 hours, that person appears before a judge or a magistrate for bail.

What about evidence in court? Those of us, for example Mr. Kembi-Gitura, Mr. Wetangula and many others, who have conducted cases in court will tell you how incredible it is that you present a case in court day in, day out, for a whole month, and you do not have, in front of you what the judge wrote until you happen to be appealing. Our judges record proceedings using longhand. I remember distinctly that, many years ago, we recommended that our courts should introduce a method of transcription so that evidence is recorded live and, at the end of the day, a record of those proceedings is produced, so that when the accused person comes back the following day, he has in front of him a record of what transpired the previous day. This enables him in cross-examination in response to the charges in front of him.

Mr. Temporary Deputy Speaker, Sir, if we are talking about human rights, there is no right greater than the right to know what the judge has recorded as evidence against you before you move to the next stage. It should not be left until a person is appealing, and then they are asked to pay for a copy of the judgement. I notice that the Attorney-General has recommended that judgement should not be paid for. But the Attorney-General has only talked about the judgement. What about the proceedings? Again, with utmost respect - this is a good attempt at a good law - I recommend that we introduce in our Criminal Procedure Code the requirement for a public address system, and for personnel to record court proceedings, type them and to avail them to the accused person and his advocate the following day, or as soon as the court resumes, in order to enable him to mount his defence.

When I, the Attorney-General and others were the Chairmen of the Law Society of Kenya (LSK), we all fought for our Judiciary to have a public address system in courts. This speeds up court proceedings. This is the right time for us to introduce public address systems in our courts if we want to introduce a law for the promotion of human rights in this country.

Mr. Temporary Deputy Speaker, Sir, the other point I would like to dwell on, and which also surprises me is that, again, the report by these senior people was not dealt with until 2003, which is six years---

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is my learned friend and senior counsel in order to mislead this august Assembly, which shows that he was not listening to what I was saying, to the effect that although the report was made in that year, this House has passed a number of legislations implementing it? I do not want to repeat, but I did mention a number of legislations. Is he also in order to say that I was bringing a comprehensive legislation when I made it very clear that there are many areas which are being looked into and which will be brought to this House before the end of the year? Is he also in order to treat administrative matters as matters of law?

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, with utmost respect, the Attorney-General may have introduced a number of legislations on some of these things that I am talking about. Of course, he has every right to think that administrative issues have nothing to do with law. It is my position, after so many years in the legal profession, that the procedure that you use for convicting a Kenyan is, more often, than not more important, if not more critical, than the actual substantive law which you use. May I also say that if, indeed, the Attorney-General has taken account of the report of this tribunal, then what are we debating? It means that there are some issues which have not been debated and I am quite in order to address them, and I will continue to do so.

Mr. Temporary Deputy Speaker, Sir, I would like to say that it may have been fashionable in 1997 not to have legal representation in criminal cases offered by the State. It may have been fashionable to assume that every Kenyan knows the law and, therefore, he can stand up there in his defence. The Attorney-General and the NARC Government have no excuse whatsoever to pretend to be amending the criminal justice system and not offer Kenyans the right to representation by an advocate of their choice paid for by the State.

(Applause)

Mr. Wamwere: Even a senior counsel!

Mr. M. Kilonzo: Thank you, Mr. Wamwere. Fortunately---

The Temporary Deputy Speaker (Mr. Poghisi): Order! Mr. M. Kilonzo, you should address the Chair and not Mr. Wamwere!

(Laughter)

Mr. M. Kilonzo: Thank you very much, Mr. Temporary Deputy Speaker, Sir.

The point I was trying to make is that it is very important that the NARC administration, having carried on its mantle the issue of human rights, should offer representation to people accused of crime. Fortunately, the Attorney-General, when he was the Chairman of the Law Society of Kenya, established and presided over the establishment of the Public Law Institute, whose primary objective was to set up legal representation of accused persons in this country. I can tell the Chair that this was in 1990, or more years than I can count on my fingers.

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

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I do not want to be informed. I am sorry!

If the Chair may allow me to continue, I think it is important that the country understands that it has in place a new Government called "NARC" and it likes human rights. One of the principal human rights is that an accused person should not be subjected to the law which is so complicated without legal representation. I am willing to concede that you cannot possibly do this for every offence. Let us start with basic offences like murder, treason, manslaughter, cases against corruption and economic crimes. We should offer legal representation for these cases paid for by the State. The other issue that I would like to address is the issue of bail. Again, the hon. Attorney General says that the main extract of this law is human rights. I would like to say that it is time we categorised offences like murder and treason to make them bailable. So, if you are talking about human rights and you believe that you have a system of law that can be able to look and make sure that this person, who is purported to have committed an offence, can, in fact, be able to be bailed---

Mr. Temporary Deputy Speaker, Sir, as I speak to you and as you know in one of our neighbours, a friendly country, Zimbabwe, there is a treason case going on. The accused person is out on bail and I think in this country we can be able to do it so that if you are accused of treason or murder of certain degrees - first or second degree - then you can be bailed out to go and stay with members of your family. The reason is that, as a matter of fact, cases in this country take far too long. That brings me to the next point.

Mr. Temporary Deputy Speaker, Sir, I am asking the Attorney-General to consider inserting a section in this legislation requiring an accused person to be prosecuted within a given period of time unless he waives the right to speedy trial. We have had cases without numbers where somebody is arrested, appears before court where he is given bond and then two years down the line, after 24 appearances, because he appears every month for mention of his case, amazingly the Attorney-General enters *nolle prosequi* and withdraws the charge under Section 92. We saw recently the same applying to some cases involving Kenyan citizens and whether you like them or not, this is another issue. With regard to the Goldenberg scam, people have been in court for over ten years. Is that desirable? Is that human right? I dare say it is not!

Mr. Temporary Deputy Speaker, Sir, we must require that when a police officer decides that he is going to arrest somebody, he must have his evidence available to him. This law that the Attorney-General wants us to pass, based on human rights, should require that an accused person will be tried between that given period as specified unless he waives his right to a speedy trial. It is the work of the magistrate to say: "Mr. Waweru, you have appeared before me; you are charged with this offence and you are entitled to a speedy trial to be tried within three months. Do you waive that right or do you insist on it?" It is then up to the NARC Government to make sure that the accused person is prosecuted speedily. This process of window-dressing prosecution must stop. In some cases, you arrest people, prosecute them and take them to court and down the line you withdraw the charge and no remedy is offered to these people who have been accused. There is absolutely no compensation and you are left to hang around as though you are a second-rate citizen and yet the world never gets to know whether you were guilty or not because you have not been prosecuted.

Mr. Temporary Deputy Speaker, Sir, arising from that, I have another point and that is why I said, much as I welcome this law, it is so full of gaps that there is so much to be done. This country has gone through a very difficult period. I will remember, and never forget, a time when even advocates' offices were invaded by police officers for purposes of search and these police officers were walking into various offices without even the courtesy of carrying a search warrant and saying: "I have come to search." The time to stop that sort of practice is now. We must specify that, before you go and search somebody's office, you ought to be able to go before a magistrate, obtain a proper search warrant in respect of the shoddy evidence that you have and present it so that that search is legal.

I also suggest, with absolute conviction to the Attorney-General, that under this Bill we should introduce a clause stating that any evidence that is illegally obtained through an illegal search is inadmissible in a proper court of law. Once again, it will require that before these police officers go to arrest, search for this evidence and collect this evidence, they will make sure that they follow the correct procedure of ensuring that the law has been complied with. But as long as we do not abolish and outlaw whatever evidence has been collected improperly, then the concept of human rights will only remain a concept. It will not be realised.

I welcome the comments by my learned friend, Senior Counsel hon. Muite, on the issue of consent by the Attorney-General on political crimes. Although the NARC Government may be sitting on those Benches and feeling very pretty and happy, the fact remains that there will always be political offences like incitement and abuse of office. Whilst I agree that extensive powers of the Attorney-General to give or deny consent to certain offences should be denied---

The Temporary Deputy Speaker (Mr. Poghiso): Your time is up!

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support, subject to the amendments.

Mr. Wetangula: Thank you, Mr. Temporary Deputy Speaker, Sir. These amendments to our criminal law system should have come to this House ten years ago. It has always been a big shame to Kenyans to know that we still have flogging in our penal system. Flogging or corporal punishment, as it is called, is one of the most inhuman and degrading forms of punishment that is practised largely in feudal regimes in the Middle East. It is important that Kenya keeps abreast with developments in the judicial systems around the world by abolishing flogging.

Mr. Temporary Deputy Speaker, Sir, I would like to believe that the Attorney-General would have done a lot more in improving our criminal justice system in this country through these amendments. I am saying this because I do not want to encourage my learned friend, the Attorney-General, to keep coming here with piecemeal amendments to the law when he has an opportunity to bring comprehensive amendments to our criminal administration system.

Mr. Temporary Deputy Speaker, Sir, one major omission I see in this Bill, and it was touched on a bit by my learned friend, Senior Counsel, Mr. Kilonzo, is that we need to have a clear limitation period in criminal cases in this country. Unless there are such circumstances that the State would not have been able to prosecute a person, we should have some limitation. I am thinking of the abuse of the criminal law process by the former regime, particularly in the case of Mr. Githunguri, which was decided by the High Court. It ruled that inordinate delay in prosecution of cases amounts to abuse of the law and a violation of one's rights. Unless it is in a case of a fugitive, when it is alleged somebody has committed an offence and the law enforcement agencies are present, it makes nonsense of the legal system to arrest somebody five years down the line and charge him with an offence that he would have been charged with earlier.

Mr. Temporary Deputy Speaker, Sir, I would like to say further that, failing to observe this kind of limitation is just as bad as what my learned, Mr. M. Kilonzo, has pointed out; judging somebody and keeping him in court for ten years on a case that would have taken, perhaps, a month or two.

I would want the Attorney-General to come up with some law that requires courts to expeditiously hear and determine cases. What happens is that, you will be charged in a court and every time you go to court, a magistrate or a judge creates one reason or another and sends you back to remand for two or three months; you come again and you find he is not there, and all through that period the accused person has no redress against the State.

As a matter of fact, we need a law that---

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghiso): Order! Order, hon. Members! I would like to ask hon. Members to consult quietly so that we can hear the hon. Member on the Floor.

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, it will be desirable for the State to compensate a person who is charged and, for no reason or fault of his own, is kept in custody or keeps on going to court for three to four years, until his case is determined.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General intends to amend the law relating to confession. I have never believed that it is desirable for a magistrate, who is a judicial officer, to be the one to take confession from suspects. As Mr. M. Kilonzo rightly put it, if the Attorney-General wants criminal suspects to make their confessions in court, all he is doing is telling them to go to court and plead guilty because a confession is an admission of an offence!

What I would expect the Attorney-General to do is to strengthen the capacity of the police force and that of the police stations. I have always argued that there are so many idle lawyers in this country. The Attorney-General should think of creating a provision in the law that requires every police station to be attended to by a full-time lawyer, employed and paid by the State. It is such lawyers who will be able, at the first instance, to advise the suspect of his rights; to record confessions, if any, with an attendant warning and caution that such

statements may be used against such a person in future.

Mr. Temporary Deputy Speaker, Sir, you can imagine a situation where a person is arrested in Dr. Godana's constituency which is up north; in the middle of almost nowhere. Then such a person has to be driven for 300 kilometres or more, to be placed before a magistrate to record a statement, if it is a confession. At the end of the day, if such a statement is repudiated or denied, you will require the magistrates to be witness in cases; to go and show that they actually recorded confessions.

We do not want to create a situation where judicial officers are routinely paraded in courts as witnesses because of disputes or statements they have recorded; called confessions. I would want the Attorney-General to seriously think, before we come to the Committee Stage, to bring an amendment and make it succinctly clear that every police station must have an attendant lawyer, as a full-time employee of the Government.

Mr. Temporary Deputy Speaker, Sir, also the Bill seems to lose sight of the fact that justice is not necessarily achieved by the manner you treat a suspect. Even the complainant has a right to justice. The aggrieved parties have a right to justice. I would want to know what the Attorney-General wants to say in the manner in which complainants and victims of crimes are compensated. I know what he has said about injuries and so on, but we have cases where there are no personal injuries, but crimes are committed. How do you compensate the victim? This is because I believe that justice is not about the protection of the rights of the criminal, but it is also about redressing the plight of the victims as well.

Mr. Temporary Deputy Speaker, Sir, the Bill also says that homicide cases shall now be tried by Judges of the High Court without going through what we call committal proceedings. This is good, but I want the Attorney-General to go further and enlarge the jurisdiction of the Chief Magistrate's court to hear homicide cases. If a Senior Principal Magistrate can preside over grisly cases of robbery with violence, where sometimes deaths have occurred, I do not see why they should not hear homicide cases. Some are as simple as drunkards fighting over something silly in a bar then one dies, and we have to burden the High Court to hear such cases.

Mr. Temporary Deputy Speaker, Sir, it is my humble view that I would wish the Attorney-General to amend the law and provide that, in certain homicide cases, which, in the view of the investigating officer who I have said should be a lawyer at the police station, such cases should be heard by magistrates at the level of Chief Magistrates. But such magistrates should be empowered to sit with assessors.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghiso): Order! Order! I would expect the Front Bench to be listening to what is going on.

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, one other problem with the administration of criminal justice in this country is the weakness in the prosecution system. Whether you talk of the office of the Attorney-General, it is understaffed and operates under-capacity. If you talk of police prosecutors, you find complicated frauds being handed over to police sergeants to prosecute. They go to court, and they have clever lawyers forming rings around them, and criminals always end up going scott-free. I would like the Attorney-General to take a very conscious move and strengthen the prosecution arm, whether it is through his office or through the police prosecutions. But the ideal situation, as Mr. M. Kilonzo has said, is that policemen have no business prosecuting cases in this country. Forty years after Independence, we have trained enough lawyers for the State to hire, pay them and have them to prosecute cases so that accused persons and suspects get a fair deal in courts because there are professionals handling their cases. We do not want a situation of surprise and attacks as Mr. M. Kilonzo did put it, where you go to court as an accused, you do not know what you are going to face or what is coming up against you. It should be a legal right, whether it is mere a case of pickpocketing---

The Temporary Deputy Speaker (Mr. Poghiso): Mr. Wetangula, address your colleagues in the proper way.

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, as I was saying, I agree with my learned senior, hon. M. Kilonzo, that there should be no cases of surprise and attack in our criminal law system. Every single person, whether he is charged with a simple case of pickpocketing or homicide, must know exactly what evidence he is going to be confronted with when he goes to court. He must be given ample time to prepare his case and be given ample time to get his defence in place. These rights will only be enforced if they are embedded in our statutes. We should not leave them to the discretion of anybody.

I would like to urge the Attorney-General to make sure---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghisio): Hon. Members it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 2nd April, at 9.00 a.m.

The House rose at 6.30 p.m.