

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 20th November, 2001

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Departmental Committee on Agriculture, Lands and Natural Resources on the visit to the United Kingdom, Columbia, Costa Rica, the United States of America, Germany, Netherlands and Belgium.

Report of the Departmental Committee on Agriculture, Lands and Natural Resources on the Coffee Bill, 2001.

Report of the Departmental Committee on Agriculture, Lands and Natural Resources on Mwea Irrigation Scheme.

(By Mr. Munyao)

ORAL ANSWERS TO QUESTIONS

Question No.420

SUB-DIVISION OF TULIMANI DIVISION

Mr. Speaker: Question No.420 by Mr. Kalulu is deferred to Thursday.

(Question deferred)

Question No. 635

CIVIL SERVANTS IN PRESIDENTIAL ENTOURAGE

Ms. Karua asked the Minister of State, Office of the President:-

(a) how many civil servants and Ministers accompanied the President on his recent Coast tour and campaigns in Taveta;

(b) what their names are, ranks and how much tax payers money the Government used for the travel,

allowances and for them;

(c) what was the role/duties of these officers during the said tour; and,

(d) how much money has been used by civil servants and Ministers accompanying the President on visits within the country between 1st January and 30th July, 2001.

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

(a) The Head of State toured the Coast Province in the months of July and August, 2001. During both

visits the President was accompanied by a total of 13 Cabinet Ministers, six Assistant Ministers and over 26 senior civil servants.

(b) The list of the Ministers and civil servants is as follows: It contains 13 names but I will mention their last names. They are: Hon. Godana, hon. Maj. Madoka, hon. W.C. Morogo, hon. A. Wako, hon. Biwott, hon. Kosgey, hon. Raila, hon. Sunkuli, hon. Ngala, hon. Mohamed, hon. Prof. Onger, hon. Nassir and hon. J. Nyagah. The Assistant Ministers were: Hon. Mwakalu---

Mr. Speaker: How many are they?

The Minister of State, Office of the President (Mr. Sunkuli): The Assistant Ministers are six, Mr. Speaker, Sir.

Mr. Speaker: Why do you not table the whole list?

The Minister of State, Office of the President (Mr. Sunkuli): I will table the list Mr. Speaker, Sir.

(c) The Cabinet Ministers and civil servants attended all presidential functions by virtue of the nature of their duties and Ministerial functions.

(d) Every Ministry and Government department utilises funds voted by Parliament for the purpose of travelling and accommodation during presidential functions. The funds are spent under

[The Minister of State, Office of the President]

Item 110, the Government Authorised Expenditure.

(Mr. Sunkuli laid the document on the Table)

Ms. Karua: Mr. Speaker, Sir, the Minister has not even attempted to answer parts "c" and "d" of my Question which read as follows: What were the roles and duties of these officers who included the Director of Agriculture and all cadres of civil servants? How much money was used by the Ministers and the civil servants? The Question does not ask from which Vote the money came from. I just want to know how much this presidential tour cost the tax payers. That is really the Question.

Could the Minister answer parts "c" and "d" of the Question?

Mr. Sunkuli: Mr. Speaker, Sir, I have given proper answers to the Question: What did these people go to do on the Coast tour? These are members of the Government. The President runs his executive office with the assistance of his Ministers, Assistant Ministers and the Civil Service. I am sure the hon. Member is quite educated and I do not need to teach her how the Government operates. She knows that. The Standing Orders of this House do not require me to tell Members of Parliament what they already know. Hon. Members have voted money to the Government. Each Department spends this money and then it is audited by the Controller and Auditor-General. The Public Accounts Committee (PAC) will scrutinise these funds. If there is anything wrong with the expenditure, that is the point at which the hon. Members become interested. Otherwise, I do not think it is fair to ask me to visit each department of the Government and find out how much money each Minister spends when, in fact, this will come before the PAC.

Mr. Muniya: On a point of order, Mr. Speaker, Sir. This Question is very specific. Even the vouchers are fake. They have not even been filed. We are asking how much money was spent; we are not querying the expenditure. The figures are there. The Minister should tell us how much was spent.

Mr. Sunkuli: Mr. Speaker, Sir, the figures are there in every department. Eventually, PAC will inquire into how much money was spent by the Government. If we exceeded the limit or spent the money improperly, the PAC will inform this House.

Mr. Keriri: Mr. Speaker, Sir, are you satisfied that the Minister is, in fact, answering the Question because I feel that he is avoiding it. We are asking this Question because of a particular purpose; that Government money has been spent on unofficial purposes and we want to know how much has been spent. Are you satisfied that he is answering the Question because it is very clear and he has not answered it.

Mr. Sunkuli: Mr. Speaker, Sir, this was not a trip for the Office of the President only. Each Minister made the trip to Mombasa in accordance with his own Ministerial duties. Every Minister is responsible for the Vote of his particular Ministry and you will appreciate that this is a matter which will be properly audited by the Controller and Auditor-General. If, indeed, this money was spent for non-Government matters, it will be found out by the PAC.

Mr. Speaker: Mr. Minister, I think there are two issues being mixed here. These are the questions of misuse and the amount used. It could be very correct, for those are two issues. I think the House wants to know how much it cost. I do not think it is being suggested the money was misused. This is because if it was misused, that is for the Controller and Auditor-General to audit.

Ms. Karua: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Wait a moment.

Mr. Sunkuli: Mr. Speaker, Sir, I do not know how much money was spent and because that information is spread out in all the Ministries---

Ms. Karua: On a point of order, Mr. Speaker, Sir. It is obvious that this Minister is not taking this House seriously and is treating it with contempt. The object of that Question is so that we know, as the watchdogs of the taxpayer, how much such a visit cost against its usefulness. We do not have to wait to lament when the report of the Controller and Auditor-General comes here.

I do appreciate that the Question touches on many Ministries, but the organiser of that trip is the Office of the President. What is so difficult for the Minister to find out the amount spent for the sake of transparency and accountability?

Mr. Speaker, Sir, if you may allow me to continue laying basis for my point of order, this is a time when we are telling teachers that we cannot pay them. We want to know whether we are actually misusing money, when we could apply the same to pay the teachers. I am urging you to direct the Minister to answer the Question. I am also proposing that he be named under Standing Order No.88 for taking this House for granted. It is my humble view that treating the House with contempt is gross misconduct.

Mr. Speaker: We have not reached there yet!

Ms. Karua: Mr. Speaker, Sir, I will come to it when we reach there, but could he be directed to answer the Question?

Mr. Spekaer: Mr. Minister, could you answer the Question?

Mr. Sunkuli: Mr. Speaker, Sir, with due respect, I have come here to perform my duty. The hon. Member had the Question placed on the Order Paper. During the first time the Question was supposed to be asked, she was not here. At that time, I was prepared to give the answer, which I have done today. If the hon. Member does not like the answer that I have given, I am sure that does not mean I am in contempt of the House. I have just given the answer which to the best of my ability and knowledge is the correct one.

Ms. Karua: Answer part "d" of the Question!

Mr. Speaker: Order! Mr. Sunkuli, I suppose you have to get the figures for part "d" of the Question.

(Applause)

I will give you up to next week.

Ms. Karua: Mr. Speaker, Sir, could he also answer part "c" of the Question when he comes next week? This is because we have to know the duties of all those officers and whether they were useful there, apart from the issue of baggage.

Mr. Speaker: Well, I thought he had said that they were there to assist the President.

Mr. Minister, proceed and answer that straightaway.

Ms. Karua: Mr. Speaker, Sir, with a measure of arrogance, he just said that---

Mr. Speaker: Order! I think if you detest arrogance, I think there is a ring of the same from you. We cannot personalise matters in this House.

Mr. Sunkuli: Mr. Speaker, Sir, as you know, the hon. Member is the Shadow Minister---

Ms. Karua: I am not!

Mr. Sunkuli: Mr. Speaker, Sir, if she is not, I think the DP Members of Parliament know that when hon. Kibaki goes around the country, they all go with him. What duties do they go to perform there?

(Applause)

Mr. Speaker, Sir, I would want to plead with you that next week is too soon for that kind of information to be obtained.

Mr. Speaker: I will give you two weeks from now. Question deferred!

(Question deferred)

Next Question, Mr. Githiomi!

Question No.714

REPAIR OF ROADS IN KIPIPIRI

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

(a) whether he is aware that Kipipiri Constituency has not benefitted from the *El Nino* funds on repair of roads damaged by the rains; and,

(b) how much money was collected for the roads in the constituency from the *El Nino* funds; and,

(c) if he could inform the House the roads earmarked for repair under the *El Nino* funds and when the work will commence.

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

(a) I am aware that Kipipiri Constituency has benefitted from *El Nino* funds on rehabilitation of roads damaged by the *El Nino* rains that occurred between October 1997 and April 1998 because two of the three roads being rehabilitated through *El Nino* funds pass through Kipipiri.

(b) The total money allocated for rehabilitation of the three roads in Nyandarua District is Kshs247,799,441.

(c) The roads earmarked for rehabilitation in Nyandarua District under the *El Nino* funds are:-

(i) Roads passing through Kipipiri Constituency:-

D389 - Captain Geta-Magomano-Ndunyu-Njeru Road to be rehabilitated at the cost of Kshs74,481,770; and,

C69 - Njabini-North Kinangop-Ol Kalou-Dondori Road to be rehabilitated at a total cost of Kshs98,835,901.

(ii) Road not passing through Kipipiri Constituency:-

C83 - Dondori-Ol Joro Orok Road to be rehabilitated at a cost of Kshs74,481,770.

The rehabilitation of roads under *El Nino* funds programme in Nyandarua District is expected to commence in April, 2002.

Mr. Githiomi: Mr. Speaker, Sir, I would like to thank the Assistant Minister for allocating the Kshs247 million on roads passing through Kipipiri Constituency. However, I would also like to inform the Assistant Minister that Road D389 cannot wait up to April next year, because it is totally impassable.

Could he ensure that this road is given priority and done in January/February next year?

Mr. Kochalle: Mr. Speaker, Sir, the District Roads Committee (DRC) can handle that; it can be looked into.

Mr. Speaker: Very well. Next Question!

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

Mr. Speaker: But you are happy!

Mr. Githiomi: Yes, I am happy, Mr. Speaker, Sir. However, he did not tell me---

Mr. Speaker: Yes! Next Question, Mr. Muchiri! You know I want to encourage happiness and contentment of happiness.

(Laughter)

Mr. Muchiri: Mr. Speaker, Sir, I beg to ask Question No.675, but I do not have a written answer!.

Mr. Speaker: Neither do I see the Minister.

Question No.675

RELEASE OF BODIES FOR RE-BURIAL

Mr. Muchiri asked the Minister of State, Office of the President whether he could consider releasing the bodies of the following for re-burial to their relatives:- Dedan Kimathi; Nahashon Isaac Njoroge Njenga; Hezekiah Ochuka and P. Okumu.

Mr. Speaker: Is anyone here from the Office of the President? Mr. Kochalle!

The Assistant Minister, Office of the President (Mr. Kochalle): Mr. Speaker, Sir, I think Mr. Samoei was to answer the Question, but I do not know where he has gone.

Mr. Speaker: Okay. I will come back to it. Next Question, Mr. Mwenda!

Question No.450

COMPENSATION OF DISPLACED PEOPLE IN MARIMANTI

Mr. Speaker: Is Mr. Mwenda not here. We will leave his Question until the end. Let us move on to the next Question. Next Question, Mr. Muya!

Mr. Muya: Mr. Speaker, Sir, I would like to ask Question No.699, although I have not received a written answer as yet.

Question No.699

QUERY OVER HIGH WATER TARIFFS

Mr. Muya asked the Minister for Water Development:-

- (a) whether he is aware that following the revision of water tariffs at the end of 1999 as recommended in Sessional Paper No.1 of 1999, many rural families cannot access clean drinking water as the increase came at a time when poverty levels were rising in Kenya; and,
- (b) why the minimum charges were doubled from the 1999 minimum of Kshs125 to the current Kshs250 and consumers debited with huge additional deposits; and,
- (c) what the total outstanding debt is owed by consumers of Aguthi Water Supply Scheme in Tetu Division of Nyeri District as at 30th June, 2001 and,
- (d) whether he could consider writing off these debts and reverting to the 1999 tariffs for this particular scheme as a measure of poverty reduction.

Mr. Speaker: Is anyone here from the Ministry of Water Development? We will leave the Question until the end. Let us move on to the next Question by Mr. Kiunjuri!

Question No.457

RECRUITMENT OF ADEQUATE FOREST WORKERS

Mr. Kiunjuri asked the Minister for Environment:-

- (a) whether he is aware that most of the forest department workers were retired through the golden handshake and the subsequent retrenchment which occurred late last year; and,
- (b) what he is doing to ensure that there is enough work force to rehabilitate the forests.

The Assistant Minister for Environment and Natural Resources (Mr. ole Ntutu): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that both the voluntary early retirement and the civil service retrenchment programmes have resulted in the retirement of a substantial number of workers in the Forest Department.

(b) As part of the Ministerial Rationalisation Exercise, the Forest Department is being re-organised into a unit focusing only on core functions of forest management, conservation and development. Further the Forest Department is currently involving the local communities adjacent to forest in reforestation through preparation of participatory forest management plans. In addition, savings made by the Government from retrenchment programme will facilitate allocation of adequate funds for employment of casuals in the implementation of forest plantation development programmes. The envisaged incorporation of the private sector into commercialisation of the forest plantation development will also further enhance reforestation exercise.

Mr. Kiunjuri: Mr. Speaker, Sir, it is true that vast forest lands are lying idle, and trees are harvested and no re-plantation is going on. The answer that the Assistant Minister has given to us is that the Government decided to retrench people and it is now using the same funds to employ casual labourers. Could he explain to this House what was the purpose, in the first place, of retiring and retrenching experienced workers only to replace them with unskilled and unexperienced workers?

Mr. ole Ntutu: Mr. Speaker, Sir, the main purpose of this retrenchment exercise, and not of these workers--- Most of the workers retired voluntarily without being dismissed from the Ministry. We have some plans, as a Ministry, to recruit more officers in order to make the Forest Department more practical.

Mr. Anyona: Mr. Speaker, Sir, could he tell us how much savings they have made under this particular item? Could he tell us how much savings there is, if any?

Mr. ole Ntutu: Mr. Speaker, Sir, I am sorry. I do not have the figures at the moment, but I can provide them later.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. The Assistant Minister himself, in his written answer, has said that they have made savings from which they will now employ casuals, which is a very strange policy. Now, he turns around and says that he does not have the figures. How can he then be sure that what he was telling us, in the first place, is true? I do not know how you can help him, but we need to have those figures.

(Loud consultations)

Mr. Speaker: Order, hon. Members! We want to follow this debate. But the question of rehabilitation and maintenance of forests is a very crucial issue in Kenya today. I think the House, and Kenyans generally, are very anxious to find out what programmes exist to increase forest acreage. I think Mr. Assistant Minister, I will give you more time. I think the House wants to know this; What are you doing countrywide to ensure that there is re-forestation going on, and what tools you are using? If you do not have, tell the House that you do not have them. Will next week be okay with you?

Mr. ole Ntutu: Thank you, Mr. Speaker, Sir. I will be a bit happy if the Question will be deferred so that I can get the proper information.

Mr. Speaker: How do you like Wednesday afternoon next week?

Mr. ole Ntutu: Yes, Mr. Speaker, Sir.

Mr. Kiunjuri: On a point of order, Mr. Speaker, Sir. Next week, I will not be within the country because, as you know, we will be inaugurating the East African Assembly, and I am the goalkeeper NO.1 of Bunge FC, which you belong to. Or, should I give authority to Mr. Obwocha to ask that Question on my behalf on Tuesday, next week?

Mr. Speaker: Mr. Kiunjuri, you know that no amount of goals saved will ever stop the business of this House, or will be considered. Nevertheless, when do you prefer to have it?

Mr. Kiunjuri: Mr. Speaker, Sir, during the first week of December.

Mr. Speaker: Very well. So, the Question is deferred!

(Question deferred)

Question No.119

TERMS FOR DRUGS PROCUREMENT

Mr. Anyona asked the Minister for Medical Services:-

(a) what the role of Crown Agents, Swipco and GTZ is in the procurement of drugs, equipment, pharmaceutical and non-pharmaceutical supplies for the Ministry;

(b) what the terms and conditions of the agreement between these procurement agents and the Ministry of Health are; and,

(c) why the Ministry require the procurement services of Crown Agents, Swipco and GTZ when the Ministry has a well established procurement and tendering system.

The Assistant Minister for Health (Dr. Wako): Mr. Speaker, Sir, I beg to reply.

(a) The role of Crown Agents and GTZ in the procurement of drugs, equipment and both pharmaceutical and non-pharmaceutical supplies for the Ministry is to provide consultancy procurement services. They are involved in bid preparation, invitation of tenders, processing of orders, clearance of goods from ports of entry and transportation to the points of use. The Ministry has, however, had no dealings with SWIPCO in the procurement of goods.

(b) M/S Crown Agents and GTZ were appointed by the Government with a view to providing high quality technical services to Ministries/Departments with regards to procurement of goods and services through international competitive bidding. The terms and conditions of the agreement between the Government and M/S GTZ are that the firm shall be paid 2.4 per cent of the value of goods purchased, while Crown Agents receives 4.5 per cent of the value of the goods.

(c) The Ministry utilises the services of Crown Agents and GTZ as these are donor conditionalities by the World Bank on credits extended to the Ministry. The Ministry, however, utilises its own procurement and tendering system to purchase drugs and medical supplies procured through GOK funding.

Mr. Anyona: Mr. Speaker, Sir, as you can see from part (b) of the written reply, if, indeed, it is true that the Government has been forced to acquire the services of these agents for procurement, and they have been required by the donors to pay them these amounts of money, it means that the country is being taken for a ride. They are being given money with one hand and it is being taken out with the other hand. Could he lay on the Table these conditionalities so that we know them for sure? This is because we want to contest them. Or is that just an excuse?

(Dr. Wako laid the documents on the Table)

Dr. Wako: Mr. Speaker, Sir, it is true that one of the World Bank's conditionality is that we should use this agent. It is true that in certain cases, the Ministry's or departments do not have enough manpower to carry out international competitive bidding, and that is the reason. I would like to lay down the conditionalities given by the GTZ and the World Bank tender.

Dr. Kulundu: Mr. Speaker, Sir, while appreciating the conditionalities laid on the Table, it would appear like Crown Agents are being paid at higher rate than GTZ. But what explanation does the Ministry have for the delay in the delivery of renal units already paid for by the Kenyatta National Hospital, but not delivered for the last 18 months?

Two, the Minister for Public Health told this House that he was going to acquire eight HPLCs machines for analysis of drugs. Why has the delivery of those eight machines been delayed by Crown Agents again?

Mr. Speaker: Dr. Kulundu, are you ready for it? This is because it appears that those are two different questions.

Dr. Wako: Mr. Speaker, Sir, I am not ready for it.

Mr. Speaker: Dr. Kulundu, put a different question!

Dr. Kulundu: Mr. Speaker, Sir, is the Assistant Minister aware that Crown Agents have been responsible for the delay in delivery of special equipment, one at the Renal Unit in Kenyatta National Hospital which is already been paid Kshs600 million for the last 18 months; and secondly eight HPLC machines for the National Quality Control Laboratories? Is he aware that there has been a delay by Crown Agents?

Dr. Wako: Mr. Speaker, Sir, I am not aware of any delivery or delay by Crown Agents. As far as we are concerned, they are doing a very good job.

Mr. Gatabaki: Mr. Speaker, Sir, could the Assistant Minister confirm that this country pays over Kshs10 billion to these firms for services which could easily be provided by Kenyans?

Dr. Wako: Mr. Speaker, Sir, I am not aware that the services are rendered at about Kshs10 billion.

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

Mr. Speaker: Order, Mr. Gatabaki! Under what Standing Orders?

Mr. Gatabaki: Mr. Speaker, Sir, you know that I am a student of yours in Standing Orders. I, therefore, have to request you---

Mr. Speaker: Well, as a good student, what have you learnt so far? Which Standing Orders have you learnt?

(Laughter)

Mr. Gatabaki: Mr. Speaker, Sir, I have learnt quite a lot, but on this, I was not prepared to---

Mr. Speaker: Very well. I will give you the very last time!

Mr. Gatabaki: Mr. Speaker, Sir, in view of the amount of money paid by our Government to these clearing agents, could the Assistant Minister lay on the Table the amount paid to every one of them and give the justification?

Mr. Speaker: You see, that is not a point of order; that is a supplementary question.

Mr. Anyona: Mr. Speaker, Sir, I have just arrived from a conference in West Africa and one of the issues discussed there was about procurement. I find this answer very vexing. If the donors imposed any conditions at all, I suppose they would require these agents to assist the Ministry to procure. But the Assistant Minister talks about them inviting tenders. Could he tell us how do they do it? Do they advertise in our newspapers, and invite tenders? Or, is that done through the Ministry? In which case, if the Ministry is doing it, then, why do you pay them this much money? What do you mean by "preparing deeds, invitation of tenders and processing of orders?" What do you mean by that? What do they do? Is that not done by the Ministry itself?

Dr. Wako: Mr. Deputy Speaker, Sir, the preparation is done by the agents as laid down in the

procedures. That is the standard procedure.

Question No.406

BURST SEWAGE SYSTEMS IN MAJOR TOWNS

Dr. Kulundu asked the Minister for Local Government:-

- (a) whether he is aware that almost all major towns have burst sewage systems;
- (b) whether he is further aware that burst sewer lines pose great health risks to the inhabitants of these towns and Kenyans in general; and,
- (c) what corrective measures he plans to take to rectify the problem.

The Assistant Minister for Local Government (Mr. Kiangoi): Mr. Speaker, Sir, I beg to reply.

- (a) I am aware that there are numerous cases of burst sewer lines in our towns.
- (b) I am also aware that burst sewage lines pose great health risks to the inhabitants of these towns and Kenyans in general.

(c) Due to financial constraints, it has not been possible for local authorities to expand their sewage systems. The few local authorities that have managed to upgrade their sewage systems have done so through financial assistance from donors. In order to enable local authorities to finance sewage systems, my Ministry is encouraging private sector participation in the provision and management of water and sewerage services due to the massive investment required in this particular area.

Dr. Kulundu: Mr. Speaker, Sir, that is a very unfortunate answer from the Assistant Minister. Whereas he acknowledges that there are burst sewage lines in almost all major towns, and that Kenyans are exposed to diarrhoea and other water-borne diseases, he says that due to financial constraints and over-reliance on donor funding, there is nothing the Government can do to alleviate this problem. Towns and urban centres in this country have become epicentres of spreading diarrhoea. If the Assistant Minister is not aware that in the current Printed Estimates, Parliament has approved a total of Kshs1.65 billion to be put in a Maintenance Fund. Could he be kind enough to tell us the municipalities that have benefited from this fund? The provision is reflected under Item 500, Head 375 of the Ministry's Recurrent Vote. Which municipalities have benefitted from the Kshs1.65 billion?

Mr. Kiangoi: Mr. Speaker, Sir, various local authorities have taken advantage of this provision although there has been an element of external assistance. These include Nakuru, Bungoma, Kisii, Kapsabet, Murang'a, Eldoret and Mombasa Municipal Councils.

Mr. Murungi: Mr. Speaker, Sir, the Assistant Minister is talking about towns which already have burst sewage systems, which are either being maintained or repaired. We have some towns which have no sewage systems at all. These are a greater health hazards there to wananchi than those areas with existing sewage systems. I have in mind Nkubu Township in South Imenti. What plans does the Ministry have to provide sewage systems to towns where the services do not exist at all?

Mr. Kiangoi: Mr. Speaker, Sir, those are the areas I said my Ministry is encouraging private sector participation in the provision of water and sewage services. The cost involved in the construction of sewage systems is immense. If we, as Kenyans, would appreciate this and, through education and encouragement, have private sector participation in the provision of these services, we shall be able to cater for this particular town. All the towns referred to by the hon. Member are not risk-free. The situation is even worse where we have burst sewage lines than where the service does not exist at all. Where there are no sewage services, there could be other sewerage systems such as septic tanks.

Mr. Sungu: Mr. Speaker, Sir, is the Assistant Minister aware that there are towns in this country where the situation is much worse? People in Kisumu empty raw sewage into Lake Victoria, where we source our domestic water from. It is estimated that in 30 years' time Lake Victoria will be "dead". Fish in that lake are threatened. Could the Assistant Minister use part of the Kshs1.65 billion from the Maintenance Fund to service the sewage system in Kisumu, which requires Kshs200 million?

Mr. Kiangoi: Mr. Speaker, Sir, the issue of raw sewage being emptied into Lake Victoria is being addressed. It is my Ministry's concern that, that ought not to be the position. Of course, Lake Victoria will be a great health hazard if people continue to empty raw sewage into it.

Mr. Speaker: Could you ask the last question, Dr. Kulundu, unless you are satisfied with the reply you have got?

Dr. Kulundu: Mr. Speaker, Sir, at this rate of relying on donor funding for even the most basic services,

we will reach a time when we will need donor funding to hire people to sweep our offices. The problem with sewage systems in our municipalities is that they were built as early as the 1930s. I have in mind Embu, Kakamega and Kisii Towns, where the Assistant Minister comes from. We cannot surely rely on donor funding for these very basic services. Given the frost relations between Kenya and the donors, what urgent measures does the Ministry intend to put in place to upgrade sewage systems in the various towns?

Mr. Kiangoi: Mr. Speaker, Sir, in the first place, I do not come from Kisii; I come from Nyamira. As I have said, my Ministry is trying to encourage private sector participation. Other than that, through the annual Budget, we shall try to cater for this kind of situation. It is not true that we rely entirely on donor funding for our services. Donors are our development partners. It is the trend world-wide for countries to do business with their development partners. That is what I mean by referring to donor funding; I did not mean to refer to money that is just released to us as aid.

Mr. Speaker: Mr. Muchiri's Question for the second time!

Mr. Muchiri: Mr. Speaker, Sir, I do not have a written answer to my Question!

Question No.675

RELEASE OF BODIES FOR RE-BURIAL

Mr. Muchiri asked the Minister of State, Office of the President, if he could consider releasing the bodies of the following to their relatives for re-burial:-

Dedan Kimathi;

Nahashon Isaac Njoroge Njenga;

Hezekiah Ochuka; and

P. Okumu.

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Speaker, Sir, this Question was originally referred to the office of the Vice-President and Ministry of Home Affairs, Heritage and Sports. However, at the very late hour, it was brought to our office. I intend to have a look at the details to enable me answer this Question. Maybe, I would request that I answer it next week.

Mr. Muchiri: Mr. Speaker, Sir, this is a very simple issue. The Question was deferred in order for the Assistant Minister to go and consult His Excellency the President, the only person who can authorise re-burial. Could he tell the House whether he has consulted His Excellency the President?

Mr. Speaker: Do you know anything about the history of this Question?

The Assistant Minister, Office of the President (Mr. Samoei): Yes, Mr. Speaker, Sir. I said that originally this Question had been directed to the Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports. But sometime last week, it was brought to our office. I intend to look at the details and be able to answer it next week.

Mr. Speaker: Very well! How long do you want?

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Speaker, Sir, a week will be good enough.

Mr. Speaker: The Question is deferred for one week.

(Question deferred)

Question No.450

COMPENSATION OF DISPLACED
PEOPLE IN MARIMANTI

Mr. Speaker: Is Mr. Mwenda still not here? Question dropped!

(Question dropped)

Question No.699

QUERY OVER HIGH WATER TARIFFS

Mr. Muya asked the Minister for Water Development:-

- (a) whether he is aware that following the revision of water tariffs at the end of 1999, as recommended in Sessional Paper No.1 of 1999, many rural families cannot access clean drinking water as the increase came at a time when poverty levels were rising in Kenya;
- (b) why the minimum charges were doubled from the 1999 minimum of Kshs125 to the current Kshs250 and consumers debited with huge additional deposits;
- (c) what is the total outstanding debt owed by consumers of Aguthi Water Supply Scheme in Tetu Division of Nyeri District as at 30th June, 2001; and,
- (d) whether he could consider writing off this debt and reverting to the 1999 tariffs for this particular scheme as a measure of poverty reduction.

The Minister for Water Development (Mr. arap Ngeny): Mr. Speaker, Sir, I apologise for coming late. Mr. Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) The minimum charge was increased from Kshs125 to Kshs250 in order to improve water service delivery after the Ministry stopped subsidising the services rendered to the consumers. The National Water Conservation and Pipeline Corporation had, therefore, to raise its own revenue to effectively run the operations and maintain the scheme.

(c) The total outstanding debt owed by the consumers on Aguthi Water Supply Scheme in Tetu Division of Nyeri District, as at 30th June, 2001, was Kshs30,206,670.10

(d) The Ministry cannot write off the outstanding debt, as this would lead to the demise of the water supply scheme. The 1999 tariffs were far below the operational cost and, therefore, this necessitated the present revision.

Mr. Muya: Mr. Speaker, Sir, the Minister is not serious about answering this Question. He, perhaps, has forgotten that he answered a similar Question in December, 1999, when he gave the total collection from the scheme as Kshs1,050,000 per month. Out of that, only about Kshs400,000 used to be spent on the scheme. So, where does the subsidy by the Ministry come from?

The Minister has said that he is not aware that many people cannot access clean drinking water. He then went ahead to answer part "c" of the Question---

Mr. Speaker: Order! It is Question time!

Mr. arap Ngeny: Mr. Speaker, Sir, I cannot recall the answer I gave in answer to a similar Question in 1999. However, I assume that because Aguthi Water Supply Scheme serves consumers in several locations, what the hon. Member has alleged could be happening in a specific area.

Mr. Muhika: Mr. Speaker, Sir, in answer to part "a" of the Question, the Minister said that he is not aware that many people have been disconnected from this water scheme because they owe the Corporation Kshs30 million. How will the people, who have been disconnected from the water scheme because of a debt of about Kshs30 million, pay Kshs250 per month? This water charge has been increased from Kshs125. How will they raise Kshs250 whereas they were not even able to raise Kshs125?

Mr. arap Ngeny: Mr. Speaker, Sir, I appreciate that at the moment, there are economic difficulties everywhere in the country. However, certain services must be provided and be paid for. Unfortunately, one of those essential services, which must be paid for, is water.

Mr. Muya: Mr. Speaker, Sir, the Minister has said that if the debt of Kshs30 million was written off, it would lead to the demise of the scheme. What plans does he have to save the scheme, if the consumers will not pay the Kshs30 million? Will the scheme not collapse, anyway?

Mr. arap Ngeny: Mr. Speaker, Sir, we treat water consumers like any other clients. As a matter of fact, there are some consumers who are good payers. Since some consumers are regular payers while others are irregular and others do not pay at all, the Corporation is willing to listen to the merit of every individual's case. If the hon. Member advises his people to go and see officials of the Corporation, I am sure, they will come up with a reasonable compromise.

QUESTIONS BY PRIVATE NOTICE

SELECTIVE ISSUANCE OF FIREARMS LICENCES

Mr. Kariuki: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following

Question by Private Notice.

Could the Minister explain why the Government has selectively issued firearm licences to certain private security guard companies and what the criteria is of issuing firearms licenses to other organised groups?

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

The Government does not discriminate against any person or group of persons in the issuance of firearms certificates as alleged. However, firearms certificates are issued to individuals on merit and in accordance with the provisions of the Firearms Act, Cap.114, Section (5). All applicants are considered on individual basis and not on group merit basis.

Mr. Kariuki: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead this House? He knows very well that there are certain security companies, such as Cartrack 911, which have selectively been offered firearms and ammunition. They have even been advertising that they offer services of armed guards. Have these firms been issued with firearms licences selectively just because of their ownership? On what basis have they been selectively issued with firearms licences whereas other security companies have been denied the same facility?

Mr. Samoei: Mr. Speaker, Sir, I am not aware that Cartrack Security Company has been given any preference in the issuance of firearms certificates. When a security company advertises the services of armed guards, that does not necessarily mean that they have firearms. It could as well mean that they are armed with rungun, jembes or some other weapons. However, it is true that proprietors of Securicor Kenya and Group 4 Security Limited, as well as, Wells Fargo Limited have been licensed to acquire chemical maces which are classified as firearms. These are issued to the owners as individuals, and not to the security firms.

Mr. Wamae: Mr. Speaker, Sir, could the Assistant Minister now direct that these companies should not advertise that they have armed guards because they have not been licensed to carry guns?

Mr. Samoei: Mr. Speaker, Sir, if Mr. Matu Wamae heard me very well, I said that at no time shall we restrict anybody from advertising whatever services he has to offer. If security firms advertise that they have armed guards, that does not mean they have firearms. We shall not restrict them from advertising their services.

Mr. Kiunjuri: Mr. Speaker, Sir, noting that the police force is unable to combat insecurity in this country, and given the high rate of insecurity in the country, could the Assistant Minister consider licensing those reputable firms, like Falcon Security Limited to carry guns?

Mr. Samoei: Mr. Speaker, Sir, unfortunately, the law as it stands today, does not make provision for the issuance of firearm certificates to security firms. The law only provides for the issuance of firearm certificates to individuals who merit them.

Mr. Kariuki: Mr. Speaker, Sir, this issue of firearms hinges on national security. There is a fear that organised groups like security guards could even be used to topple the Government. Therefore, even if the Assistant Minister, in his answer, says that certain companies are protected, these companies could be bought by individuals with ulterior motives. So, whether the Assistant Minister is telling us the truth or not, that does not matter to us now. However, a situation may arise where those companies could be used to topple the Government. Could the Chair, therefore, direct the Assistant Minister to come up with the truth about the matter, rather than wait for the issue to grow to a level where this Government could be taken over by security companies?

Mr. Speaker: Mr. Kariuki, I know nothing about security firms. So do not get me involved. The Assistant Minister knows better than I do. Mr. Samoei, would you like to respond?

Mr. Samoei: Mr. Speaker, Sir, we exercise due diligence in the issuance of firearms to individuals whom we perceive to merit firearm certificates. I have always learned to speak the truth in this House and I will keep doing so.

DISPLACEMENT OF BUDALANG'I PEOPLE BY FLOODS

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

(a) Is the Minister aware that River Nzoia in Budalang'i Constituency has flooded and thousands of people are displaced, crops destroyed and houses washed away?

(b) Is he further aware that Musoma Primary School in Bunyala West Location cannot be accessed because of floods?

(c) What urgent measures is the Minister taking to implement the report of the Provincial Evaluation Monitoring team of 2000 over the rehabilitation of Nzoia Dykes

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

(a) I am not aware that Budalang'i Constituency has flooded and thousands of people have been displaced.

(b) I am not aware that Musoma Primary School or any school in Bunyala West Location cannot be accessed because of the floods.

(c) The recommendations contained in the Provincial Evaluation Monitoring Team of 2000, on the rehabilitation of Nzoia Dykes have been received and will be implemented, as soon as funds are available.

Mr. Wanjala: Mr. Speaker, Sir, I am surprised that the Assistant Minister does not know what is happening in Kenya, and Budalang'i Constituency is part of Kenya. Floods came and swept away homes, schools have been closed, crops have been destroyed and animals killed. I am surprised to hear from the Assistant Minister that up to now, he does not know about all this. I have personally gone to the Assistant Minister's office and the DC's office and informed them about the situation. Even the DC was on the ground when the floods came on 3rd November, 2001. First of all, could the Assistant Minister tell us how much money the Government needs to rehabilitate Nzoia Dykes?

Mr. Kochalle: Mr. Speaker, Sir, I am very much aware of what is going on in Kenya, but the issue of money was not included in the original Question and, therefore, it does not arise here. The floods which the hon. Member is referring to were flash floods which lasted for about 10 hours during the night of 3rd and 4th November. They subsided the following day and the area is now dry and there is no problem. The claim by the hon. Member that bridges, schools, houses, animals and crops were destroyed and washed away is not true. The District Disaster Team led by the District Commissioner and the Ministry's Technical Team visited the area on 5th and 7th November, 2001, to assess the situation and saw no cause for alarm because everything was found normal. So, all the schools in the area are accessible and the Kenya National Examinations were conducted without any problem.

Capt. Ntwiga: Mr. Speaker, Sir, when the Assistant Minister answered this Question during the first round he said that he is not aware that there are floods in Budalang'i Constituency and yet this Question has been in the Ministry for not less than two weeks. Could the Assistant Minister, therefore, be given time to go and assess the situation personally? Let the Assistant Minister visit the area and then come to answer this Question again! For that reason, I would like to request that this Question be deferred.

Mr. Kochalle: Mr. Speaker, Sir, there is no need of giving me time to give a satisfactory answer because I have told this House what is happening on the ground; the District Commissioner and the Ministry's Technical Team have visited the ground and therefore, there is no need of giving me more time to come up with another answer.

Dr. Wekesa: Mr. Speaker, Sir, the Assistant Minister is not serious. We have rains all over the country this time round. Even Kilome Constituency which normally does not have rain has a lot of rain now. There is a lot of rain in Mombasa and Trans Nzoia. Indeed, Budalang'i Constituency does not have to get rain for the area to be flooded. If Trans Nzoia, Kakamega and all the Western part of Kenya is getting rain, the place could be flooded! Could the Assistant Minister tell this House which planet he lives in? In any case, the issue of dykes has been raised by every hon. Member who has represented Budalang'i Constituency. Could the Assistant Minister tell this House whether the Government will do something about dykes in Budalang'i Constituency? We want to hear what the Assistant Minister is going to do about dykes in Budalang'i Constituency.

Mr. Kochalle: Mr. Speaker, Sir, first of all, I would like to tell the hon. Member that he should be grateful for the current rains that he is talking about. However, I live on this planet just as he does. With regard to the dykes, we have received information, and so we know what is going on there. The rehabilitation of these dykes will be implemented, as soon as, we get the necessary funds.

Mr. Wanjala: Mr. Speaker, Sir, when the Office of the President realised that there was some money that they were going to receive to repair the roads which were damaged by *El Nino* rains, they took over the projects from the Ministry that was supposed to implement them. But when they signed the agreement, there was a section that required them to, first of all, consider life-threatening situations. I would like to point out that the floods which are experienced in Budalangi Constituency are life-threatening. I wonder why they have been allocating other projects over Kshs100 million when in Budalangi Constituency, we need only Kshs70 million to rehabilitate all the dykes. Could the Minister, because this is a life-threatening situation and there is still some money remaining in the *El Nino* Emergency Management Project Fund, take it as a priority and rehabilitate these dykes in order to save these people?

Mr. Kochalle: Mr. Speaker, Sir, I would like to point out that saving our people is the Government's job and we will do it. So, the hon. Member has to wait until we get the funds so that we can repair the dykes.

BAILING OUT OF KPLC

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

(a) Where will the Minister obtain Kshs2.8 billion to bail out the Kenya Power and Lighting Company (KPLC)?

(b) Could he advise other Ministries on how to find money so that other companies that provide livelihood to Kenyans could also be saved?

The Minister for Energy (Mr. Raila): Mr. Speaker, Sir, I beg to reply.

(a) I would like to inform the hon. Member for Gem that the Government is not bailing out the KPLC as alleged. However, the Government owes the KPLC Kshs2.5 billion. This amount has accrued from unpaid electricity bills by various Ministries, departments and local authorities as at 30th June, 2001. It also includes unsettled Rural Electrification Programme bills. Debtor Ministries, Departments and local authorities have been asked by the Ministry of Finance and Planning to promptly settle their bills through their budgetary allocations. The KPLC has also been directed to institute speedy and prudent measures to collect outstanding bills from the private sector. These measures are expected to help improve the KPLC's liquidity.

(b) I cannot advise other Ministries on how to mitigate financial constraints being experienced by parastatals under their responsibilities as they are better placed to attend to such matters under the on-going Parastatal Reform Programme. Moreover, the issue at hand is not about bailing out the KPLC, but settling the Government debt.

Mr. Donde: Mr. Speaker, Sir, I think the Minister is forgetting very simple arithmetic which has come from the KPLC and his Ministry. The KPLC has been provided with power by KenGen, which is a Government agent, and the KPLC has not paid it Kshs11 billion. What is Kshs2.5 billion which the Minister has said the Government owes the KPLC? If he takes away Kshs2 billion from Kshs11 billion, he will still have over Kshs8 billion to be settled. This is because the KenGen has sold power to the KPLC at cost of Kshs11 billion.

Mr. Speaker: Order, Mr. Donde! This is your Question because it was framed by you. You should abide by its terms! Now, proceed on the terms of the Question!

Mr. Donde: Mr. Speaker, Sir, could the Minister explain the difference of Kshs8 billion? It is not possible for the KPLC to be "broke" because the Government owes it money, when it is supposed to pay Kshs11 billion to KenGen.

Mr. Speaker: Mr. Donde, I think you are irrelevant, are you not?

Hon. Members: No! No!

Mr. Speaker: Order! With all due respect, Mr. Donde, I think you are irrelevant. You should ask the Minister where the Government will get Kshs2.8 billion to bail out the KPLC. That is the question you should ask him.

Mr. Donde: Mr. Speaker, Sir, let me ask the question if that is what you are directing me to do. This House is the one which is given the responsibility of allocating money to all the Ministries. I remember that we sat in this House during the Budget Day and made a budget for this nation according to revenue available and expenditure. I do not know how a Ministry can get Kshs2.5 billion without the authority of this House.

Mr. Speaker: Yes, he can answer that!

Mr. Raila: Mr. Speaker, Sir, I sympathise with Mr. Donde because I am sure he did not listen to what I was saying. I also sympathise with him for spending three cold nights last week not because of lack of power, but because of lack of a partner.

(Laughter)

I have said that this money will not come from my Ministry. This is money which various Ministries, and not necessarily the Ministry of Energy, owe the KPLC. I would like to point out that several Ministries have not settled their electricity bills. They include such strategic institutions as the Kenya Broadcasting Corporation (KBC) and Kenyatta National Hospital (KNH). There are also several institutions and private customers who have not settled their electricity bills. I have said that, that is where this money will come from and not from the Ministry of Energy.

Mr. Shidiye: Thank you, Mr. Speaker, Sir. There was a severe drought that affected this country, particularly the power sector. Could the Minister explain to us the amount of money the KPLC lost when we

experienced that drought? Could he also tell us the measures we can come up with when droughts like that persist?

Mr. Raila: Mr. Speaker, Sir, it is true that we experienced the severest drought since 1949. As a result of this, most of our dams dried up and our hydrogen ration capacity, therefore, went down initially by 26 per cent in the 1999/ 2000, Fiscal Year, and then further by 46 per cent. Since hydro electric power is our cheapest source of generating electricity, this had adverse effect on the income of the KPLC. The accounts of the KPLC have been published, and they state that this company lost Kshs4.1 billion.

Mr. Karume: Thank you, Mr. Speaker, Sir. The Minister has said that the Kenya Government owes the KPLC Kshs2.5 billion. We know very well that if an individual does not settle his or her electricity bill by the stated date, the KPLC personnel will go and disconnect electricity. Could the Minister order the KPLC to disconnect power to all the Government departments which owe it this money so that they can pay?

Mr. Raila: Mr. Speaker, Sir, it is true that we can order the KPLC to disconnect power to these Government departments. But I would like the hon. Member to appreciate that among the customers, some are very strategic institutions, and if power is disconnected, it will cause many problems to the country. For example, the KBC---

Hon. Members: Switch it off! Switch it off!

Mr. Speaker: Order, hon. Members!

Mr. Raila: Mr. Speaker, Sir, the hon. Members may have their own opinion. If we switch off the KBC, people will think that, that was a *coup de' tat*. Secondly, if we stop the operations of the KNH with patients in the Intensive Care Unit (ICU), you will send them prematurely to go and meet Lord Jesus. There are those considerations and that is the reason why we cannot order a blanket disconnection of power to these institutions.

Mr. Kamolleh: Arising from what the Minister has said that the KPLC has lost Kshs4 billion as a result of drought, could he then tell this House why this country instead of depending on hydro-electric power alone---

Mr. Speaker Sir, since this country experiences a lot of sunshine, we could do something about solar energy. It is also a country that experiences strong winds and we could do something about wind energy. What is the Minister doing, or what measures does the Minister have in place to make sure that we do not depend only on rain, but on other alternative means to produce electricity?

Mr. Raila: Mr. Speaker, Sir, first, I want it to be known that we are not only dependent on hydro-electric energy. I said that we are dependent 70 per cent on hydro-electric energy, but we are trying to reduce the dependence. Initially, it was about 90 per cent. We have started exploiting geothermal energy in Rift Valley. We have Olkaria I, II and III Projects and soon we will begin Olkaria IV Project.

Secondly, we are also looking into what we call renewable energy which includes solar, biomass, wind and so on. However, there are limitations to these new sources of energy. But we are promoting solar energy and that is why we have removed duty on all solar equipment.

We are also doing exploration on wind. The wind map is almost complete. So, we will have a mixture which will not entirely be dependent on hydro-electric energy.

Mr. Donde: Mr. Speaker, Sir, the Minister is talking about what KPLC is owed. Could he explain how much KPLC owes other institutions like KenGen, so that we can see where the fault lies?

Mr. Speaker: I am not so sure we do not have a Question on that. An hon. Member has filed a Question on how much KPLC owes KenGen. I know this because I approved that Question.

Mr. Donde: Mr. Speaker, Sir, what is wrong with that Question?

Mr. Speaker: That Question will come here! Mr. Raila, would you like to answer that question?

Mr. Raila: Mr. Speaker, Sir, the published accounts of KPLC are out and can be obtained. The hon. Member can have a look at them. But I want you to understand and appreciate that KPLC is a commercial enterprise. As a commercial enterprise, it owes and it is also owed. So, it owes KenGen Kshs11 billion and KenGen also owes it some money. I know that, as of now, KPLC is a solvent company. But it owes money because of the reasons that I have given.

Mr. Speaker, Sir, hon. Members are forgetting that only recently we had power rationing because KPLC had nothing to sell. Most of the areas were being given power on alternate days. The KPLC had less to sell and this is one of the reasons why they incurred such a heavy loss.

Mr. Ndicho: Mr. Speaker, Sir, I beg to ask the Minister for Local Government the following Question by Private.

(a) Is the Minister aware of the Collective Bargaining Agreement (CBA) signed on 7th August, 1993 which reviewed the salaries of all local authorities employees throughout the country?

(b) Is he further aware that Thika Municipal Council was part and parcel of this CBA where its employees were awarded the salary increment since 1993?

(c) Why then did the current council decide to deduct all the monies earned by the employees in Thika since 1993 and sacked over 50 employees who protested over the deductions?

(d) Could the Minister order for reinstatement of these workers and pay back their deducted monies?

The Assistant Minister for Local Government (Mr. Kiangoi): Mr. Speaker, Sir, I seek your indulgence and that of the House because the answer I had expected to get is not ready. I have talked to the hon. Member, but that is not enough. I will try and get it answered next week.

Mr. Speaker: What is your reaction, Mr. Ndicho?

Mr. Ndicho: Mr. Speaker, Sir, I am not satisfied with the fact that the Assistant Minister does not have the answer. These are people who have been sacked and whose salaries have been deducted. They are going without food and their children have been chased out of school and the Assistant Minister is just here playing about. Could I then demand that he answers this Question earliest, possibly tomorrow afternoon.

Mr. Speaker: From the Question, those workers were sacked in 1993?

Mr. Ndicho: Mr. Speaker, Sir, that was when the CBA was signed. They were just sacked the other day.

Mr. Speaker: To be fair to those Kenyans, let us give the Assistant Minister time to enquire.

Mr. Ndicho: We will give him until tomorrow afternoon!

Mr. Speaker: Not tomorrow.

Mr. Ndicho: When?

Mr. Speaker: I will defer the Question to next week.

Mr. Ndicho: Oh! My God!

Mr. Speaker: Mr. Ndicho, I do appreciate. I want to help you. The only way these Kenyans can be helped is if the Assistant Minister gets to the bottom of the issue.

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

Mr. Speaker: What do we want to do?

Mr. Ndicho: Mr. Speaker, Sir, the Assistant Minister called me outside and told me that he could answer this Question tomorrow afternoon.

Mr. Speaker: Is that so, Mr. Kiangoi?

Mr. Ndicho: Mr. Speaker, Sir, to defer this Question to next week is unfair because that is too far.

The Assistant Minister for Local Government (Mr. Kiangoi): Mr. Speaker, Sir, my friend, Mr. Ndicho, has been a bit inconsistent. This is because we talked about the matter and agreed. But as you said, I will definitely answer this Question on Tuesday, next week. I will be on their back until they give me the answer.

Mr. Speaker: Very well. I hope it will be a satisfactory answer.

(Question deferred)

MINISTERIAL STATEMENT

NON-PAYMENT OF SALARY TO MR. KAMANGU

The Assistant Minister for Education, Science and Technology (Mr. Awori): Mr. Speaker, Sir, on Thursday, hon. Karua asked a Question about a teacher who had gone to university to do a specialised degree, but was not paid any salary throughout the period. I stated that he did qualify to get his salary. I did table a list of disciplines where such a teacher could have gone with pay. But I did not table the circular that allows the Ministry's discretion to add another discipline. First, I want to table the circular.

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

Secondly, I want to inform hon. Members and the House that the discipline of Information Technology that the teacher has gone to take will be included among all other degree courses whereby a teacher will study

while on salary. But this will not be pushed back in order to help this particular teacher. This will start from 1st January, 2002.

Mr. Speaker: Ms. Karua, do you want to seek clarification?

Ms. Karua: Mr. Speaker, Sir, could the Assistant Minister tell us where the salary of Mr. Kamangu is going to? This is because the Ministry of Labour and Human Resource Development is forwarding his salary every month to the TSC and it has agreed that he should be paid a salary while on a study leave. They agree that the course he is studying is a critical one. Could the Assistant Minister consider forwarding the salary to Mr. Kamangu because the parent Ministry is paying the money and the TSC is not entitled to retain it?

The Assistant Minister for Education, Science and Technology (Mr. Awori): Mr. Speaker, Sir, all teachers are employed by TSC irrespective of where they teach. Those who teach in the institutes of technology are employees of the TSC. It is the TSC which has got the final say as to what happens to their salaries.

POINT OF ORDER

MAYOR'S REFUSAL TO SIGN CONTRACT

Mr. Muchiri: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Local Government on why the Mayor of Nairobi had a dispute with the French Ambassador in his parlour over the signing of the contract on the proposed Kibera Urban Environment Sanitation Project in Nairobi which was to cost Kshs159 million

Mr. Speaker: Is anyone here from the Ministry of Local Government? I hope they will be informed.
Next Order!

BILL

Second Reading

THE COPYRIGHT BILL

(The Attorney-General on 15.11.2001)

(Resumption of Debate interrupted on 15.11.2001)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, when the House adjourned last time---

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

Mr. Speaker: On this Bill? What is it?

Mr. Ndicho: We are surprised that the hon. Member is asking the Minister for Local Government why the Mayor refused to sign---

Mr. Speaker: But we have already left that issue. Wait until the matter comes up again. We are already on the Bill.

Mr. Ndicho: It is only because we are happy that the Mayor refused to sign that contract.

Mr. Speaker: Order! Order!

Proceed, Mr. Wako.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, when the House adjourned last time I was moving that the Copyright Bill be read a Second Time.

I will cleave liberty to refer extensively to my notes because this is a technical Bill. I want to state from the outset that this is a very important Bill which touches on those aspects of the law which, particularly the developing countries have neglected for a long time to their detriment and to the benefit of the developed world. Not long ago, this House passed the Industrial Properties Bill which was similar to the Intellectual Property Bill. We now are proposing this Copyright Bill. Mr. Speaker, Sir, in the drafting of this Bill, there has been extensive consultations among the stakeholders. We have held a number of stakeholders' fora, because this Bill is really for their benefit. I am glad that all the stakeholders are on board, as far as this Bill is concerned. As I move it, I will be mentioning what their roles are going to be. In fact, the aim of this Bill is to remove the Copyrights Section which is headed by a mere Assistant Registrar-General in charge of copyright matters from my office, to a body

corporate to administer that area. The body corporate will be controlled by the stakeholders. I will explain that later.

Mr. Speaker, Sir, this Bill was published as the Copyright Bill 2000, and was not debated due to the tight schedule of the House last year. The Bill lapsed, and at the end of the year we had to republish it. In republishing it, further consultations with a number of stakeholders who have improved on the Bill were taken on board. I am, therefore, putting this House on notice, that during the Committee Stage, I will be moving further amendments to this Bill, pursuant to further stakeholders' consultative meetings that have been held, to further refine the Bill, and which amendments incorporate the advances in copyright, particularly, in digital technology.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, the importance of the Intellectual Properties Bill and Copyright Bill cannot be gainsaid. A strong legal regime on copyrights is desirable, as it contributes to the national economy and, promotes and preserves the cultural heritage of the country. A strong Copyright Bill is also desirable to ensure that the principal actors, namely: Musicians, producers, publishers, authors and performers, are encouraged to be creative, and that they realise the fruits of their creativity and labour. As they realise that, obviously, the Government will also earn some money from it.

In fact, if you look at the intellectual property offices of the developed world, they are self-sustaining. They do not depend on the Government for any subsidy at all, and in fact, contribute significantly to the Government revenue.

Mr. Deputy Speaker, Sir, issues of copyright have ceased to be merely national issues. As we have become a global village, to be able to effectively protect the copyrights, and for the principal actors to be able to effectively gain from the copyrights, we must have an international regime.

Mr. Deputy Speaker, Sir, Kenya is also a member state of the World Trade Organization and the Berne Union which are all concerned with issues related to copyrights. This Bill fully addresses the requirements of Trade related aspects of Intellectual Properties Rights (TRIPS). It meets the requirements of TRIPS and also of the Berne Convention. As a nation, we cannot be left out of the international regime which controls and governs intellectual properties. We can only be left behind to our own detriment as a nation, and to the detriment of our principal actors, whom I have mentioned.

Mr. Deputy Speaker, Sir, this Bill--

Mr. Orendo: On a point of order, Mr. Speaker, Sir. I apologise for interfering with hon. Wako's contributions, but I am seeking direction from the House, in view of many issues that have been debated either by this House, the Chair or the courts, affecting certain Bills that have come to this House; as to whether or not they comply with the Constitution.

Mr. Speaker, Sir, probably it may be an exercise in futility for the Attorney-General to address the House fully on this matter before he gives directions as to whether or not the Constitution is being flouted, or otherwise.

Clause 43 of this Bill gives powers to prosecute persons, who have allegedly committed offences falling under this Bill, to an inspector or a police officer - an inspector, as defined in this Bill is not necessarily a police officer - or any other person authorised by the Board. Then it goes on to say, that whoever authorises the Board has to get approval from the Attorney-General. The Bill is not clear whether or not, it is approval for that specific offence or a general approval to prosecute given by the Attorney-General.

Mr. Deputy Speaker, Sir, the issue which I wanted to be given direction on, is this: Since under Section 26 of the Constitution, the Attorney-General is given powers to prosecute, withdraw prosecutions, and hence take over prosecutions, there is no provision under Section 36 where the Attorney-General is given powers to approve prosecutions which are initiated by---

Mr. Deputy Speaker: Mr. Orendo, you are now debating the Bill! You have not raised any point yet! What is your point?

Mr. Orendo: Mr. Deputy Speaker, Sir, Section 26 of the Constitution gives the Attorney-General specific powers to institute prosecution. He can take them over or terminate prosecution. It does not give him powers to delegate or to approve prosecution. That is the power which is not there in the Constitution. So, the direction I am seeking, is that, this particular Clause is giving the Attorney-General powers which are inconsistent with the powers which are given to the Attorney-General *vide* the Constitution. We are going into the same problem that we have had with other Bills that have come to this House, including the Anti-Corruption Authority Act where the

Attorney-General was trying to surrender prosecution powers to another body. It was said here, that, that would cause a conflict.

Mr. Deputy Speaker, Sir, if you look at that Section 26, particularly sub-section 4, which gives the Attorney-General when effecting the general enforcement of those powers, to direct a police officer to carry out the investigations. Under this Bill, he does not have those same powers. The Attorney-General has those powers under Section 26, because he has certain responsibilities which he has to carry out without the direction of anybody.

Mr. Deputy Speaker: What is your point?

Mr. Orengo: Mr. Deputy Speaker, Sir, you may not be in a position to give that direction now, but I am begging the Chair, so that our work is not in vain to assist us. Everyday we are being shot down by the courts. In fact, at the moment, the Attorney-General is looking at those cases or the prosecutions in the courts, under the Copyrights Act.

Mr. Deputy Speaker: Order, hon. Orengo! What you are saying is tantamount to asking the Chair to interpret the Constitution. But you will be given an ample opportunity to make your contribution. If there is need for the Chair to make a ruling, I will do so. The Attorney-General has hardly finished his contribution, and we do not know whether he is going to handle Section 43 of the Bill. So, just hold your horses until I propose the question and then give you an opportunity to contribute to the debate.

Mr. Orengo: Mr. Deputy Speaker, Sir, I am not challenging the Chair. I can hold my horse, but the Attorney-General must bring to this House Bills that comply with the Constitution, before we debate them. In this Bill, there is a clause which is violating the Constitution. How can the House proceed to debate a Bill which is violating the Constitution? That issue needs to be resolved! Otherwise, this can be an exercise in futility, and we will look foolish in the courts we start losing cases everyday. In fact, the Attorney-General is aware that there are so many cases pending before the court, which he has not solved!

Mr. Deputy Speaker: Order, Mr. Orengo! Just, proceed, Mr. Attorney-General.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, the hon. Member of Parliament will have ample time to contribute on this Bill. After making his contribution, I will respond on the issues he has just raised. But I am glad that he is only complaining about one sub-section out of more than 50 sections of this Bill. A sub-section is not the main thrust of this Bill and, therefore, that can be dealt with. If there is a problem with a sub-section of the Bill, it does not mean that the entire Copyright Bill must be thrown out, because a sub-section, which deals with a tiny aspect of the Bill, is unconstitutional.

Mr. Deputy Speaker, Sir, I am very much aware that he met the Audio-Visual Workers and Distributors Association. That is why he is anxious to raise this matter. Those people are complaining through a memo which they presented to me, that policemen have been harassing them when they go and take copies which in the eyes of the police, are infringing on copyright rules. They are also complaining that police officers have taken action against them under the existing Act.

The action that has been taken against them under the existing Act---

Mr. Deputy Speaker: Order, Mr. Attorney-General! I think you are now debating a matter which is not before this House!

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, all I am saying is that the hon. Member should declare his interest. If he wants to pursue the interests of the Audio-Visual Workers and Distributors Association---

Mr. Deputy Speaker: Order, Mr. Attorney-General! Now, you are missing the point of this debate. We do not want you to introduce documents which have not been made available to the rest of the House. If you received that document in your office, and it is not related to this particular Bill then you should not refer to it.

Please, proceed with the debate on the Bill which is before the House.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, in light of your ruling, I will reserve my comments on Section 26 of the Constitution until I reply.

Mr. Deputy Speaker, Sir, this is an important Bill. On the enactment of this Bill, the current Copyright Act, Cap.130 of the laws of Kenya, which commenced on 1st April, 1966, will be deleted. I want to show hon. Members the considerable improvements that have been made to this Bill, to take into account the developments made in this area of copyright.

Mr. Deputy Speaker, Sir, Clause 2 of the Bill has additional definitions of words which are not there under the current Act. For example, we have terms such as: "authentication device" which include banderole, hologram or any other device used as proof that a copy is genuine. One of the major complaints raised by stakeholders is the issue of piracy, which has to do with determining whether a copy is genuine or it is a copy infringing on somebody's copyright. Under this Bill, there will be an "authentication device" which will show that

a copy is genuine and not subject to being confiscated.

We have a more elaborate definition of who the author is. That definition takes into account a computer programmer, which was not there at the time of the existing Copyright Act. We have got definitions such as "banderole" which means a serialised identification or authentication adhesive or stamp which is affixed to all genuine copyright works. We have a wider definition of communication to the public, reproduction and folklore within the definition clause.

This Bill treats folklore the way all other works are treated. Under the existing Copyright Act, folklore was treated in a subsidiary manner. It was to be enforced in accordance with the rules that the Attorney-General would put in place under Section 42 of the Act. But as we look at the Copyright Bill now, the folklore issue is being given the same force of law as any other copyright works. In other words, we are saying our own culture and traditions are as important as any of the works that may be produced in a modern society. So, when we come to definitions, we have got a lot of new definitions which are not only an improvement, but which take into account the new developments that have occurred in this particular area.

Mr. Deputy Speaker, Sir, let me now come to area of administration. This is one of the major changes that are going to occur. As I stated earlier, currently the Copyright Unit within the Registrar-General's Department is headed by an Assistant Registrar-General in my office, who administers copyright issues. Upon the enactment of this Bill, we are going to have the Kenya Copyright Board established as a body corporate to administer the Act. As a body corporate, it will have the usual functions of the board and so on. But I want to draw the attention of this House to the membership of the Board. The membership of the Board will consist of: The Chairman, who shall be appointed by the Minister from amongst the members of the registered copyright societies. So, therein, you will see that the Chairman will not just be appointed out of the blues. He will not be appointed for the sake of being given a job. There is a limitation on the powers of the Minister in the appointment of the Chairman. The Chairman must be appointed from amongst what I would call the stakeholders under the Act.

Mr. Deputy Speaker, Sir, in the Board, we shall have one member representing registered software associations, one member representing registered musicians associations, one member representing registered filming associations, two members representing publishers, authors and writers associations, one member representing the performing artists associations and one member representing public universities. Then there will be the usual Permanent Secretary of the Ministry responsible for matters relating to broadcasting, the Attorney-General or his representative, the Commissioner of Police or his representative, and so on. All those officials will be representing Ministries which have direct relevance to the issue of copyright.

Mr. Deputy Speaker, Sir, during the Committee Stage, I will add two more members. There will be one member representing the registered association of producers of sound recordings and one member representing the association of broadcasting stations. That is in recognition of the fact that, through the liberalisation policy, we have more than one broadcasting station. So, the broadcasting stations will be represented in the Board. In the Committee Stage, I will move an amendment to have those two additional members included in the Board.

Mr. Deputy Speaker, Sir, it is the Board that will implement the Copyright Act. It is the Board which shall be responsible for all matters of copyright and related rights in Kenya, as provided for under the Copyright Act. It is the Board which shall supervise and monitor the Kenya Copyright Law as well as its relation to the international legal regime, and advise the Government on the same. It is the Board, consisting of stakeholders, which shall licence and supervise the activities of collective management societies, as provided for under the Act. It is the Board which shall device promotion and introduce training programmes on copyright and other related matters. It is the Board which shall advise and regulate conditions for the conclusion of bi-lateral and multi-lateral agreements between Kenya and other countries. It is the Board which shall maintain an effective databank on authors and their works. It is the Board which will enlighten and inform the public on matters relating to copyright and other related rights. In other words, it will no longer be just a junior official in my office responsible for that, but a Board controlled by interested stakeholders. It will be in charge of implementing the Copyright Act. On the enactment of this Bill, the Attorney-General's Office will no longer be responsible for enforcing the Copyright Act. It will be the Board consisting of stakeholders to enforce their rights under the Copyright Act.

Mr. Deputy Speaker, Sir, the Board will have an Executive Director. If you look at page 37, just like the appointment of the Chairman is limited; that he must be among the stakeholders, so is the appointment of the Executive Director. The Executive Director cannot just be any Director! He will be appointed by the Minister, but on the recommendation of the Board controlled by the stakeholders.

Also, not just any person will be given the job of the Executive Director. The Director will be appointed through a transparent process. He must also meet certain qualifications relevant to the job. If you look at Clause 11 Sub-Section 2 on page 37, it clearly says that:-

"No person shall be appointed under this Section, unless such a person is:-

- (a) A person qualified as an advocate of the High Court of Kenya, of not less than five years standing, or has held a judicial office in Kenya; or, (B) has at least, five years experience in matters relating to copyrights and other related rights; or, (C) has served in a senior position in a copyright office for, at least, three years."

So, an Executive Director must be knowledgeable, an expert and one who can provide leadership on issues relating to copyright.

Mr. Deputy Speaker, Sir, if I may move on quickly, under the Bill, you will find that we have detailed definitions of copyrights and other related matters under Part Three. I do not really want to go into that. I think the provisions are straightforward and self-explanatory.

Mr. Deputy Speaker, Sir, the other area that I would like to touch on relate to protection or infringement. I do not want to dwell on Part Three. It is, more-or-less, straightforward and most of those provisions are in the current Copyright Act. Let us move on to Part Four which deals with infringement. The greatest improvement on this Bill is on the methods of enforcement. The current Act is very weak with regard to provisions relating to enforcement. This Bill provides, at least, four different methods of enforcement. The infringement of the copyright law can be enforced through civil action, or what we call in law "Anton Piller Order", criminal action and through inspectors.

Mr. Deputy Speaker, Sir, through civil action, a person who alleges that his copyright has been infringed has a right to go to court and sue the person or the authority, or the institutions which have infringed his rights and can ask for a relief by way of damages and injunction on accounts. He can also request the court to order that all the infringing articles be delivered up to the plaintiff--

*(Mr. ole Ntimama and Mr. Kones
consulted loudly)*

Mr. Deputy Speaker: Order! Mr. ole Ntimama, this is Parliament!

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, Mr. ole Ntimama has a very distinctive and infectious laughter and I would request him to listen very carefully to what I am saying because he may well wish to have that laughter recorded as his copyright.

(Laughter)

Mr. Deputy Speaker, Sir, such a person can also, in a civil action under our laws, ask that he be awarded. This new section, "a" and "b" appears on page 61 of the Bill. One can be awarded an amount calculated on the basis of reasonable royalty which would have been payable by a licensee in respect of the type of the work concerned. He can also ask - and this is also a new section, the court to direct an inquiry to be held so that it can determine what he has lost. Whereas this was there under the Common Law through decisions of the court, it is now being made part of the Statutes. In situations where there have been grave breaches or violations of an infringement, he can also ask for additional damages which the court may consider appropriate in the circumstances. I think that is what we call aggravated damages over and above the damages which are compensatory in nature. That is one issue by way of civil action.

Mr. Deputy Speaker, Sir, there is also what we call the Anton Piller Orders and that is provided for in Clause 37 of the Copyright Bill at page 66 which states:-

"If a person has a *prima facie* evidence that his right has been infringed by another party and he satisfies the court or competent authority that *prima facie*:-

- (a) he has a cause of action against another person which he intends to pursue;
(b) the other person has in his position documents infringing copies or other things of whatsoever nature which constitute evidence of great importance in the substantiation of that cause of action; and,
(c) there is the real and well-founded apprehension that the documents, infringing copies or other things may be

hidden or destroyed or rendered inaccessible before discovery can be made in the usual way, the court or competent authority as the case may be, may make such order as it considers necessary or appropriate to secure the preservation of the documents, copies or things as evidence."

Under the Anton Piller Orders, he can go to court to seek for an order that the infringing articles or works or documents be secured and preserved as evidence in the case that may come up.

Mr. Deputy Speaker, Sir, because of the nature of the application, this order can be given *ex-parte*. In other words, it can be given in the absence of the person against whom it is being alleged this is happening. But the complainant has to satisfy the court that he has a *prima facie* case. The reason behind this is that if the other person is served to come and argue, those very copies may be destroyed and there would be no evidence whatsoever. The main reason of making this application is to ensure that the said evidence is preserved.

Mr. Deputy Speaker, Sir, then, we have criminal offences that would be committed. On the whole, the penalties have been increased four-fold from the current penalties which are here under the Copyright Act to deter piracy in this country. All the principal actors, all the genuine authors and musicians have complained of one thing; that we are not effectively protecting the infringement of their copyrights. This means that there is a lot of piracy in these fields and, therefore, they are not getting the benefit that ought to accrue to them. Therefore, the penalties that we have put in place are deliberately aimed at deterring piracy in this country. In addition to civil action, under the Anton Piller Orders, the criminal action is there. In this criminal action, if somebody is found guilty, there will be heavy penalties which will befall that person. The penalties have been increased four-fold from the current penalties under the Copyright Act.

Mr. Deputy Speaker, Sir, in order to administer the Act, the Board must have a machinery to do that. One of the weaknesses under the Copyright Act is that we have relied on the regular police to enforce it. First of all, the regular police have so many other issues of law and order which they have to attend to. They also have so many other criminal cases that they have to attend to. Therefore, this really becomes as an additional burden on them and because of the technical nature of this work, it is not clearly understood or appreciated what this is all about. Therefore, we must have a special calibre of policemen and people having police powers and who can help the authors to enforce this Bill when enacted. That is why in Part IV, we have the inspection. Under Clause 39, we say:

"The Board shall for the purposes of enforcing the provision of this Act appoint such number of inspectors as the Board considers appropriate and shall issue to them in writing or in such form as may be prescribed, certificates of authority to act as such inspectors."

Under Clauses 40, 41 and 42, the powers of the inspectors are clearly spelt out.

Under Clause 43, an inspector, a police officer or any person authorised thereto in writing by the Board, may subject to the approval of the Attorney-General, who is the ultimate authority on issues relating to criminal prosecution, prosecute in subordinate courts and offences under this Act.

In fact, these officers will be working under delegated powers by the Attorney-General. I wanted to remind my learned friend, Mr. Orenge, that he seems to know only a few subsections of Section 26, but not all of them. During my reply, I will be reading out and reminding him of the other subsections of Section 26 which he did not quote. So, we shall have this calibre of people or inspectors who will help the Board and the stakeholders. By doing so, they will be helping the principal actors directly on enforcing their rights under this Bill when enacted.

Mr. Deputy Speaker, Sir, under Part VI we have the collective administration of copyright. The basic principle underlying this copyright is that the administration of copyright matters must ultimately be done by the stakeholders. The aim of this Bill is to provide that legal environment in which they can undertake the enforcement. Under Clause 46, no person or association shall commence or carry on the business of the copyright collecting society except under, and in accordance with the certificate of registration granted under this Act. All applications for registration as collective societies shall be made to the board.

Every certificate shall be in a prescribed form. The board may approve a society if it is satisfied that the body is a company limited by guarantee and incorporated under the Companies Act. It should be a non-profit making entity because we do not want to have associations which are formed for the purpose of exploiting the actual principal actors, that is, the actual owners of the copyright. That is why we must be satisfied that, that corporate body is a non-profit making entity which exists solely for the purpose and benefit of its members. It must also, in its rules and regulations, contain such other provisions as are prescribed, being necessary to ensure that the interests of members of the collecting society are adequately protected. Such a body must also have as its simple objective negotiating the collection and distribution of royalties. Its accounts must be regularly audited by independent external auditors elected by the society.

Clause 46(7) touches on the transitional provisions because when this Bill becomes law, there could be a void since none of the collecting societies may have been registered by then. It states that there shall be a transitional registration period not exceeding six months from the date of commencement of the Act. Under Clause 47(8), this will enable all collecting societies that are presently registered under any written law in Kenya, to obtain certificates under the Act, within a period of six months. This means that on enactment of this Bill the existing collecting societies, most of which will be members of the board, will continue to exist for a period of six

months within which time they should apply for registration.

The other important provision is the issue of royalties. The approved society shall levy royalty payments in proportion to the user's gross income resulting from the exploitation of his work, provided that royalties shall not exceed 20 per cent of the gross income referred to and such royalties shall be fixed by tariffs in accordance with the following principles. Again, here we are trying to guard against these approved societies exploiting the real owners of copyrights by putting in place principles which will govern the tariffs. The proposed tariffs shall be negotiated with the main users or the association. The tariffs shall be approved and published by the board. The collecting society shall distribute all collected royalties to the authors and publishers of the exploited works after deducting the approved percentage to cover their own costs and their contribution to the benevolent fund. Part of it will also go to the board to run its activities.

Mr. Deputy Speaker, Sir, we then have the competent authority which will act as an arbiter between the board and the members. It is provided for on page 80. The copyright authority means authority of not less than three and not more than five persons, one of whom shall be a qualified advocate of the High Court of Kenya with not less than seven years standing or a person who holds or has held a judicial office in Kenya who shall be the chairman. You will note that whereas, formerly, the executive director did only have five years experience as an advocate to be a member of the competent authority which is really the arbiter. Under this law, the executive director should be a senior person. That is why we have specifically included the phrase: "...at least five years standing".

I do not want to go into great lengths on an otherwise excellent Copyright Bill which as I said, is as a result of intensive consultative meetings between the various stakeholders. These are representative associations of the various organisations like authors, musicians, broadcasters and so on. We have had extensive meetings and I want to take this opportunity to thank them for their contribution which has made it possible to have this excellent Bill.

With those few remarks, I beg to move.

The Assistant Minister for Energy (Eng. Manga): Thank you, Mr. Deputy Speaker, Sir. I beg to second this very important Copyright Bill which should have been amended a long time ago.

As time goes, things change and we are living in the world of change and rapid development, especially in information technology. This Act needs to be looked into again and improved so that it can benefit the principle actors. This Bill seeks to improve the quality of the board members. It seeks to have specialised women and men who can deal with the problems that come up in the Copyright Act. The appointment of an executive director is a very important function. This appointment should not be based on political affiliation or any other biased considerations. The executive director must be a specialised person who can guide the board to carry out its functions in a proper way.

This Bill, which the Attorney-General has moved today, also seeks to improve on the enforcement of the Act. It has been said that there is an Act in place which has no teeth. Today the Attorney-General seeks to give teeth to this Act so that it can really bite when people contravene it.

The Bill seeks to have specialised inspectors who will assist those who are enforcing the law, to be able to handle it technically and come out with proper reasoning to help the principal actors. It is important to have an Act which is very accurate, so that it can protect those it is meant to.

Mr. Deputy Speaker, Sir, the Copyright Act is an international Act. It is an important law which is recognised world over and especially, to encourage those who are doing some important work. It assures them that their work will not be copied by other people without caring for what they have suffered.

With those few remarks, I wish to second this Bill.

(Question proposed)

Mr. Muite: Mr. Deputy Speaker, Sir, you heard the hon. Attorney-General tell this House that this Bill is a result of a lot of consultations between stakeholders, presumably those who are to be found within the territorial boundaries within the Republic of Kenya. However, when you go to page 87 of the **[Mr. Muite]** Bill; that is The Memorandum of Objects and Reasons, what do you find? You find that the object of this Bill is to repeal and replace the Copyright Act, Cap.130 of the Laws of Kenya. This is the Act which currently provides for the protection of copyrights in literary works, musical and artistic works and so on and so forth. The need to repeal and replace this Act arises not from consultations with stakeholders as the Attorney-General is telling us. It is stated here that:

"The need arises from multiplicity of development in copyright law on the international scene including a number of treaties and agreements to which Kenya is a party. This Bill seeks to

modernise an important part of Kenya's regime of the Intellectual Properties Law and bring it into conformity with the said international instruments. As a member of the Berne Union and of the World Trade Organisation (WTO), Kenya is required---."

This is the real objective. Kenya is required by who? Is it by the WTO or the Berne Convention? Are these the stakeholders that the Attorney-General is suggesting that they held intensive consultations with?

Mr. Deputy Speaker, Sir, I have gone through this Bill and I support it because I think to a very great extent, it is going to be able to protect particularly, the local musicians. However, I would like to sound a word of caution here. When the Attorney-General of this Government starts talking about the WTO and international treaties---

The first priority before you append your signature to those international treaties and the WTO, is to ask yourselves: "How is this international instrument or treaty going to benefit the nation and the people of Kenya?" This is because this is the question that these other bodies and nations ask themselves. When the WTO which is mentioned here is imposing terms and conditions on international trade, they are benefitting the developed countries.

The time has come for the developing countries or the Third World to also put the priority of the national interests of a particular country at the head of the list of our priorities.

Mr. Deputy Speaker, Sir, so through you, let the Attorney-General not take pride in putting in the Memorandum and Objects of this Bill the WTO and the Berne Convention and so on and so forth. We want him to say that the main objective of this Bill is to protect the nationals of Kenya; that is the musicians, writers, playwrights and the others. That is our own embryonic intellectual property. This is what we need to promote. If there is a conflict, for example, in a lot of areas there will be conflicts between our interests. One example is in the area of these seed varieties that are being developed. You find that the international conventions are actually drawn in a manner that prejudices the developing countries and we are going to be locked out. We are going to be exploited unless we are very careful. It is only recently that we started talking about allowing generic drugs to be imported into this country. These are some of the dangers.

So, when you are talking about international treaties, the WTO and developed countries, before we append our signatures to any instrument we must be satisfied that the provisions of those treaties and the terms being given by the donors and the WTO are going to result in some tangible benefits to Kenya, in her peculiar position as an under-developed country. That is why India has refused to sign a lot of these copyrights and treaties regarding drugs and things like those, so that they can manufacture drugs at a cheaper cost in order to benefit their own people.

Mr. Deputy Speaker, Sir, when one goes through the Bill, there are a number of little points that I would like to draw the attention of the Attorney-General to. On page 43, Clause 23, I support the spirit behind this particular Clause. It states:-

"Copyrights shall be conferred by this section on every work eligible for copyright of which the author or in the case of a work of joint authorship, any of the authors is at the time when the work is made, a citizen of Kenya or domiciled in Kenya or resident in Kenya."

Now, the Attorney-General as a lawyer will know that the term "resident" on its own is really not a legal term. I would plead with him to put the word before the word "resident", "ordinarily resident" so that it becomes a legal term. When you talk about "ordinarily resident", then that has got a special connotation. This is because otherwise, you can create a loophole where people come here for a week, two weeks, a month or three months and claim that at the material time when they put in their applications, they were residents in accordance with Clause 23. I think if the Attorney-General adds the words "ordinarily resident", then we will be able to equate it.

In fact, then you elevate the quality of the resident, to that of a person domiciled in Kenya or a citizen. Mr. Attorney-General is aware---

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

Mr. Deputy Speaker: Mr. Attorney-General, there is really no such a thing as a point of information under the Standing Orders.

The Attorney-General (Mr. Wako): Okay, Mr. Deputy Speaker, Sir. I just want to state that I am taking your points, but also to inform the House that I know my learned colleague is an expert in these matters. This is because when we were in the private sector, he was an expert on matrimonial cases where we have this term "ordinarily resident" being able to sue either for divorce or maintenance. So, I take his advice on that matter very seriously.

Mr. Muite: Mr. Deputy Speaker, Sir, the Attorney-General will also remember the deliberations we had in the Council of Legal Education when the late Chief Justice James Wicks was presiding and hon. Karugu was there. We were arguing about the phrase "ordinarily resident"; who was at that time entitled to be admitted to

serve in Kenya. So, the Attorney-General will remember that occasion. This is an important point. One of the judgments we relied on was by Lord Alfred Denning, because in England at that time, if one was ordinarily resident within an area of a local authority, then one was entitled to a bursary to join the university. An Indian who, unfortunately, had been resident in England for a very long time applied for that bursary and the local authority said: "We are not going to grant you the university bursary because you are not ordinarily resident here." The case went up all the way to the Court of Appeal, and Lord Denning wrote a judgement saying: "This Indian, his uncle is in Kenya; his brother is in Pakistan and his sister is in Canada. He has only come to this little island of ours for the purposes of education, but his centre of gravity is not in England. Therefore, he is not ordinarily resident in England, although he has stayed there for 15 years." That is why I am saying: Let us use a legal term so that we avoid these loopholes.

Mr. Deputy Speaker, Sir, on page 33--

Mr. Deputy Speaker: Are you going backwards?

Mr. Muite: Yes, Mr. Deputy Speaker, Sir. Again, you will see that the Attorney-General - regarding the appointment of members of the Board - part (a) is on the appointment of the Chairman, and I have no quarrel with it. But part (b) provides for one member to represent the Registered Software Association. In terms of elegance in drafting, this is left hanging. Who is going to nominate that member? Is it the intention of the Attorney-General that the Minister should, in his absolute discretion, nominate the member or is it the attention that the Registered Software Association will themselves elect one person? If it is the latter, then, they should say so. I think, at the moment, it is left hanging. That goes also for part (b); one member to represent the Registered Musician Association. Is it the Minister or is it this association that is going to nominate that member? That should be clarified all the way to part (G). When it comes to part (H), I think there is also a little legal oversight there on the part of the Attorney-General because when you look at part (I), the Attorney-General or his representative is mentioned. When you look at part (J), the Commissioner of Police or his representative is mentioned. Why is the Attorney-General discriminating against the Permanent Secretary in the Ministry of Tourism and Information? Why must he himself be the member? Why not his representative as it has been said in respect of the other?

On page 43, there is Clause 22(a). There is the requirement that sufficient effort has to be expended on making the work to have an original character. In other words, a literary or musical artistic works shall not be eligible for copyright unless sufficient effort has been expended on making the work to have an original character. Again, this sort of hangs in the air. In whose judgement will that be done? Is it in the judgement of one of these enforcement bodies or in the judgement of the Board? Some criteria needs to be laid down. We need to know who is to make the judgement because there will be disputes. In whose judgement will that be done?

On page 43, regarding the term of 50 years, I have no yardstick or basis for suggesting whether this period is reasonable or unreasonable. I have not heard the Attorney-General elaborating on why it should be 50 years. Is that the normal period or is it a figure that the Attorney-General, in consultation with the stakeholders internally and externally, has agreed upon? Is it the normal period? I would like to know if we are going by the normal period.

On pages 36 and 37, there is mention of the salary of the Executive Director, which is going to be decided by the Attorney-General. The Executive Director will be a servant of the Board. I am a little at a loss as to why the Attorney-General under Clause 11 should recommend that the terms and service of the Executive Director should be determined by the Minister. You will see that the Executive Director, although he is being appointed on the recommendation of the Board, he will be the Secretary to the Board and he will be working with the Board. Nevertheless he is being appointed on terms and conditions of service as shall be determined by the Minister. One wonders whether the Minister wants to ensure that the loyalty of the Executive Director is directly to him or her rather than to the Board. This is because after all, in the day to day management of affairs of the Board, the Director will be acting as a servant of the Board. Why do you not allow the Board to negotiate his or her terms and conditions and salary because whoever pays the piper calls the tune? If it is the Attorney-General who will be deciding on the terms, conditions and remunerations of the Executive Director, he will be like the chief officers in the local authorities who do not listen to the elected councillors because their terms and conditions of service are fixed by the Ministry of Local Government. It is the Ministry which transfers and promotes them. They can totally afford to ignore the elected councillors. I would suggest to the Attorney-General that the salary should be fixed by the Board in consultation with the Minister so that he or she becomes truly answerable to the Board and not to the Minister.

Regarding Clause 48, on page 79, the Attorney-General recommends for the establishment of a competent authority which will be appointed by the Minister for the purpose of exercising jurisdiction under this Act, where any matters require to be determined by such an authority. He goes on to give a long list of powers to this particular authority, which he is going to appoint. Again, to my mind, it looks a little in elegance. We have

already established a Board and given powers to it. In terms of enforcement, we are also creating various other authorities which will license various societies. Do we need now to superimpose another authority appointed by the Minister? Why can we not vest those powers which these authorities require to execute here in the Board? Why does the Attorney-General want a multiplicity of roles which will cause conflict and overlaps of powers and jurisdictions? Again, I would ask the Attorney-General to reconsider the desirability of creating these other authorities vis-a-vis vesting these powers and authority on the Board so that we have one centralised authority to carry out the administration of the functions of this Act.

Finally---

Mr. Deputy Speaker: Clause 48 provides for the setting up of an equivalent tribunal which will adjudicate between the Board and Societies?

Mr. Muite: Under Clause 48, there is no tribunal which is being set up.

Mr. Deputy Speaker: Well, it is a kin to it.

Mr. Muite: Then why do we not say so?

Mr. Deputy Speaker: That is better.

Mr. Muite: Yes; let us say so. The Authority is being given powers over the Board. We should create it as a tribunal and provide for the qualifications and composition of its membership as we have done for the Board. That way, there will be no room for arguments.

Mr. Deputy Speaker, Sir, finally, I believe that this Bill is aimed at protecting the local artiste or the intellectual property of Kenyans. So, once we enact this Bill, we should not leave the dissemination of information to the Board. Let the Attorney-General get his counterpart in the Ministry of Information and Tourism, and in other relevant Ministries, to disseminate as widely as possible information regarding the desirability of our local people registering their creativity under the Act.

One of our greatest problems is failure to enforce existing legislations. For instance, even the provisions contained in Chapter 30 are hardly enforced. The situation in the music and book rights world is purely anarchical. Infringement of the existing copyright laws goes unpunished. So, there is one more issue here: Enforcement of these provisions, which I hope will be prioritised by the Board and by the office of the Attorney-General. There is no need of having good laws if those laws cannot be enforced ruthlessly. So, let there be no question about the enforcement of the provisions that we are enacting.

Secondly, let us disseminate as widely as possible through the Ministry of Information and Tourism the advantages of our local artistes registering their creativity and work.

It is a great shame that people who have provided Kenyans with so much entertainment through local television series such as *Vitimbi* and, the famous musician, the late Mr. Fadhili Williams and artiste Mzee Pembe, have died as paupers. Even the copyright of Mr. Fadhili Williams' most famous song, *Malaika*, has now been claimed by people outside the country. Mr. Fadhili Williams died only the other day as a pauper. Mr. Fadhili Williams was not the only local artiste who has died as a pauper. All our famous musicians have ended up dying as paupers. So, let us bring this state of affairs to an end by encouraging local musicians to register any new creativity under these new provisions, so that they can be protected.

Although the Attorney-General has talked about self-regulation, the Government should come up with strategies of encouraging creativity amongst Kenyans. We should set up a budget for this purpose, even if this calls for the giving of awards to artistes for exemplary performance. A nation which does not invest in research cannot develop. Research should cover all areas of human endeavour. Music, books and plays are part of our culture. If there is adequate financial returns, we will draw this kind of creativity out of our young and brilliant men and women. The Attorney-General should come up with a budget for this purpose although he says that the implementation of the law we are about to enact will not cost a lot of money. So, I suggest that in the next financial year, the Attorney-General sets up a small fund to encourage creativity amongst Kenyans under the law we are about to enact.

With those remarks, I beg to support.

Mrs. Sinyo: Mr. Deputy Speaker, Sir, I rise after my eloquent party leader, Mr. Muite, to support this Bill, which was brought here by boss, the Attorney-General.

Mr. Deputy Speaker: Mrs. Sinyo, the Attorney-General is your former boss.

Mrs. Sinyo: Mr. Deputy Speaker, Sir, a boss remains a boss.

(Laughter)

I wish to support this Bill except for one thing. I seek the indulgence of the Chair to remind me of the

contents of Clause 33(1) of this Bill. This is the only area where area I intend to make some adjustments. I will move the amendments during the Committee Stage.

Mr. Deputy Speaker: Clause 33(1) reads as follows:-

"Subject to this Section, copyright shall be transmissible by assignment, by license, documentary provision or by operation of law---"

Mrs. Sinyo: Mr. Deputy Speaker, Sir, could you also read out for me Clause 32(1)?

Mr. Deputy Speaker: Clause 32(1) reads as follows:-

"Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to:

- (a) claim the authorship of the work; and,
- (b) object to any distortion, mutilation or other modification of or other related action in relation to the said work, which will be prejudicial to his honour or reputation."

Mrs. Sinyo: Thank you, Mr. Deputy Speaker, Sir. The point I am illustrating to the House and the Attorney-General here is that this Bill is now a copyright of the Government Press. However, the Government Press has not provided an alternative presentation of the Bill to enable me in this House access its contents.

The Attorney-General is a veteran of human rights. During his time in private practice, and now in Government, he demonstrated this by, for example, appointing the task force which reviewed the law relating to persons with disabilities. Right now, the Office of the Attorney-General and that of the Vice-President and Minister for Home Affairs, have a Bill relating to people with disabilities, which the Attorney-General is dilly-dallying with so that he does not table it in the House. In this Bill, the rights of persons with disabilities and, more specifically those of the blind, to access information are paramount.

Mr. Deputy Speaker, Sir, when it comes to the Copyright Bill, on a humanitarian point of view, I would like us to address the needs of the blind and, specifically in the education system. All textbooks are written on white paper and in ink. For a blind student, irrespective of whether he is in a nursery, primary school, secondary school, tertiary institution or university, he has no direct access to any textbook unless and until they are transcribed into braille for him to use his fingers to access the information, or the information is put on an audio tape, or thirdly, he gets a reader to directly read out the information and he sits down and listens.

Mr. Deputy Speaker, Sir, while we are talking about the Copyright Bill, and especially Section 32, I would want to come up with an amendment to provide that the authors will not have absolute objection to any modification of their text, especially when it applies to the benefit of the visually impaired persons. This is because there is no way we will directly access any information unless it is changed from print into braille, put on cassettes or somebody reads it to us directly. If blind students have to study mathematics or geography, definitely the text already in print will have to be described verbally or a diagram will have to be explained in a manner or distorted in a form that will enable the visually impaired person to perceive what actually is on the printed copy. So, under Section 32 of the Copyright Bill, in spite of excellency of the Bill, I want to create an exception to it. I will bring my amendment in consultation with the visually impaired persons. This is a matter of deep concern.

On that note, I would also want to recommend that in the representation on the Board, if all people and associations are to be represented, it would be prudent and very humanitarian of the Attorney-General to consider putting on it a representative of the association of the visually impaired, particularly those dealing in transcribing copyright texts, be they textbooks, novels or just story books. Even broadcasting institutions which would take information from a book and act it should make the visually impaired persons follow what is in the book.

I would propose that if the Attorney-General is not conversant with some of these issues, we have organisations dealing with such issues, such as the African Braille Corporation (ABC), situated along Langata Road. It transcribes braille for Africa as a continent. The institute ensures that blind children in primary and secondary schools have textbooks to use and blind teachers have textbooks to use in teaching their students. It would be a noble idea for the Copyright Bill to be put in braille form.

It saddens me that even at an age like this one when we are reviewing our Constitution, it is not obvious that disability should be an agenda in any Bill that we table in this House, and much more so, at a time when we are setting precedence of human rights and want good practice. I would have expected my former office, where I served for over 12 years, to have had insight that the needs of the visually impaired persons, when it comes to copyright, would have to be taken on board.

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

Dr. Anangwe: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to make my contribution on this Copyright Bill, 2001.

Let me say from the outset that I support this Bill. But I have to be very frank and call a spade a spade, build upon what Mr. Muite said previously and also to refer to the Memorandum of Objects and Reasons of this Bill. There is a bit of international dimension in this particular Bill. As the Attorney-General has already said in the Memorandum of Objects and Reasons, which Mr. Muite read out, it is very explicit, indeed, and I only need to reiterate it. As a member of the Berne Union and the World Trade Organisation (WTO), Kenya is required to amend her copyright legislation to conform to the agreement on Trade Related Intellectual Property Rights (TRIPS) Agreement. The Bill addresses fully the requirements under the TRIPS Agreement. So, the reason why we need to underline this particular statement in the Memorandum of Objects and Reasons is to understand the context in which this particular Copyright Bill has been formulated. Let us not have any illusions. It is not a homegrown document in terms of the ideas. The sources of the ideas that are inherent in this particular document arise out of international agreements, which we have to implement as a matter of course.

As many hon. Members may be aware, when the TRIPS agreement was being formulated and agreed amongst about 140 countries, there were two requirements which countries were supposed to fulfil in relation to intellectual property rights. One was the formulation of the Industrial Property Act, which we have already formulated in this country. Secondly, the Copyright Bill had to be put in place in fulfilment of that particular requirement. I do not think we have much of a choice because this is a requirement. We executed those agreements and many countries have already acceded to them. Many countries have already passed these legislations and the price of refusing to pass these legislations could, of course, elicit trade retaliations, particularly from those countries that stand to gain from this Copyright Bill.

I am aware of countries in Latin America, particularly Argentina as well as India, which had very strong reservations. We know the kind of wrangles that have ensued between the United States of America (USA) and these countries. These countries were steam-rolled, and as a matter of fact, they had to pass these legislations. So, in order to avoid a situation of that nature, where we will be steam-rolled and overwhelmed, and as part of our commitment in the international arena, it is only fair that we agree and pass this particular Bill to conform to the requirement of the international agreements.

However, sometimes when analysts look at such documents, they tend to say that this is a sign of globalisation. But I have reservations to that kind of conclusion, where we accede to agreements of this nature because the world has become a global village and, therefore, standardisation of such practices has to be adopted the world over. In many respects, laws of this kind, whose sources are international and emanate from such organisations as the WTO, should be seen in their right perspective. As much as we may benefit in one way or another, we must accept that the main thrust of such a document is really to spread hegemonism and neo imperialism of ideas. This particular document is no exception. This is because we want to presuppose that this particular document is within the mode of globalisation. I would presuppose two fundamental things. First, globalisation means mobility of capital and labour. That means that capital and labour would move from one region to another depending on the comparative advantage of that particular region, in order to maximise wealth creation.

Mr. Deputy Speaker, Sir, let us be frank on that particular question. We are not part of the global world in terms of the economy. This is borne out by the facts on the ground. One special reference is, of course, UNCTAD World Investments Report, 2001, which did lay facts very bare in terms of where Africa and the third world stand with regard to the sharing of capital, wealth and world trade.

Mr. Deputy Speaker, Sir, for instance, last year, direct foreign investments grew by about 21 per cent to one trillion dollars. Out of these, only 19 per cent went to developing or third world countries. Out of this, 0.65 per cent went to Africa. The point I am trying to underscore here is that, if these are the kind of figures that are being generated to show our status in the flow of capital at the global level, we are at the periphery. We are not an integral part of the global economy *per se*. We may be there, but we are aliens to the extent that, of course, a document of this nature has been formulated. We are not saying that we are not going to pass this Bill. However, we have to pass it with an understanding that we are peripheral participants and we are unlikely to benefit as much as those who have a higher stake in that particular document of World Investments Report, 2001.

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

Mr. Deputy Speaker: Under which Standing Order are you raising that point?

Mr. Gatabaki: Mr. Deputy Speaker, Sir, it is on the question of relevance.

Mr. Deputy Speaker: Sorry?

Mr. Gatabaki: It is on relevance, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: No! There is a ruling already in this House that, if you want to stand on a point of

order, it must be on two issues: Conduct or procedure. If it is on procedure, name the Standing Order which is being violated.

Mr. Gatabaki: Mr. Deputy Speaker, Sir, I would like to seek your guidance---

Mr. Deputy Speaker: Order! Order, Mr. Gatabaki! You will not seek guidance from me when you stand on a point of order! Unless you tell me what Standing Order the Member on the Floor is violating, I will not allow you.

Proceed, Dr. Anangwe!

Dr. Anangwe: Mr. Deputy Speaker, Sir, probably the hon. Member was not following my argument. The argument I am trying to put across is the question of the international context in which this agreement has been formulated and the context from which we generate these ideas in the Copyright Law or the Intellectual Properties Act. I was only citing one particular example to underscore that particular point; that whereas these ideas emanate from the international arena, Africa or the third world countries as participants in this particular international or global arena are really peripheral participants.

Mr. Deputy Speaker, Sir, the point that I am trying to drive at is that, whereas we may be obliged to accept these ideas, indeed, what is stipulated is the thrust, the object and the interest inherent in this document. This is meant to standardise intellectual property rights at the international level. But as a matter of fact, they are only universalizing the rights of the developed countries such as the United States of America, Europe and Japan.

The rights we are being told to legislate are rights that are beneficial to many of the countries in the West and we are expected to do the same. Of course, what is in it for us is a debatable matter.

Mr. Deputy Speaker, Sir, I know that when the Attorney-General was making his presentation before this House, he did explain certain terms. This particular Bill relates to literary, musical, artistic and audio-visual works, sound recording, broadcasting and other connected purposes. We have to be very explicit in order for one to understand what it is in terms of the details of the Bill. This way, we may be able to accept, whether or not what is being copyrighted or the laws being passed to protect the rights of those who generate these ideas, will benefit both the local people and international world. Of course, one has to look at further definitions of artistic and audio-visual works, sound recordings and the broadcast works. In fact, in many of the cases, it analyses very closely many of the products that are being targeted by this Copyright Law. In as much as we may benefit from that law, our benefiting is just incidental. The bulk of what is in this document, and those rules that are most critical, relate to those that are generated from outside.

Mr. Deputy Speaker, Sir, when you look at Clause 23(1), on page 43, indeed, this particular clause does not fore-close the participation of outsiders. Of course, it says that: There are copyrights in relation to Kenyan citizens, but it also refers to individuals domiciled or resident in Kenya. Also the copyrights relate to a body corporate which is incorporated under or in accordance with the laws of Kenya. That means that Kenyans can register their copyrights. That also means that outsiders who are resident in Kenya and who have intellectual property to protect can also be registered. It also says that the law requires the corporate bodies, including multinational corporations to be incorporated locally and also register their copyrights.

Mr. Deputy Speaker, Sir, the point I am trying to put across is that, this is an open-ended copyright law that accommodates both Kenyans and outsiders. So, it is a "free-for-all" situation in many respects. You can come from the United States of America or from Japan and stay in this country and if you have a copyright to protect, you are free to register it. So, it is not only a Kenyan affair, it is a matter that is open-ended and many will have a right to benefit from it.

Mr. Deputy Speaker, Sir, given the kind of products that have to be copyrighted, we are all aware that, if we are talking about literary works, novels, stories and poetic works, you only need to go to our bookshops and libraries then you will find that the bulk of these books are from outside. When it comes to things like computer programmes which we use to run our computer systems in this country, they come from outside the country.

With regard to sound recording and the music that is played, whether it is over the radio or it is sold in music shops, you only need to count them. The products that are being generated by Kenyans are far too few. We only need to listen to our radios or watch televisions; or even go to night clubs. The bulk of the music you hear on radio, television and in such clubs, is not local. If they are not singing rap music, they are singing *Ndombolo* or some other forms of music. When you look at the TV programme line-up, you will rarely find the *Vitimbi* programme. Probably the *Vitimbi* programme will come once per week on TV. Many of the programmes that we are watching and listening to are, of course, external. They have come either from the United States of America or from Europe. So, the point we are trying to stress is that the implication inherent in this particular Bill is that we have to be very careful because we may end up being losers. Since Kenya is, by and large, a consumer of many of the products that are being protected under this particular copyright---

Mr. Gatabaki: On a point of order, Mr. Deputy Speaker, Sir. According to Standing Order No.68

because it is my right to rise on a point of order. Standing Order No.76 requires the former Minister to be responsible for what he has said.

Mr. Deputy Speaker: What about it?

Mr. Gatabaki: Mr. Deputy Speaker, Sir, is it in order for the hon. Member to mislead the House on the whole idea of globalisation? I am happy that Mr. Biwott is here because he has been articulating the rights of--

Mr. Deputy Speaker: Order, Mr. Gatabaki! Which Standing Orders are you referring to?

Mr. Gatabaki: Mr. Deputy Speaker, Sir, I rise on Standing Order No.68, which gives me the right to raise a point of order. Standing Order No.78, talks about the accuracy of what the hon. Member said.

Mr. Deputy Speaker: I think Mr. Gatabaki, you should read the whole Standing Order No.68. It does not end with 68(1). Standing Order No.68(2) states:

"Mr. Speaker shall either give his decision on the point of order forthwith or announce that he defers the same for consideration after which the Member who was speaking at the time the point of order was raised may continue his speech."

In fact, you have addressed that point of order to the Chair and not to the hon. Member on the Floor, because it is the Chair that should make a ruling. In respect of Standing Order No.76, you are quite right; a Member should be responsible for the accuracy of the statements he makes. So, if you want to use that Standing Order, indicate the statement the hon. Member on the Floor has made which is not accurate and I will rule accordingly.

Mr. Gatabaki: Mr. Deputy Speaker, Sir, I would like to rise on the Standing Order related to accuracy; that the hon. Member is not accurate in the statement he has made and he cannot attest his presentation as the correct situation. The hon. Member has said that the whole idea of globalisation is the mobility of labour and capital, which is not accurate. This is because the whole idea of globalisation is to free every kind of market including labour, capital and any other resource. I can assure the Chair that Mr. Biwott can support my position because he has articulated that idea more than anybody else.

Mr. Deputy Speaker: Order, Mr. Gatabaki! What you are saying is that he has not fully defined globalisation, as you understand it. But really, that is more of a semantic quibble than a substantive issue.

Proceed, Dr. Anangwe!

Dr. Anangwe: Mr. Deputy Speaker, Sir, I agree that on any subject of this nature, which is an academic one, there are many schools of thought, and the hon. Member is entitled to his view. The only thing is that probably, we should have a forum where I should give him, at least, a reading list so that he has a deeper understanding of the issues I am talking about. Let me continue. I was trying to say that the implications inherent in this particular Bill for us, being consumers---

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports (Mr. Osundwa): Mr. Deputy Speaker, Sir, it is exactly---

Mr. Deputy Speaker: Order! Mr. Osundwa, no hon. Member can intervene between a Member on the Floor and the Chair!

Proceed, Dr. Anangwe!

Dr. Anangwe: Mr. Deputy Speaker, Sir, all I am trying to say is that if you look at this Copyright Bill, you will find that it is true that there are certain dimensions that may be relevant to us. But I am also saying that given the fact that we are also consumers of many of the literary, artistic and audio-visual works, sound recording and broadcasts, there are serious implications that, probably, we have to take cognisance of as we formulate it. This is because we may end up being losers in the long term.

One obvious implication in relation to this Bill is that, indeed, there will be an increase in the cost of access to some of these works. Without a copyright law, you may pirate and not pay the full cost of that particular innovation, but with a copyright law and enforcement mechanisms being put in place, you will have to pay the price. So, one obvious implication is that these products which we are trying to provide for a copyright law, and to the extent that they emanate from without, the cost will increase, whereas it may have been easier to get a pirated copy which may be less expensive.

The other implication is that we will deal a death blow on the piracy industry. I accept that those people, who invest their energies to generate ideas and innovations, have a right to reap the fruits. This is because without that kind of protection, there may be no motivation for investment in innovation. It costs money to innovate; it costs money to produce a product and it is only fair that once that investment has been incurred, unless you are given a lead time to recoup the resources you invested, in future, you may be unable to engage in that kind of enterprise. But on the other hand, we have also to take cognisance of the fact that within this country, the piracy industry employs people, and there are some people who generate their income through piracy. That is the reality.

Whether or not we are able to enforce these particular copyright laws so that we proscribe them, the fact of the matter is that there are some Kenyans who are in the piracy industry. These Kenyans either pirate the cassettes which you see being sold in matatus, bus stops or even in music shops. In the process, there are some Kenyans who sell these particular products and earn a living. What will we do about them? There are some Kenyans who sell pirated video-tapes. There are video shops that, of course, lend out or sell these products, and in the process, some Kenyans earn income.

The implication of this Bill, if it is passed is that we will have to close those shops. That is the reality. There are some people in this country who have computers, but have not paid the full price of the computer programmes, whether they are Windows 97 or Lotus. If we pass this particular law and it is enforced, the implication is that Kenyans who survive on this industry of piracy will be out of business. It is an implication that we really have to take cognisance of and realise that Kenyans will suffer as a result of this particular Bill.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, the other dimension which arise from this particular Bill is that unlike the Copyright Law 130, this one includes many things. It will require additional and institutional infrastructure in order to enforce it. Who will pay the price? More so, when we are seeking to copyright and protect products or innovations that emanate from without, will we be subsidised? Will we be assisted? I know that under the TRIPS Agreement, Article 67 does provide that in the event that their enforcement will be a cost to a developing country, that particular developing country has a right to invoke that particular Clause in order to allow it to access financial and technical assistance from developed countries; countries that stand to benefit by our enforcement of this particular law.

Mr. Temporary Deputy Speaker, Sir, I know that Clause 16(2) provides that Parliament will appropriate. But let us not underestimate the magnitude of the work involved in enforcing that and ensuring that pirates are stamped out. We will have to retrain our policemen to be able to understand the full dimension of all those products that are involved, so that they are able to put a stop to malpractices. We will also have to retrain our customs officials, so that they could stop malpractices at the borders. There is an implication in terms of institutional arrangement and finance, which is only fair that other people should pay the price under Article 67. This is because many products and works that have been targeted for copyright here come from outside the country. We should not tax Kenyans in order to protect what is due to outsiders, unless they are willing to pay the price.

Mr. Temporary Deputy Speaker, Sir, Clause 23 provides for various types of works and the date of the expiration of the copyright. I think the Attorney-General may have difficulties in relations to certain works, particularly when we are talking about computer programs. Computer programs have no lead-time; they do not last for very long time. When a computer program is created, it may not even last a year. That is why, each time you look at, say, a microsoft product like Windows, new products are coming up. If you put 50 years as the duration required for that particular work to last, by the time that work is 50 years old, it may no longer be in use. So, we will have to be very flexible and relate the duration on the kind of products we are dealing with.

Also, music, for that matter. What we are simply saying here is that a Kenyan or an outsider who produces a record and he registers his rights over it--- We all know that the music that was sang and danced 50 years ago makes no sense now. If it is played today, you would wonder how people could ever dance to such a record. Fifty years from now--- Maybe what we copyright now may not make sense even in ten years' time. So, the Attorney-General will have to be careful that, when one is deciding on the duration required, it will depend on the kind of programs and products involved.

Mr. Temporary Deputy Speaker, Sir, in relation to computer programs, I will even go a step further. What is implied in this particular Bill is inventions of new things. But with regard to computer programs, it may not be a question of new technology; it may be a question of building upon the current technology and just doing amendments to come up with a new product. That is what makes a fundamental difference from, say, Windows 95, Windows 97 and Windows 2000NT. The reason is that there is no fundamental structural difference, but it is just a question of improvement. For example, if one comes up with Windows 97 and registers it, say, in 50 years to come, it would be already dead and of no use. Then came the Windows 2000NT. The programmer simply built on what the Windows 97 was; no new invention. The works are short-lived. You have provided for a longer time,

but it may not have any meaning.

With those few words, I beg to support.

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, I rise in support of the Bill. I want to congratulate the hon. Member who has just sat down because he had done his research well. I will endeavour not to repeat what he and other hon. Members have said. For that reason, I will be extremely brief.

Mr. Temporary Deputy Speaker, Sir, although we are passing this legislation so that we can fulfil our obligation under the WTO arrangement, we must ensure that what we are doing is relevant to what is going on in the country and suits us. We can pass it with necessary modifications to suit our circumstances. I have been looking at certain sections of this Bill and one of them is Clause 22(3)(b). This section deals with copyright and other related rights. One of the conditions is that the work has to be written down, if it is literary, musical or artistic. It has to be written down, recorded or otherwise, reduced to material form.

In a country where quite a sizeable part of the population is illiterate, if we put a condition that the work has to be written--- If it is something orally passed, and the person who is literate takes it over, writes it down and rushes to copyright, we will do a great injustice to the person who actually ought to be the owner of the copyright. We ought to find ways and means of accommodating our situation, which has a large illiterate population. Even where we have literate Kenyans, many are not aware of copyright laws and ILC International Agreements. We have the recent case of the university dons who conducted research on HIV/AIDS vaccines with the University of Oxford team. We saw our team, despite being highly educated, almost being denied their input into the research, because the Oxford team rushed to register. Our brothers took their time and they were being told that, at the end of the day, they would be mere spanner-boys. The uproar made the Oxford team to give them part of the rights. But perhaps, they did not get what they ought to have gotten. So, what should we do then to ensure that we do not pass laws that would take our population by surprise? I am proposing that the Attorney-General should consider introducing an amendment at the Committee Stage - if he does not - we will, that one of the duties of the Board should be to sensitise Kenyans on copyright laws, international laws relating to copyright and industrial property laws. We cannot go by the assumption that everybody understands. If we pass this law without providing for people to be sensitised the people, we will open floodgates for our people to be swindled by those who have more information on those laws and the World Trade Agreement.

Mr. Temporary Deputy Speaker, Sir, I have looked at the composition of the board. It looks okay, except where the Minister is given powers to appoint four people. This is in Section 6 which stipulates whom should be appointed to the Board. I have no quarrel with everything that is seen there, except where the Minister is allowed to appoint not more than four other members by virtue of their knowledge and expertise, in matters relating to copyright and other related rights. Since the Attorney-General is a representative of the Board, we would expect that the Attorney-General's representative will be a person knowledgeable and with expertise on matters relating to copyright and other related rights. We also expect that the various stakeholders named in Section 6, would also appoint persons who would adequately represent their interests and, of necessity, would have to be persons with knowledge and expertise in matters relating to copyright and other related rights. To give the Minister the power to appoint four more people, means that the Board will consist largely of Government appointees. We are moving from Government having a heavy hand in a Board like this, to a more participatory approach. When we have already about five people nominated from the Ministries as opposed to the seven or eight from the private sector, then if we allow the Minister, who is most likely the Attorney-General to nominate four more people, we would be making the Board, Government-heavy. We need more participation, and there is no reason why the eight nominees should remain. The Attorney-General should consider removing that Section. Otherwise, we shall make a bid to have it removed.

Mr. Temporary Deputy Speaker, Sir, I have also noted that according to Section 43, with regard to the prosecutions under this Act, it is implied that there would be in the criminal court, another prosecutor besides the police. Under the old Copyright Act, I have witnessed prosecutions carried out by the police. Remembering that this is a very technical area, those prosecutions, have, in most instances, been conducted in a very awkward manner, which suggests that the people prosecuting lack the basic understanding of the Copyright Law and, are totally unhelpful to the court. We have ended up with decisions that leave a lot to be desired. This being a technical area, I would expect the law to propose a prosecuting unit under the Board, which consists of experts or people trained to appreciate copyright laws and other related laws. I would, therefore, suggest that the Attorney-General considers introducing that, in order to strengthen this legislation.

Mr. Temporary Deputy Speaker, Sir, we also ought to ask ourselves whether we need to criminalise what is purely a commercial matter. Should those not be civil prosecutions in the Commercial Court with penalties? Commercial transactions are better solved, not by criminal prosecutions, but by monetary penalties and safeguards. If the prosecutions are in a specialised division like the Commercial Court, it means the judges dealing with the

matter are going to take time to understand the copyright laws and, the cases will be processed more fairly and in a quicker manner. I am proposing that, other than leaving it merely as a criminal offence, it ought to be a civil offence that takes care of the compensation, to avoid repeat litigation and, instead of a fine, the compensation should go to the owner and, maybe, a fine to the Board or the Exchequer, to cover for what monies are paid by the taxpayers and to support the work of the Board in implementing the Act.

Mr. Temporary Deputy Speaker, Sir, this law also provides for a competent authority. This is detailed in Section 21(3), where it states, that the appeals from decisions of the Board will go to a competent authority. The Minister is left to determine who that competent authority is. I think, concentrating the powers in the hands of the Minister is again autocratic. We are running away from concentration of power in the hands of any one person, and we would like something that is inherently democratic. Therefore, I am proposing that the Attorney-General, perhaps, considers establishing a tribunal, instead of a nebulous competent authority. We could have a tribunal at the level of the High Court. I have no quarrel with the qualifications of the members of the competent authority on Section 48. But rather than have the Attorney-General solely determine who the members of this tribunal are going to be - after all, they have given qualifications of people who should be judges of the High Court - he should consult with the Law Society of Kenya or even the Judicial Service Commission for that matter; or both of them, so that he makes an informed decision; not by just considerations which he thinks are adequate, but those that entail broader consultations.

Mr. Temporary Deputy Speaker, Sir, I have also seen the schedules to this Act. Schedule No.2(b) states that members who stay absent for three consecutive Board meetings without the permission of the Board will be removed by the Minister. I do not think it is appropriate to involve the Minister in this issue. If the members fail to attend three consecutive meetings, then their membership should lapse automatically by operation of law. So, the Board should keep the records of the Board meetings, so that any member who does not attend three consecutive meetings without prior permission of the Board should automatically be disqualified. We should not give discretion to the Minister where it is unnecessary. If we say that the member may be removed, it means, people can canvass with the Minister even after failing to attend meetings three consecutive times, and the Minister may or may not grant them the right to continue sitting on the Board. Too much discretion breeds corruption. Let this be by operation of the law. I believe the Minister would also be busy with other duties, not just waiting to monitor how the members are attending meetings.

Mr. Temporary Deputy Speaker, Sir, with regard to Section 42, I am suggesting that it is too punitive to say that, people who are suspected of infringing copyright laws should be arrested without a warrant. That is a technical offence. One can be arrested on what appears to be suspicion, but which later turns out to be flimsy ground. Let a person be arrested upon a warrant being signed by a court of competent jurisdiction. The prosecutors and investigators should be ready to sign an affidavit detailing what grounds led them to believe that a person infringed copyright laws. I am saying this because, I have witnessed under the old copyright law, competitors using the police to harass their competitors in business, cause them to be arrested, then their cases drag in the courts, only to be released later. This being a technical area, let the arrests be with a warrant.

Mr. Temporary Deputy Speaker, Sir, finally, when we are considering what is good for Kenya, we should ask ourselves at whose expense globalization is. We are on the receiving end, and I do not think that much good is coming to our country because of globalization. It is the countries of the North that continue to benefit. We grant them permission to operate outside our laws on the Export Processing Zone, while our people are subjected to inhuman treatment. We are now allowing them in, perhaps, to even copyright our own indigenous knowledge on drugs and claim to own the copyright on certain forms of treatment. To avoid being the losers in this globalization efforts, we should make sure that whatever is passed is adopted to the needs and special circumstances of Kenya. That is why we are saying that one of the areas that the Board has a mandate, should be to sensitise Kenyans on copyright laws.

With those few remarks, I beg to support.

Mr. Ndwiga: On a point of order, Mr. Temporary Deputy Speaker, Sir. Since nobody is opposing this Bill, and most of the pertinent issues have been raised, could we call upon the Mover to reply?

(Applause)

The Temporary Deputy Speaker (Mr. Muturi): It looks like Mr. Ochilo-Ayacko would like to contribute before we call upon the Mover to reply.

Mr. Ochilo-Ayacko: Mr. Temporary Deputy Speaker, Sir, I know that those hon. Members who support the Coffee Bill are keen to have it moved. But that should not negate the right of an hon. Member to contribute to the Copyright Bill. This is a very important Bill because it is an attempt by the office of the Attorney-General and,

therefore, the Government of this country to move into the 21st Century and protect copyrights.

Mr. Temporary Deputy Speaker, Sir, I intend to be very brief. I have got no quarrel with the objectives of the Bill. They are noble and I believe that people with innovative ideas deserve the kind of protection envisaged in this Bill. But the problem that I have with this Bill is that, when I look at the trend we have locally, we do not have people who are innovative because of widespread poverty in this country. So, the passage of this Bill is going to benefit people who are non-Kenyans! That leads us to the point which hon. Michuki has raised many times in this House, pursuant to Standing Order No.97.

Mr. Temporary Deputy Speaker, Sir, in this Bill, there is no indication to the extent of financial commitment to this country. We know that people who infringe on copyright in Kenya are largely peddlers of pirated video cassettes and musical cassettes. What they derive from such infringements is a small means of livelihood. These are people whom I would call members of the informal sector. They are largely hawkers. There are many people who depend on that kind of livelihood. So, it would be very important for the House to know who is going to underwrite the expense that will arise from the passage of this Bill. I would be happy to hear from the Attorney-General on that matter. I heard hon. Dr. Anangwe say that the Bill has a Clause, which if invoked, it will have some people underwriting the expenses that will arise from the passage of this Bill. I believe that this House would be keen to know how much we would be getting from those who really stand to lose if we do not pass this Bill. We are not going to have Kenyans taxed to safeguard the elites of South Africa, Europe or America. That would be very unfair to an overburdened economy. I am saying this because a couple of months ago - I am interested in studying wildlife- I was moving from shop to shop in Nairobi, trying to get an original cassette on wildlife. But I could not get one that could pass the test of the Bill we are debating now. I was only able to get it in a shop next to the Stanley Hotel. But in that shop, a single cassette was being sold at Kshs2,800. That was the amount of money I was asked to pay in order to get an original cassette. When I went to another shop, where they were selling cassettes that have violated the kind of Bill that we are talking about, I was able to get it at Kshs200.

Mr. Temporary Deputy Speaker, Sir, we are talking about a country that is having very many poor people. So, it is imperative for the Attorney-General to tell us where he will get this money from. If he will get it from the pockets of Kenyans, then I think it is unfair for this House to ask Kenyans to protect Americans, Europeans and Chinese. We do not write much nowadays. We read a lot of books published by Kenya Institute of Education and some cheap stuff from local publishers. In fact, we do not produce any movies and many other things. So, at this point in time, it would be very discouraging for a House which acknowledges that poverty is widespread in this country to encourage the impoverishment of Kenyans.

Secondly, if you look at the powers that are being conferred upon the Board, particularly the inspectors that are appointed by members of the Board, they are draconian. The Bill proposes to give the inspectors power to seize property belonging to hawkers. If you took wares that belong to somebody from an informal sector, that person will not have anything to resort to. The only other means of livelihood open to that person is to get an illegal firearm and shoot any of the Members of this House in order to get something small from him or her. We know that poverty is very close to insecurity. So, anything that may allow the Board to use means that might destabilise the informal sector and, therefore, increase the velocity of poverty in this country should be discouraged.

So, I recommend that the Attorney-General, at the Committee Stage, should make sure that the Board's draconian powers are checked. We are dealing with people without savings and this idea of arresting them without warrants is not a 21st Century idea. We cannot pass a Bill that is noble on intent and then sneak in legal practices that belong to the dark ages gone-by. I am sure that if you intend to arrest any person, such arrest must be founded on proper suspicion and must also reflect the spirit of the Constitution of this Country, which requires that a warrant of arrest should be issued and that legal representation must be provided for any one who is arrested. Those are the areas that require to be addressed, and because of poverty which is widespread in this country, the Attorney-General needs to mitigate the harshness in terms of implementation of this Bill. He also needs to assure this country that there will be money.

With those few remarks, I beg to support the Bill half-heartedly.

Mr. Orenge: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. I would have taken a lot of time to contribute to this Bill, but I can see that hon. Members are anxious to contribute to other Bills which will come after this. So, I will try to be as brief as possible.

Mr. Temporary Deputy Speaker, Sir, I commend Dr. Anangwe who has talked about this Bill at length. He provided the intellectual and ideological framework as to why we need this Copyright Bill. That was a wonderful exposition on his part. I would also like to commend hon. Members who pointed out that in the memorandum signed by the Attorney-General, he has clearly stated - and he cannot run away from it - the reasons why we need this Bill.

It goes without saying that the intention is to domesticate agreements reached, which Kenya is party to, as a member of the so-called "global village." So, it is not really a homegrown Bill as it were. It is saying quite clearly that there is a requirement for Kenya to comply with the instruments and agreements which we are party to, in order to become part of the global village, if at all we are but Dr. Anangwe did say that we are in the peripheries. But, if at all, we are in that global village, it is necessary to come up with a Bill of this nature.

The first point that I would like to make is that, in domesticating some of the international agreements or instruments, care must be taken of national interests. For example, I know that Kenya has been very shy to ratify the Rome Statute on the Creation of the International Criminal Court, because we have not complied with the requirements. One of them is that we should get rid of the death penalty. Secondly, under the Rome Statute, there is no power under the sun that can be immune from prosecution, including the President. So, for those two good reasons, the Attorney-General has refused to ratify an important international instrument.

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

Mr. Orengo: I know that you have signed, but Kenya has not ratified the Statute!

The Attorney-General (Mr. Wako): Is the hon. Member of Parliament in order to mislead this House that the Government has refused to ratify the Statute, when, in answer to a Question last week, I stated that the Government is committed to ratifying it? The Government is in the process of doing so! It is one out of the 153 countries that have signed the Statute, but only 40 countries have ratified it so far. So, we are in the process of doing that. It takes time because we must, first of all, amend our laws to be consistent with the Rome Statute, so that when we ratify it, it is meaningful. We cannot just rush to ratify it when our own laws have not been amended. So, we are in the process of ratifying the Rome Statute by first of all, making proposals in this House to amend our laws.

Mr. Orengo: Mr. Temporary Deputy Speaker, Sir, that is really an argument! It does not take away my point that he has not ratified the Statute. One of the reasons why they cannot ratify it is because they fear to prosecute the President while, in nations where they have agreed to ratify, there is no power under the sun that cannot be prosecuted. But that is besides the point. In as much as you are not in a hurry to domesticate the Rome Statute on the creation of an International Criminal Court, I am also saying that, in making laws of that nature, if you take into account what Dr. Anangwe said in the beginning; that we should not rush to domesticate those agreements without taking into account the local domestic consequences, whose full effect may not be quite relevant now but in another ten or 15 years, we shall be reaping what we have sown. I must say that, at the end of the day, it is the same powers behind the World Trade Organisation (WTO) - like Dr. Anangwe said - that are trying to extend neo-colonial practices even up to the 21st Century.

Having said that, one of the most important considerations, which I want the Attorney-General to take into account is: In view of the way the Kenyan economy is performing, there are many Kenyans who are now involved in the informal sector. If you go to every town--- If you took a walk between Moi Avenue, Ngara and up to Dandora--- The other week, I was in Kilgoris. If you go to small towns, Kenyans are earning their livelihood through petty trade, so to speak. That is because our industries are closing up and so on. When the Attorney-General talked about the stakeholders, he should have taken into account those Kenyans who are involved in such kind of trade or businesses.

When I looked at the Act fully and tried to analyse it, especially on the provisions that relate to assignments of copyrights to the extent that there could be a disposition of copyrights; that, in itself, shows that there are those people in Kenya today, who are going to benefit. They are going to ask for those exclusive rights to the extent that there is going to be one or two individuals who are going to gain, to the exclusion of those who engage in that kind of business and trade. I am saying that because, for example, if a Kenyan goes out there and lawfully acquires some merchandise or goods which, under this law should be copyrighted, and brings them to Kenya after paying taxes or duties and proceeds to sell them after having complied with the law where those goods originated from, and brought them to Kenya lawfully, it will be an additional red-tape to require such a person not to deal or trade in such goods or wares, until they have been authenticated by way of a device. For all intents and purposes, as far as I am concerned, this is just creation of another red-tape and bureaucracy. I would be quite comfortable if that was in relation to works of whatever nature, that originated from Kenya. But if there are wares or products which are being imported into the country, and somebody has fully obliged in acquiring such goods and brought them into the country, I think it would not be right to require such a person, in the absence of having made an application for copyrights--- The person who would be suffering is the person who has imported such goods.

To demonstrate that point, if you look Clause 36 Sub-Clause 5, it says:-

"No person shall sell or exhibit for sale any copyright works in any form without an authentication device affixed thereto, pursuant to Sub-Section 4."

Now, the person who would be selling would not necessarily be the person who is required under Clause 36 of this Bill to apply for the authentication of copyright works. If you look at Clause 36 Sub-Clause 1, it reads:- "A manufacturer of sound and audio-visual works or recordings and a publisher of literary works shall apply to the Board for the authentication of copyright works."

The duty is upon the manufacturer. If the manufacturer does not do what is required under the law, the law provides for punishment. So, that is different from the person who would be selling or exhibiting such works.

My reasoning is that the person who really should be punished is the manufacturer who has not applied for authentication from the Board. I want the Attorney-General to understand my remarks in the sense that--- I am trying to put the point that he is creating a lot of bureaucracy while, in the new world order, we are trying to create less bureaucracy. It is the same point that Ms. Karua was trying to make. We want less red-tape and more governance! So, when you give all those powers and authority to the Board for authentication in a situation where somebody is merely selling goods or wares, and he is not under any obligation under the law to apply for authentication, then, we are punishing the wrong person. I think that particular Clause should be looked into. The same should go for Clauses 37 and 38. If you look at them generally, you will find that the person's punishment would be both in terms of cash; a fine not exceeding Kshs100,000, or imprisonment. When a term of imprisonment is provided for, then I think under any sensible criminal justice system, the person who is being punished should really be the one responsible for the alleged offence. I have said that under Clause 36, the seller or the exhibitor may not be under such an obligation. So, to the extent that this Bill will interfere with those Kenyans that are trying to earn a living and not resorting to crime, and there are many Kenyan graduates who do not have employment; I think the Attorney-General would have taken a lot more time to talk to the industry as a whole, including the consumers and look at the way in which this law would affect them before coming up with a Bill that has got provisions for punishment for matters which are purely commercial.

In actions that are brought under this Bill, there are presumptions, which according to the Attorney-General, are to be made in certain circumstances where there is no challenge to copyrights and so on. I think this again goes to the root of our justice system of making presumptions. I think we should look at it and see whether it is in conflict with the Evidence Act or not. But, I think the most important position in our justice system is that if somebody goes to court and makes certain allegations, it is incumbent upon him to provide the proof and not look up to the opposite party for that.

Finally, Mr. Temporary Deputy Speaker, Sir, I had come up with a point earlier which I think my colleagues have talked about; that is, the powers of prosecution. I think my fears are being addressed. Since this is a technical Bill or it will be a law of a technical nature that requires people who have a certain amount of knowledge, it will be wrong to keep provisions that give prosecutorial powers to persons who do not necessarily meet a certain threshold of expertise. I think it will also continue to derogate the powers of the Attorney-General. The most wonderful thing about the powers of the Attorney-General, as exists in modern democracy, is that it is accountable to the public and Parliament. As the Attorney-General, the other day kept on saying: "I have the power! I have the power!" But, of course, the courts have put him to shame by showing him that he does not have all the powers, with so many of those rulings there. But I am saying, at least, he is accountable to us in carrying out his duties to the country and making decisions under Section 26 and which are subject to judicial review. I think that those prosecutorial powers which are given under this Bill tend to take away the spirit of the Constitution in Section 26 that the framers of our Constitution saw it as a necessary ingredient of the rule of law. In compliance with the rule of law, there should be an office of the Attorney-General as the Director of Prosecutions. I think those powers should not be given to anybody under the sun. I think these are powers that must be jealously guarded. I just wanted to remind the Attorney-General, Mr. Wako, that there was an Attorney-General once here who in this Parliament tried to secure his powers. He said in this House: "It is the President who has appointed me. The President must have the powers to sack me! He did not understand the theoretical basis of Section 26. Unfortunately for him, within six months of making those pronouncements, he ceased to be the Attorney-General of this country. So, I am asking the Attorney-General to try and guard some of his powers because they are subject to review by this House, and the High Court. They are important constitutional powers which subordinate courts may not be able to deal with adequately. If the Attorney-General has the habit of delegating his powers to every Tom, Dick and Harry, like the inspectors under the Copyright Act, I think it will be a derogation of the Office of the Attorney-General and would undermine the very basis upon which some of these important sections which deal with matters of public interest, including the many departments that fall under his office and as the Chief Legal Adviser of the Government, he should be able to oversee them. So, the use of the word "approval" here is like to clothe those prosecutors with the powers they do not have. Section 26 of the Constitution does not give the Attorney-General that mandate of approval. He can institute, undertake or terminate prosecutions. But if we come to a situation where all prosecutions of private or public nature should be approved

by the Attorney-General, I think we will be doing a great disservice to the constitutional basis and the constitutional order upon which this country was founded.

With those few remarks, I beg to oppose.

Mr. Murathe: On a point of order, Mr. Temporary Deputy Speaker, Sir. Considering the fact that we shall have time to examine the Bill clause by clause, may I call upon the Mover to respond?

The Temporary Deputy Speaker (Mr. Muturi): It is now time for the Mover to respond.

The Attorney-General (Mr. Wako): Thank you very much, Mr. Temporary Deputy Speaker, Sir. First of all, I would want to thank all those who have contributed to this Bill in a very positive way, starting with the last speaker. I am glad that he has now clarified the position that he wants the powers of the Attorney-General under Section 26 to remain intact and I assure him that they will. If he thinks that the words "subject to the consent of the Attorney-General", somehow dilutes those powers, then we shall see how to rephrase that particular clause to ensure that the Attorney-General retains his powers under Section 26 of the Constitution.

Mr. Temporary Deputy Speaker, Sir, the Bill is in the national interest of the people of Kenya. When we talk about the interest of the people of Kenya, let us not just confine ourselves to the interest of the people of Kenya within Kenya. The Bill will promote the interests of the people of Kenya internationally.

Mr. Muite mentioned a number of famous musicians who have died paupers. Had they created that music or works of art, when this Bill, which we are going to enact was in force, they would have died millionaires. For example, the Malaika song would have been protected not just nationally, but internationally. So, as much as it must be the purpose of our Bill to ensure that our laws are in conformity with the WTO and Bern Union, that is being done in the interest of nationals of the principal actors on copyright issues at heart.

Mr. Temporary Deputy Speaker, Sir, I know and it has been eloquently stated that there are a number of people in the informal sector who are benefitting from whatever they are selling. Everybody must earn his livelihood in a legitimate manner. By protecting the copyrights of Kenyans, musicians, authors and performing artists who are now paupers--- They have used their creativity to create those works of art and yet, we are not protecting them; they are paupers! Instead, other people are exploiting their creativity and making a living. That is wrong. I believe that if this Bill is enacted, we shall have a thriving industry of our own artists, musicians and dramatists which will create employment for everybody else so that everybody benefits. It will be so thriving that using the laws of supply and demand; the market forces, the price of Kshs2,000 will come down to a level which everybody can afford. In enacting this Bill, I can see the creation of employment in this country as we protect those people with creativity.

I believe Ms. Karua did mention a few things about the Board itself, the Minister having some powers to terminate appointment of a member who has not attended the Board for three consecutive meetings and so on. I accept that one. The termination must be there, but, maybe, on the recommendation of the Board itself. There must be a time where you are no longer a member and rather than just being left vaguely by whatever circumstances that have arisen---

I will seek further clarification on the competent authority. It is really doing the work of the tribunal. But under the current Copyright Act, it was also called Competent Authority and it may very well be that in all these legislations all over the world, they are called competent authorities. But maybe, we need to clarify that it is a competent authority which has the powers of a tribunal or the powers to arbitrate the disputes that may arise between the Board and other persons.

Mr. Temporary Deputy Speaker, Sir, the issue of piracy is very important and we cannot allow the flagrant infringement, and violation of people's copyrights to continue in this country or anywhere. Therefore, this law quite rightly so, must be effectively implemented. To use the words of Mr. Muite, it must be implemented ruthlessly to ensure that there is no piracy and that people, the industry and the Government benefit from the taxes and so on.

It is true that a lot will be demanded by way of administration. That is why we have a body corporate being established. It is not a body corporate of the Government, but one by the stakeholders themselves.

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

(Question put and agreed to)

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

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Muturi): Hon. Members, it is now time for the interruption of business. The House stands adjourned until tomorrow on Wednesday, 21st November at 9.00 a.m.

The House rose at 6.35 p.m.