

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 6th May, 2008

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTION BY PRIVATE NOTICE

MEASURES TO AVERT FOOD SHORTAGE

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

In view of the imminent world food crisis projected by the World Food Programme, what urgent measures is the Government putting in place to avert hunger and ensure food access by all, throughout the crisis period?

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

The Government has put in place the following urgent measures to avert hunger and ensure food access to all throughout the crisis period:-

(1) In the Supplementary Estimates, Kshs2.2 billion has been allocated for national food security.

(2) A food security meeting has been convened to discuss the possibility of importation of foodstuff and the amounts to be imported.

(3) The Government has authorised the National Cereals and Produce Board (NCPB) to borrow Kshs850 million to procure fertilizer for sale at affordable prices.

(4) The Ministry has given the NCPB Kshs392 million for buying of strategic grain reserve stocks. In the Supplementary Estimates, Kshs1.4 billion has been allocated to the NCPB to enhance its capacity to purchase maize from farmers on delivery to discourage any export of cereals from the country.

(5) The Ministry has started implementing the National Accelerated Agricultural Input Access Programme (NAAIP) at a cost of Kshs245 million targeting small-scale farmers.

(6) The Ministry has set aside Kshs68 million towards promotion of drought-tolerant traditional food crops such as pigeon peas, cassavas, sorghum and sweet potatoes.

(7) Together with other stakeholders, the Ministry is providing fertilizers, seeds and assorted tools to Internally Displaced Persons (IDPs) in the Rift Valley Province.

Thank you, Mr. Speaker, Sir.

Mr. Baiya: Mr. Speaker, Sir, the measures that the Assistant Minister has stated have only addressed the question of food security partially. All over the country, Kenyans, particularly those living in urban centres, are being faced with a situation where food prices increase by the day and they are unable to access food. However, he has not mentioned anything that the Government is doing to address the question of the cost of food commodities, particularly the inflation aspect. It is because of high inflation that our people cannot access food. What is the Government doing to

address the question of inflation with regard to accessibility of food by Kenyans?

Mr. Mbiuki: Mr. Speaker, Sir, the Ministry of Agriculture, in conjunction with other stakeholders, is in the process of importing cheap maize from the international market. In conjunction with the Ministry of Water and Irrigation, my Ministry is also in the process of procuring rice at competitive prices. The world food prices have been sky-rocketing. The Ministry, in conjunction with the Ministry of Finance, is also in the process of importing cheap foodstuff from the international market.

Mr. K. Kilonzo: Mr. Assistant Minister, you did mention that the Government has allocated Kshs1.3 billion to the NCPB to purchase maize and other foodstuff. Could you tell the House the magnitude of the shortage you are envisaging? What has the Government done? What is it looking at?

The Minister for Livestock Development (Dr. Kuti): On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to address the Assistant Minister directly, instead of him doing so through the Chair?

Mr. Speaker: He is certainly out of order!

Mr. K. Kilonzo, can you make amend and proceed?

Mr. K. Kilonzo: Thank you, Mr. Speaker, Sir. What I just want to know is the scope of food shortage that this country has. Saying that they will import maize and other foodstuff is not enough. We have seen unscrupulous business people, in previous years, flood this country with so much foodstuff in the guise of mitigating against food shortages. It is sad that when farmers harvest their produce, they do not get any value for it because the local market has already been flooded. What kind of shortages are we, as a country, expecting?

Mr. Mbiuki: Mr. Speaker, Sir, currently, the NCPB has 3.5 million bags of cereals. According to the Government's projection in the 2006/2007 Financial Year, we need to maintain a stock level of four million bags of maize. Between now and August, the Government intends to bring 3 million bags of maize and beans from outside. At the end the day, we can caution the country against any speculators who may be bringing maize from outside. So, we want to maintain a minimum stock level of 4 million bags of cereals at any given time, in anticipation of the serious food crisis that may be coming with time.

Mr. Muriithi: Mr. Speaker, Sir, I have listened very well to the Assistant Minister for Agriculture, but I would like to tell this House that we are experiencing the biggest shortage of food because half of the grain in the world market is going into the development of biofuel. So, when the Assistant Minister says that they are going to import raw grain, I really do not know what he means. What is the Ministry of Agriculture doing in order to address itself to the shortage of grains in view of the current development of biofuel from the grains? That is why the price of maize is skyrocketing. I believe that there are some problems even in importing grains from the world market. Could the Assistant Minister tell us how he is going to handle the biofuel issue with respect to the West *vis-a-vis* the developing countries?

Mr. Mbiuki: Thank you, Mr. Speaker, Sir. The Ministry of Agriculture is encouraging farmers to move away from cereal food production and concentrate on production of other crops such as cassava and bananas. Within the East African region, we have excess maize production in Uganda and Tanzania which can cushion us. Even as we speak, our farmers have enough stocks in their stores which they are not willing to sell because of speculative purposes. So, we have enough cereals within the East African region. Our biggest objective, as at now, is to encourage farmers to move away from production of maize and beans so that they can concentrate on other crops.

Mr. Keynan: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead the House when we know very well that the current food crisis is as a result of the post-election crisis? The Assistant Minister has not mentioned anything to do with the Internally

Displaced Persons (IDPs). We are talking about the current crisis, and he is just addressing the symptoms. Could he tell us how they are going to resettle farmers who are all over in the camps? That is the only way we can avert the imminent food shortage which we are facing. Otherwise, the Assistant Minister is just talking about the symptoms.

Mr. Speaker: That sounds like a question. But that notwithstanding, Mr. Assistant Minister, are you able to respond to that?

Mr. Mbiuki: Mr. Speaker, Sir, the resettlement of IDPs started on Monday. Through the Ministry of State for Special Programmes, we have provided farmers, who are being resettled, with basic food items. Our biggest objective is to encourage these farmers to go back to their farms and do farming.

Mr. Speaker, Sir, this morning, we launched a credit facility in conjunction with Equity Bank whereby all these farmers will have access to cheap credit facilities in the market so, at the end of day, we will be able to boost production of foodstuff in the country.

Thank you, Mr. Speaker, Sir.

Mr. Baiya: Mr. Speaker, Sir, I think the Assistant Minister has not responded to the question of what the Government will do to address the issue of high prices of food and ensure that it is accessible to Kenyans. The price of food all over Kenya has gone up. So, what will the Government do about that issue?

Mr. Mbiuki: Thank you, Mr. Speaker, Sir. The prices of foodstuff is basically controlled by the law of demand and supply. Due to the current post-election crisis, we have serious low supply of foodstuff. We encourage our farmers to go back to their farms and do farming so that we can boost supply of food. So, the bottom line is on the production of foodstuff, which we are encouraging farmers to embark on.

Mr. Farah: On a point of order, Mr. Speaker, Sir. The hon. Assistant Minister is evading the Question. We are not talking about salt or anything else which is a luxury. We are talking about the basic needs of Kenyans. We are talking about accessibility of food. If they cannot access food, they will die. The question the hon. Member is asking is: What interventions is the Assistant Minister taking to make sure that food is easily accessible to Kenyans? He should talk about subsidies and other things. He should talk about how the Government will intervene.

Mr. Speaker: The question simply put is this: What are you doing to ensure that food is affordable to Kenyans? Could you deal with that?

Mr. Mbiuki: Mr. Speaker, Sir, the biggest problem we have right now is the rising prices of foodstuff in the market. That problem has been caused by low supply of food in the market. As a Ministry, we would like to encourage our farmers to boost the production of foodstuff. As I earlier stated, we want to encourage farmers to backup the production of foodstuff. We are now extending credit to small-scale farmers so that they can boost production.

Secondly, we are boosting farmers by providing them with fertilizers at a very low cost. This is because the bottom line of pricing is the law of demand and supply. We need to boost supply of foodstuff in the market.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to tell us that his Ministry is using Equity Bank to give credit facilities to farmers while we know very well that we have the Agricultural Finance Corporation (AFC), which falls under the Ministry, and its work is to give credit facilities to farmers? What is it that is being hidden here?

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: There is already a point of order, Mr. C. Kilonzo! You cannot stand on a point of order before the Assistant Minister responds!

Proceed, Mr. Assistant Minister!

Mr. Mbiuki: Mr. Speaker, Sir, the Ministry encourages other players in the market to help

our farmers. The AFC is a Government parastatal which offers loans at 10 per cent to farmers. The Ministry of Agriculture, in conjunction with other players such as the Alliance for a Green Revolution in Africa (AGRA) and the International Fund for Agricultural Development (IFAD), have come up with a programme to give farmers affordable credit facilities. This may be at 5 per cent per annum on a reducing balance.

Mr. Speaker, Sir, we encourage the local commercial banks to give our farmers credit facilities without securities. This money is guaranteed by AGRA and IFAD and the farmers will not be expected to give securities. It is a question of walking into the bank and getting a loan of maybe Kshs100,000, and then, you will repay it with Kshs5,000 on top. We encourage the local commercial banks to come and help people who cannot get credit facilities.

Mr. Speaker: That should rest the matter!

Next Question by Mr. Mbai.

ORAL ANSWERS TO QUESTIONS

Question No.022

MEASURES TO CONTROL SAND HARVESTING IN EASTERN PROVINCE

Mr. C. Kilonzo: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Point of information to who?

Mr. C. Kilonzo: It is a point of information on Mr. Mbai's Question.

Mr. Speaker: Yes, Mr. C. Kilonzo.

Mr. C. Kilonzo: Mr. Speaker, Sir, I alerted the Clerk that when this Question was deferred to this week, Mr. Mbai stood on a point of order last week and specifically requested the Question to be deferred to next week.

Mr. Speaker: That is valid. So, the Question is deferred to Thursday next week.

(Question deferred)

Question No.023

REPORT ON KILLING OF PEOPLE IN KISUMU DURING POST-ELECTION CRISIS

Mr. Shakeel: Mr. Speaker, Sir, may I, please, refer Question No.023 to the Minister of State for Provincial Administration and Internal Security.

Mr. Speaker: Mr Shakeel, ask the Question!

Mr. Shakeel: Do I read the Question?

Hon. Members: No! No!

Mr. Shakeel: I ask Question No.023, Sir. I am sorry. I am still a layman!

Mr. Speaker: Order, Mr. Shakeel! You have been here for sometime. Please, sit down! The normal practice, Mr. Shakeel, is that when your Question is called, you stand up from where you are and say: "Mr. Speaker, Sir, I beg to ask Question No.023". It is that simple! Could you do that now?

Mr. Shakeel asked the Minister of State for Provincial Administration and Internal Security:-

(a) what the progress of investigations of police actions and killings that occurred in

Kisumu during the post-2007 election crisis period is; and,
(b) whether he could lay the final or a progress report of the said investigations before the House.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Speaker, Sir, I beg to reply.

(a) There was no probe committee set to investigate police action and killings that occurred in Kisumu during the post-election crisis. This is because the police acted within the confines of the law as the residents of

Kisumu went on the rampage destroying lives, property, looting, burning buildings and vehicles and barricading all highways leading in and out of Kisumu City. This forced the police to use the necessary force to prevent further destruction of property.

(b) The Assistant Minister cannot lay on the Table the outcome of the investigations for the reasons stated already in part "a" above. However, inquest files have been opened on all deaths that occurred during the violence as stipulated in Section 386 of the Criminal Procedure Court. In one of the files opened by the police, officer No.81073, Police Constable Edward Kipkoech Kirui, was arraigned in court and charged with the offence of murder of one Ismail Chacha, contrary to Section 2004 of the Penal Code. The case is pending hearing at the High Court Nairobi.

Mr. Shakeel: Mr. Speaker, Sir, I did not ask whether there was a probe committee set. My Question was very clear: "What is the progress of the investigations of the police action and the killings that occurred in Kisumu in the post 2007 election period?" I did not ask specifically whether there was any committee, a probe committee or a commission set to carry out investigations. I wanted to know why the police were instructed to use live bullets to shoot innocent protesters. There was no violence at that time until the police came and the Rapid Deployment Unit went there.

Officers from the Rapid Deployment Unit took no instructions from the local police force. They were taking instructions directly from Nairobi. They were using live bullets. I was targeted by a police officer with a smoke grenade. The hon. Member for Kisumu Town West was also targeted. We were asked to lie down on the ground, and yet we were hon. Members. There was no violence! If there was any violence, then it had been instigated earlier. From 8.00 a.m to nearly 4.30 p.m, the police were watching and some of them were helping in breaking into the buildings and security panels. Their vehicles were seen pulling down security panels.

Mr. Speaker: Mr. Shakeel, could you, please, try very hard and ask your question?

(Laughter)

Mr. Shakeel: Mr. Speaker, Sir, is it in order for the Assistant Minister to mislead the House by giving that answer?

Mr. Lesrima: Mr. Speaker, Sir, I have already said that with regard to the various deaths that took place, inquest files have been opened to investigate the loss of lives. It is also clear that the situation was not as peaceful as the hon. Member is trying to describe it. There is evidence of destruction of a lot of property and also loss of lives.

Dr. Khalwale: Thank you, Mr. Speaker, Sir. The killings and deaths during this period were not just limited to Kisumu. They occurred in many other places in the country. We are aware that the police were able to arrest quite a number of youths. The United States of America and the United Kingdom seemed to have had access to the investigations that were taking place because as a result of this, several politicians, some of them who are sitting in this House, had their travel arrangements curtailed. We would like the Assistant Minister to tell us who are these Ministers whose travel arrangements were interfered with and what action he will take against them if, indeed, they are the ones who were inciting the youth.

Mr. Lesrima: Mr. Speaker, Sir, that is a different Question.

Mr. Mbadi: Thank you, Mr. Speaker, Sir. I think the Assistant Minister should answer the Question very clearly because it is in the public knowledge that over 90 per cent of the deaths in Kisumu were as a result of police bullets whereas in other towns you could find that people died out of violence caused by civilians. However, the deaths in Kisumu were as a result of shooting by police. I want the Assistant Minister to explain why in Kisumu over 90 per cent of the deaths were as a result of police shooting.

He has, indeed, said that some people lost lives, could he give statistics of those who died out of other causes and those who died out of police killings?

Mr. Lesrima: Mr. Speaker, Sir, the purpose of opening this inquest is to establish the facts that the hon. Member is talking about. However, in total, 45 deaths were reported and inquest files were appropriately opened. The police actions were within the confines of the law and---

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

Mr. Speaker: Allow the Assistant Minister to finish!

Mr. Lesrima: Mr. Speaker, Sir, the hon. Member had asked about the statistics. There were 45 people who were reported killed. I am not sure if the figure will work out to 90 per cent. Others died through burning. There were about six unknown male adults who were burnt beyond recognition at Minoki Building when it was set on fire.

Mr. Speaker, Sir, one unknown male person was found dead at Makasembo after having drunk excess alcohol. Another one was set ablaze by members of the public and burnt beyond recognition after he was found to have stolen a cow. There are other activities which took place in addition to destruction of Government vehicles, public vehicles, residential buildings, private vehicles and commercial vehicles.

Mr. Outa: Thank you, Mr. Speaker, Sir. There is a lot of evidence and it is known that the police were given orders to shoot and kill in Kisumu. All this is in the public domain. I want the Assistant Minister to give us a clear clarification on what the Government is doing to bring all these people who were involved in the killings to book. Secondly---

Mr. Speaker: You are allowed one question at a time!

Mr. Outa: I am sorry!

Mr. Speaker: Since you are relatively new, you can ask a second one!

Mr. Outa: Thank you, Mr. Speaker, Sir. I personally encourage what the Government is doing to bring peace and reconciliation. However, in Kisumu, we understand that these people who were given orders to kill are still living with us. What is the Assistant Minister doing to transfer all these police officers who were involved and are still currently living in Kisumu, to other places while we talk about peace and reconciliation?

Mr. Speaker: Mr. Assistant Minister, you have to two questions to answer. Please, bear with the Chair!

Mr. Lesrima: Mr. Speaker, Sir, I think the second question is with regard to transfers. The first question is with regard to instructions. I am not aware of any instructions that were given to shoot and kill. The purpose of opening this inquest file is for anybody who has information to come forward and provide it as to who did the actual shooting. As far as the police are concerned, they only used teargas, rubber bullets and blank ammunition in this exercise.

Mr. Namwamba: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to deliberately mislead this House and answer this Question so casually? He even misleads this House to the extent that he says that inquests are being conducted while at the same time he tells this House that the police acted within the confines of the law! What is the purpose of an inquest if the Assistant Minister has already determined that the police, by killing in excess of

83 innocent people, acted within the confines of the law? Could the Assistant Minister treat this matter with the seriousness it deserves?

(Applause)

Mr. Lesrima: Mr. Speaker, Sir, I have not said the police killed anybody. I have only said that the purpose of the inquest that is being carried out is to establish the truth as to who took what action on the material days.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Allow me to draw the attention of the Assistant Minister to Standing Order No.38(1). He earlier dismissed my supplementary question, arguing that it was a different Question. It reads:

"Any Member may ask a supplementary question for the purpose of elucidating the answer given to the original Question, but a supplementary question must not introduce any matter not related to the original Question".

I had stood up to ask him that, "What is he doing to the politicians, some of whom are on the Front Bench, who were behind the incitement of the youth?". This is a question that is arising directly from the same killings that were visited on our youths, not just in Kisumu, but all over the country. Is the Assistant Minister in order to skip the question?

(Laughter)

Mr. Lesrima: Mr. Speaker, Sir, if evidence is adduced in court implicating politicians, they will also be called to account.

Mr. Speaker: Last question, Mr. Shakeel!

Mr. Shakeel: Mr. Speaker, Sir, the Assistant Minister is misleading the House. Having said that there were a number of deaths, they were not 45; they were 83. Just before he sat down, he misstated a fact. He said that the police used teargas and rubber bullets. No rubber bullets were used in Kisumu. We have spent G3 rifle cartridges. We also have postmortem reports of nearly 63 people, who were shot and killed using G3 rifles.

Mr. Speaker, Sir, is the Assistant Minister saying that the Rapid Deployment Unit is not a police unit? If he is saying that, then he might say that, "Okay, they were shot by the Rapid Deployment Unit".

Mr. Speaker, Sir, why is it that it was only in Kisumu where people were shot dead using G3 rifles? Even in Naivasha, people were not shot dead. The police used a helicopter and rubber bullets to disperse the people there.

I am not satisfied with this answer. I think the Assistant Minister is misleading this House.

Mr. Speaker: Mr. Assistant Minister, try and answer what you have not answered!

Mr. Lesrima: Mr. Speaker, Sir, I think I have answered most of the questions the hon. Member has raised. I have only said that I think we should follow the rule of law and due process. The matter is not closed. If you have any evidence, then you know where to take it in this process of investigation.

Mr. Speaker: Fair enough, Mr. Assistant Minister!

Next Question by Mr. Were!

Question No.026

GUIDELINES ON PRICING OF
SUGAR-CANE

Mr. Were asked the Minister for Agriculture:-

(a) whether he could confirm that the Government has set guidelines on the price of cane per tonne payable to farmers by millers;

(b) whether he could further confirm that some millers have been contravening these guidelines; and,

(c) if answers to (a) and (b) above are in the affirmative, what action the Ministry is taking against

those contravening the guidelines and to ensure compliance by all millers.

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

(a) I confirm that the Government, through the Sugar-cane Pricing Committee, has set guidelines on the price of cane per tonne payable to farmers by millers.

(b) I am further aware that millers are complying with the guidelines, except Mumias Sugar Company.

(c) My Ministry, through the Kenya Sugar Board (KSB), has instructed Mumias Sugar Company to effect compliance with the guidelines through its Board of Directors, as it is a private company.

Mr. Were: Mr. Speaker, Sir, the answer that has been given is not satisfactory. On the 17th of September last year, at about 11.00 a.m. at Mumias Sugar Company, the Government gave a directive that with effect from that day, the price of cane per tonne payable to farmers would be Kshs2,500. The Minister made that announcement as a directive in front of His Excellency the President, the then Vice-President, the Attorney-General and it was supposed to take effect on that day.

Mr. Speaker, Sir, could the Assistant Minister inform this House why the directive has not been applied by Mumias Sugar Company up to this day!

Mr. Mbiuki: Mr. Speaker, Sir, there is usually a Sugar-cane Pricing Committee in place. They have a formula of coming up with the price of sugar-cane per tonne.

In September, 2007, there was a Government directive for sugar millers to price cane at Kshs2,500 per tonne. The directive has been fully complied with by the millers, except the Mumias Sugar Company. They are buying cane per tonne at Kshs2,300. We have directed Mumias Sugar Company, through its Board of Directors, to effect the Government directive by increasing their price from Kshs2,300 to Kshs2,500 per tonne.

Mr. Speaker: Anybody else who has a question?

Mr. Mbadi: Mr. Speaker, Sir, whereas I thank the Assistant Minister for answering that question, if I got the question correctly, it was whether he could now confirm that Mumias Sugar Company has complied with the directive. The directive was given in September last year. Have they complied or have they refused to comply with the directive? If they have refused to comply, what is the Ministry going to do?

Mr. Mbiuki: Mr. Speaker, Sir, as I have stated, Mumias Sugar Company is a listed public company at the Nairobi Stock Exchange (NSE). The company is answerable to its shareholders and implements decisions of its Board of Directors on which the Government is represented. We have tried to lobby the company, through the Board of Directors, to comply with directive. As of now, they have not implemented the price of Kshs2,500 for cane per tonne. They are still paying sugar-cane farmers kshs2,300 per tonne of cane. However, through the Board of Directors, we are trying the best we can pin them down, so that they can increase the price to Kshs2,500 like other millers.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister say here that there is almost nothing he can do to Mumias Sugar Company. Yet, in this Parliament, we passed the Sugar Act, 2001, which stipulates among other things, liability of the Board for damages. Section 13 says:-

"The provisions of Section 12 shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works."

This law compels the miller to actually pay the farmer. So, since our farmers are actually not being paid, why can he not apply Section 13 of the Sugar Act, 2001, to make sure that the farmers are paid and the Chief Executive Officer honours that directive from the Government?

Mr. Mbiuki: Mr. Speaker, Sir, if at all we use that formula which is specified in the Sugar Act of 2001, the price will be Kshs2,100. However, Mumias Sugar Company is paying farmers Kshs2,300, which is even far much above what is specified in the legal Act. The directive by the Government was for millers to pay farmers Kshs2,500. So, Mumias Sugar Company is still above board at Kshs2,300 according to the provisions of the Sugar Act of 2001.

Mr. Were: Mr. Speaker, Sir, the Assistant Minister is misleading the House by saying that if we apply the pricing formula, the correct price applicable to the farmers would be Kshs2,100. If we applied that formula, the correct amount that should be paid to the farmers is Kshs2,700, which is being paid by West Kenya Sugar Company. So, talking about Kshs2,100, is misleading this House.

The Government gave a directive at Mumias Sugar Company not anywhere else, when the President went to lay the foundation stone of the co-generation project. The Assistant Minister has indicated, in the answer to the last question, that the Government, through the Kenya Sugar Board, has directed Mumias Sugar Company to comply with the directive. How long have you given them to comply with that directive or is it open-ended?

Mr. Mbiuki: Mr. Speaker, Sir, the Government is represented in the Board of Mumias Sugar Company. As I speak, we are negotiating with the millers, so that they can effect the Government's directive.

Mr. Speaker: Mr. Assistant Minister, is there any deadline?

Mr. Mbiuki: Mr. Speaker, Sir, there is no deadline.

Mr. Speaker: Next Question, Mr. Chepkitony!

Question No.010

LEAKAGE OF 2007 KCSE EXAMINATIONS

Mr. Chepkitony asked the Minister for Education:-

(a) whether he could confirm that there was massive countrywide leakage of 2007 KCSE Examinations; and,

(b) what action he is taking against the Kenya National Examinations Council to stop these frequent leakages of national examinations.

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

(a) There was no massive countrywide leakage of the 2007 Kenya Certification of Secondary Education (KCSE) examinations. However, I can confirm that there was an increase in the number of examination irregularities.

In order for this answer to be understood, I would like to explain what "an examination leakage" is and what "an examination irregularity" is.

An examination leakage is where an examination paper is public knowledge before the examination is taken. When there is such a breach, then the paper is cancelled, withdrawn and replaced with a different one. Mr. Speaker, Sir, an examination irregularity could be of several aspects. One of them could be shared information on a particular examination, like a question

being leaked or given to a candidate prior to the examination, but which is not published. In such a case, it does not become necessary to cancel the examination, but the individual candidates or people concerned are penalised.

Mr. Chanzu: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to come here to lecture us about definition of terminologies instead of answering the Question which he has been asked?

(Applause)

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I am only trying to explain so that this is understood.

The Ministry cannot cancel every examination which is interfered with by people sharing information through Short Message Service (SMS). What the Ministry is concerned about is to ensure that each case is treated on its own merit.

(b) From what I have explained in part "a" of my answer, the Minister appointed a team of experts to examine all the Kenya National Examinations Council operations and propose the necessary changes which will include addressing the issue of increased examination irregularities and also taking preventive measures in case there is anybody who attempts to leak the examinations.

Mr. Chepkitony: Mr. Speaker, Sir, the Assistant Minister is confusing us with terminologies of "leakage" and "irregularities." Both terminologies amount to questions reaching the candidates before hand.

He is admitting that incidents of irregularities have increased. What is he doing to address these examination leakages or irregularities he is talking about? Does it mean that he does not have honest and trustworthy members of staff? These cases of irregularities arise out of dishonest and irresponsible people at the KNEC. It is absurd that examinations leak, but the Ministry does not take any action against the responsible staff.

Mr. Mwatela: Mr. Speaker, Sir, I have just explained, but I will do so, again.

The process of handling examinations goes through a number of stages. For example, there are centres where these examination papers are stored, usually referred to as "armoury". Last year, for the KCSE examinations, there were 596 such centres. The examination papers are stored there for about two weeks before the actual taking of the examinations. It is very possible that somebody can get access to a particular aspect of the information that is contained in the examinations, and share it with another---

(Loud consultations)

Mr. Speaker, Sir, may I explain this? Information on the examinations can be shared. What happens usually is that the KNEC has a way of detecting such shared information and penalising the individuals concerned, particularly the candidates. However, I have just said that we have put a committee in place which will study all the processes the KNEC follows, with the intention of ensuring that there is no more compromise in the examination process.

Mr. Farah: Mr. Speaker, Sir, given that leakages in examinations have become the order of the day in this country for the last 40-plus years; and given that since the doctoring of results of examinations kind of keep certain sectors of this country as permanent under-class and stops them from going to the right schools and right institutions and given that their being used the Government is endemic---

We remember the Musa Gitau Primary School saga in the 1990s. Further, given that we

had the East African Examinations Council (EAEC) before and that the East African Community is being fast-tracked now, could his Ministry consider bringing back the EAEC because examination setting and marking has lost credibility in Kenya? This will enable the examinations from Kenya to be marked by Ugandans, the ones for Ugandans will be marked by Tanzanians and the ones for Tanzanians will be marked by Kenyans so that this doctoring and the credibility that our education sector has completely lost could be addressed once and for all?

(Applause)

Mr. Mwatela: Thank you, Mr. Speaker, Sir. Yes, the Ministry is working closely with the other East African States in trying to create a system that is good for all of us. But may I also inform this House that the same problems we have here of increased irregularities are also in Uganda and Tanzania. So, it is a shared problem and we would like to fight it together.

Mr. Mwaura: Mr. Speaker, Sir, this issue of examination leakage has really caused a lot of concern in our country. I would, however, like the Assistant Minister to state very clearly why certain candidates who never sat for the examinations were awarded marks while the others who sat for the examinations and had very good marks had their marks lowered. What steps have been taken to avert this from recurring during the examinations which will be done this year?

Finally, Mr. Speaker, Sir, some reports are out that some computers were being blamed for these examination irregularities. What has the Assistant Minister done to do away with these computers, which are likely to cause the same havoc to innocent children of this nation?

Mr. Mwatela: Mr. Speaker, Sir, the issue of fake results was a subject of a Ministerial Statement in this House. It was already addressed by the Minister and I consider it a different Question from this one.

Mr. Koech: Thank you, Mr. Speaker, Sir. I would like the Assistant Minister to take this matter very seriously. We know that Kenyans are spending a lot of money to educate their children and everybody looks forward to the day when students are to sit for the exams. It is unfortunate for the Minister to cheat this House that there was not much leakage last year. It is in the public domain that in some of our national schools, a lot of papers, for example, the History and Christian Religious Education papers were found with students even before the examinations. The Assistant Minister should take it very seriously and inform this House on the real actions that were taken. Could he also tell this House how many people have been suspended as a result of the leakages last year?

Otherwise, Mr. Speaker, Sir, we should not accept, as a country, that since it is happening in Uganda, therefore, it is okay for it to happen in Kenya!

Mr. Mwatela: First, Mr. Speaker, Sir, may I say that there was no paper that was found in possession of candidates or any other person which tallied with the paper that was set by the Kenya National Examinations Council (KNEC). That is what would have amounted to a leakage. There was a paper, indeed, which was found in the possession of somebody in Nakuru being photocopied and somebody alerted the police. When this paper was compared to the paper that was set by the KNEC, it was totally different!

Mr. Speaker, Sir, the Ministry takes the matter of examinations very seriously and in this particular time in this Coalition Government, we would like the matter of examinations irregularities and leakages to come to an end. So, we are doing everything possible to end that.

Mr. M. Mwangi: Thank you, Mr. Speaker, Sir. I am Muturi Mwangi. The Assistant Minister has accepted that there were irregularities. First and foremost, that is leakage!

(Laughter)

If there were irregularities in the examinations and whatever terminology you would want to refer to as irregularity against the leakage and you have set up a commission, you have admitted that you have a big problem. Kenya is a member of the Commonwealth countries and, even in the Commonwealth, we have examinations and the a Commonwealth Secretariat. There is a standard to which any Kenyan student would have to achieve to be admitted in any of the Commonwealth universities. These irregularities being referred to by the Assistant Minister are going to tarnish our image. The repute of Kenyan examinations is wanting. What action and steps is the Assistant Minister taking to make sure that the applications from Kenyan students to the Commonwealth countries are not penalised and that students are not made to sit other examinations before they are admitted in those universities?

Mr. Mwatela: Mr. Speaker, Sir, I share the concerns of the hon. Member, and very seriously so. We need to ensure that we do not damage the image of our examination system. That is why I said earlier on that we have put in place a committee which is going to examine all the processes to ensure that we seal all loopholes and bring back the good image of the old days of our examinations.

Thank you, Mr. Speaker, Sir.

Mr. Chepkitony: Thank you very much, Mr. Speaker, Sir. The Assistant Minister keeps on referring to the committee. Could he tell this House when the committee is going to conclude its work so that we can be assured of a better examination process this year?

Mr. Mwatela: Mr. Speaker, Sir, I would like that report to be in this House as soon as yesterday, but it is a process. We have to look at the whole system and get ways of sealing loopholes, as I have said earlier.

Mr. Speaker, Sir, I would say that, ideally, in the next two months, we should have a report of that committee.

Mr. Speaker: That brings us to the end of Question Time!

PERSONAL STATEMENT

REBUTTAL OF CORRUPTION ALLEGATIONS AGAINST HON. LINTURI

Mr. Linturi: Thank you, Mr. Speaker, Sir. I am rising on Standing Order No.69 to make a personal statement on a matter that is in the public domain. The matter is to the effect that I am among the Members of the Public Investments Committee (PIC) who are unqualified to sit in the Committee because I have allegedly been cited for corruption in the past.

Mr. Speaker, Sir, I wish to state the following simple facts: That, I am not corrupt and that I have never been cited for corruption anywhere in the Republic of Kenya. I have never been summoned by any of the previous Committees on any matter nor have I ever been cited by any previous Reports of the Committee for whatever reason.

Mr. Speaker, Sir, I want to state on the Floor of this House that I have no intention of stepping down as a Member of the PIC since such a move will have no justification. Members of the Committee, as presently constituted, have demonstrated their confidence in me by electing me to lead them.

(Applause)

I intend to discharge that mandate without fear or favour. I equally urge Members of the Committee to stand firm and discharge their mandate fully knowing that the appointment, first of

all, is by the people of Kenya. Those who feel sceptical about the capacity of my Committee to watchdog over the State Corporations on behalf of this august House are invited to audit the Committee's work from time to time. We have an excellent foundation laid by the Committee of the last Parliament and we intend to continue with the good work.

Mr. Speaker, Sir, I am pleading for your protection.

Thank you.

Mr. Speaker: Very well, Mr. Linturi! You are assured of the Chair's protection at all times.

POINTS OF ORDER

GOVERNMENT POSITION ON INTEGRITY OF ECK

Mr. Namwamba: On a point of order, Mr. Speaker, Sir. I wish to request for a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs to explain the following:-

First, what is the official position of the Government on the integrity and probity of the Electoral Commission of Kenya (ECK) as currently constituted in view of the disputed December, 2007 polls whose inept handling by the said ECK precipitated the unprecedented ethnic conflict that resulted in the deaths of over 1,200 Kenyans and displacement of over 350,000 others?

Secondly, in view of the bungled 2007 polls, is the Government convinced that the ECK as currently constituted has the capacity and enjoys the confidence of the people of Kenya to continue in office and to preside over the by-elections in five constituencies scheduled for 11th June, 2008?

Thirdly, could the Government justify why it cannot fast-track the enactment by this House of the minimum reforms package tabled by the Departmental Committee on Administration of Justice and Legal Affairs before the Fifth Session of the Ninth Parliament, specifically recommendation No.14 proposing a new Section 41 of the Constitution of the Republic of Kenya that would empower this House to appoint a new nine-member ECK that would enjoy the full confidence of Kenyans both in the forthcoming by-elections and in future electoral tasks?

Finally, could the Minister explain why the Political Parties Act has not been operationalised and in the same vein tell this House when Kenyans can expect the Act to come into force?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker Sir, while undertaking to bring this weighty matter before the Minister for Justice, National Cohesion and Constitutional Affairs, I think it is good for Mr. Namwamba to note that the Member for Igembe Central, Mr. Imanyara, had also sought a Ministerial Statement on the Political Parties Act. Therefore, there is a coincidence. However, I undertake to let the Minister responsible deal with this matter expeditiously.

REPORT OF PRESIDENTIAL COMMITTEE ON SPECIFIC CONCERNS OF MUSLIM COMMUNITY

Mr. Affey: Mr. Speaker, Sir, I rise on a point of order to seek a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs on the outcome of a Presidential Committee established on 15th October, 2007 by His Excellency the President to address specific concerns of the Muslim community in Kenya with regard to harassment and discrimination in application of the law. I wish the Statement to contain the following:-

Whether the appointing authority has received the Report of this Committee. Secondly, if yes, what action the Government has taken in implementing the outcome and the recommendations of the Report? Thirdly, if not, whether the Committee has provided an interim Report as envisaged in the Terms of Reference (TOR) and, if possible, interim recommendations. Could the Minister also consider bringing that Report before this House?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I similarly undertake to have the Minister, Ms. Karua, come before this House with a Statement regarding that Report.

KILLING OF CHARLES NGUNG'U
AND NAFTALI IRUNGU

Mr. Baiya: On a point of order, Mr. Speaker, Sir. Last time I had sought a Ministerial Statement from the Minister in charge of internal security regarding the shooting of two young Kenyans in Lari, Kiambu.

Mr. Speaker, Sir, I expected the Ministerial Statement to be delivered today, but I cannot see the Minister showing any signs of doing so.

Mr. Speaker: Mr. Minister, what is the fate of this Statement that you undertook to give?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Speaker, Sir, I beg the indulgence of the House and request that this Statement be issued on Tuesday, next week. The Statement is not ready. If the Member would agree, then I will bring the Statement on Tuesday, next week.

Mr. Baiya: Mr. Speaker, Sir, the Commissioner of Police was quoted extensively on Saturday as purporting to have responded to the Statement that I had sought. How come the Assistant Minister is now talking about next week? Indeed, it is the Commissioner of Police who should be advising him on the Statement that he ought to bring here and yet the same Commissioner has gone out to the public purporting to answer me. Is that in order?

Mr. Speaker Sir, could I know whether the Statement will be issued on Tuesday and not just next week?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Speaker, Sir, I undertake to issue a Ministerial Statement next Tuesday and it has nothing to do with what the Commissioner of Police said over the weekend.

BILL

Second Reading

THE CRIMINAL PROCEDURE
CODE (AMENDMENT) BILL

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

This is yet another Bill which tries to reform our penal laws and procedures to comply with the international standards relating to the conduct of the criminal justice system. It may be recalled that in the 1990s, I set up a task force on penal laws and procedures, which was chaired by Justice Luttah and which made many recommendations. This House debated those recommendations under the Criminal Law (Amendment) Bill, which introduced noble ideas such as taking into account the right of the victim of the crime in the hearing and in the passing of sentences of those

who have been found guilty of an offence under our laws.

Mr. Speaker, Sir, there were also noble ideas such as giving the court hearing a criminal case the ability to assess the damages in an assault case which can be payable to the victim and actually ordering compensation such as doing away with corporal punishment, which is now regarded, internationally, as cruel and inhuman. This also includes rationalising the sentence in sexual offences.

Mr. Speaker, Sir, although that was a one-time task force which was appointed, there is need for a continuous review and reform of criminal laws. This need is of paramount importance to the efficient and effective administration of the criminal justice system.

Mr. Speaker, Sir, to give focus to this important task, and taking into consideration the significance of incorporating practical experience in making recommendations on the reform of our laws, I have set up a Standing Committee on Law Reform relating to the criminal justice system under the Department of the Director of Public Prosecutions.

This Committee will, on an on-going basis, take into account the experiences they are encountering in court on the issue of prosecution, take into account the experiences that the police are having on the

issue of criminal investigations and so on.

They will be making recommendations to this House. In fact, the first version of such recommendations was passed by this National Assembly under the Criminal Law (Amendment) Act of 2007.

Mr. Speaker, Sir, it in this regard that the Standing Committee made recommendations that the law should provide a proper legal framework for plea-bargaining, otherwise the system was prone to abuse. Plea-bargaining, as we understand it, is the hallmark of many criminal justice systems. In Kenya, which comes under the common law system, plea-bargaining has, up to now, been made in a very informal way, where the prosecutor discusses with the accused person, or his or her advocate, a bargain over the plea; for example, they may say: "This is a murder case, but the facts of the matter show that it is a manslaughter". If the accused person is prepared to plead guilty to a manslaughter case, they may bargain and it is reduced to manslaughter, so that the accused person pleads guilty to manslaughter and thereby saves the court a lot of time on the hearing of the case, which would in any event have ended up proving a manslaughter case. So, this has been done on a very informal basis. But it is important.

Mr. Speaker, Sir, in the United States of America (USA), it is estimated that over 90 per cent of cases are settled through plea agreements between the prosecuting attorney and the defendant. It is important to note that, although America comes under the common law system, they have since moved forward and made plea-bargaining part of their written statutes. In the USA, under Rule 2 of the Federal Rules of Criminal Procedure, the legal framework for plea-bargaining is provided for. This is what we are now trying to do in this Bill, which is before you. We want to move plea-bargaining from an informal process to a more transparent process, which follows certain procedures before we can arrive at it.

Mr. Speaker, Sir, as I stated earlier, this is an informal process, and it normally comes at the stage when a plea is being taken before the court.

Mr. Speaker, Sir, there are many advantages to plea-bargaining. I will quote a few.

(i) Plea-bargaining promotes the acknowledgement of guilt and willingness to assume responsibility on the part of the accused person.

(ii) Plea-bargaining, by its very nature, involves concessions by both the accused and the prosecuting person. These concessions save the court a lot of time. As you know, right now, our courts are breaking down under a backlog of very many cases, many of which could be plea-bargained, people punished, and the time of the court set free.

(iii) As a result of plea-bargaining, it has been proved elsewhere that even the sentence that is imposed becomes not just a punishment of the accused person, but a rehabilitative and

informative process by the accused person acknowledging his guilt and by meting out a sentence appropriate to what he or she has pleaded guilty to.

(iv) Plea-bargaining also helps in the administration, particularly in cases where, for example, through plea-bargaining you may get the accused person to make a full statement and disclosure of not only himself or herself, but also of all the people who may have been involved in a particular crime. Therefore, it assists in getting all the culprits before a court of law. When they come before a court of law, there is sufficient evidence because of the plea-bargaining that may have been done by a few people, and they are convicted.

(v) Plea-bargaining also reduces the cost of administration of justice, not only to the advantage of the State, but also to the advantage of the accused persons.

(vi) Plea-bargaining also reduces the number of appeals that normally clog our system.

Mr. Speaker, Sir, for the Standing Committee, there is no doubt whatsoever that plea-bargaining is an essential complement to the administration of justice system anywhere in the world and in Kenya. The Standing Committee, in undertaking this exercise, examined how the plea-bargaining processes are undertaken in a number of countries. They particularly examined the plea-bargaining process in the USA, South Africa, India, the United Kingdom (UK), Australia, Canada and in our neighbouring countries. Certain principles stand out when you examine the system in all these countries.

Mr. Speaker, Sir, first of all, the plea-bargaining has been reduced from informality to a formal process with a proper legal framework which we are now attempting to do. The process, when it is reduced to legislation as we are trying to do, makes plea-bargaining a transparent process. When plea-bargaining is reduced to legislation like this, it ensures that the accused person has entered into this agreement voluntarily. At the time he is entering into this agreement, the accused person is fully made aware of all his or her rights and the alternatives that may be open to him or her.

Mr. Speaker, Sir, also, when plea-bargaining is reduced into a legal framework, it prevents abuse of the process. Although the court is not part of the process of the plea-bargaining, it assumes a supervisory role as we shall see in the process. This agreement has to be registered in court.

Mr. Speaker, Sir, if I talk briefly about this Bill, it is meant to amend the Criminal Procedure Code to make provision for plea agreements. Although under common law and tradition, this whole issue has been known as plea-bargaining, here in Kenya, it is still called plea-bargaining, but elsewhere the name has changed to plea agreement.

It is an agreement between both sides; reduced into writing and registered in court. So, this Bill is to make provision for plea agreements.

Mr. Speaker, Sir, the plea agreements can be initiated by the accused person, his advocate or the public prosecutor. The plea agreement is in respect of reduction of a charge to a lesser charge or withdrawal of a charge. Plea-bargaining can only be entered into after an accused person has been charged and, at any time, before judgement. Though most of them will happen at the time of the plea, but supposing at the time of the plea, the accused person says he is not guilty and the trial start? In the process of hearing the case, the accused person can decide to change his plea and enter into a plea agreement. So, a plea agreement can be entered into at any time before judgement is given in a particular case. The plea agreement is between two sides. On one side, we have the Republic, the representatives of the court appointed by the Attorney-General or the Director of Public Prosecutions or officers subordinate to them; whom the Attorney-General has authorised in accordance with Section 265 of the Constitution. On the other side, is the accused person or his advocate.

Mr. Speaker, Sir, the police and other non-professional prosecutors cannot enter into plea agreements without prior approval either of the Attorney-General or of the Director of Public

Prosecutions. One also needs to keep track of what our police prosecutors are doing. Let me, at this stage, inform the august House that it is the policy within our strategic plan that we should progressively reduce the number of police prosecutors in this country. As we progressively reduce them, we progressively increase the number of the professional prosecutors.

Only just before the election, I launched a manual for training of professional prosecutors. If we will have lay prosecutors, then they will not be police prosecutors. The lay prosecutors will be lay prosecutors employed in the Attorney-General's office. This manual would have trained them to be police prosecutors and

they will have a scheme of service. As of now, this law is stating that the police prosecutors cannot enter into plea-bargaining without prior approval of the Attorney-General, the Director of Public Prosecutions or professional officers duly authorised by the Attorney-General.

Mr. Speaker, Sir, the law then continues to provide for what happens after the initiation and what is discussed and so on. Clause 137(E) says: "A plea after discussions, agreements are reached." Clause 137(E) says the plea agreement shall be in writing. Right now, there is nothing in writing. It is merely based on some level of understanding between the prosecutor and the accused person or his advocate. One hopes that each side is acting in good faith, but now we are going to say that everything has to be adduced in writing.

Of course, care is made to ensure that if the accused person who has negotiated a public agreement through an interpreter, for example, there must be a certificate by the interpreter to the effect that he interpreted accurately during the negotiations and in respect of the contents of the agreement.

Mr. Speaker, Sir, the agreement then goes before the court under Clause 137(f). Here is where the court now comes really into it to see that everything is in order. Now, before the court enters that plea agreement, it has to be sure that the accused person understands, for example, that he has the right to plead not guilty. Also, that he has a right to be presumed innocent until proved guilty. However, he has a right to remain silent. He also has the right not to be compelled to give self-incriminating evidence. In fact, he has the right to uphold trial and so on. So, all those matters that the courts must itself ensure that the accused person is aware of are matters which will make the court know that the accused person has, while knowing his right, voluntarily decided to enter into this plea agreement. The court would then, after being satisfied, enter that plea agreement. The court also has the option not to accept the plea agreement, in which case, the case will proceed to full trial. In refusing to accept the plea agreement, the court shall record the reasons for such rejection and inform the parties accordingly.

Even where the plea agreement has been entered into, the accused person, again, is given the right, any time, to withdraw from the plea agreement under Clause 137(k). So, this is what we have under this Bill. We are proposing to make plea bargaining above board. We are trying to shield it from being used as an instrument of fraud so that every person knows what exactly was agreed and it is recorded. As you know, court records, and actually criminal records, are public documents which any person can go and inspect. With the passage of this Bill, we would have moved a long way to ensuring a just expeditious criminal justice system in this country; a system which will help us unclog, I am quite sure, the many cases which are pending before the courts as you all know; a system which will also ensure that the sentences that are passed meet the individual concerned; sentences aimed at reforming and rehabilitating the person.

With these few remarks, I beg to move and ask my fellow Senior Counsel, Mr. M. Kilonzo, to second me.

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): Thank you, Mr. Speaker, Sir. I would like to take this opportunity to thank my learned friend and co-Senior Counsel, by some accident of history and politics because there are only two Senior Counsels in

this august House this time. I want to salute the Attorney-General, Mr. Wako, for bringing forward this law.

Mr. Speaker, Sir, I have no doubt in my mind that history will come to judge what you are doing this afternoon as the grace of God; giving you an opportunity to chair the debate on this very critical law in our country. It would be recalled that one of the critical agreements in the National Accord and Reconciliation Act was the long-term issue of legal and institutional reforms. I would like to say very firmly, without fear of contradiction, that the reform of our criminal justice system is as big as even the constitutional reform. Although my learned friend, the Minister for Justice, National Cohesion and Constitutional Affairs, was telling me that I should be digging up tunnels for the city of Nairobi and create bypasses and so on, she wanted me to leave the responsibility of seconding this Bill to her but she finally conceded. Even Mr. Orengo similarly wants to contribute to this very critical law because we must and it is essential that we be seen by the world as reforming our criminal justice system.

Mr. Speaker, Sir, I would like to mention a few things that are so critical here. For the first time, as a country, we are going to be recognised as a country that recognises the rights of the victim to crime. It is not fair for the present establishment of criminal justice system where it appears that we are always only concerned with the rights of the accused person. I know they are very important and you and I have spent all our lives defending people charged with crime. But at the back of our minds and the back of the mind of any lawyer worth his salt, is the knowledge that even as he defends his client; even as he helps his client to grapple with the law book once it is thrown at him, it is the knowledge that there is a victim somewhere in the background.

Mr. Speaker, Sir, the time has come for us to send a message to the country and the world that we are a modern state whose responsibility includes accepting the wide-ranging effects of crime as to cover not just the victim but also members of their family.

Mr. Speaker, Sir, the other item, although by extension, that is essential for this House to note is the question of compensation. In fact, it provides that, if at any time, the contemplated agreement, we call it plea bargain but in this case plea agreement, contemplates an impact on a victim, then the victim will have a right of say, right of hearing and, in fact, right to comment on the terms of the agreement. This is an exceedingly important aspect of the future of criminal justice system in this country so that we can show that we are serious about what we want to do.

The other amazing thing in this Bill is that, again, under Clause 137(f), the Attorney-General has gone out of his way to yet again emphasise the rights of the accused person before he enters into a plea agreement. When this matter goes to the Departmental Committee, I want to persuade him to even embrace and probably consider accepting an amendment so that we also include, once and for all.

In law the process of discovery which you, Mr. Speaker, Sir, are well aware of, which has now been introduced into our jurisprudence by the courts through the Court of Appeal and also the High Court itself whereby an accused person is now, for the first time, and this goes barely four or five years now, entitled to all material, evidence, statement, the investigation that the prosecution may have created. Right now, and without speaking too much out of class, there is an issue that has arisen as to whether that responsibility that has been created by the courts of the stage to supply the accused person with discovery material, whether that right also extends to the accused person himself.

Mr. Speaker, Sir, I, personally, share the view that if it is discovery, it ought to cut both ways. I think in the process of amending this Criminal Procedure Code through this Bill, this is, perhaps, the right opportunity so that Parliament does not have to come back to it in due course to find suitable language and proposals to, once again, tell the world and the country that no trial by ambush is contemplated by the constitutional provisions that protect the right of the accused

persons. By the same token, the constitutional protection on the accused also includes certain rights and privileges; including advancing to the prosecution, at the very least, the names of witnesses or any possible potential alibi that they want put forward.

Mr. Speaker, Sir, I say this again with absolute conviction that the measure of any modern country is done through the confidence that the public and the world has on its legal system. Law and order itself is founded on how efficiently the issue of prosecution and the treatment of accused persons is meted out. Fortunately, this country is lucky to have a Vice-President, for the first time in history, who is also a lawyer; an extremely senior lawyer, and I hope that his Ministry will consider bringing to the fore reforms in the Prisons Service so that instead of treating accused persons after conviction as second-rate citizens, we have a correctional system as understood in the rest of the world.

Again, this is in line with the fact that legal and institutional reforms form the substance of the National Accord that this House passed barely a month or so ago.

The fact that a country also reflects its efficiency in investment and management of its affairs, if that efficiency is measured against the yardstick of law and order, and particularly criminal justice system, is another reason that I want to use to persuade my colleagues in this House, to pass this law as quickly as possible.

Mr. Speaker, Sir, I would like to touch on the issue that the Attorney-General referred to concerning the training of prosecutors. I sincerely think, with respect again, that, as a country, we must go beyond that. We must also train court clerks, so that they understand what it is they are interpreting for the accused person when he appears in court, and so that they can also offer the magistrate and the judge assistance, if necessary, in research and other formulations that affect their work. We have no choice. This is part of the institutional reforms that are so critical. If we offer training to court clerks, I want to suggest to the Attorney-General that the scheme of service that he is proposing for prosecutors, should also extend to court clerks. Those people work for long hours in extremely difficult circumstances.

You will find that as long as a judge or a magistrate has a file in front of him, the court clerk must remain there, and must also take the mood of the court, the accused, the witnesses, and above all he is also the face of the magistracy and the judicial system to the rest of the world. Therefore, if court clerks are not enjoying good benefits---

I dare say that, as a country, we have failed this very important institution, even when we revised the salaries of judges, the magistrates and the court clerks were overlooked. I have no doubt that the Government will consider these very important issues so that they can be brought to the fore.

Mr. Speaker, Sir, this law that is being brought forward is also going to address the issue of delays. We have become a country with a very bad image when it comes to the processing and finalisation of trials. Recently, the President himself was forced to release somebody who had been in remand for close to eight years, if my recollection is correct. The fact that people will now be able to enter into formal agreements will also eliminate the perception that you can buy your way into the criminal justice system through the bribing of prosecutors to enter into shallow, shady and sometimes unfair agreements to victims of crime. This time, such agreements would be required to be put in writing and would go towards eliminating the public perception of corruption in prosecutorial ranks.

Mr. Speaker, Sir, allow me to mention another matter, which is very close to my heart, and which I think is important for the country. This is the issue of continuing legal education for members and officers of the judicial service. The Law Society of Kenya (LSK) itself has already initiated, and is already implementing, continuing legal education for advocates who remain on the

Roll. It is time when, in the efforts of transforming and reforming these institutions that the judiciary itself considers---

The sooner they implement the better, continuing legal education not only for magistrates but also for judges, so that they can keep pace with not only legislation but best international practices in this particular area.

In fact, I personally think that magistrates ought to be the starting point of judicial training. They ought to be offered a minimum of 90 days judicial training, so that when they get elevated to the Bench, if they are lucky, then they can be the principal beneficiaries of this. This, coupled with continuing legal education, is an essential reform for the benefit of our country, and will reflect well when I start implementing the policy on the Nairobi Metropolitan Area. After all, we are going to be telling the country that we have an efficient judicial system and an efficient metropolitan area, which will be attracting investors.

Mr. Speaker, Sir, allow me to mention, only in passing, not because it is not important, but because it is crucial and in is in the mouths of all Kenyans, particularly those in the Grand Coalition, that we must produce a new Constitution for the country. I recollect the role that you personally played during the Bomas Draft. You are aware, firsthand, of the enormous work that was done regarding the updating the improvement, and above all, the reforms required in the judicial and legal system of our country.

Mr. Speaker, Sir, I do hope that the principals, and the leaders of this Grand Coalition, will honour their word and ensure that the Grand Coalition gets to business and builds on the reforms, particularly the one that the Attorney-General has brought forward in form of the amendments to the Criminal Procedure Code, so that we can, once and for all, borrow that which we find useful from the Bomas Draft and then embrace it by way of reform.

Mr. Speaker, Sir, you will recall that, during the last Parliament, we passed the witness protection law. That law has not found its right place in our judicial system. I suspect that it is something to do with the fact that the amendment to the Criminal Procedure Code had not come forward. The main focus of the witness protection law is to make sure that in seeking to eliminate and punish crime, we do not go for 100 per cent success, because the chances are that we will win only very few cases. Witnesses who are willing to come forward can come forward and seek protection under that particular law. Mr. Speaker, Sir, gain, I want to say, without fear of contradiction, that these amendments, which permit the entering into an agreement will, first, create the right atmosphere for people engaged in crime, but those who then see the light of day, or turn Christian or Muslim and want to repent their sins, to come forward, plead guilty, enter into an agreement by way of a plea bargain, but at the same time be able to offer first class evidence of the crime, particularly in corruption, drug-trafficking, money-laundering and such other crimes, so that the country can come to terms with the best international practices in this very important area.

Mr. Speaker, Sir, looking at the law itself, one will observe that even if somebody had very serious objections to it, it is a balanced law. It is balanced because, under Clause 137(c) the court itself will have no right to participate in the negotiations for this agreement. This will to keep the judge and the magistrate away from perceptions that they are party to what the prosecution and the defence are discussing. Therefore, on the basis alone, that the court will not participate, the protection enhanced in Clause 137, whereby the accused is then informed by the court itself of their right not to plead guilty, or having done so, of his or her right to persist in that appeal and his or her right to be presumed innocent until proved guilty, his or her right to remain silent and not to testify during proceedings, his or her right not to be compelled to give self-incriminating evidence and his or her right to a full trial. This is where, I think, we ought to be very clear: A full trial also includes the right to discovery. He or she also has a right to be represented by an advocate of his or her choice and to examine any person directly or through his or her legal representative. These are

extremely crucial aspects of modern governance.

Mr. Speaker, Sir, it is important that this House accepts them and takes them on board, because the law is, yet again, emphasizing those rights.

Mr. Speaker, Sir, you will also find that the Bill also says that by accepting plea-bargaining, an accused person will waive his right to a full trial and this is also very critical; the nature of the charge he or she is pleading to and the maximum possible penalty should be explained to him or her fully. This is for the simple reason that they may not know what they are pleading guilty to. Some of the situations that we have met in private practice, and also the mandatory minimum penalty and forfeiture--- This is a law that I humbly persuade my colleagues to pass without hesitation.

The other thing is that, under Clause 137, you will notice a new and very crucial insertion. Before the court can accept the plea agreement, it is required---

QUORUM

Mr. Kigen: On a point of order, Mr. Speaker, Sir. We do not have a quorum.

Mr. Speaker: Let me ascertain whether we do not have a quorum.

(The Clerk-at-the-Table counted the hon. Members present and reported their number to Mr. Speaker)

Mr. Speaker: There are 22 hon. Members in the House which is below the required number by eight.

So, could the Division Bell be rung?

(The Division Bell was rung)

Mr. Speaker: Mr. M. Kilonzo, you may proceed. We now have the requisite number.

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): Mr. Speaker, Sir, I was on my feet explaining that Clause 137 is crucial and re-affirms to all and sundry that this law is not intending to undermine the existing constitutional protection of the Kenyan people or any person who is taken to court. At the point of recording, the court will, in fact, have to explain to the accused person the things that I have mentioned, particularly, under Clause 137(f)(g), about the court's authority to order compensation. This means the accused person, in the event that the offence involves compensation to the victim or to the State or restitution, will not say, later: "I pleaded guilty and entered into this agreement under misapprehension. I did not know that I would end up losing the same property that I stole. I did not know that I would end up having to compensate the victim or to retribute whatever I stole." So, the power is expressly protected there; the right of the accused person to know that by entering into such an agreement, he is exposing himself to restitution and also to compensation to the victim.

Mr. Speaker, Sir, above all, the accused person is entitled to be told by the court that, by entering into such an agreement, he is waiving his right to an appeal. After all, the right of appeal, because of our judicial system being a three-tier system from magistracy to High Court and Court of Appeal, sometimes, confers on the accused person, the right to an appeal being an important component of a full trial. Again, the accused will be told that in the event that he makes a false statement and the issue of prosecution for perjury arises, then that statement can be used against him, so that, again, he is not taken by surprise.

The law also goes further: "Where the court accepts this plea agreement, it will set down the factual basis of the plea record." The reason for this is to remove beyond peradventure, any doubt in the mind of any person involved in this particular prosecution, that there was any under-hand dealing or *hanky-panky*. This is the reason as to why I am recommending it to the country. The court must also say that the agreement shall become binding upon the public prosecutor himself. Again, this eliminates an experience that has been going on in the country for close to 12 years now - judicial review proceedings---

Mr. Speaker, Sir, you will remember the famous case involving an hon. Member who is now, in fact, a Member of Parliament, where the Attorney-General promises not to prosecute him and then turns around later and says that he will prosecute him. So, that protection is now expressly stated. The agreement shall become binding upon the public prosecutor and the accused person. In fact, I must express special admiration for the Attorney-General. He is using the back door to reduce some of his powers, under Section 26 - the power to prosecute - because it is an absolute power.

In this particular instance, once the Attorney General approves a plea agreement, he will be bound by that plea agreement, and he cannot turn around against it. Although this provision will deny my fellow former lawyers in the Bar a lot of legal work, it is long overdue for this country. We know, for sure, that the word of the Attorney-General or the prosecutor is binding.

Mr. Speaker, Sir, upon conviction, another window is yet opened for the parties to address the court. In passing the sentence, the court shall take into account the period during which the accused person has been in custody. This is an extremely crucial provision. Time and again, our people remain in custody for a long time before they are put on trial. In the end, the magistrates only grope in the dark as to whether the period that was taken by the suspect in custody can be taken into account. The court will also take into consideration the proposal as contained in Clause 137(i). This is where it matters. It says:-

"In passing sentence, the court shall take into account a victim's impact statement, if any, made in accordance with Section 329(c)."

This is a dramatic improvement of the justice system for this country. At that point, the victim or the members of his family or his counsel, will be able to advance the impact that this case may have had on their family. Again, under paragraph (c), the court will have to say the stage at which the accused person indicated his intention. This means that we will be giving the accused person an opportunity to give his intention early enough, without having to wait until the public has incurred enormous expenditure in prosecuting him, or in investigation, so that if he indicates, on the date of arrest, that he intends to utilise this law, then that can be taken into account. This may very well influence the court in giving a lesser sentence than could, otherwise, have been.

Above all, under Clause 137(j) - I want to pay special tribute to the task force that helped the Government to come up with this proposed law - in a case where a court rejects a plea of agreement, because a court has a right to reject a plea of agreement, the reasons must be stated. This is because some magistrates might take an interest in a case or there might be circumstances that may influence the reason for not accepting the plea. You notice that, upon rejection of a plea agreement, no further plea negotiation in a trial relating to the same fact can take place. Again, this a warning both to the prosecution and to the accused person to make sure that they understand that if the court for any reason rejects what they are advancing, then they cannot do it again. I have noticed, in my life, as a trial attorney, that this sort of thing used to happen almost during every mention. You would find the counsel telling the magistrate: "Your honour we are discussing this matter with a view to reaching a plea bargain. Can you give us another mention of 30 days". In the process, the country incurs expenditure and the accused person is disadvantaged and everybody else is disadvantaged.

Mr. Speaker, Sir, I also want to acknowledge that under Clause 137(n), this law would not apply to offences under the Sexual Offences Act. This is also important for the protection of our women and even, for that matter, the protection of men because I hear the Sexual Offences law that we passed in 2006, is equally applicable to men when they are assaulted sexually. As I hear, it is an increasing practice. Again, the Attorney-General is also given the discretion, and I think it is fair that this discretion be recognised, that he, himself, can by notice in the Kenya Gazette specify offences in which a plea bargain will not be acceptable. I can see, for example, myself suggesting to the hon. Attorney-General that offences pertaining to drug-trafficking, prostitution and offences that affect the moral fibre of our country should not be allowed for plea bargain; for people who sodomise young children, for people who commit offences that challenge the protection that the Holy Bible, the Holy Qur'an and the Hindu Gita provide. That way, they will know once and for all, that you do not touch a Kenyan sexually without their express consent as required. I hope that the Attorney-General will also publish speedily the rules contemplated by Clause 137. I am saying this because this is a law whose time has come. If these rules are published timeously, it will enable the country to come to terms. The magistrates will not be grappling in the dark in the process of implementing this very critical law, that is going to speed up the process.

Mr. Speaker, Sir, I would like to address the definition of plea agreement. Members of this august House should note the definition given:

" A plea agreement" means an agreement entered into between the prosecution and an accused person in a criminal trial in accordance with Part IV".

Therefore, hon. Members, as we debate this, we must look at what Part IV says so that we understand, once and for all, that it is not any cursory discussion that takes place between the prosecutor or the friendly policeman in arresting you, who says: "Do not worry, if you agree to this, we are going to make sure that you go home, in an effort to secure a plea". The plea agreement that is contemplated by this law is a very serious matter and is a dramatic advancement of our criminal justice system, at least, with regard to how accused persons take offences that they are charged with. Above all, as I have said, it would build on the foundation that this country has created in passing the Witness Protection Law last year.

Mr. Speaker, Sir, competence of an accused person under Clause 137 is critical. You would remember in your training the rules we call the McNaghten Rules- determination of whether the person is competent. It is not clear what the Attorney-General has got in mind whether under this Clause, the magistrate will require an investigation by a qualified doctor or a specialist in matters involving everything above the shoulders upwards, the state of mind and so on. I hope that when this Bill reaches the Departmental Committee, or when it comes to the Committee Stage, we ought to be a little bit clear as to what is involved here. This is because some of the people who will appear before magistrates and who may be entering a plea, may themselves be unable to understand the process they are undergoing under the famous MacNaghten Rules. Therefore, I think, there is need for clarity under Clause 137. But it is a welcome suggestion regarding our jurisprudence as to how we manage our accused persons.

We will earn respect throughout the world when it is seen that this requirement is an open window for the magistrates and judges to be require a serious mental investigation, particularly when they are in doubt as to whether the accused person really understands what he is doing. More so, on this aspect, the state of mind in criminal matters refers to the time of the commission of the offence and not necessarily the time at which the accused person is in court. Therefore, it is a highly technical area that requires very careful clarification.

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

(Loud consultations)

Mr. Speaker: Order, hon. Members!

(Question proposed)

The Assistant Minister for Medical Services (Mr. Mungatana): Thank you, Mr. Speaker, Sir, for giving me the opportunity to make my contribution to this Bill. I also want to thank the Attorney-General for bringing this Bill to the House for debate.

We have heard extremely beautiful arguments both from the Mover and the Seconder of the Bill to persuade the House for those who are not persuaded to support this Bill to become an Act of Parliament.

[Mr. Speaker left the Chair]

*[The Temporary Deputy Speaker
(Prof. Kaloki) took the Chair]*

But as I always say, something good can always become better. When this Bill goes to the relevant Departmental Committee, they will want to consider a few of these suggestions that I am going to make. Under the proposed Clause 137(b), there is a clear restriction on the categories of the officers or prosecutors who can enter into a plea bargain. The fact of the matter is that, in criminal practice, we have a very big deficiency of the category of people who are either senior counsel or people of higher status who can be relied on to be present in court to prosecute the day-to-day criminal cases that arise.

Mr. Temporary Deputy Speaker, Sir, if one of the aims of this Bill is to reduce the number of people who will be held in our jails, then we know for a fact that police prosecutors are the people who really move the criminal justice system in Kenya. I think it will be a good point for the Committee to consider that instead, and I hope the Attorney-General will listen to this issue, of putting certain State Counsels and people in certain categories to be the only ones who can give the authority to enter into plea bargain, the Committee should consider listing categories of criminal offences that can be entered into plea bargain and those which may not be entered into plea bargain.

Mr. Temporary Deputy Speaker, Sir, the proposed Clause 137(c) addresses the question of initiation of the plea bargain process. Here, there is a provision that the plea bargain process can be initiated by the Public Prosecutor, an accused person or by his legal representative.

I do not have a problem with the Public Prosecutor initiating this process. However, I have problem with the accused person being given a blanket approval to initiate the process of plea bargain or his legal representative.

There is no qualification that the Attorney-General has placed on the accused person. What if he is an accused person who last week was in court, charged with a similar offence and was advised by a very clever lawyer that there is a way in which he can get a lesser sentence? So, instead of getting a seven years sentence, he was given a very short sentence because of a clever way of plea bargaining. The same accused person, after he has finished his sentence which was very short because of the plea bargain, he comes back to court and gets another clever lawyer to do the same for him. There must be standards set to the accused person who can plea bargain. We cannot, for instance, have jailbirds, entering plea bargain after plea bargain.

Mr. Temporary Deputy Speaker, Sir, there is a big loophole here that the Attorney-General and the Departmental Committee on Administration of Justice and Legal Affairs need to look at so

that we can have accused persons who enter into plea bargain be persons who are qualified accused persons and not every other accused person who comes in and says that he wants to enter into a plea bargain.

Mr. Temporary Deputy Speaker, Sir, if you look at Clause 137(f), you will see that the court already sets its own standards as to what it needs to inquire before it can accept a plea bargain and the things it needs to tell the accused person concerning his or her rights. These have already been enumerated. They are in a long list which runs up to "g". This long list enumerates the standards that the court needs to adopt for the plea bargain.

Mr. Temporary Deputy Speaker, Sir, if we put standards for the court in terms of what they need to examine or to inquire into before a plea bargain is recorded and even the rights they need to inquire into before they accept a plea bargain, it is absolutely important for the accused person also to have standards set up for them.

Mr. Temporary Deputy Speaker, Sir, I say this because in the constituency I have been asked to represent, for the next five years, there are many problems concerning farmers and cattle keepers. You will find that there are some people who graze animals on peoples' land. These people are arrested, taken to court and they serve a sentence of six months or one year and once they are out, they still go back to offend in the same manner in which they were prosecuted. If the accused person got a plea bargain and instead of serving his 12 months sentence, he serves for three months and then goes back home, this would offend the whole justice system in the community.

If someone has been punished, the community needs to feel that justice has prevailed upon the person who is serving the sentence. If he got a plea bargain, that cannot be a candidate for a second plea bargain and definitely not a third plea bargain.

Mr. Temporary Deputy Speaker, Sir, we need to look at who can be allowed to enter into a plea bargain and not every accused person. I agree with the Attorney-General and the Seconder of this Motion, Mr. M. Kilonzo, when he says that this Bill, under the proposed Clause 137(n) shall not apply to sexual offences. That will offend the sense of justice in this country. If, for example, a little child is defiled, then a clever lawyer goes and enters into a plea bargain and a full sentence is not served--- This is a good innovation because definitely, there are some offences that we would not want to see or hear, as a country, that there was a plea bargain.

In improving Clause 137(n), I think and propose that the Committee should look into a set of offences and legislate them. I agree that the Sexual Offences Act must be there. There are drug-related offences that are recognised internationally. Trading in drugs or in substances that can alter the mind must definitely be in this category. We have other serious categories like when we have offences by people who are accused of treason or people who are accused of acting against the interest of the entire nation. There are categories which the Departmental Committee on Administration of Justice and Legal Affairs needs to put into legislation so that we do not let all these be decided by the Attorney-General. Mr. Temporary Deputy Speaker, Sir, I propose that the proposed Clause 137(n) should be expanded. In fact, I propose that a proper schedule be created and the Committee, in its wisdom, looks into all possible--- I am sure that hon. Members will speak about others here. They should look into all offences that should not be part and parcel of plea bargaining. Plea bargaining should be restricted to offences that will not offend the morality or the sense of nationhood in this country.

Otherwise, I want to add my voice to those who have said that it is time we passed this law because it brings the country to a level of criminal justice law across the world where this is a clear provision. At any rate, those of us who have practised law in private practice, know that it is a matter of fact that for serious offences such as murder, there has been a practice that has been there. It is not legislated but it has been happening. For example, when a matter arises from a crime of

passion, someone finds his spouse on top of another person, when this person takes a knife and passes it through the intestines of the offending party, even the prosecutor knows that the accused has committed the crime of murder but it is a crime of passion. So, ordinarily, in practice, it has been known that when you look at the set of facts, the crime is reduced from a murder charge to manslaughter before it goes to trial.

Mr. Temporary Deputy Speaker, Sir, if this has been happening, we should not be waiting for the law, all the time, to be overtaken by events. I think, in Kenya, we need to be ahead and anticipate circumstances. The country is changing and the population is changing. Crime is also changing and we need to meet international standards. I think, in Kenya now, we need to be ahead. We need to anticipate circumstances that the country is changing into, and accept that the population is growing. Even crime is changing and we need to meet international standards.

Mr. Temporary Deputy Speaker, Sir, I think it is time we passed this law. It is already in practice; we only need to legislate properly, and in a manner that is transparent, as the Attorney-General said. It should be done in a manner that everybody understands, so that people will not, again, be accusing officers of the court that they take some money, or something, for them to change the plea into a lesser offence.

Mr. Temporary Deputy Speaker, Sir, I would also want to say that another reason why we need to accept this is that in some communities in parts of this country, near where I come from, you will find there is a plea-bargaining. This is in the African sense of justice. You will find that when someone commits a crime, the community, instead of retaliating says, it is a man who has been killed, "Traditionally there this, and this amounts to compensation". If this is done, there will be no bloodletting in terms of a reprisal.

That has not found expression in law in this country. That African tradition has not found expression in the law of this country! So, if communities in African societies are already practising the plea-bargaining, in fact, it is time we incorporated that practice into the law and made it part of the system of the law that we have. It would help us to help everyone operate within the law.

Even the constituents we represent are already operating to international standards. We are saying that we are only making our law meet international standards. In fact, even the constituents out there in the villages, in various communities, are already practising this. This is a system of compensation for crimes, that are committed, especially serious crimes, against communities.

Mr. Temporary Deputy Speaker, Sir, we should not have difficulties in passing this law. I would urge all hon. Members who will be making their contributions to look at this Bill. There could be provisions that we could make it better. Definitely this is a law whose time has come and it should be passed.

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

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Thank you Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make my contribution to this very important criminal procedure law.

Mr. Temporary Deputy Speaker, Sir, from the outset, I would like to commend the Attorney-General of the Republic of Kenya for coming up with this amendment. In my view, the amendment should have come yesterday. We should have passed it yesterday. All we are confirming is that we are about 50 years behind the other legal systems in other countries.

Mr. Temporary Deputy Speaker, Sir, plea-bargaining is not something new. I think every student of law is taken through a course on plea-bargaining. Unfortunately, it has had no legal outlet in this country. Its advantages are many. First of all, it reduces the time taken in trial. At the moment we have some murder cases that are as old as 15 years. I am told some take even longer. With plea-bargaining, it is possible to reduce the time taken to finalise a case.

Mr. Temporary Deputy Speaker, Sir, the other advantage of plea-bargaining is that it

reduces the backlog in the court system. It will free the judges from some of their time, which can be spent on other cases.

In my mind, I have no doubt that these amendments are necessary. They will bring our law into current use. They will bring our law to be in accordance with the practices of other legal systems of justice.

Mr. Temporary Deputy Speaker, Sir, the fears that have been expressed that there will be corruption between the prosecutor and the accused have been over-emphasised. If there is corruption, it will not be worse than any other that is already there. So, really those who are saying that this is just giving prosecutors another chance to line up their pockets are over stressing this fact.

Mr. Temporary Deputy Speaker, Sir, there are some standards that have been set by these amendments. In other institutions, these terms are not even there. It is left to the prosecutor and the accused person, or his or her lawyer, to enter into a plea bargain.

Mr. Temporary Deputy Speaker, Sir, plea-bargaining is not something new. In fact, it has been happening even in our court system, but informally. For example, you find that when somebody has been accused of murder, and there was no malice aforethought, then clearly it means that, although the person has killed another person illegally it does not amount to murder. For murder, there must be malice and aforethought.

*[The Temporary Deputy Speaker
(Prof. Kaloki) left the Chair]*

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, what has been happening is that, when you accuse somebody of murder and he or she knows it was not murder, and that it was done on the heat of the moment, the accused will plead not guilty. The matter will go to trial, take, may be, seven years but at the end of the day the judge will reduce the charge from murder to manslaughter.

Mr. Deputy Speaker, Sir, this week I read in the newspapers that a husband killed his wife because she received a short text message from a lover. Clearly, that case was not murder. It was manslaughter. However, it had to go through all the stages of the system, only for the judge to reduce the charge from murder to manslaughter. If there had been a plea-bargain, this would not have taken place. The fellow would have said, "Yes, it is true that I killed my wife. I had not planned it and it was not premeditated. It was on the heat of the moment. I was annoyed when I saw the short text message from her lover. She did not give me respect---" Things like that.

Mr. Deputy Speaker, Sir, there are many cases of this nature. The other one we read about in the media is of a person who comes home at an unusual time and finds his wife committing adultery. The man proceeds to kill the her lover or something like that. Again, that is not murder. It was not premeditated. There was no malice aforethought. It is only that the fellow happened to come to his home at the wrong time, and witnessed what was happening. I think plea-bargaining would take care of such cases. It can only improve our legal system.

My view on this, which I would like to recommend to the Attorney-General, is that plea-bargaining can also include compensation to a person. That is right, but, I think, the Attorney-General can also provide for an amount of money to be paid to the State. This happens in the United States of America (USA) and the United Kingdom (UK), where an accused is told that if they do not plead guilty the magistrate or judge is authorised to specify an amount of money that they you will pay to compensate the State for wasting its time. I think we also need something like this. There should be an amount of money to be paid to the State in addition to that to be paid to the

victim.

There is a very clear case and everybody knows that this has happened. However, for some reasons, I think Africans do not accept realities and the truth. You will find a case where we can see clearly that a particular person is guilty, but continues denying it. So, he goes to trial. It takes a lot of time of courts and prosecutors. Other cases cannot be heard in good time. So, if we were to do so, the State will also get some money. Nobody is a loser. The other view that I would like the Attorney-General to take into account is that although the Bill is talking of compensation in a plea bargain, I think even in other cases, there should also be an amendment. After a person has been convicted, the victim is paid some money, for example, assault. If today you are charged with assault and convicted, then it is upon you to go back to sue the fellow who assaulted you in a civil case. It would have been cheaper if the magistrate or judge was allowed to say: "Yes, you assaulted this person. The court also rules that you pay Kshs10,000 or Kshs20,000 to the person who has been assaulted. Again, this will reduce backlog in our civil cases.

At the moment, you are forced to do double work. First of all, you give evidence in a criminal court and then, again, you have to file a civil suit. I think that just wastes time.

The other good thing about the Bill is the fact that, during sentencing, the time that somebody has been in custody is taken into account. It is only last week that a person who had stayed in custody for seven years was found innocent. Again, we have no provision for compensating such a person. In other systems, for example, the United Kingdom (UK) or the United States of America (USA), if you have been in custody and found not guilty, the state compensates you for the time that you wasted in custody. Even where you are convicted, but, on appeal, you succeed, again, the state compensates you because of the time you have wasted in custody. I would like to recommend to the Attorney-General to also think of bringing these amendments.

Mr. Deputy Speaker, Sir, now that the Attorney-General is in a good mood of making very good amendments, may I also suggest to him that he also needs to copy what the other systems are doing. At the moment, our jails are congested. Why is it so? They are congested because once you are convicted, you are taken to jail immediately. In other systems, the prison authorities are asked by the magistrates or judges: "When will there be vacancy or space available in jail." Then you are told: "Although you have been convicted today, you will not be taken to jail immediately." You are told to report within six or eight months. The statistics we have is that in nine out of ten cases, the people who have actually been convicted actually report. For example, in the USA, there is a famous musician who was convicted, but because the jails were congested, he was told to report to jail after eight months. If we take this kind of innovative systems, this will decongest our jails. This is because, say, you have been convicted and jailed for two months, if you are told to report to prison after eight months, surely, where will you go? The sentence is only two months. The issue of somebody not turning up to jail should not arise. The statistics is in our favour. That fear that if you are convicted and told to report after so many months you do not do so, is actually not there. So, now that the Attorney-General is in a good mood of making good amendments, could he also look into this issue?

Mr. Deputy Speaker, Sir, I think this plea-bargaining can also help the tax system. We must commend the KRA. They have really saved this country. Everybody had fears that because of the clashes that happened after the general elections, the revenue collected by the Government would go down. However, the revenue has not gone down. So, whatever witchcraft or "*kamuti*" the KRA is using, it is working. It should continue with it because revenue for the Government is actually increasing. Where KRA sends, for example, Kshs1 billion to a company that produces alcohol, they could sit down and say: "Look, instead of paying us Kshs1 billion, pay us Kshs200 million. Instead of us going to court and taking ten years for a ruling to be made, pay us such amount and so

on." So, I think even in plea bargaining this should be recommended to the KRA. They will get more revenue in this way rather than taking people to court. People will also start paying their taxes because they will know that they can negotiate the amounts due. This is good for everybody. We need as much revenue as we can for the Government to be able to carry on its very ambitious programme.

I am also happy that the plea bargain does not include sexual offences. This is right. We know that it has been happening. For example, we have had cases where somebody has been accused of raping a young girl and the parents are compensated. They accept the compensation and then withdraw the case. I think it is only fair that this should not be allowed to proceed, although, at the moment, it is proceeding on informally. We must protect our young girls from sexual molesters. So, I think it is a good thing.

Mr. Deputy Speaker, Sir, there is also a provision where the Attorney-General has been authorized to include other offences where plea bargaining is not acceptable. I would recommend to him that he includes treason. I think treason should not be included in plea bargain. Crimes of genocide and crimes against humanity should also not be included in plea bargaining. These offences go beyond the individual. They also affect the country.

So, there are enough safeguards. The fears of the Law Society of Kenya have been over-emphasized. I do not see these new rules being misused because even now it is happening, but informally.

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

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Thank you, Mr. Deputy Speaker, Sir. I rise in support of the Bill. I will be very brief because most of the things that I would have liked to say have been said by other colleagues.

First, I just want to reiterate that plea bargaining has been with us, but only in murder cases; where murder has been reduced to manslaughter in befitting occasions. So, the Bill is widening the scope of plea bargaining. I want to agree with Mr. Githae that crimes against humanity, or all crimes that ought not to be subjects of plea bargaining under international law, should be exempted.

I have no fears that the enactment of the Bill would lead to corruption in the justice process. Corruption occurs even today, whether through lawyers, prosecutors or judicial officers, where the persons involved lack integrity. So, the law *per se* cannot increase incidents of corruption. I believe that the Attorney-General would monitor what happens with his Prosecutors and State Counsels.

Similarly, the court process should also be able to audit what happens before its officers. We should have internal mechanisms of raising the Bar and ensuring that corruption is weeded out not only in cases of plea bargaining, but in all cases.

However, Mr. Deputy Speaker, Sir, I have been discussing with the Attorney-General and I would like to draw the attention of the House that the proposed Clause 137(m), which says:-

"Notwithstanding anything contained in any written law for the time being in force, the statements or facts stated by an accused person in a plea agreement shall not be used for any other purpose except for the purpose of this part".

I think we need to relook at this clause. The Memorandum of Objects and Reasons says clearly that enactment of this proposed legislation is to enable clear the backlog in our courts. The backlog is not only in criminal cases but also in civil cases. We, therefore, must allow the plea bargaining agreement to be used in a civil case that is related to the criminal case before the court. That would, similarly, clear the backlog in the civil cases that arise out of that criminal case. After all, even today, a criminal conviction can actually be produced as evidence when one is pursuing a civil remedy. This gives impetus to another suggestion that, perhaps, we should start relooking at the civil procedure where we can say that a criminal conviction becomes proof of the civil matter, and

it if it is a claim for compensation, all that would remain would be the assessment of damages. But even if we do not go that far, it would be prudent, in my view, to allow the plea agreement to be used in the civil process.

Now, Mr. Deputy Speaker, Sir, the issue of plea bargaining is exempt for certain offences, and I have already said, I associate myself with what has been said before and what is on the legislation on cases involving sexual offences and any other offence that the Attorney-General may, by notice in the Gazette, exempt. But, instead of leaving it just open for the Attorney-General to gazette, we could now include crimes that are under international law that cannot be subject to plea bargaining because they are known. We are party to the Rome Statute, we can just remove them and enrich this Act by making an addition.

Mr. Deputy Speaker, Sir, in conclusion, this is a progressive legislation. It is the way forward and even to finish the backlog of the many past economic crimes and corruption cases and all the myriads of criminal cases that are pending, we need this legislation. We do trust that, once it is enacted, it will be utilised with vigour to ensure that we unclog the wheels of justice and also the criminal justice system.

I commend the Attorney-General for bringing the legislation and I beg to support.

(Applause)

Ms. Odhiambo: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill. In supporting this Bill, I want to join those who have talked about the role of victims.

Mr. Deputy Speaker, Sir, this is a very revolutionary piece of legislation and I would like to commend the Tenth Parliament for coming up with very revolutionary pieces of legislation. Only recently, we saw an amendment to the Constitution by a way that is not known to many lawyers, which would call either by importation of legislation or by annexure. I hope this House will be bold enough to continue making enactments that are this progressive.

However, Mr. Deputy Speaker, Sir, I would want to say that in relation to the trend that we are taking, it would be prudent that if we are focusing on the right of criminals, at the same time we should give more comprehensive attention to the rights of the victims. Last year, I was actually privileged to assist the Kenya Police in developing a comprehensive paper on victim support. One of the things that was very clear was that we have neither law nor policy on victim support in this country. Unless we are careful, we will have a situation that was witnessed with the Kenya Prisons Service, where we paid much more attention on the prisoners at the expense of the warders and we can see the results.

Mr. Deputy Speaker, Sir, if we are not careful, we will have a situation where we will soon be seeing victims on the streets because we are paying much more attention on the accused persons than we are on the victims. Therefore, I would like to urge the Attorney-General that at the same time that we are enacting or doing these amendments, we should, at the same time, come up with a comprehensive law on victims. I noticed that this Bill makes a cursory mention of victims by referring to the victim impact statements. If you actually look at progression in other countries, you would realise that they have very comprehensive policies or laws on the same. Therefore, I hope that the Attorney-General will take cognisance of that.

Mr. Deputy Speaker, Sir, whereas I also wish to support this Bill, I would want to throw caution that, in this country where we are actually facing a challenge of corruption, such a process may actually be abused. Therefore, we must have in place very, very tight laws that would ensure that it is not subject to abuse or corruption.

Therefore, Mr. Deputy Speaker, Sir, I would want to make reference to Section 137(o)

which says:

"The Attorney-General may make rules for the better carrying into effect the provisions of this part"

I would want to urge that there should be an amendment making it obligatory upon the Attorney-General to make rules and not discretionary.

Mr. Deputy Speaker, Sir, I would also want to commend the Attorney-General for making provisions exempting cases relating to sexual offences from this Bill. In the same vein, I noticed that the Attorney-General has also got discretion to exempt certain cases. I would want to urge that cases relating to children under the Children Act should also be made clearly non-discretionary and should be provided for explicitly the same way we provided to cases relating to sexual offences.

Mr. Deputy Speaker, Sir, again, we know that the country is going through a plethora of reforms. Despite that, we know that there is a crisis of confidence in our public institutions. Because of this, it would be very prudent that the authority for negotiating should not be taken away from the Office of the Attorney-General and should only go as far as State Counsels but not to public prosecutors.

All practising lawyers know the kind of confidence we have in our public prosecutors; first, by virtue of their education and secondly, by virtue of their training that does not solicit a lot of confidence in the way they handle cases, especially those related to children and women. I, therefore,

urge for an amendment that will not give the authority to all public prosecutors, but instead put it to the level of State Counsels.

Finally, this Bill provides an opportunity for the Attorney-General to make provisions relating to lawyers as private prosecutors. I know that under the Sexual Offences Act, the Attorney-General had made a commitment to do this, but in practice we have not seen it happen. This, therefore, actually provides an opportunity for the Attorney-General to bring into effect the role of lawyers as private prosecutors in selected cases, including those related to sexual offences.

With those few remarks, I beg to support.

Mr. Nyamweya: Mr. Deputy Speaker, Sir, I also rise to support the proposed amendments. I will associate myself with what my colleagues have said. However, in carrying out these reforms, I would like to urge that we look at the system itself, particularly the infrastructure. With regard to the courts that we have in Kenya, now that we have many districts, if only we could urge that in part of the reforms that we are carrying out, including this---

*(Ms. Laboso crossed the Floor
without bowing to the Chair)*

Mr. Deputy Speaker: Order, Ms. Laboso! By now you must know the procedure of the House. You cannot just cross the Floor like that without having gone to the Bar. Please, go ahead and do that. That ritual is sanctified and you cannot avoid it.

*(Ms. Laboso moved to the Bar and
bowed to the Chair)*

(Applause)

Mr. Deputy Speaker: Proceed, hon. Nyamweya!

Mr. Nyamweya: Mr. Deputy Speaker, Sir, that is my good neighbour and, perhaps, we can do a bit of plea-bargaining at our Borabu/Sotik border!

(Laughter)

Mr. Deputy Speaker, Sir, my concern is that as much as we are moving towards modernising the system, we must also look at the infrastructure itself, for example, the court rooms, the personnel, the training of the entire staff and the equipment that we use. I do not think that plea-bargaining *per se* will un-clog the justice system. I think we must also, besides this particular Bill that I support, urge the Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs to bring a comprehensive Bill dealing with reforms in the Judicial Service. We must also look at the number of magistrates we can bring in. This Bill, should have been accompanied, very speedily, with the enabling appointment of extra judges of the High Court and the Court of Appeal. This is because part of the system is clogged by the lack of actual personnel. In doing what we ought to have done a very long time ago, we must invest and put enough funds in modernising the system itself so that we can deal with the numerous cases which come before us.

Mr. Deputy Speaker, Sir, if you go to an ordinary court, you will find hundreds and hundreds of accused persons, perhaps, who should not have been accused in the first place. It is high time, in this system, we introduced prosecutors at this level we are asking, so that authority is given to deal with plea-bargaining in every district. That way, matters do not have to go before the Attorney-General. These matters should be dealt with at the district level.

In addition to the infrastructure which we must improve with regard to our courts, we must also ensure that the accused truly understands what this means. This is because there may be an urge to reduce the existing backlog, then we need to take this route as a short-cut to get rid of remandees. When we get to the Committee Stage, I think we will bring an amendment which will seek to make it very clear that the accused person should not lose his or her rights at all and they should be explained to him or her. In fact, we need to ensure that there is legal representation before there can be plea-bargaining. This is because, even now as it is with regard to murder cases which we have, there is a tendency that the prosecutors can overwhelm an accused person and say, "You know it is easier and cheaper for you to take this route." We must protect the rights of a person. Our emphasis should be on that one.

Mr. Deputy Speaker, Sir, with regard to compensation of victims, I really wonder whether we have given it sufficient thought that a person who robs another person is rarely in a position to compensate the victimised person. Does it mean that we then need to set a fund from which victims can be compensated? It is fair enough to look at the accused persons and protect their rights. How do we propose to compensate victims of crime if, indeed, we are introducing that as part of the law? I think this Bill is timely, but as I said before, I believe that there is a lot of work that we still need to do. I am glad that I am a Member of the Departmental Committee on Administration of Justice and Legal Affairs. Perhaps, I should reserve some of my comments on the things I would like to urge to be done because I will state them in the relevant Departmental Committee.

With those few remarks, I beg to support.

The Minister for Energy (Mr. Murungi): On a point of order, Mr. Deputy Speaker, Sir. It appears that this Bill has been thoroughly debated by this House. All the issues have been covered. Although I am a lawyer myself, I really have nothing useful to add. Would it be in order for me to request that the Mover be now called upon to reply?

Mr. Deputy Speaker: Mr. Kiraitu, I think before you stood on a point of order, I did not see any other Member of Parliament rise to contribute on this Bill. So, based on the procedure of the House, I will now ask the Mover to reply.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to reply. I wish to thank hon. Members who have made sterling contributions to this Bill. These include the Seconder, Mr. M. Kilonzo, my two former Deputy Attorney-Generals, that is, Messrs. Mungatana and Githae,

the Minister for Justice, National Cohesion and Constitutional Affairs, Ms. Karua, the crusader for children's rights Ms. Odhiambo and my dear friend and colleague Mr. Nyamweya. It is the first time actually I have heard him speak in this House. Congratulations!

They have all made useful comments which, of course, we are going to take on board. First of all, there was a common comment on Clause 137(n) under which the Sexual Offences Act will not apply to this Bill when enacted. I want to agree with them entirely. I also want to agree with them that there may be need to exempt other offences from the provisions of this Act and in particular, international crimes such as genocide and crime against humanity and drug trafficking. I believe that we should be able to deal with that at the Committee Stage.

Mr. Deputy Speaker, Sir, I want to assure Mr. Nyamweya that as we modernise the law, we are not losing sight of the infrastructure. In fact, the Ministry of Justice, National Cohesion and Constitutional Affairs, starting with Mr. Murungi followed by Ms. Karua have been on the forefront in trying to put the infrastructure in place through the GJLOS Programme. I believe that they are all here, particularly the current Minister. I know she has heard and I will ask her to redouble her efforts in putting the infrastructure in place.

Mr. Deputy Speaker, Sir, on the issue of decentralization of the prosecutors to the district level, which was raised by hon. Members, I can assure this House that, that matter is in our strategic plan for the State Law Office. In future, we should have a State Law Office at every district headquarters. When that is done, there will be a professional prosecutor at that level. The aim really is to have all professional prosecutors under the Attorney-General's office, as I indicated to you, when I was moving the Bill.

Mr. Deputy Speaker, Sir, I would consider the point raised by Ms. Odhiambo about also exempting offences under the Children's Act. That should also be considered for reasons which other contributors to the Bill have stated.

On the issue of lawyers as private prosecutors, I want to inform this House that very soon I will be publishing the Private Prosecutors Bill. We are on the move. We need to, among other things, establish what can be done for that category of prosecutors.

I want to agree with the Minister for Justice, National Cohesion and Constitutional Affairs on Clause 137(m) of the Bill. I believe that the information which is contained in a plea agreement, and which has been entered into on a very voluntary basis, should not only be used in a civil case arising out of the matter, but I believe in other criminal cases.

When I was moving this Bill I stated that part of this plea bargaining process is actually to enable us to have good witnesses against the bigger fish, if one may call them so, or other people who have committed crimes and they do not want to plead guilty to the offences.

I now come to the very progressive proposals by Mr. Githae, who said that if the jails are full, the prisoners should be asked to come when they are less full, for example in nine months time and so on. I know that works in the United States of America (USA), but we are yet to get there. I am sure that when the strategic plan for the Prisons Department is fully implemented, and the conditions in the prisons are good enough for you and me to be there, like they are in the USA, it will be possible to for us to say: "Go away and come at such and such a time", and you duly report on the stated day to enter prison.

Mr. Deputy Speaker, Sir, on the issue of the victims, whereas the trend so far has been to emphasise the rights of the accused person in the international law, the trend now is to balance the rights of the accused person against the rights of the victim. The rights of the victim are now finding place in the criminal justice system. It is just like we have done here, where in entering the plea agreement there has to be a victim in that statement, if any is made, to enable the court to arrive at the right decision.

In the amendments that we carried out in 2002, we began restoring the balance by copying from the practices in Canada, where before a sentence is meted out, the court has an obligation to

consult the victim and his family to find out what they think the appropriate sentence and adequate compensation ought to be. We are going to follow up this trend in the minimal amendments that are coming to try to take into account the rights of the victim and his family, and not just the rights of the accused person, who may, in any event, be a suspected criminal. We must also take care of the law-abiding citizens who are victims of criminal behaviour in this country, or any in any country for that matter.

Mr. Deputy Speaker, Sir, there was also an issue about money being paid to the State. That law is coming. When you listen to cases in the USA and other countries, at the conclusion of a criminal case, they will be able to tell you that it has cost the State so many million pounds to carry out the investigations and the prosecution.

If we are also going to be cost-effective in the criminal justice system, we must find a way of assessing what a certain case has cost the State to investigate and prosecute a particular crime. If, for example, as happened to this country, there are criminals, or suspects, who do now want cases to be heard and there is an application upon application from the magistrate's court to the High Court and the Court of Appeal, and then before a case is heard another application is made--- They take the criminal justice system round and round for years, then in the end when the case is heard and they are found guilty--- Those people must be made to pay for the amount it has cost the State to mount the investigations and prosecutions. We are particularly talking about cases which involve economic crimes, where substantial sums of money may be involved, and where we know that a particular suspect has taken the criminal justice system round and round, because he or she is heavily loaded, has the money and can hire the best lawyers in town. If such a suspect is convicted, not only should he or she be sentenced, but he or she should be fined.

An order should also be made that he or she pays the amount which it has cost the State to mount that prosecution.

Those reforms are coming. All that I am asking of this House is to be more understanding and ready to pass the law reforms that are going to come between now and the time when the Tenth Parliament ends.

With those few remarks, I beg to reply.

(Question put and agreed to)

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

COMMUNICATION FROM THE CHAIR

DEFERMENT OF THE INTERNATIONAL CRIMES BILL

Mr. Deputy Speaker: Hon. Members, under normal circumstances we would have moved on to the next Order, the International Crimes Bill. But I have received interventions from the Attorney-General that debate on this Bill forms part of our business for tomorrow. Under the circumstances we will have to adjourn the House.

(Bill deferred)

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Wednesday, 7th May, 2008, at 9.00 a.m.

The House rose at 5.40 p.m.