

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 11th April, 2002

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

The Report on the Departmental Committee on Administration, National Security and Local Authorities on tour to Israel and Egypt.

(Mr. Kimeto)

NOTICES OF MOTION

LEAVE TO INTRODUCE PALM INDUSTRY BILL

Mr. Maitha: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-
THAT, this House do grant leave to introduce a Bill for an Act of Parliament entitled the Palm Industry Bill to take care of the coconut farmers at the coastal region.

SESSIONAL PAPER ON NON-PERFORMING LOANS

Mr. Kihoro: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-
THAT, in view of the extensive debts and financial difficulties faced by all coffee societies in Kenya which have a large debt portfolio; this House urges the Government as part of its poverty eradication programme to introduce a Sessional Paper to provide for the writing off of all non-performing Government loans so as to enhance coffee farmers' income and assist in the revival and growth of the coffee industry.

Mr. Kimeto: Mr. Deputy Speaker, Sir, I beg to give notice of a Motion on the Report of the Departmental Committee on Administration, National Security and Local Authorities---

Mr. Deputy Speaker: What do you intend to do?

Mr. Kimeto: I beg to move that the Report be adopted by this House.

Mr. Deputy Speaker: So, give notice of the Motion!

Mr. Kimeto: I beg to give notice of the Motion that the Report be adopted by this House.

(Laughter)

Mr. Deputy Speaker: Order! Order! Mr. Kimeto, you have not given us any notice. Give notice of the Motion that we adopt that Report.

Mr. Kimeto: Mr. Deputy Speaker, Sir, let me give that notice of Motion on Tuesday next week.

Mr. Deputy Speaker: You do not have to give it now if you are not ready. You can give it on Tuesday or Wednesday next week.

ORAL ANSWERS TO QUESTIONS

Question No.150

LIST OF STALLED DONOR-FUNDED PROJECTS

Dr. Ochuodho asked the Minister for Finance:-

- (a) whether he could table a list of all donor-funded projects which have stalled in the past five years, showing the amounts spent so far, the balance required to complete them and the financiers; and,
- (b) what plans there are to complete these projects.

Mr. Deputy Speaker: There is nobody from the Ministry of Finance. We will come back to this Question later.

Next Question, Mr. Muiruri!

Question No.160

CONSTRUCTION OF GACHEGE TEA FACTORY

Mr. Muiruri asked the Minister for Agriculture:-

- (a) whether he is aware that Kenya Tea Development Agency (KTDA) is constructing a tea factory in Gatundu North called Gachege Tea Factory;
- (b) who the principal financiers are and what the terms of the contract between KTDA and the financiers are; and,
- (c) who the registered owner of the land on which the factory is being built is and what the total cost of the land was.

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): Mr. Deputy Speaker, Sir, I would like to request that this Question be deferred because we looked for the file in our Ministry, but we have not traced it. I would request the Chair to give us another two weeks to continue and double our efforts to trace this file.

Mr. Deputy Speaker: But this Question has been with you for, at least, three months!

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): Yes, Mr. Deputy Speaker, Sir. All efforts have been made, even in the districts and the field where this officer used to work, but we have not been able to trace the file. I am requesting that the Question be deferred.

Mr. Deputy Speaker: But this Question is referring to the KTDA. KTDA is not missing!

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): Mr. Deputy Speaker, Sir, I had two Questions to answer. I am sorry this is the first one.

Mr. Deputy Speaker: We are talking about Question No.160!

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): I am talking about Question No.165. I am sorry.

Question No.160 was to be answered by my colleague, who has not turned up. Maybe he is still on the way coming. But if by the time it is asked for the second time he will not have turned up, I will be able to answer it. I will look for a copy of the answer.

Mr. Deputy Speaker: That is fine.

Next Question, Dr. Ali!

Question No.165

PAYMENT OF BENEFITS TO MR. OSMAN ALI

Mr. Deputy Speaker: Unfortunately, Dr. Ali is out of the country. So, his Question is deferred until next week.

(Question deferred)

Next Question, Mr. Kanyauchi!

Question No.151

REPAIR OF SINDO-NYAGWETHE ROAD

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

- (a) whether he is aware that the road between Sindo and Nyagwethe was rendered impassable as a result of the *El Nino* rains in 1997; and,
- (b) what action he is taking to ensure that the road is repaired.

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

(a) I am aware that the road between Sindo and Nyagwethe was rendered impassable as a result of *El Nino* rains.

(b) During this financial year, the Ministry has allocated Kshs2.5 million for this road. This Kshs2.5 million is not part of the Kshs5 million for constituencies; it is an extra amount for this road. The work plan for the next financial year is in progress and we anticipate that some money will be used on the bad sections of the road.

Mr. Kanyauchi: Thank you, Mr. Deputy Speaker, Sir. I like the honesty of the Assistant Minister. However, we realise that the financial year is just about to end. We have about two to three months to go. He is talking about Kshs2.5 million for this financial year and we have not got the money yet. When are we likely to get it?

Eng. Rotich: Mr. Deputy Speaker, I will ensure that by the end of next week, the money is availed to the district.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, I thought the Government had some funds for the *El Nino* projects. Why is the Assistant Minister waiting to use the Road Maintenance Fuel Levy Fund to do this road instead of using the *El Nino* funds?

Eng. Rotich: Mr. Deputy Speaker, Sir, these roads were not among the identified roads to benefit from the *El Nino* funds.

Mr. Anyona: Mr. Deputy Speaker, Sir, I would like the Assistant Minister to clarify one issue. The funds in question were provided for a project, which was started but not completed by the end of the financial year. In this case, the funds had not been fully utilised. Now, what would happen to such funds? Do they go back to the Treasury or once they are committed to the project they are deemed to have been used? There are very many incomplete projects in the country. We would like to have a clear policy clarification on this one.

Eng. Rotich: Mr. Deputy Speaker, Sir, if the money is from the Road Maintenance Fuel Levy Fund, it does not go to the Treasury at the end of the financial year; it remains in the account. On the other hand, if the money is from an Item in the Ministry's Development Account, it must be returned to the Treasury at the end of the financial year. However, once it is committed to a project, we must ensure that it is fully implemented.

Mr. Kariuki: Mr. Deputy Speaker, Sir, could the Assistant Minister clarify which roads fall under the *El Nino* funding and which ones fall under the Ministry of Roads and Public Works? We get confused whenever we hear about *El Nino* funds, because there are two Government Departments which address the same issue.

Eng. Rotich: Mr. Deputy Speaker, Sir, we do not have roads under the *El Nino* Fund. The funding was as a result of the *El Nino* phenomenon that we experienced in 1997. The project was initially under the Ministry of Roads and Public Works, but was subsequently relocated to the Office of the President. So, we are funding the same roads, which are under the Ministry of Roads and Public Works.

Mr. Kanyauchi: Mr. Deputy Speaker, Sir, as I said, my fear is the time span. We have very little time. It would be a very good idea for the Assistant Minister to undertake to give me the cheque from his office, or whichever office. We have only two months remaining to the end of the current financial year. So, I would like an undertaking from him to the effect that the money will be released.

Eng. Rotich: Mr. Deputy Speaker, Sir, I hope that by Friday next week, we will have released the cheque to the district.

Mr. Deputy Speaker: Thank you very much.

Let us proceed to the next Question.

Question No.167

REPAIR OF EMBAKASI VILLAGE ROAD

Mr. Mwenje asked the Minister for Local Government:-

- (a) which contractor was allocated the contract for the repair of the road leading to Embakasi

Village; and,

(b) why the road has not been repaired to date.

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

(a) A contractor by the name of Put Sarajevo General Engineering Company was awarded the contract for the repair and construction of Embakasi Road. The contract included roads in Dandora, Umoja, Kayole, Embakasi and Gigiri areas of Nairobi.

(b) The contractor suspended works before embarking on the Embakasi Road due to non-payment by the employer.

Mr. Mwenje: Mr. Deputy Speaker, Sir, before I ask my supplementary question, could the Assistant Minister clarify who the employer of the contractor is in this case?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, clearly, the employer is the Government of Kenya.

Mr. Mwenje: Mr. Deputy Speaker, Sir, you can now see that instead of the Assistant Minister saying clearly that the Government failed to pay the contractor, he referred to an employer as if that employer is a third party who was supposed to pay the contractor. That is being cunning, and is not fair. Be that as it may, since it is the same Government which is supposed to pay the contractor so that he can do the job, when is he going to pay the contractor? What action is he taking to ensure that the contract is performed? The road in question is very short. Only 100 metres of this road are repaired whenever the President is expected to pass through it; the rest of it is left as it is. The public is wondering why that should be the case since they are also taxpayers.

Mr. Kiangoi: Mr. Deputy Speaker, Sir, the contract was awarded by the Ministry of Local Government. That is why I am answering the Question. Sometime back, this House passed the Kenya Roads Board Act. Complications have arisen from the provisions of the Act in that previously, the Ministry of Local Government used to get 21 per cent of the Road Maintenance Fuel Levy Fund money, which was being used to service the contracts, including that of the Embakasi Road Project. However, the newly passed Act does not mandate the Ministry of Local Government to be an agent of the Kenya Roads Board. There have been problems of payment because we are no longer an agent of the Kenya Roads Board. So, we are trying to streamline this problem. There have been several meetings among all the concerned parties, so that we can---

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

Mr. Deputy Speaker: Order! The Assistant Minister is responding to a question. So, sit down!

Mr. Kiangoi: We have had several meetings. As soon as that issue is sorted out, we will have funds to pay the contractor.

Mr. Mwenje: Mr. Deputy Speaker, Sir, the Assistant Minister is totally misleading the House. As we speak, the contractor is on site at Kayole, doing one of the roads which fall within this contract. So, the delay in doing this road has nothing to do with the discussions he is talking about. So, could he simply tell us what is happening to the other roads? Really, there is nothing to be discussed.

Mr. Kiangoi: Mr. Deputy Speaker, Sir, what the hon. Member has said is not true, because these works commenced on 11th March, 1999. Completion of the project is due in March, 2009. Works on all the affected roads stalled in October 2001.

Mr. Muchiri: Mr. Deputy Speaker, Sir, some money was set aside in respect of this contract. So, could the Assistant Minister tell the House what happened to the money that was not paid to the contractor?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, as I said earlier, the money is with the Kenya Roads Board. The problem is that the employer of the contractor, on behalf of the Government, is the Ministry of Local Government.

Dr. Ochuodho: On a point of order, Mr. Deputy Speaker, Sir. You have heard the Assistant Minister repeat that the money meant for the reconstruction of these roads was with the Kenya Roads Board. I happen to be a Member of the Committee concerned with roads which, at one point in time, summoned the Ministry officials. We learnt that this was the only Ministry which never remitted---

Mr. Deputy Speaker: Dr. Ochuodho, you are arguing! What is your point of order?

Dr. Ochuodho: Mr. Deputy Speaker, Sir, is the Assistant Minister in order to mislead the House that the money went to the Kenya Roads Board whereas every other agency transferred the money to the Kenya Roads Board except this Ministry, which kept it? That was the position as of last year.

Mr. Deputy Speaker: Order! You are arguing!

Dr. Ochuodho: Mr. Deputy Speaker, Sir, is it in order for him to mislead the House that the Ministry remitted the money to the Kenya Roads Board?

Mr. Deputy Speaker: Dr. Ochuodho, if you start telling us where the money is, then you will not be raising a point of order but a point of fact!

Proceed, Mr. Assistant Minister!

Mr. Kiangoi: Mr. Deputy Speaker, Sir, there was no money to be remitted to the Kenya Roads Board. What I am saying is that we used to get 21 per cent of the Road Maintenance Fuel Levy Fund money, which would be used to

service these roads. The Kenya Roads Board Act did not mandate us to be an agent of the Kenya Roads Board. That was the omission.

Mr. Deputy Speaker: Order! Mr. Assistant Minister, are you now telling this House that the projects which were in existence before the Kenya Roads Board Act came into being are all suffering the same fate?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, that is the position as of now, because we are not getting any money from the Kenya Roads Board.

Mr. Deputy Speaker: Order! Order! Mr. Assistant Minister, when the contract was signed and awarded, one of the answers you should have provided was whether there were sufficient funds for its execution. You are now telling this House that, indeed, that was the position, and that when this new Act came into being, that ceased to be the position. The Act does not release any agency from its original contractual obligations.

Mr. Kiangoi: Mr. Deputy Speaker, Sir, indeed, you are right. We have not run away from that responsibility. That is why we have been having meetings with the Ministry of Finance and Planning and the Kenya Roads Board (KRB), so that we can be availed funds in order to complete our projects in accordance with those contracts. You were right in saying that we are not running away from our responsibility.

Mr. Mwenda: Mr. Deputy Speaker, Sir, could the Assistant Minister explain to us on three things? One, what was the contract value of this Embakasi project? How much work was done before the suspension? How much was the contractor paid to date for this contract?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, the entire contract sum for the 36-kilometre road network, including the one of Embakasi, was Kshs587,415,403.59. By the time the contract was suspended, 85 per cent of the work had been done. The value of the work that had been done was Kshs424,046,600 and the contractor, as to date, has been paid Kshs254,750,000.

Mr. Anyona: Mr. Deputy Speaker, Sir, I think the Assistant Minister has confused this issue. As far as I can remember, the Fuel Levy Fund is administered by the Ministry of Roads and Public Works after the funds have been remitted by the Treasury. The Ministry of Roads and Public Works then transfers the funds to the KRB. As far as I can recollect, again, without going back to the Act, the local authorities are some of the agents of the KRB. I can see Eng. Rotich nodding in agreement. Where is the problem? This is because as far as the law is concerned, there is no problem that the Assistant Minister is talking about.

Mr. Kiangoi: Mr. Deputy Speaker, Sir, there is no confusion anywhere. At least on my part, there is no confusion. I am saying that the KRB has not appointed - if Eng. Rotich was nodding, then, he was doing it for something else - the Ministry of Local Government as an agent.

Mr. N.M. Nyagah: Mr. Deputy Speaker, Sir, the issue raised in Mr. Mwenje's Question is very common in Nairobi. There are very many roads that have been suspended and are lying bare with the chippings exposed and without the tar being put on top. Is the Assistant Minister aware that it is going to cost the Government a big chunk of money to redo all these roads again? This is because over a period, they are all going to be washed away, and they will have to be redone from scratch. How long is it going to take before the so-called negotiations are completed? Which are these negotiations and with whom are they being held with so that we have some time limit as to when they can be done?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, I cannot say the exact time, but there are discussions that are going on, and we have involved the Treasury in this. I believe it was something that was inadvertently done because the Minister for Local Government ought to have been appointed as an agent, and as soon as we are included in that kind of category, then, the project will proceed.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, the Assistant Minister is misleading the House. When the Minister appeared late last year before the Committee on Energy, Communications and Public Works, he did confirm, in the presence of the then Minister for Local Government, that 21 per cent of the Fuel Levy Fund was remitted to his Ministry. The Minister did confirm that they received the money contrary to the law. I agree with the Minister. They are not supposed to have received the money. It should have gone straight to the KRB. But here is a case where they received the money. Why can the Assistant Minister not tell us why the 21 per cent was sent to the Ministry of Local Government? Allow me to give credit to the Minister for Roads and Public Works which remitted its 79 per cent to the KRB. Where is the money? Why did the Ministry not remit money to the KRB so that such roads, like the road leading to Embakasi Village, could have been repaired? Where is the money?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, I was not part of those discussions with the then Minister.

(Loud consultations)

But I know, and I am saying that we used to receive that amount of money - 21 per cent - when the Kenya Roads Board Act came into operation. We did not receive the money because we were not appointed as agent of the KRB.

Mr. Mwakiringo: On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Whom do you want to inform?

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, I want to inform the Assistant Minister.

Mr. Deputy Speaker: Order! Ask your question!

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, I do not want to ask a question; I want to inform him.

Mr. Deputy Speaker: You cannot inform him!

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, let me now ask a question. Could the Assistant Minister then tell us why they are not using the funds sent to them by the Minister for Roads and Public Works for the Nairobi area?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, as I have said, I have given the breakdown of what has happened and the payments that we have made. There are no funds that are kept by the Ministry which have not been utilised towards this project.

Capt. Ntwiga: Mr. Deputy Speaker, Sir, you will realise that there are so many bogus Asian contractors in this country. I would like the Assistant Minister to tell us what happened to M/S Chinese Bridge Contractors who were doing a very good job in Nairobi. Where have they vanished to? They were doing a very good job for us in this City. We would like to know where they have gone to so that these Indian contractors have taken over construction jobs.

(Applause)

Mr. Deputy Speaker: Yes, Mr. Muihia!

Mr. Muihia: Mr. Deputy Speaker, Sir, we are talking about spending Kshs16 million per kilometre of Embakasi Road. Is the Assistant Minister satisfied that the amount of the tender - Kshs587 million - was within normal construction standards and whether the contractor has not received by now all the amount of money that they have paid? These contractors have just walked out on the job. Is he satisfied that Kshs587 million was the amount to be spent on a 36-kilometre road resulting to Kshs16 million per kilometre?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, I do believe from general knowledge that the tendering procedures were followed properly and the cost in monetary terms per kilometre was adhered to in those tendering procedures. I want to state that M/S Put Sarajevo has not vanished; it is a very reputable firm of road contractors. Not that Indians cannot do a good job--- But these are not even Indians; it is a Polish company that is doing a lot of good work. In short, for the information of the House, they have been awarded the contract for a road called Chemosit-Kisii which was originally commonly known as Kisii-Chemosit.

Mr. Kamolleh: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to segregate the Indians and Asians living in this Republic as bad and good ones? M/S Put Sarajevo maybe a company of anybody else. But is he in order to say that they are not like Asians or Indians? Are the Asians and Indians that bad that they should be mentioned in this House to that effect?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, that is not what I meant. In fact, I said exactly what he is saying. I am agreeing with him on that. I was starting to remove the imputation put by an hon. Member who had asked a question about the Chinese Company and talking about Indians. I am saying that Indians are not necessarily bad when it comes to construction work.

Mr. Deputy Speaker: Mr. Kamolleh, you had better listen to the proceedings in the House properly before you shoot up or you shoot your mouth!

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. I do not know whether you heard the Assistant Minister talk about the road called Chemosit-Kisii. For purposes of proper records of this House, there is no such road. The road that we do know is Kisii-Chemosit Road. The fact that there has been politics which changed the construction of the road and it had to start from Kisii to Chemosit, and this time round they are trying to complete the road by resurfacing the area that has already been tarmacked - with the kind assistance of this Assistant Minister - it does not change the historical facts. Could the Assistant Minister withdraw the name he gave to the road, because as far as our community is concerned, the road will create a lot of problems? It is meant to confuse this issue.

Mr. Deputy Speaker: Order hon. Anyona! You are complaining about the order of those names but if I called you Anyona George, would I be out of order? Must I always refer to you as George Anyona? Mr. Mwenje, ask the last question!

Mr. Mwenje: Mr. Deputy Speaker, Sir, the truth of the matter is - and that is what the Assistant Minister is trying to avoid saying - that these contracts were actually done through Kenya Urban Transport Infrastructure Project (KUTIP), which is operating under the Ministry of Local Government. It was KUTIP which was actually paying for these contracts through the Ministry. The Ministry has been dilly-dallying all along because it has not done anything. They have not even approached KUDIP in order to know what has been done. It appears as if the Assistant Minister does not know what is happening exactly on the ground. Would I be in order to ask the Chair to defer this Question, for the Assistant Minister to go back and investigate the truth of this matter on this particular road? The money is there

but there is nobody to use it. The Ministry is deeply asleep. Now, they are talking about the petroleum fuel levy. This is not about petroleum fuel levy---

Mr. Deputy Speaker: Order, Mr. Mwenje! Just ask your question. I cannot defer this Question when we have spent the last ten minutes!

Mr. Mwenje: But I was hoping that in the course of it, he would come up with some truth.

Mr. Deputy Speaker: Well, keep that hope alive!

Mr. Mwenje: Mr. Deputy Speaker, Sir, I feel hopeless if I am left like that. I need your intervention!

Mr. Deputy Speaker: If you are not asking a question, then I will move to the next Question!

Mr. Mwenje: Mr. Speaker, Sir, when will this road be repaired? I was there this afternoon and that road is in a terrible condition and it is impassable.

Mr. Kiangoi: The road will be repaired before June this year.

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

Mr. Maitha: Mr. Deputy Speaker, Sir, as I ask my Question, I would like to point out that in part (c) of the Question, the Minister should refer to Cap.297, the Land Acquisition Act.

Question No.090

EVICTON OF MTOMONDONI SQUATTERS

Mr. Maitha asked the Minister for Lands and Settlement:-

(a) whether he is aware that over 300 squatters who have lived for over ten years on Plot No.11 Section IV MN at Mtomondoni, Kilifi District are about to be evicted by unknown land owners;

(b) whether he is further aware that the owner of the same land is an absentee landlord and never left any orders of trusteeship of this land; and,

(c) whether he could apply Section 23 of the Land Control Act, Cap.302 Laws of Kenya, to issue decrees so that the squatters could be settled on this land.

Mr. Deputy Speaker: Mr. Maitha, if you are amending the Question now, then I am not allowing it.

Mr. Maitha: I am not amending but pointing out a mistake.

Mr. Deputy Speaker: No! That Question was handwritten by you before it was typed.

Mr. Maitha: Mr. Deputy Speaker, Sir, the Minister can still answer the Question with that minor amendment.

Mr. Deputy Speaker: Mr. Maitha, if you want that Question deferred, I will do so. Otherwise, you can ask it in the manner in which it is. This Question was copied from the original handwritten Question which you submitted and these are the laws you quoted!

Mr. Maitha: Mr. Deputy Speaker, Sir, in that case, I want the Minister to answer the Question the way it is.

The Minister for Lands and Settlement (Mr. Ngala): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that over 300 squatters who live on plot No.11 Section IV MN at Mtomondoni in Kilifi District are about to be evicted by unknown land owners.

(b) I am also not aware that the owner of the same land is an absentee landlord who never left any orders of trusteeship to the plot. However, I am aware that the land is privately owned and that the ownership of the same has changed hands severally over the years.

(c) I am not able to apply Section 23 of the Land Control Act, Cap.302 and issue decrees, so that the squatters could be settled on this land, since the said Act does not empower me. There is a title deed to the land which indicates that it is privately owned.

Mr. Maitha: Mr. Deputy Speaker, Sir, at the Coast there are two types of land. In 1908, the land was divided into two categories; the protected land under the Protectorate and that under the Arab Reserve. All the land that was under the Protectorate was given to the white people as a reward. The land in question is among those which were given to white men. The white man owning that piece of land left the country in 1948 and left squatters living on the land. Three months ago, the Managing Director of Kenya Broadcasting Corporation, accompanied by other people, went to that land with the local District Officer, claiming that they had been given authority by the owner, who is not in Kenya, to evict the squatters. Could the Minister table the title deed of that plot in this House, to prove that the owner of this land is in Kenya?

Mr. Ngala: Mr. Deputy Speaker, Sir, I may not be able to lay the title deed on the Table. But if it is the wish of the House that we lay that title deed on the Table of the House, we will do it to show that the land belongs to a person who is currently in Kenya and not an absentee landlord as the Member of Parliament is alleging.

Mr. Kihoro: Mr. Deputy Speaker, Sir, the Minister should confirm to this House, that the land in question has been changing hands in vacant possession. If this land has permanently been occupied by squatters, even when it has been changing hands at the Lands Office, the squatters are still entitled to the land under adverse possession law.

Could he tell us the status of the squatters in light of the adverse possession that they have acquired because of the absentee landlord being away?

Mr. Ngala: Mr. Deputy Speaker, Sir, the land does not belong to the squatters. There is a registered person who is the owner of that land. The hon. Member for Kisauni asked me to Table in this House, the title deed for that land. We shall get the title deed in order to ascertain the correct ownership of that land.

Mr. Deputy Speaker: Order, Mr. Ngala! Mr. Kihoro asked you about the rights of those squatters who have lived there all these years!

Mr. Ngala: Mr. Speaker, Sir, I beg the indulgence of the Chair to allow the hon. Member to repeat that question.

Mr. Kihoro: Mr. Deputy Speaker, Sir, from 1948, there have been squatters living on this land. The Minister should know that the squatters have acquired title deeds to this land under adverse possession law. The piece of paper you are calling a title deed does not apply here because the land belongs to the squatters under the Adverse Possession Law. Could you confirm that?

Mr. Ngala: Mr. Deputy Speaker, Sir, the terminology used by the Hon. Member - "adverse law" - is something that I have got to check in order to establish its parameters. I cannot answer that question straightaway because it is something legal. I have to check on the meaning of adverse possession law!

Mr. Deputy Speaker: Mr. Minister and the Questioner, I will defer this Question.

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

Mr. Deputy Speaker: When I have ruled that I will defer this Question, there is no point of order because nothing else has happened since the ruling.

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

Mr. Deputy Speaker: No! Now the Minister knows what range of laws hon. Members want to ask him about in respect of this land, I will defer this Question to next week, Wednesday.

Mr. Maitha: On a point of order, Mr. Deputy Speaker, Sir. I respect your ruling, but have you directed the Minister to go and find out the meaning of "adverse possession", or have you directed him to come back to the House to say whether there are squatters on this land or not?

Mr. Deputy Speaker: Order! I have deferred the Question and not a section of it.

(Question deferred)

Dr. Ochuodho's Question for the second time!

Question No.150

LIST OF STALLED DONOR-FUNDED PROJECTS

Dr. Ochuodho asked the Minister for Finance:-

(a) if he could table a list of all donor-funded projects which have stalled in the past five years, showing the amounts spent so far, the balance required to complete them, and the financiers; and,

(b) what plans there are to complete these projects.

The Minister for Finance (Mr. Obure): Mr. Deputy Speaker, Sir, I apologise for not being in the House when the Question was asked the first time.

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

(a) There are eight stalled donor-funded projects for the period covering the last five years. There is an appendix which shows details of these projects. I do not know whether it is in the interest of the House for me to read out each one of them. But I am prepared to table the list here.

Mr. Deputy Speaker: How many are there?

The Minister for Finance (Mr. Obure): Mr. Deputy Speaker, Sir, there are eight projects.

Mr. Deputy Speaker: Read them out!

The Minister for Finance (Mr. Obure): Mr. Deputy Speaker, Sir, the first project is the Kenya Finland Forestry Programme. This project never started. It required an amount of Kshs536 million. The second project is the Mathare 4A Upgrading Project. An amount of Kshs387,668,640 has already been spent and a further Kshs77,606,972 is required to complete it. The third project is the Western Kenya District-Based Agricultural Development Project, which was funded by the International Fund for Agricultural Development (IFAD). An amount of Kshs92,097,096 has already been spent on it and a further sum of Kshs239,402,864 is required to complete it.

The fourth project is the Japan-funded construction of the Tana Basin Road, which was funded by the Japanese Government. A sum of Kshs3.9 billion has already been spent on it and a further Kshs1.88 billion is still

required to complete it. A World Bank-funded project has also stalled. This is the Kenya Urban Transport Infrastructure Project (KUTIP). So far, Kshs5,885,145,000 has been spent and a further Kshs1,684,610,000 is required to complete the project. The sixth project was funded by the ADB/ADF. This is the Horticultural and Traditional Food Crops Development Programme. So far, Kshs18.4 million has already been spent and a further sum of Kshs899,240,588 is still required to complete the project.

Another ADB/ADF-funded project has stalled. This is the construction of the Narok-Mau-Narok Road. Already Kshs800 million has been spent on this project and a further Kshs600 million is required to complete it as initially envisaged. The last project is the Yala Swamp Irrigation Project, which was again financed by ADB/ADF. A sum of Kshs103,795,073 has already been spent and a further Kshs93,431,393 is required to complete it.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, I doubt whether all the stalled donor-funded projects are listed here. I expected to see projects such as the World Bank Chiromo Campus, Moi University, and the National Youth Service Housing Projects listed here because they are also donor-funded.

However, I realise that already Kshs11.2 billion has been spent on these projects, which have stalled. We still require Kshs6 billion to complete these projects. The Minister did not answer part "b" of my Question which is: What is the Government doing to complete these projects, having put Kshs11.2 billion into them?

Mr. Obure: Mr. Deputy Speaker, Sir, that will require that I go through each one of the projects very quickly to indicate the intended action by the Government in response to the question by Dr. Ochuodho.

The main reason why the Finland-funded project was halted by the Finish Government was the fact that there were some arguments about procurement systems. There was also the question of lack of parliamentary approval of the new forestry policy as well as the proposed Forest Act. Those were the main reasons why the project stalled. We are renegotiating with the authorities in Finland and they have indicated a strong interest in this project. We hope that they will come back and proceed with the project.

Mr. Deputy Speaker: What is the project for?

Mr. Obure: Mr. Deputy Speaker, Sir, this is an afforestation programme. The Finish Government wanted to assist us to enhance our forestry programmes.

The second programme is the Mathare 4A Upgrading Project. As you all know, this project stalled because of the insecurity that surrounded it. As of now, negotiations are going on. There were disagreements among the various stakeholders. Negotiations are now going on between all the stakeholders, including the Catholic Diocese of Nairobi, which was among the lead participants, and we hope that the various issues will be resolved, including the issues raised by leaders from that area of Nairobi.

The third project which was funded by IFAD stalled largely again because IFAD in Rome felt that the programme was not running well and there were problems of implementation. The programme was intended to assist in boosting food production, but in certain cases, the funds were used to construct health centres and other things that were not initially envisaged in the programme. So, IFAD queried this. I want to assure this House that negotiations are under way with IFAD and we are asking them to come up with alternative programmes which are implementable, based on the priorities which have been identified under the Parastatal Reform Strategy Programme (PRSP).

Mr. Deputy Speaker, Sir, with regard to the stalled part of the Japanese-financed Road Construction Programme in Tana River Basin, we are hoping to raise some money out of the forthcoming Budget in order to complete the remaining portion of that road.

The Kenya Urban Infrastructure Transport Project (KUTIP) stalled because of issues relating to fraud which were raised involving all the people who were undertaking that project both from the Kenyan Government side and from the World Bank side, investigations are going on at both ends; here in Kenya and in the USA. The matter is being pursued by the Kenya Anti-Corruption Police Unit (KAPCU) and we hope that we will certainly hear something about that matter in the coming days.

Mr. Deputy Speaker, Sir, concerning the horticultural and traditional food projects which stalled, we sent a team to ADB, Abidjan; it has just come back and negotiations are going on between ourselves and ADB to see if this suspension of this project can be lifted.

With regard to Narok-Mau-Narok Road, I would like to report that this project requires Kshs600 million to be completed. At the present moment, we are looking for a possible donor to assist us complete its final bit. This is really the case with the Yala Irrigation Project in Nyanza and Western Provinces. Again, a new proposal has been developed and it is being considered by the ADB and ADF. We are vigorously pursuing this matter to ensure that the unfinished projects are completed.

Thank you.

Mr. Gatabaki: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister not misleading this House about the number of stalled projects in Kenya? The Chair can remember that I did have the opportunity of tabling a Report of the Public Accounts Committee before this House, and it was discussed for two weeks. In that Report, which was unanimously approved by this House, there are more than 100 projects which have stalled and they range from the

Norwegian donors, DANIDA, Finland Government and many governments which have withdrawn their support for those projects because of bad governance and corruption!

Mr. Deputy Speaker: What is your point of order?

Mr. Gatabaki: Is the Minister not misleading this House by presenting only five stalled projects; when we know that there are many; ranging from 100 to about 1,000? Is he not misleading us by minimizing the number which shows the Government's poor performance?

Mr. Obure: Mr. Deputy Speaker, Sir, the hon. Member for Githunguri is always looking for every opportunity to make that statement about this Government mismanaging the affairs of the State. That is not true. I think it is necessary for us--- I am responding to the Question as raised, which states that: "Could the Minister table a list of all donor-funded projects which have stalled?" I want to clarify on the projects which I have listed here, and they are not five, but eight.

Secondly, it is important for us to differentiate between funds we get from donors for specific projects, and the funds we get from donors for Budget support. A lot of what Mr. Gatabaki is saying refers to the Budget support projects which are not covered under the jurisdiction of this Question. I would like to give the hon. Member an example. There is a reform programme in the Civil Service. That is a World Bank Project which has stalled and I have not listed it here. That project stalled because KACA was disbanded by a decision of the court, and our failure to pass legislation to restore it. I have not listed that project here because it is a Budget support programme.

Mrs. Mugo: Mr. Deputy Speaker, Sir, as a Member of the Public Investments Committee, I do hear of so many donor-funded projects which have stalled because the money has been syphoned into people's pockets, instead of funding the projects.

An hon. Member: Stolen!

Mrs. Mugo: The money is stolen, in other words.

An hon. Member: That is an unparliamentary term!

Mrs. Mugo: Okay, the money has been syphoned or looted.

Mr. Deputy Speaker: Do not let those hon. Members put words into your mouth!

Mrs. Mugo: Mr. Deputy Speaker, Sir, the money is misappropriated. The Provincial Commissioner, Nyanza Province, confirmed this by saying that civil servants have perfected the art of stealing with the pen, and this is a fact! Even donors have refused to give Kenya money because of the vice of stealing money meant for projects.

Mr. Deputy Speaker: Ask your question!

Mrs. Mugo: What strategies or protective devices have been put in place by the Government to convince the donors to resume their support to Kenya so that those stalled projects can be completed?

Mr. Obure: Mr. Deputy Speaker, Sir, that is really generalising the whole issue. I think it is unfair for the hon. Member to generalise the issue the way she has done. I am not standing here to defend those who are implementing projects; the civil servants and so on. I will be the last person to do so. But let us talk about specific cases.

If the KUTIP has a problem because there is suspicion that money has been stolen, that project has been suspended and vigorous investigations are being carried out, and those who are involved will be brought to book and be prosecuted. If there are any projects; and all of us in this House are responsible to ensure that projects intended to cater for the benefit of the public are implemented to the satisfaction of everybody; it is up to us to highlight areas of weakness where money has been stolen and appropriate authorities will take the necessary action.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, the Government often accuses the Opposition Members of Parliament as the ones who are telling donors not to bring money to help Kenya. Here is a glaring case whereby we cannot get Kshs6 billion from donors largely because of corruption. I would like to request the Chair to allow me recognise the Minister, being a member of my state, that he has not been known to be corrupt in the past. Allow me also to congratulate the PC; Nyanza, who is really fighting corruption.

Mr. Deputy Speaker: Ask your question!

Dr. Ochuodho: Mr. Deputy Speaker, Sir, in the case of the Mathare 4A Housing Project, where the Government has already spent Kshs387 million, public funds, and only Kshs77 million is remaining to complete this project; could the Minister tell us how much of the work remains uncompleted? Of the Kshs77 million that is required, what portion is the Government required to contribute and why is it not making money available to complete the project?

Mr. Obure: Mr. Deputy Speaker, Sir, I talked about Mathare 4A Project and said that it is an issue between the various stakeholders who have not reached an agreement. As I said, Kshs387,668,640 has already been spent on the project. There is a further Kshs77.6 million which is required to complete the project.

I will talk as a Kenyan now, not necessarily as Minister for Finance. We leaders have a responsibility of ensuring that the poor people of Mathare 4A benefit from a project of that kind. In my personal opinion, what has caused a problem in Mathare 4A is the question of personal interest. There are people who perceive this project as a

threat to their possibility of collecting rent; and that is where the problem is, and that is what we are trying to resolve.

Mr. Deputy Speaker: Order! In the meantime, Mr. Minister, the hon. Member would like to know whether you will make this money available to complete this project or you are still looking for donor money.

Mr. Obure: Mr. Deputy Speaker, Sir, I had a session with the representatives of the German Government. In fact, your counterpart was here a few weeks ago, and we had a discussion with him. Of course, they are very concerned about this. We told them that we are in the process of resolving this matter, and they will come and complete this particular project because the money is available. So, the sooner we resolve our differences, the sooner they will come and complete the project because the money is available.

Mr. Deputy Speaker: Thank you!

Let us move to Mr. Muiruri's Question for the second time.

Question No.160

CONSTRUCTION OF GACHEGE TEA FACTORY

Mr. Muiruri asked the Minister for Agriculture:-

(a) whether he is aware that Kenya Tea Development Agency (KTDA) is constructing a tea factory in Gatundu North called Gachege Tea Factory;

(b) who the principal financiers are and what the terms of the contract between the KTDA and the financiers are; and,

(c) who the registered owner of the land on which the factory is being built is and what the total cost of the land was.

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): Mr. Deputy Speaker, Sir, I would like to apologise on behalf of my colleague for not turning up to answer this Question, but I am now prepared to answer it.

I beg to reply.

(a) I am aware.

(b) The principal financiers are M/s Proparco, a French Government Company and Mataara Tea Factory growers.

The total cost of the proposed factory is approximately Kshs397 million. Proparco is expected to provide US\$3.5 million and the Mataara growers will raise the rest of the money. The lending terms, so far, have not been concluded between the KTDA and the prospective financiers. But they are in the process of being discussed.

(Mr. Parpai consulted with Mr. Kihoro)

Mr. Deputy Speaker: Mr. Parpai, what do you think you are doing?

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): Mr. Deputy Speaker, Sir, the answer to part "c" of the Question is that the registered owner of the land on which the factory is being built is the KTDA. The land was bought in 1997 at a cost of Kshs12,463,214 by the KTDA Ltd., on behalf of Mataara Tea Factory growers. The KTDA is in the process of transferring ownership of the land to Gachege Tea Factory Ltd.

Mr. Muiruri: Mr. Deputy Speaker, Sir, the answer that the Assistant Minister has given this House is inadequate. The Chair heard him say that the approximate cost will be Kshs397 million. He goes further and says that the lending terms have not been concluded between the KTDA and prospective financiers. That is incomplete. He has also said that the KTDA is in the process of transferring the ownership of the land to Gachege Tea Factory. This answer is also incomplete.

The Assistant Minister is aware of the problems of Mataara Tea Factory. I would like to point out that two farmers were shot dead and, during the fracas, a policeman also lost his life. This particular factory is under 24 hours police guard. The farmers do not know what is happening. The last Annual General Meeting (AGM) of Mataara Tea Factory was held in 1997 and the farmers are at a loss because they do not know what is going on. Could the Assistant Minister table all these agreements between Proparco, Mataara Tea Factory farmers and the KTDA? This is because the farmers do not know what is going on. This is the first time they have heard of Kshs397 million---

Mr. Deputy Speaker: Finish!

Mr. Muiruri: Mr. Deputy Speaker, Sir, could he table these documents because this answer is incomplete and it does not help Mataara Tea Factory at all?

Mr. Sumbeiywo: Mr. Deputy Speaker, Sir, according to our inquiry, so far, the agreement has not been signed. Therefore, I am unable to table the agreed contract.

Mr. Murathe: Mr. Deputy Speaker, Sir, after the liberalisation of the tea sector, the land on which tea

factories are built belongs to tea factory companies. Could the Assistant Minister repeat that, that land belongs to the KTDA so that people are clear? Another person will die!

Mr. Sumbeiywo: Mr. Deputy Speaker, Sir, currently, the land on which this factory will be constructed is under the KTDA.

Mr. Gatabaki: Mr. Deputy Speaker, Sir, I speak with authority as the spokesman of Coffee and Tea Parliamentary Association (COTEPA). Considering the circumstances in which all the French-funded projects have fared for example, Kerio Valley, he cannot guarantee that the French will not end up doubling the amount of money involved. If the French, do, indeed, end up financing this project, will the Kenya Government ensure that the interest rate is affordable or is within the limit of the World Bank and the International Development Association of the World Bank?

(Mr. Gatabaki spoke from the Dispatch Box)

Mr. Muiruri: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member for Githunguri in order to bring the World Bank issue here when the issue at hand is about the construction of Mataara Tea Factory?

Mr. Deputy Speaker: Well, you are the one who is at the border! The hon. Member has asked whether the Assistant Minister could confirm that those who are financing this project will not behave in a similar manner to those who financed another project.

Mr. Muiruri: Mr. Deputy Speaker, Sir, I apologise.

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Mr. Deputy Speaker, Sir, I have seen Mr. Gatabaki speak from the Dispatch Box twice. But rules are rules unless we do not want to follow them.

Mr. Deputy Speaker: Order! Rules are rules, but the Chair happens to know them. I happen to know the rules and I have allowed Mr. Gatabaki to speak from the Dispatch Box as the new leader of SDP in Parliament.

(Applause)

Proceed, Mr. Assistant Minister!

Mr. Sumbeiywo: Mr. Deputy Speaker, Sir, we will ensure that the interest rate that will be charged is within the agreement signed by the factory.

Mr. Muiruri: Mr. Deputy Speaker, Sir, the Assistant Minister has told this House that the cost of the land was Kshs12,463,214. Is he aware that this particular land is only 21 acres? This piece of land is in the forest; it is not near Thika Town. The cost of one acre in that area is about Kshs600,000, which is four times that cost. This is scandalous! Am I in order to ask the Assistant Minister to give this House a proper answer by tabling every document which relates to the purchase of this land, which is exorbitant? He should also table all the agreements between Mataara Tea Factory--- I do not know how Gachege Tea Factory has come in because the farmers who will pay the loan belong to Mataara Tea Factory.

Mr. Deputy Speaker: Order! Order! Mr. Muiruri, as a former police officer, you really ought to be more disciplined. Ask your question!

Mr. Muiruri: Mr. Deputy Speaker, Sir, would I be in order to ask the Assistant Minister to table every document concerning the construction of this factory? Who is the contractor? How much is he being paid? Who are the financiers? What are the terms of the loans and interest rates? When will the factory be completed? The farmers need to know all this so that they can be aware of what is involved.

Mr. Sumbeiywo: Mr. Deputy Speaker, Sir, to answer the first question by the hon. Member, the land which measures 24.6 hectares was bought in August 1997. I am not aware whether it is in the forest or lowland. But the fact of the matter is that the factory was constructed after a long discussion between the tea growers and the company. The only thing that may be necessary for me to produce before the House is a copy of the agreement. I seek the indulgence of the House to give me one week to do so.

Mr. Deputy Speaker: Mr. Sumbeiywo, I give you up to Wednesday next week to produce those documents.

QUESTIONS BY PRIVATE NOTICE

FIGHT BETWEEN KAKUZI GUARDS AND VILLAGERS IN MAKUYU

Mr. P.K. Mwangi: Mr. Deputy Speaker, Sir, before I ask my Question, I would like to make a correction on part "a". It is not "Gathunguni", but Gathungururu Village.

However, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) What caused the fight between the security guards of Kakuzi Limited and residents of Gathungururu Village, Makuyu Location, Makuyu Division on 12th and 13th March, 2002, where more than 20 persons were critically injured?

(b) Who were the perpetrators of that unlawful act and how many people have been arrested and prosecuted in connection with the incident?

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

(a) The fight was caused by the residents of Gathungururu Village when they attacked Kakuzi Limited labourers who were planting trees in a portion of land which belongs to Kakuzi Limited. The land measures about 70 acres and the residents of Gathungururu Village claimed that the land in question belongs to them. During the fight, 12 security guards for Kakuzi Limited and nine civilians were injured. The injuries were minor for they were treated and discharged in a fair condition.

(b) The perpetrators of this unlawful act are not yet known, but intensive investigations have been launched to establish who they are. Once they are identified, they will be made to face the full force of the law. The arrest and subsequent prosecution will be based on the outcome of the investigation.

Mr. P.K. Mwangi: Mr. Deputy Speaker, Sir, the answer given by the Minister is quite misleading. The people of Gathungururu were given their present land by Kakuzi Limited. They are former workers of Kakuzi Limited. The agreement was that they were to get 400 acres of land from Kakuzi Limited. However, they were only given 330 acres of land. Kakuzi Limited did not give them 70 acres of land according to the agreement. This is the land the residents of Gathungururu Village are fighting for. What Kakuzi Limited did that day was to send more than 300 guards to go and destroy crops of Gathungururu people. Could the Minister tell us whether Kakuzi Limited had an eviction order to do so?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, unfortunately, I do not have the same facts as the hon. Member seems to have. I am not aware of any eviction order. As I stated, to the best of my information, the fight happened when those villagers attacked Kakuzi Limited labourers. If there are other facts, those are not known to me.

Mr. Waithaka: Mr. Deputy Speaker, Sir, the Minister says those facts stated by the hon. Member are not within his knowledge. We know the residents of Gathungururu are fighting for their land where they grow crops. Kakuzi Limited wants to repossess the 70 acres out of the 400 acres they had earmarked to give the residents of Gathungururu. Could the Minister tell us who occupies these 70 acres of land? Is it the residents of Gathungururu or Kakuzi? If he does not know, he should seek for more time because it is very important and we do not want to cause more problems in future.

Mr. Sunkuli: Mr. Deputy Speaker, Sir, precisely, from the supplementary question, it appears that I need some time to investigate this matter. Maybe, I should be given up to next week.

Mr. Deputy Speaker: Very good. Really there is no point in proceeding if the Minister does not have those facts with him. Mr. Mwangi, do you want this Question deferred?

Mr. P.K. Mwangi: Mr. Deputy Speaker, Sir, since the Minister seems not to have the facts, I agree that this Question be deferred and he should come back well quipped to answer this Question next week.

Mr. Deputy Speaker: Very well. The Question is deferred to Thursday, next week.

(Question deferred)

Next Question, Mr. Munyes!

RELOCATION OF RESERVISTS IN TURKANA NORTH

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

(a) How many Kenya Police Reservists have been relocated to Kakuma and Lokichoggio towns from border areas?

(b) How many are serving in Kakuma Refugee Camp under UNHCR, and how many are in Lokichoggio UNICEF - Operation; Lifeline Sudan Camp.

(c) What steps is the Minister taking to relocate them in the locations previously intended for them?

Mr. Deputy Speaker: If Mr. Munyes is not here the Question is dropped.

(Question dropped)

POLICE EXTORTION FROM DAGORETTI HAWKERS

Mr. Anyona: Mr. Deputy Speaker, Sir, before I ask my Question, I would like to correct the last word in part "a" of the Question. It is "Corner." Secondly, I have not received the written reply. Nevertheless, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Is the Minister aware that on 27th February, 2002 at about 4.00 p.m. errant police officers from Karen Police Station, using vehicle Registration No.GKA 425E harassed and extorted bribes from the following hawkers at Dagoretti Corner.

Messrs:

Musyoka Matheka	-	Kshs300
John Kimaru	-	Kshs300
Richard Githaiga	-	Kshs300
Peterson Munyua	-	Kshs300
James Gaku	-	Kshs300
Michael Gitau	-	Kshs300?

(b) Since the police officers from Karen Police Station have persisted in harassing innocent and law-abiding hawkers at Dagoretti Corner, could the Minister institute urgent investigations into these corrupt practices at Karen Police Station?

(d) What measures will the Minister take against the officers involved in the harassment and extortion of bribes?

The Minister of State, Office of the President (Mr. Sunkuli): Mr. Deputy Speaker, Sir, I apologise to the hon. Member for not availing the written reply in time. I think there was actually a delay in drafting the answer.

Mr. Deputy Speaker: Have you got a copy to give him?

The Minister of State, Office of the President (Mr. Sunkuli): Mr. Deputy Speaker, Sir, nevertheless, I was not even going to read the answer the way it is written. I will give a different answer.

(a) No, I am not aware. I have perused the Occurrence Book (OB) in Karen Police Station and I did not see any report about this matter.

(b) Harassment by police officers, or by anybody, is a matter to be condemned. I cannot do more than to ask those who fall victim of this to report the matter to the police so that the Government can take action.

(c) As soon as I get a formal complaint from Messrs: Musyoka Matheka, John Kimaru, Richard Githaiga, Peterson Munyua and James Gaku and Michael Gitau, I will be able to take action.

Mr. Anyona: Mr. Deputy Speaker, Sir, I am sure you will recall that this is not the first time a Question of this nature has come up involving different incidences in the past. Each time the Minister concerned comes here, the excuse he uses is that he is not aware or no report has been made to the police. Therefore, they cannot investigate. They can only investigate if a report is made. That is the type of answers we have been getting.

Because I was aware of those problems, I made sure that excuse could not be available this time around. So, when the incident took place, in the first place, I personally spoke to the OCPD, Langata Police Station, about it. Secondly, the leaders of those hawkers went to the OCPD himself and handed him a letter dated 20th March, 2002. It is addressed to the OCPD and it was handed personally to him. A copy of the same letter was handed to the OCS, Karen Police Station. The members sought to make a statement in the OB, but they were not allowed to do so. I would like, first of all, to table this letter. It is signed by nine members of the hawkers group in Dagoretti Corner. I really do think that, in order to be able to solve this problem of the police, the Minister should go out there and get the police to do their work because they are not telling the truth. If the Minister does not know about this letter, then how can he know what happened?

(Mr. Anyona laid the document on the Table)

Mr. Sunkuli: Mr. Deputy Speaker, Sir, this appears like a case where I have been misled. Because, if the police received this letter, then I ought to know about it. I would like to verify these facts, and, therefore, again ask the indulgence of the Chair so that I can answer this Question next week, after I have found out what the police have to say about it.

Mr. Anyona: Mr. Deputy Speaker, Sir, I am also using it as a test case for this Minister because, first of all, he is my friend and secondly I believe sincerely that he can make a difference if he wishes to. Either he will succeed over this Question or he will not. I would like to give him as much time as required, but please let us have a comprehensive answer. In the meantime, please, stop the police from harassing innocent hawkers in this City and elsewhere.

Mr. Deputy Speaker: The Question is deferred to next week.

(Question deferred)

Mrs. Mugo: On a point of order, Mr. Deputy Speaker, Sir. While appreciating what the hon. Member has done in helping me with the work in Dagoretti Constituency, I would like to state that Dagoretti Constituency has a very active hon. Member of Parliament. I have asked similar Questions on behalf of hawkers. I know the hon. Member is a frequent visitor to my constituency and this is the second time he is bringing this Question. I am concerned, because I think it is courteous if the hon. Member could have mentioned to me about it.

Mr. Deputy Speaker: What is your point of order?

Mrs. Mugo: Mr. Speaker, Sir, I have brought this matter to the House several times; about the police in Dagoretti Constituency harassing and arresting people every evening. When the Minister comes back with the answer, could he say what action he is going to take, and not to tell the people to report to the same police who are harassing them? What measures is he going to take to arrest this situation?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, you would notice that there are two complaints that the hon. Member is making. One is why Mr. Anyona has asked the Question and the other one is why the police should receive complaints. With respect to the second matter---

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

Mr. Deputy Speaker: Order, Mrs. Mugo! He is responding to your point of order. You cannot be the only person with a view. All these hon. Members have their views. So, please, let us give him a chance.

Mr. Sunkuli: Mr. Deputy Speaker, Sir, with respect to the second question, I suppose that, that is the constitutional way of the Government receiving complaints from people. With regard to the first matter, the hon. Member usually raises Questions about gender issues, and I suppose that is why Mr. Anyona asked a more serious issue.

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

Mr. Deputy Speaker: Order! Order! With respect to the first part of your intervention, I agree it is customary in order for hon. Members who wish to raise issues in other hon. Members' constituencies to inform them. But there is no rule here which I can use to enforce that. If you did not intend to get an answer then I would say, with respect, that it was a frivolous point of order.

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

Mr. Deputy Speaker: Order, Mrs. Mugo! Let us remain friends! **Mrs. Mugo:** Mr. Deputy Speaker, Sir, I would like to clarify!

Mr. Deputy Speaker: Order! If you want a clarification on that issue, rise after Question Time. But this Question has been deferred to Wednesday next week.

(Several hon. Members stood up in their places)

Order! There will be no more debate on this Question!

Next Order!

POINT OF ORDER

PLIGHT OF FARMERS IN NORTH RIFT

Dr. Wekesa: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Agriculture regarding the maize saga. Farmers in the North Rift region have been subjected to a lot of problems by the National Cereals and Produce Board. There was a demonstration by the farmers in Eldoret, and they were mishandled by the police. These farmers have a legitimate complaint against the Government. They have delivered their maize from October last year.

Mr. Deputy Speaker: Order, Dr. Wekesa! Are you now telling the Minister what he should say in his Statement? Is that background necessary for the purpose of seeking a Statement from the Minister?

Dr. Wekesa: Mr. Deputy Speaker, Sir, all I want the Minister to do is to explain how the Government is going to make money available to pay the farmers, because this is the time that the farmers need to prepare land for this season's planting of maize. The farmers also want to pay school fees, hospital bills and buy seeds. The recent announcement by the National Cereals and Produce Board to ask farmers to barter their proceeds against the inputs does not please the farmers, because most of them are small-scale farmers. They need money to be able to---

Mr. Deputy Speaker: Order, Dr. Wekesa! In your request to stand up on a point of order, you were very specific; that you wanted the Minister to tell this House what he is doing about the plight of maize farmers in particular, and you have already done that. But now you are debating, and there is no Motion before us on the plight of farmers. So, you should ask the Minister for Agriculture to make a Statement on the plight of farmers in North Rift,

and in particular how they are being treated by the NCPB.

Next Order!

BILL

Second Reading

THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS BILL

(The Attorney-General on 3.4.2002)

(Resumption of Debate interrupted on 10.4.2002)

Mr. Deputy Speaker: Mr. Mwenje, you still had 24 minutes.

Mr. Mwenje: Thank you, Mr. Deputy Speaker, Sir. I will make use of the 24 minutes.

As I was saying, this Bill is important and has been properly brought to this House. It is a Bill that we should pass, with some amendments. Hopefully, it will not be like other Commissions which we have formed here, and have not been very useful, including the Constitution of Kenya Review Commission. We should say it very clearly that the Constitution of Kenya Review Commission has not served us well.

Mr. Deputy Speaker, Sir, I, as an individual, would like us to go to the next general elections with the current Constitution, without any minimum amendments. Those of us who will come back here can overhaul it then. That is because we have been let down by the Constitution of Kenya Review Commission (CKRC). Kenyans have been let down by very many other commissions which have been formed. We hope that when that time comes, this Commission will not let us down either.

Mr. Deputy Speaker, Sir, as many Members have said before, it is common knowledge that some of those who have violated human rights the most in this country are police officers. They have used their power, just because they have guns in their hands, to do what they want. They have dehumanised everybody in this country. They do all what they think they can do within their powers, just because they have guns. They have been referred to in this House as trigger-happy! They just shoot to kill using the machines that they carry and very many Questions have been raised in this House. When the police are told to arrest criminals, they take all their time to do that. But when they are told to go and arrest an hon. Member, they run there very happily, hoping that somebody would give them something. We should resist giving them anything. It is better to appear in court rather than bribe any police officer. Let them infringe human rights but one day, they will pay for it.

Mr. Deputy Speaker, Sir, I know of many cases which are pending in police stations, including the Buru Buru Police Station. Complaints are made there; and I, personally, have made many complaints there, but the police have not acted on them. But when complaints are raised against me, any other important person or a common man, you will find them there! But when it is against criminals, you will never see them. I would like the Attorney-General, when he will be replying, to tell us why there are many pending cases at the Buru Buru Police Station, despite the fact that evidence has been produced and no action has been taken. I dare to substantiate when that time comes.

Mr. Deputy Speaker, Sir, with regard to the Bill, let me start with Clause 5, which stipulates the qualifications of the Chairman and the Commissioners. Time has come when we should stop being neo-colonialised that, every time we talk of the qualifications of a person to sit in a commission, he must be a person qualified to be a judge. Why do you need to be qualified to be a judge to become a commissioner? Who does not know what human rights are? Who does not know those who are infringing human rights? Everybody knows and you do not have to be a judge to know that!

Clause 5 reads:- "In the case of the Chairperson, he is qualified to hold office as a Judge of the High Court." Why? Are we only looking for jobs for the lawyers? Who says that a learned person of a certain level cannot become the chairman? Who says, because to be a judge you must be a lawyer, that if you have other professional qualifications, you cannot be the chairman? I totally disagree with that connotation that every time we create such a commission, we have to put a provision that somebody must be qualified to be a judge.

In any case, magistrates are just as qualified as the judges. The only difference is that some of them are appointed earlier to be judges. Some magistrates are even more experienced than some judges! Some ordinary citizens may be more qualified elsewhere! I do not agree with the qualifications and I hope that clause will be amended to fit the situation in Kenya.

Mr. Deputy Speaker, Sir, Clause 6(3) states:-

"The Attorney-General shall, within seven days of the expiry of the period prescribed under Subsection 2, convene a Committee comprising the Speaker of the National Assembly, the Chief Justice or his nominee."

Mr. Speaker sits in this House and he is a very busy person, but he has not been given a nominee. We must also defend the Speaker this time. It should also read:- "The Speaker or his nominee." Where it refers to the Chief Justice, it is written: "The Chief Justice or his nominee." Where it refers to the Attorney-General, it is written: "The Attorney-General or his nominee." But when it comes to the Speaker, it is written: "The Speaker of the National Assembly." Does that mean that the Speaker is not a busy man? This House is respected through the Speaker and, therefore, that section should be amended to read: "The Speaker or his nominee." That is because he could be busy. That would rule out the Deputy Speaker and anybody else sent by the Speaker. That should be amended to include a nominee from the Speaker, just like the other cases which have been put in the Bill.

Mr. Deputy Speaker, Sir, Clause 9 reads:-

"Three Commissioners, whose term of office shall expire at the end of three years and three other Commissioners will expire at the end of four years." They are supposed to agree between themselves whose time will end up after three years and whose time will end up after four years. We are all human beings and nobody would want his term to end earlier. They may also disagree and my proposal here is that the appointing authority should decide who will go for three years and who will go for four years. But when you leave it between themselves--- We saw it even here in this House when parties were supposed to appoint people to the East African Legislative Assembly. We disagreed on the Floor of this House! If this august House, which is the most respected institution of this country, cannot agree, how do you expect those people who will be paid to agree? It will not be possible. My opinion is that the appointing authority should appoint each Commissioner for a period or a certain number of years to avoid the anomaly which is likely to happen. To avoid that, let the appointing authority make a decision as to who will go after three or four years. In any case, at the end of the day, all of them will somehow go!

Mr. Deputy Speaker, Sir, the functions are stipulated in Clause 16. That is where the real issues will be. That is where the whole country will be looking upon to see how the Commission will operate and perform its functions. In the first place, we must say that it must not be like the CKRC where some Commissioners never attend its sittings! They must attend all the sittings like Members of Parliament who, if they do not attend for eight consecutive sittings, they lose their seats. In the Commission, there is nothing of that nature. That is why the CKRC Commissioners do not attend their sittings. We need to put a clause here that if they do not attend a certain number of sittings they will lose their seats. They are honourable citizens, but we do not know at which stage one changes from being honourable to whatever else one can be. We need to have such a clause which will dictate the time for sittings and the remuneration because the payment which will be approved by this House will certainly be attractive and therefore, one has got to justify why he should earn that allowance. A number of people have come to this House. When we went round collecting views with the Constitution of Kenya Review Commission, a number of people suggested that there should be an ombudsman. If this Commission works rightly we may not need an ombudsman. I do not know whether it will work properly. If it works, there will no need for an ombudsman. How will the Commission function if, when they find somebody guilty of committing an offence, they will still have to go to the Attorney-General to have that person prosecuted.

We must blame the Attorney-General's office because we noted anti-corruption cases were never prosecuted. That is why it was necessary to form the Kenya Anti-Corruption Authority. To date, it is the same reason why donors will not give us money because no prosecution is being done. This country is suffering because those who have misappropriated public funds have not been prosecuted. Whose fault is it? It is the fault of the Attorney-General's office. I must say the Attorney-General and the police are very quick in arresting Mwenje, Gatabaki, Dr. Ochuodho and all the rest and taking them to court. Why has the Attorney-General never prosecuted all those who have misappropriated public funds? Why has he never prosecuted those whom Dr. Ochuodho or even I made a complaint against even in the police station? This is because he is applying double standards.

This Commission will have to get the same Attorney-General to prosecute, but he will never do that. He will only prosecute a case when he wants to do so. Even when you go for private prosecution, he will not allow you to proceed with the case. He will take over the case and discontinue it. That is the whole crux of the problem of this country. We have a situation where the Government does not prosecute and private prosecutions are frustrated. I had a case which I had to refer to the Attorney-General to allow for private prosecution. I can assure you that you will go through hell in order to get authority for private prosecution. We are now telling this Commission to rely on the Attorney-General for prosecution.

I would have preferred that we amend the Constitution and allow this Commission to prosecute cases directly. That would have been the way forward so that they can be effective. This Commission will soon be ineffective because they have to refer to the Attorney-General. Before this Attorney-General came to this House he was known to be a very good human rights lawyer, but is he any more? Who has interfered with

him? Who told him to change from what he was? Somebody should tell us what happened to him and not me. I knew him before he came to this House. I was in this House before him and I knew him. He was a very good man. All of a sudden, things have changed. We will not tolerate human rights violation in this country any more because the time is up.

There are those who have been trying to marginalise others and that also amounts to human rights violation. We have a Government that segregates some people. If something is done by a certain group of people, it is considered okay, but if it is done by another group, it is not okay. We have a Government that advocates segregation. This is violation of human rights. What more are we looking for? How do we know that the law we are about to enact today will be respected by this Government? This Government is one institution which is known for violation of human rights. I do not know whether this Government is aware of what human rights are or whether they read about them in the books.

Some rights are God-given, but this Government does not even respect God-given rights which may be called human rights. That is why we are saying that the time is up for the Government. We intend to pass this law and that is why I insist that the Attorney-General should not be allowed to prosecute these cases. We should allow this Commission to prosecute these cases, even if it means spending a fortune on private prosecutions. That is why I agree that we should allocate some money for private prosecution because you can never rely on the Attorney-General's office, or this Government for that matter, to prosecute the offenders. How many people have been mentioned for misappropriation of funds? That is a violation of human rights. It is a violation of human rights when you steal Kshs186 million from a State Corporation and you are never prosecuted; and when you are prosecuted the case just drags along for some time, and eventually it is thrown out of court. That amount of money is enough to educate children in the whole of Embakasi Constituency. It gets misappropriated by one person and when he is taken to court, nothing happens. What worse violation of human rights can there be than when I take away the only money that you had in your pocket? You cannot even go home. You might be forced to sleep here in town and face the wrath of those boys.

An hon. Member: Which boys?

(Laughter)

Mr. Mwenje: Mr. Deputy Speaker, Sir, I am sure that as you drive within the city you must have seen those boys who do not play around. They are here.

What I am, therefore, saying is that misappropriation of public funds should be treated as a form of violation of human rights. We should allow this. Human rights should not just be confined to domestic, gender, children or such small issues. It should be extended so that it covers even the highest levels of society. The first culprit of this Act will be the Government.

Mr. Deputy Speaker, Sir, I will give you an example. The Government has arrested me severally and taken me sometimes to Machakos and Loitokitok, which borders Tanzania, as if courts do not exist here in Nairobi. I have been arrested 43 times since I was elected as an hon. Member of Parliament in 1997. Out of the 43 times I have been arrested, I have been acquitted. The Government either withdraws the charges or just sets me free. What does that mean? It is harassment! That is violation of my own human rights. If they can violate the human rights of an hon. Member of Parliament of such a stature as myself, what about the other common person?

Mr. Deputy Speaker, Sir, it is good that the Government has come out with this Bill but as I have said, it will be the first victim. It should compensate the victims of human rights abuse. I am glad that Section 19 states:-

"The Commission can redress and order some kind of remedy in each of these cases."

There should be no exemption from the top-most man in this country to the lowest-placed person. I know that the law says that you cannot take the President to court, but when it comes to human rights abuse, there should not be any discrimination. This is because this is an international issue. That is why we are using international standards just as the preamble states. The law should then apply literally to everybody from the top to the bottom.

Mr. Deputy Speaker, Sir, I am very disturbed to note that even in land matters, a lot of violation of human rights has been witnessed. You have even seen old women running to the President sometimes in public meetings trying to give him some letters. Why? This is because the Provincial Administration has refused to help them even after they have presented their case. That happens because people find that there is no other way they can solve their problems except resorting to that. The Provincial Administration, particularly in Nairobi, is causing the highest levels of violation of human rights. We must warn them that they will be the first victim of this Bill. I am aware that in some of these cases where I have appeared in court, my arrests are ordered by the Provincial Commissioner of Nairobi. I know, and there is nothing to hide. I will not be scared any more to say the truth because the truth shall prevail. The Nairobi Provincial Administration must now know that this Bill will become law in a short time. I hope we shall amend it and the Provincial Administration will face the law because it will apply to everybody.

Mr. Deputy Speaker, Sir, we have spoken about squatters who are being harassed and kicked out by some landlords. This is violation of human rights. Every Kenyan has equal rights in this country. We should never allow these people to be evicted. This aspect will also apply in this Bill. I hope when the Commission is in place, it will start by addressing this issue.

Mr. Deputy Speaker, Sir, this business of arresting somebody and charging him in a court of law with incitement is the highest violation of human rights which is now being practised by the Government in this country. If you are arrested today and there is no case, you will be charged with incitement. Inciting who? Sometimes you are even told that you incited an hon. Member of Parliament or a District Officer. Sooner or later, you will see me being charged for inciting Mr. Deputy Speaker.

(Laughter)

Mr. Deputy Speaker: You do that a lot!

Mr. Kombo: In fact, that is what you are doing now!

(Laughter)

Mr. Deputy Speaker: You know, you incite me a lot!

Mr. Mwenje: Mr. Deputy Speaker, Sir, we must be careful because I know that if this was not happening in this House, I would be taken to court for inciting the Speaker. Is anybody capable of inciting the Speaker?

Mr. Deputy Speaker, Sir, I support this Bill so that it becomes law and hope it will be effected.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I rise to contribute to this very, very important Bill that has been long overdue to be laid in this House because human rights is an extremely important matter in building a democratic society. If there was anything that tarnished the name of this Republic during the last 20 years, particularly in the 1980s, from about 1975 to 1992, it was the violation of human rights of Kenyans.

Mr. Deputy Speaker, Sir, speaking very biographically, I have been a victim of the violation of human rights in this country simply by fulfilling my functions as a lecturer at the University of Nairobi. I was frequently picked up by the police to be questioned as to why I was using certain texts in the classroom, one of them being *"The Communist Manifesto"* written by Frederick Engels and Karl Marx. This is a book that has never been proscribed in this country. It existed in the bookstores in this country and was in the university library. The then Vice-Chancellor, the late Dr. Karanja, said quite clearly that university dons were there to impart knowledge to the students. When the students graduate and get their degrees, the Chancellor says: "Go thee into this world and practise the knowledge that you have been given". So, under the laws of Kenya there was absolutely no law stopping any lecturer to use either the Bible or a communist manifesto to teach the students.

Mr. Deputy Speaker, Sir, indeed, if you look at the Acts of the Apostles and the philosophy of Paul, you will find that they are very similar to those of Karl Marx. If you read the gospels of Matthew, Mark, Luke and John, Jesus Christ was, in actual fact, persecuted precisely because he was promoting the cause of the people. When Jesus Christ went to the temple or the church, as we call it these days, and found people misusing the temple by selling sheep, goats, trinkets and so on, and soothsaying, he took a whip and whipped them out and told them: "You are misusing the holy house". Nothing was done to him that day because even the Roman Governor realised that Jesus was exercising his human rights. If you believe, indeed, that he was the Son of God and the house of God was being misused for sinful activities, that is the first time we realised that Jesus could resort to using the whip to make sure that religion was respected, and that there was a place for religion and a place for selling sheep, goats and trinkets and soothsaying.

Mr. Deputy Speaker, Sir, if you go further and look at how Jesus took compassion for the poor---

Mr. Kombo: On a point of order, Mr. Deputy Speaker, Sir. Since when did Prof. Anyang'-Nyong'o become a preacher?

(Laughter)

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

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, hon. Kombo must know that I am the son of a bishop and my father is still very much alive.

Mr. Deputy Speaker: It wraps over!

Prof. Anyang'-Nyong'o: Yes, Mr. Deputy Speaker, Sir. In fact, that is why if I lose my membership of this House, I have another job to do. I could even take over my father's cassock. It is available there for me since he has

retired.

Mr. Deputy Speaker, Sir, if you look at the philosophy of Jesus according to the gospels of Mark, Luke and John, they are very close to what Karl Marx and Frederick Engels used to talk about. For example, one day when Jesus was approached and informed that a lot of people were hungry, he said: "How are we going to feed these people?" He asked the congregation: "How many loaves do you have?" The crowd told him: "We have five loaves". He then told them: "Give them to me". He multiplied five loaves to feed 5,000 people. He was recognised as a human rights activist. Food is a basic need! If people are starving, then give them food as a basic need since that is their human right. So, we want this Government to also realise that food is a human right and a basic need.

Mr. Deputy Speaker, Sir, one of the things which should happen in a document like this is for this Bill to become law and be put in practice so that Kenyans can see a difference in their lives. Today, I was having lunch with a former Minister of this Government who asked me: "Do you know something that happens in Parliament? From year to year, we pass Bills into laws, but if you go into the streets and ask a Kenyan whether a Bill passed into law last year has made a difference to their lives, he or she will tell you that it has not". So, what is it that we are doing in Parliament that makes a difference to people's lives? I am saying this because in the 1970s and 1980s, those of us who were in the University of Nairobi teaching students, our human rights were violated and we entered a struggle so that we could change the situation so that human rights of Kenyans could be respected. Ever since I came to this House, I must say that my human rights are now respected to some extent. But they are still violated because the Constitution says that, nobody under the Constitution of the Republic of Kenya counts for more than one. There is no respect for sex, religion or tribe, and that the law must be exercised, whatever sex, tribe or religion, you are. But as we stand here today, there are so many Kenyans who have been discriminated against in the work place because of sex, religion and tribe, and yet the Constitution says very clearly that these things should not stand in the way of a Kenyan exercising his or her citizenship. We did not need a Bill like this to make the Kenyan Government implement the Constitution, because that Constitution even in the 1980s, existed when I was at the University of Nairobi.

Mr. Deputy Speaker, Sir, I will give you an example. On 1st May, 1989, and if you remember that is also the day that Prof. Saitoti was made the Vice-President--- I remember it very clearly because on that day, I had spent three weeks in the torture chambers in Nyayo House. On that particular day, this young man who was one of the officers interrogating me, who enjoyed immensely harassing and reducing me to the level of an animal, took me to the 24th Floor of Nyayo House and told me: "Professor, sit there!" I had not brushed my teeth for about three weeks and my hair was uncombed for three weeks. So, I sat there and he told me: "Where you are sitting is where Mr. Raila Odinga sat sometime ago. Do you know where he is?" I said: "I do not know." He told me: "He is in detention. We can send you there even right now. But you have an opportunity. If you collaborate with us, we can make you a Minister and you can drive a Mercedes Benz car. As a professor, you can even become a Vice-President because a professor like you has just been made a Vice-President today." That is how I knew that Prof. Saitoti had been appointed a Vice-President. I told the man: "Look, I am happy as I am. I have a wife and children. I live in my own house and God still has my father and mother alive. These are the things I need in life and I have a job which I did not get from you." He said: "But look, you are foolish." I said: "No, I do not think I am foolish because, unlike you, I went up to the university and I have a Ph.D. I do not know whether you have one." The man got very annoyed and reached into a drawer and brought out something and he looked like he was going to use it to crush my testicles. I told him he was going too far. But Kenyans have gone through this kind of experience. I am saying so because Mr. Raila is right here and I was told that, "Where you are sitting, Mr. Raila Odinga sat there sometime ago and he is in detention. You can follow him there." I was prepared to follow him, but I was not going to kneel down and worship this fellow. Even Jesus was taken to a mountain and he was told: "This whole countryside can be yours if you kneel down and worship me." The man who was being worshipped was the devil. Jesus said: "No! No, the only person I can worship is my Father who is in Heaven and not on this earth like you." Jesus refused to worship the devil.

Mr. Deputy Speaker, Sir, many Kenyans' human rights have been violated in this way. Section 16 (d) says:-
"The functions of the Commission shall be:-

(d) to recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights, or their families."

We need to have a rider to this. That further to this clause, a truth and reconciliation commission shall also be established to work in concert with the provisions of this Bill to find the truth and reconcile Kenyans, whose human rights have been violated historically. There are people who are sitting in this Republic with burning and bleeding hearts, but as true Kenyans, they are prepared to reconcile with their fellow Kenyans, provided something is done to recognise that they suffered. There are people, as I know, who have lost their manhood in detention. They are alive today and their hearts are bleeding. We cannot pretend that they are enjoying their human rights like other Kenyans when, under the violation of human rights, their manhood and womanhood have been robbed of them. That is the highest form of violating people's human rights. But it is much easier to rob manhood than womanhood! I do not

know the facts about womanhood. I am a user and not an exploiter! I am a beneficiary!

Mr. Deputy Speaker: You are a user!

(Laughter)

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, this section of the Bill is extremely important. Along with that section, let me also refer to another very important aspect of human rights. We should not only observe individual rights as citizens of Kenya. Also to be observed are people's rights. Section 17 says:-

"In the performance of its functions under this Act, the Commission shall-

- (a) accommodate the diversity of the Kenyan people;
- (b) observe the principle of impartiality and gender equity."

Mr. Deputy Speaker, Sir, that Kenyans have cultural diversity is a gift from our Creator. It is, indeed, something that we could use creatively for the development of this nation. But that diversity of the Kenyan people has been bastardised so that it can be exploited to perpetuate in power an inhuman, irresponsible and oppressive Government which must be corrected. The way in which ethnicity is manipulated in this country to perpetuate inequalities, oppression and authoritarianism is extremely against the principle of this section of the Bill that we are debating. Accommodating and respecting the diversity of the Kenyan people means that we are in actual fact going to implement the African Charter of Human and People's Rights, which says that, among other things, in promoting democracy in Africa, they are not only going to be committed to protect individual rights, but people's rights. What are people's rights if we are going to accommodate, respect and promote the diversity of the Kenyan people? Once you have respected human rights and citizenship as a principle of our political relations in this country, then we should not fear the fact that we have diverse cultural relations, inheritance and heritage. But that we tend to use cultural heritage and inheritance to cause further divisiveness and antagonism among the people is what makes this Government iniquitous and irresponsible.

Mr. Deputy Speaker, Sir, I would say that, like the Singaporeans did, we should promote the people's languages, namely, Kikuyu, Luo, Luhya, Mijikenda, among others. These languages are the medium of communication of the people of Kenya. In actual fact, only between 5 and 10 per cent of Kenyans speak English; let us be frank. Maybe, about 40 per cent of Kenyans understand English, but the majority of them communicate comfortably in their own mother tongues. If I want to crack a joke that will make you and Mr. Raila almost crack your ribs, I will crack it in Dholuo, because the language has certain words which I cannot translate into English. That language should be promoted so that when we relax over a bottle of beer, we can have a medium of communication through which to joke. So, the fact that we have not gone far to promote the languages of the Kenyan people shows very clearly that we are not respectful of the people's rights.

Prof. Ngugi wa Thiong'o has been writing his books in Kikuyu. When I was in New York recently, I saw a new book he has written in Kikuyu, which is now translated into English and Kiswahili. So, the Kikuyu version of that book is going to come out first, and then will be followed by the English and Kiswahili versions. He also realises that he wants to communicate with many more people. However, he wanted to, first, express his passions in Kikuyu, because he was writing about the life that he lived from childhood to adulthood. He lived his childhood amongst the Kikuyu people. So, once he has expressed his childhood life in Kikuyu, the book can be translated into other languages. In any case, with the help of modern technology, we are going to find translation very easy. If in Kenya we are not promoting Kenyan people's languages, obviously, we are violating the people's rights.

Mr. Deputy Speaker, Sir, culture is not dancing by women at airports and Harambee meetings. That is a violation of the people's rights, and an exploitation of a section of society. The only thing I have seen in this country, about which I can say that the Kenyan Government has tried to promote the people's culture in terms of performing acts is during the schools and colleges drama and cultural dance festival. That festival is something this country should be proud of. Young people get to know their dances and music. Were it not for that festival, some youngsters may never know some of the traditional music that exists among their people. Another thing is that they come to one place from all parts of Kenya. Unless this is enriched, you may easily find that some concoctions are put on stage as if they were part of the cultural heritage; they are just done for the purpose of the drama. If we are serious, the provisions of this Bill will be adhered to by institutions to promote, accommodate and defend the diversity of the Kenyan people in terms of their cultural heritage and weaknesses.

The other thing I would like to talk about is the rights of those people not regarded as citizens. In Africa, where Governments themselves have been responsible for political instability and conflicts, we should never treat refugees as people who have less rights than our own people, because the fact that they are in our own land as refugees is no mistake of their own. It is as a result of bad governance in the land where they come from, which is African land, that they find themselves in other territories. Further, the phenomenon of refugees in Africa is a phenomenon which

must be looked at in terms of the illogical way in which African boundaries were actually drawn; they were drawn irrespective of the people's rights. For example, the Maasai of Kenya and Tanzania were never consulted about the boundary between Kenya and Tanzania, but they find that there is an artificial boundary between them, so that as a Maasai grazes his cattle into Tanzania from Kenya, he soon finds that he is violating the territory of another Maasai. That is completely illogical. This is the case in many other African countries.

Mr. Deputy Speaker, Sir, it is fortunate that as I speak, the Technical Committee of the Organisation of African Unity (OAU) and other ministerial committees have approved the Constitutive Act of African Union, which is going to be debated in Pretoria during the OAU meeting, which is going to be the foundation meeting for the establishment of the African Union. In the Constitutive Act of the African Union it is stated very precisely that the aim of the Act is to drive us very rapidly to an African Union in which the movement of people and capital will take place irrespective of these boundaries. We realise that, as we speak, with all the liberalisation policies that we have, capital is already free to move.

Money does not need any visa to enter Tanzania from Kenya. We have a free currency exchange now. If you want to exchange any currency, you only need to go to a bank and do so. You do not have to ask for a visa to change, say, the Kwacha into Kenya Shillings. Money movement is already free; it is flowing all over the place. Why are we insisting that our people must have visas to cross borders when we have already liberated money? Money just flies around without any visas. For money to move from Denmark to Kenya, there is no visa required. However, for a Kenyan to go to Denmark, he must have a visa. For a Kenyan to go just down to South Africa, he needs a visa, whereas the South African Rand crosses borders to land right in Kenya. Why do we want to carry visas when money, which is made by people, does not require visas? It is because we are not really very conscious of what human rights involve.

Mr. Deputy Speaker, Sir, if we are going to talk about free movement of money and capital, the first thing that moves freely to make this a reality is people. That is why I strongly welcome the writing of the Constitutive Act of the African Union to establish the African Union. It is when the African Union fully comes into being shall we really speak of respecting, promoting and defending people's rights as, indeed, stated in this Bill. It is really welcome. When that day comes, I do hope that we shall be in a position to bring to book, in the context of Clause 16 of this Bill, all those states and individuals who have been responsible for the violation of the rights of the people.

Just to revisit Clause 16(b), which says that the functions of the Commission shall be to recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violation of human rights or their families--- I think one thing that is important is that quite often, individuals in the security forces become overzealous in exercising their powers and go overboard to violate the rights of people who come under them for the so-called "security purposes". I remember the case of the late Mr. Adungosi. Mr. Adungosi was a leader of students at the University of Nairobi. He was tortured while in custody, I think in Naivasha. Mr. Adungosi was finally taken to Kenyatta National Hospital for treatment, but because of torture, his internal organs had been affected, and he died. Those who were with Mr. Adungosi in prison know the people who tortured him. The doctors who examined Mr. Adungosi at Kenyatta National Hospital are still alive. The family of Mr. Adungosi, as well as the people of Kenya, miss him very much.

Mr. Deputy Speaker Sir, I would, therefore, want it to be put on record, and be practised, that when this Bill becomes law, those individuals who tortured us and sent people like Mr. Adungosi to their early death should answer for it. As it has been said here, let the Government not just compensate Mr. Adungosi's family and friends, but let it also say: "The law told you to take Mr. Adungosi to Naivasha and keep him in prison. If he was to be questioned, he was to go to a court of law. Who gave you the authority and right to torture Mr. Adungosi and, therefore, make him die prematurely?" We know some of these people by their names. The other day, I met one at Milimani Hotel; there was a Harambee there.

An hon. Member: Who is he?

Prof. Anyang'-Nyong'o: I will not disclose his name because members of the public may corner him somewhere. You know, in this country, there is what is known as "mob injustice". I do not want him lynched.

(Laughter)

At least, having grown up as a Christian, I do not encourage that.

Mr. Deputy Speaker: Having been born a Christian!

(Laughter)

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, having been born a Christian - that is even better - we

should forgive them

Dr. Kituyi: On a point of information, Mr. Deputy Speaker, Sir. I wish to inform the hon. Member, a son of an Archdeacon, that Mr. Raila and I have bumped into one of those worst criminal torturers. He is now so prosperous that he is shopping around for sport cars in this town. I also wish to inform Prof. Anyang'-Nyong'o that up to the time that we are talking about the human rights law, in this country, there is no crime called "torture." Our Penal Code does not punish torture. That is why when police torture a person and they kill him or her, they are charged under assault and not torture. So, we could not develop this legislation properly without, in tandem, amending the Penal Code in order to provide for torture as a crime.

Mr. Deputy Speaker: Have you contributed to this debate?

Dr. Kituyi: Mr. Deputy Speaker, Sir, I have informed my brother.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I am very grateful to Dr. Kituyi for informing me. You can see - he was my student - the quality of students that I produced.

(Laughter)

I deserve better in this nation!

I am not saying that these individuals should be lynched, but we want justice to take its course because compensation is not just giving money to families that were lost; compensation is also healing the soul, reconciling differences and making sure that truth prevails. That is why it is important, as I said, that along with these things, it should come with the Truth and Reconciliation Commission Bill.

I was watching a documentary the other day about the truth and reconciliation work in South Africa. What was interesting was that people would go to the microphone and begin relating how they were tortured. They would break down and cry. Later on, after being questioned by the Commission, the journalists would ask them: "So, after you cried, how did you feel?" They would reply: "I now feel much better because somebody now knows what I went through." This is part of the expiation; part of the washing of the soul.

Mr. Deputy Speaker: If need be, they will shed blood!

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, that is true. You see, by the way, those who did these things also do recognise that when the truth is told, their world becomes very small. If you read Mr. Frederick de Klerk's biography which was just published last year, he agrees that he went to testify to the Truth and Reconciliation Commission, but Mr. Botha, who was the President before him, refused. The way he describes Mr. Botha shows that he does not have much respect for him. I think Mr. Botha was a kind of bumpkin. Mr. Botha is regarded as a very small mind as far as Mr. Frederick de Klerk is concerned. Mr. de Klerk now recognises things that he, himself, did among other things, and he appeared before the Truth and Reconciliation Commission. That is just an example of how people can rise up from their ignominy of having violated other people's rights when it is exposed and made public.

Mr. Deputy Speaker, Sir, so, the Government should not fear the Truth and Reconciliation Commission because it is going to help heal this nation. Further, when the nation is healed, any Government that comes up after that will have more legitimacy. One of the reasons why we have lack of legitimacy in the Government in this country is that people just see the terrible things that have been done in the name of governing, which are terrible, incomprehensible and totally against human rights.

I would like to support this Bill, but add that along with it, we need the Truth and Reconciliation Bill.

Mrs. Mugo: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to support this very important Bill, which I think is overdue. My only biggest worry is that, because as other speakers who are in support have said, the biggest culprits in not respecting human rights are the arms of the Government, whether it is the police, any other administration or other bodies. My worry here is how this law will be implemented because the very officers who are supposed to implement and observe human rights violations, or who the Minister of State, Office of the President, would like us to report such cases to are the same ones breaking this law everyday with impunity. I do not believe for one minute that they are breaking it because there is no law. They are breaking it because there is no political will, and because they are supported in those actions that they do by the "higher authority" as they always tell us. I, therefore, hope that the implementation of this Bill, after being passed, will be addressed and that within this law, there will be a clause giving the Commission teeth to deal even with the Government; if necessary, even to sue any Government department.

Looking at the functions and powers of this Commission, you will find that they are the same; creating awareness, informing and investigating. But there is nothing concrete showing what they do with that information. It is up to Parliament to give direction. Parliament will pass this Motion, and, then, of course, it will be implemented by this same Government; the Attorney-General. I feel it will not work, and we need to have political will if this law is going to mean anything.

There are many international conventions which can be implemented along with this Bill. These conventions or instruments are signed by the same Government, because a Minister goes and represents this Government at those conventions. But when he or she returns to this country, these conventions are never implemented. I feel that human rights, and all of you here feel the same, is a fundamental principle of all civilised nations. It is expected that these international laws or conventions which are passed abroad would be implemented by all Governments. I have in mind the many conventions which have not even been made into laws here. I feel that the Attorney-General should come up with an amendment - in form of a clause -that makes it automatic for those laws and instruments which this Government signs abroad to be part of our laws. It should be made in such a way that the Government cannot move a Bill on human rights in this House without including that clause.

Mr. Deputy Speaker, Sir, I have in mind an issue like gender. Unfortunately, Mr. Sifuna is not here because I am going to speak about it again. The Beijing Platform of Action spells out the gender rights. The Minister signed them, but they have never been implemented.

Mr. Omingo: On a point of order, Mr. Deputy Speaker, Sir. Did you realise that the hon. Minister for Vocational Training did not bow to the Chair when he entered the Chamber?

The Minister for Vocational (Mr. Ruto): Mr. Deputy Speaker, I bowed to the Chair.

Mr. Deputy Speaker: Maybe, you did not bow low enough!

The Minister for Vocational Training (Mr. Ruto): Mr. Deputy Speaker, Sir, unless you want us to bow until we kneel---

Mr. Deputy Speaker: Now that you have bowed until your nose almost touched the ground, I will excuse you.

(Laughter)

Mrs. Mugo: Mr. Deputy Speaker, Sir, when we brought a Motion here for a Bill to be brought to this House, and for reports of implementation to be published, the Minister in charge assured the House that he was going to report to the House after every six months on the implementation aspect. That was almost two years ago but we have never had even a single report. As a matter of fact, we had asked for quarterly reports but nothing has happened.

Mr. Deputy Speaker, Sir, in 1995, in Vienna, it was agreed by nations, and it was published, that women's rights are human rights. That should feature in this document. Matters of gender in this country are taken in a very light manner. You heard an hon. Minister this afternoon saying that I am too busy talking about gender issues, so that another hon. Member had to ask a Question on my behalf. I am not concerned so much about that because I welcome any Member of Parliament to ask questions on behalf of the people of Dagoretti Constituency, so long as he is courteous enough to inform me about it. The fact that I continuously address gender issues should not be construed to mean that I do not have enough work to do in Dagoretti Constituency. Indeed, I do my work 100 per cent in my constituency. I have an office in Dagoretti Constituency where I listen to the problems of my constituents. My constituents know that I serve them with total dedication. But I also have another responsibility of serving the Kenyan women because they are oppressed, and somebody has to speak for them. I cannot blame the Minister in charge of Internal Security for being so jittery because I am talking about gender issues all the time. He is on record as having been taken to court for rape! He is so involved in rape cases that he does not want us to talk about the rights of women. He knows that girls are not safe in his office! So, we will continue reminding the hon. Minister about that, as long as those cases are not resolved because he went to court to have them quashed on the basis that International Federation of Women Lawyers (FIDA) did not have the right to prosecute---

The Minister for Energy (Mr. Raila): On a point order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to discuss the conduct of another hon. Member of Parliament without bringing a substantive Motion?

[Mr. Deputy Speaker left the Chair]

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

Mrs. Mugo: Mr. Temporary Deputy Speaker, Sir, the Minister himself started it all by saying that I concern myself about gender issues all the time. He did not bring a substantive Motion to discuss my conduct! Why should I be required to bring a substantive Motion now? That would amount to double standards!

The Minister for Agriculture (Dr. Godana): Mr. Temporary Deputy Speaker, Sir, I think this is a bit serious. Issues of gender, when brought here, are issues of a general nature. Mrs. Mugo is discussing a specific hon. Member of

this House in breach of the Standing Orders.

Mrs. Mugo: Mr. Temporary Deputy Speaker, Sir, the hon. Minister for Agriculture was not in the House when this matter came up. He should not try to speak on matters which he has no information about! That Minister should rest assured that we shall continue to speak about gender issues, until girls are not raped any more. We shall make sure that they are free to go into every office, whether there is a red carpet or not.

(Laughter)

Young girls should not be raped by Ministers! In fact, such Ministers should be sacked! It is a shame!

Mr. Temporary Deputy Speaker, Sir, I have been a victim of police violence. We went to a Harambee in Kwanza Constituency with the late Kapten who was the area Member of Parliament and a good friend of mine. We were beaten by mean and thuggish policemen. In any case, they did not have uniforms and I do not think they were policemen. How could they clobber a woman Member of Parliament like that? They beat senseless all the six Members of Parliament in that function, who included, Dr. Kituyi, Mr. Orengo and myself. They told us that they were executing orders from above. They said that we had to be beaten. When we pass this Bill and orders are given from above so that ordinary people and Members of Parliament are beaten, who shall we report to, so that this law can be implemented, if those above us have no regard for human rights? Do they need a law to be enacted so that they can respect human rights? How can one be elevated so high, if he knows nothing about human rights?

Mr. Temporary Deputy Speaker, Sir, I spent the whole of yesterday with small-scale businessmen and bar owners. On 27th March, police harassed people in my constituency and took money because the Officer Commanding Police Station, Muthangari, had been killed. God bless his soul. I am really sorry for the family. In fact, I went to pay my condolences and in fact, contributed towards his funeral. I do not prescribe to the notion that when something of that nature happens, everybody should be beaten mercilessly. In the whole of Kawangware, over Kshs200,000 was stolen by the police when they shot in the air and people took cover to avoid being shot. What kind of search was that? Do those police officers know what human rights are? When the hon. Minister said that hon. Anyona should go and report to the police, we are bound to ask, which police? Is it the same police who harassed them by taking bribes? Does the Minister think he will get that report? It is clear that the Minister is not serious in assisting Kenyans.

I told the Commissioner of Police to make sure that, that money is returned. Letters have been written to the Commissioner of Police and the Attorney-General, and copied to me and many other authorities. Nothing has happened since February this year. I do not know what the Minister wants those people to do. I took it over and that is why I brought that Question to this House. But I know that I will get the same answer which I got when a former employee of the Central Bank of Kenya was killed in Uthiru. Why did the police not come until midnight, and yet the said person was killed at 8.00 p.m.? The then Minister in charge of Internal Security said here that the family called after 12.00 midnight. As a matter of fact, the neighbours of that man called at 8.00 p.m. but the police out there, as has been said before, appear to be part of those gangs. They are in league with the gangsters! I think they only shoot the gangsters dead when they refuse to give them their cut. I swear, we have good police officers and I am grateful to them, although they are very few and are outnumbered. The Minister in charge of Internal Security should ensure that Kenyans enjoy their right to security, which is a basic human right.

Mr. Temporary Deputy Speaker, Sir, I hope that those who prepared this Bill will advise the Attorney-General on how to deal with the "people above", who give orders to junior officers to torture others and kill them. "Msako" should not happen in civilised societies. Police officers should look for criminals instead of searching for them in people's houses. They rape women and steal cows and other properties, thus interfering with people's human rights. That must stop. If we pass this Bill, it should be implemented. We shall pass it because we want it.

I would also like to add here that even criminals have their rights, and one of the cardinal principles is that a person is innocent until he is proven guilty. Suspected criminals should not be shot dead or tortured by police officers while in custody, as we have been reading in newspapers. We must have a strategy on how criminals should be punished so as to deter them from engaging in crime. People must be taken to the courts of law and judges must also ensure that criminals' human rights are safeguarded. We have had many cases where criminals have gone scot-free and innocent citizens have been punished for these crimes. This has been caused by the excessive corruption that has engulfed our State. So, it is very important that we come up with a strategy on how to tackle corruption. As long as corruption is at its current level, this Bill cannot be implemented. This is because somebody will pay somewhere for somebody's human rights to be violated.

Mr. Temporary Deputy Speaker, Sir, there is a lot of misuse of public funds and properties. That must be tackled also through the proposed National Commission on Human Rights. We cannot implement this Bill as long as those issues are not addressed. When all the tax money that Kenyans pay is misused or goes into private pockets, children cannot access education and medical services, and our youths cannot get employment because there is no

creation of wealth. Those are the issues that we should address. My worry is that we have passed so many Bills in this House, but they are only put on shelves. The Government has no intention of implementing these Bills. If we are not again undertaking an exercise in futility, this Bill must be implemented and all issues that surround human rights should be addressed.

Another area that I want to talk about, which is one of my favourite subjects, is women's rights. I am happy that my friend, the Minister for Energy, Mr. Raila, who is a very strong supporter of gender issues, is here. He supported us during the debate to have women elected to the East African Legislative Assembly. We cannot forget that. When we talk about gender, it really has nothing to do with women. It has everything to do with community and development. You cannot develop a country when half of its population is ignored. If this Bill will mean anything, we must have pronouncements from the Government supporting gender issues as part of human rights. The Human Rights Convention stated in 1995 that women's rights are human rights. We cannot have the Government bringing an amendment to a Bill here, just to stop women from being nominated to the East African Legislative Assembly, which was a requirement, just because ethnicity takes priority over gender. This was done in order to take care of men from a certain community, in total disregard of women's rights. So, why are we passing all these Bills if we have no intention of implementing them? The same Government that brought an amendment here to block women---

Mr. Sungu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Seeing as it were, that debate on this issue is exhausted, I beg to move that the Mover be now called upon to reply.

Hon. Members: No!

Mrs. Mugo: Mr. Temporary Deputy Speaker, Sir, this is a very important Bill, which touches on the lives of Kenyans. I do not think anyone should be denied a chance to contribute to debate on this Bill. Every constituency has a right to be heard on the issue of human rights.

This Government has no regard for gender issues and this Bill is a mere public relations exercise. There cannot be human rights unless you respect everybody. I find the Bill lacking in gender language. I am happy to see that we have more women than men on the Civil Service Bench, and I hope that they will ensure that this Bill is gender friendly and has gender language in it. The Kenyan men, unless you keep on reminding them, forget gender issues. You heard an hon. Member say in this House that women should not be appointed judges of the High Court or elected Members of Parliament. He forgot that women have a right to be elected Members of Parliament or appointed judges. We have many male divorcees in this House and even in State House, who have kept their jobs, yet women are not supposed to do so.

The Assistant Minister, Office of the President (Mr. Samoei): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to just continue complaining and grumbling? I thought she should be contributing to the Bill. Apparently, she is complaining about men. I am getting lost.

Mrs. Mugo: Mr. Temporary Deputy Speaker, Sir, this Assistant Minister is young enough to be my son and should listen when I speak. If the Assistant Minister thinks that I am complaining, I want to tell him that I came to this House to complain about the suffering of my people. If there were no complaints, my constituents would not need an hon. Member of Parliament. They would wait for the Government to do whatever they wanted to be done. I am here to complain or to bring the issues that disturb my constituents to the forefront. My constituents are 50 per cent-plus women. So, I am in order to do this.

Mr. Temporary Deputy Speaker, Sir, workers have a right to demonstrate and even go on strike. Farmers were being beaten up yesterday by policemen because they were asking for their money. The same Government gives orders to the police force to beat up demonstrators. Then what human rights are there if farmers cannot demonstrate to push for their pay? The money is their right. Farmers should not be promised to be paid with commodities such as fertilizers, because they have to pay for their children's education and medical services. We are going back to the dark ages of barter trade, which was done away with a long time ago. Why does the Government want to bring it back? When farmers say that they do not want to barter their maize with fertilizers, they are beaten up by the police. When Air Traffic Controllers demonstrated to push for better terms of service, they were beaten up. When retrenchees demonstrated to push for their retirement benefits, they were also beaten up, and when nurses threatened to go on strike to push for better terms of service, they were told that it was illegal. How will people ask for their rights? Demonstrations are recognised the world over as a way of fighting for human rights, and this Government must appreciate it. Indeed, nobody is supposed to say anything. The Government does not need to wait for this Bill to become law for it to start respecting people's human rights. It should start doing that today. If they listen to the Air Traffic Controllers and return them to their jobs, it will be fair. I do not know whether those retirees who have been told to go back and replace those who downed their tools are being paid the same amount of money. This is persecution of their own people! It is a right to ask what you deserve and what you have worked for. That is what the Air Traffic Controllers were doing! So, by paying tax to the Government, we are supporting it and we want to ask the Government to---

Mr. Sungu: On a point of order, Mr. Temporary Deputy Speaker, Sir. For the second time, may I ask that the Mover be called upon to reply?

Hon. Members: No! No! That is too much now!

Mr. Sungu: Please, let me give the reason why I am asking for the Mover to be called upon to reply. There are many Bills pending, including the State Law Miscellaneous Amendments Bill, which I am sure, every Member is interested in, and debate on this Bill appears to have been exhausted. Would the Chair make a ruling?

The Temporary Deputy Speaker (Mr. Muturi): Okay, I rule that we hear from a few more speakers because this is a very important Bill.

Mr. Orengo: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this important Bill.

As we discuss this Bill now, probably we need only one signature for the creation of the International Criminal Court. It is only one signature that we need. Unfortunately, for our country, which got its Independence with a Bill on Human Rights in 1963, it is not upholding human rights. Unfortunately, countries which have gotten their Independence or have been liberated from oppression are taking the lead, while we are remaining behind.

Already, in Africa, Botswana, Senegal, Ghana and many other countries; even small islands like Cape Verde, have signed the Lome Treaty for the establishment of the International Criminal Court. I am again using this opportunity to try and ask this Government that, although they have signed the instruments of human rights, they should now be courageous enough--- If they are truly bringing this Bill to the House upon realisation that human rights are important, and if that is the motivation, definitely, this Government can sign the wrong Treaty and, therefore, time has come for the establishment of the International Criminal Court. But I know there is a problem about the Kenyan Government signing the wrong statutes, because the wrong Treaty says that: "There shall be no impunity." There is no power on earth which shall be beyond reproach! There is nobody in any country who should be above the law! In the development towards the creation of the International Criminal Court, it was noted that the greatest violators of human rights that have led to conflicts, wars and mass commission of crimes like genocide and rape, are the misconduct of the governments, and particularly those in Africa. Now, we have reached a stage where, even if you sign the Lome Treaty or you do not sign it, when that Court is created, the greatest targets are going to be leaders of the African governments.

There will be a time when movement will be restricted. For example, if you have raped somebody's daughter, you cannot move out of Africa. Now, Mr. Mugabe finds it very difficult to go to any other countries. You will find it very difficult to go to any other country once that court is established! This is so because it says, "impunity must be punished." The case of Milosevic that is going on at the moment is telling us that no head of state is safe. If you breach or violate the rights of your own citizens because of commitments--- Sometimes I say in public rallies that when we uphold that Constitution here as leaders; every time we come here and when we elect a new Parliament; the first person to be sworn in is always the President. And he says: "I swear that I shall uphold and defend the Constitution." Sometimes I wonder whether they have read the current Constitution and understood what it says about human rights. This is because they are the first perpetrators of the violation of human rights.

When those innocent Air Traffic Controllers were being beaten the way they were beaten, does it mean that when the President was taking the oath to defend and protect the Constitution, he did not read and understand it? The police are beating people who are trying to advocate for their rights! So, time has come now that impunity shall not go unpunished, whether or not we want to live with the international standards. If you look at the international movement, you will find that, whether you are elected or not, it will not matter. This is because once you leave your country, there are people who care about Kenyans. Just like when President Mugabe went to London, there were people who wanted to enforce a citizen's arrest on him. So, if you are a rapist in this country, although you are sitting in that Cabinet; one day in London, somebody would just appear when you are about to enter into a hotel and enforce a citizen's arrest on you. That would be the day when you will know that there is a new International Court order.

I am saying this because, here in Kenya, we sign these documents, but we do not know what we are signing. We have signed the document and ratified the Universal Declaration on Human Rights; we have signed all the major human rights instruments, like the International Bill on Human Rights, but do we sign it knowing what it is all about? It is important that the Attorney-General holds seminars for Cabinet Ministers to tell them that they have signed international human rights instruments. When you sign them, it demands that you comply with them. It is important to read about the Universal Declaration on Human Rights.

It reads in part as follows:

"That instrument is the common standard of achievement for all people and all nations."

Why do we sign these instruments? The present Universal Declaration on Human Rights looks at countries and nations. People have been compelled to rise and fight against their own governments when these rights are violated. For example, if this Government was conscious that it had signed a written contract with the teachers, which

must have the force of law; signed by Ministers in this Government on the other side of the House--- When the teachers want to hold a meeting, they are beaten up. Why did you sign these documents then?

I think next time, if a new House is elected, we must make sure that people understand all that before they take up the Bible and take the oath. Most of them are Christians; they hold the Bible and say: "We shall protect and defend the Constitution", yet when public property is being grabbed and people rise against such conducts, it is the people who are beaten up! If Mrs. Mugo is there, she is the one who is beaten up for defending public property! You end up being charged for incitement, yet you are defending public property! It means that this Government had read the Constitution backwards!

You find even small traders take their time, they go and get business licences from the City Council; from the Ministry of Trade and Industry, or whichever relevant arm of Government is concerned, and they are allowed to build kiosks in order to carry out their businesses because they have licences. You may not like those kiosks, but the fact that you have licensed somebody to operate a kiosk, the law requires that before you can demolish that kiosk, you must go through some legal process.

In this country, somebody just announces that kiosks must be demolished and they are demolished, like my brother Mr. Nassir did, and he has very little knowledge of the law. He says that kiosks should be demolished and that is meant to be the law. We do this, and yet we say that we are fighting to eradicate poverty when people do not have jobs. Even by the Government's statistics, more than 70 per cent of the people in this country live below the poverty line. When they try to earn a living, they are beaten up. This Bill will not have a meaning if we treat our people in the manner in which we have treated them.

Mr. Temporary Deputy Speaker, Sir, sometimes history has got a sad sense of justice. The other day, when I went to Kilgoris for my case, I met a policeman who was involved in beating up Mr. Raila when they went to Gucha District, during the elections towards the First Parliament. This policeman told me that never again shall he try to beat up a politician. This is because he has now realised that Mr. Raila is not only a Minister of this Government, but also the Secretary General of the ruling party KANU.

(Laughter)

So, he reminded me--- I think Mr. Raila should hear this. One of the policemen who beat you up in Gucha District at that time saw me in a Kilgoris court and told me that: "Lakini Bw. Raila akiniona, nitaenda gerezani." This policeman was not doing this because he was doing the right thing. But now because Mr. Raila has become a Minister and a senior member of the ruling party, the policeman just hopes that in his life, their past will not close because he thinks that he will lose his job. So, he told me "Usitusahau", and I told him that I will tell Mr. Raila not to forget him because there is nothing I can do for him.

The police force should be taken for training so that they can understand what human rights are all about. Mrs. Mugo said the other time, when she was beaten up in Trans Nzoia District, that it was terrible. It was not her alone who was beaten, but the people who went to attend that function were shot at with bows and arrows. This was the case, and yet the meeting was licensed. Nobody would dare say something about it. In fact, there is a police officer I know who is fond of saying that he does not understand the law, but just the power. He says: "Bw. Orengo, ukija kwa ofisi yangu, wacha mambo ya sheria. Sisi tuko na nguvu, na kama uko mbele yangu, nitakutwanga." That kind of police officer cannot really understand these very important international instruments.

There was even one police officer, the rank of a Chief Inspector, when there was a murder case against some Kenyans who had been arrested over a public meeting that took place in Nairobi at Central Park, who could not give evidence in English in court, and yet a constable could do that. This is because he came from the "right" community. Even the judge had to force him to try and speak the little English that he knew. So, the police force in this country is terrible.

The other time, when I went to Kariobangi because people had been massacred, the KANU stalwarts had been there and held their meetings without any interference. When I went there peacefully, I predicted that since I was there, within five minutes, the police would be there. But the night when they were being massacred, the police were not there. Tulifukuzwa vibaya sana na rungu na tear gas. But when President Moi went there with his so-called "Young Turks", they held a meeting and nothing happened. In fact, if the police knew their law, they would have said: "If it is right to allow President Moi to hold a meeting, why not allow Mr. Orengo to hold a meeting?" Rais Moi amezaliwa na nani na mimi nimezaliwa na nani? It is because of the type of policemen they have. I have been trying very much to fight for the rights of policemen. The police in this country do a lot of work, but with very little compensation. They are poorly paid and have no equipment. There are some guards who are employed by security organisations here who earn a lot more money than our policemen. This Government that they defend does not look after their rights. If you go to some police barracks, you will find buildings which were constructed before the Second

World War; one room made of corrugated iron sheets. They share this ramshackle. When a police officer has a spouse coming from the village, he has to ask his colleague to take a walk because he shares a ramshackle with him.

If I had my way with the police force, because of the way they are treated by this Government, I would tell them to follow what the air traffic controllers did. After all, in London and South Africa, policemen have gone on strike. But the people who speak for these policemen, like Mrs. Mugo, are the ones who are beaten up. The people who do not know what they are doing for the policemen, have their way and do whatever they want to do. So, our policemen should be trained to know the international human rights so that when they arrest people, before they are found guilty by a court of law, they should know that those people are innocent until proven otherwise.

The other area that I think should make a Bill like this have effect is that our courts should recognise the international instruments. Our courts are very shy, and when you quote some of these international instruments, they feel like you are talking literature from another world, and yet our Government is a signatory to the international instruments. The courts in this country stand accused for not taking cognisance of international instruments in the manner they should. This country has signed all the human rights instruments that have been established by the United Nations systems. So, the courts should look into this aspect. This should be the case, particularly when accused persons are brought to court after being held in custody for two weeks or a month. The courts should not wait for the accused persons to raise those questions. They should stand up and ask why people are being held in custody for so long. We should look into how people are being treated in the police cells. This is so because people who are in police cells are basically innocent.

It is in the police cells that you will find odd behaviour. You will be put in a cell and told to remove one shoe; you go into the cell with one shoe and leave another one outside. I just do not understand the logic of getting into the cell with one shoe and leaving the other shoe out. There is no logic at all. This is just intimidating people who are taken---

Mr. Omingo: On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to inform my honourable colleague that the reason why one shoe is left is to avoid the temptation of policemen stealing because they are so poor.

(Laughter)

Mr. Orengo: Mr. Temporary Deputy Speaker, Sir, this might be the case because it is very difficult for you to steal when you are in custody, but it is easy for the policemen to steal. I accept that argument. So, I think the policemen in this country should not only be educated to respect the Constitution and human rights instruments, but something needs to be done to them so that they have enough motivation to work tirelessly, to ensure that there is security in the country as a whole. Equally, the courts of justice must ensure that international instruments are complied with. When such cases appear in courts, they would take care of the international instruments. For example, in South Africa, when the issue came up as to whether President Mandela should appear in court or not, he was summoned. He went to court and gave evidence. There is even a very good South African court which came up with the verdict that the fact the President is immune from all criminal prosecutions and civil processes, does not mean that he can disobey the law. He must obey that law in order to enjoy that immunity. But here in this country, that is not the case. The other day, a Registrar of the High Court, directed that President Moi be summoned in court as a witness. It was like doing the unimaginable. There is no law that stops the President to go to court and give evidence. So, unless, we create a culture in which we know that nobody is above the law, then some of these things really mean very little.

But one thing I cannot stop from mentioning again in relation to the courts is what happened when Mr. Kibaki filed the first election petition against the President. The rules are that if you want to serve an election petition, all you need to do is to notify the other party through *The Kenya Gazette Notice*. The courts have ruled that is the best way of serving a respondent in an election petition. While Mr. Kibaki's petition was being heard, there were many rulings which were being passed, that the best way to serve an election petition is through publication in *The Kenya Gazette*. There were many cases, including Mr. Maittha's case. But when it came to Mr. Kibaki's Petition, the courts suddenly changed their minds. They said, if you want to file an election petition against the President, you must serve him personally.

Hon. Members: Where do you get him?

Mr. Orengo: The other day, I had a rare occasion of getting close to the President. But by the time we were greeting each other, all the security men thought that there was hell. If you had an election petition to serve the President, you would not be able to do it. In any case, such a ruling can be misused by other people, and not just the President. For example, if I won a parliamentary election and I know the best way to serve somebody an election petition is by personally serving that person, what I will do is, soon after the election, that I will go on holiday for two months until the period for service is over. But this was judicial anarchy and dishonesty because the courts had

decided that the best way to serve an election petition was through the publication of a notice in *The Kenya Gazette*. But because there was a petition which was accusing the President of so many offences, including bribery, there was no way that, that petition could have been heard and determined and before the President came to court to defend himself and say he did not give a bribe, the court changed its mind and said now: "Mr. Kibaki, I am sorry you did not serve President Moi with the petition personally." I think that is a serious breach of the law.

The Minister for Energy (Mr. Raila): On a point of order, Mr. Temporary Deputy Speaker, Sir. I really hate to interrupt my friend, but this does not apply only to the President. Mr. Donde also escaped a petition through the same process by being hidden within the precincts of Parliament buildings, so that he could not be served by the hon. Member who is making the allegation. Therefore, we were not able to serve a petition to hon. Donde and the petition was stopped.

Mr. Orengo: Mr. Temporary Deputy Speaker, Sir, I thank the hon. Minister for that. I was just congratulating Mr. Raila out there, but I think he should try a little bit more to read the law, in order to become a good "new Kamotho", so that when he tries to respond to me, he would know what the law says. In fact, in Mr. Donde's case, it was the opposite. Mr. Donde was served the petition personally, but the court ruled that was not the right way to serve an election petition. He was told he should have published it in *The Kenya Gazette*. In fact, it was worse because when they tried to serve the petition to Mr. Donde personally, they went into a room in a hotel here in Nairobi, and pushed the papers under the door. They deemed that to be a service. Are we in an argument?

The Minister for Energy (Mr. Raila): On a point of order, Mr. Temporary Deputy Speaker, Sir. We are not arguing. But is the hon. Member not actually contradicting himself when he now says in case of the President, he should have been served through *The Kenya Gazette Notice* and not personally, whereas he says, in the case of hon. Donde, he should have been served personally?

Mr. Orengo: Mr. Temporary Deputy Speaker, Sir, the hon. Minister is the one who is not understanding what I am saying. The law says the best way to serve a petition is through publication in *The Kenya Gazette*. The petitioner of the Gem election did not publish a notice in *The Kenya Gazette*. That is why the petition was thrown out. Personal service is not deemed to be a good service.

Mr. Kihoro: On a point of order, Mr. Temporary Deputy Speaker, Sir. I was one of the lawyers in the petition against President Moi that was filed by Mr. Kibaki. I went to the Government Printer to have the notice of the petition published. The notice of the petition was printed, plus other five notices of petitions. In respect of the other five hearings, the petitions were heard before President Moi's. However, when it came to President Moi's petition, the rules that had applied before stopped to apply.

The Temporary Deputy Speaker (Mr. Muturi): Mr. Kihoro, you appear to have risen on a point of information rather than a point of order.

Mr. Orengo: Mr. Temporary Deputy Speaker, Sir, that is really a point of information. But I think this must be clearly and squarely put. The more important point I was trying to make is that the President or those who serve under him, must be the first to comply with the law. If you want other people to comply with the law, you should be the first to do so. In the United States of America, the same system has been used. Where there was immunity, Presidents can now go to court because of a positive interpretation of the law. They have to demonstrate that they have complied with the law. Indeed, as Mr. Kihoro says, the first notice to have been published in *The Kenya Gazette* was the one published by Mr. Kibaki informing the President that a petition had been filed. In fact, nearly 90 per cent of the petitions which were heard, were heard on the basis that there had been a valid service through publication in *The Kenya Gazette*. But the courts suddenly changed their minds when they were confronted with the petition against the President. The petition was accusing the President of bribery, corruption and cheating. That was the time they realised that the only way the President could escape this accusation is by himself coming to court. So, they had to change courts. It was put in the Court of Appeal. I appeared in that court. It consisted of the most junior Judges in the Court of Appeal; the senior Judges were kept out of it. It was the first time when a petition challenging the election of the President went to the Court of Appeal.

Mr. Temporary Deputy Speaker, Sir, if we want this Commission on human rights to have any meaning, those in the Government must first show they are complying with the law and that they respect law and human rights. They are not cutting corners. But if on a simple thing like an election petition, the President himself was cutting corners, then how do you expect these international instruments to be complied with? I do not want to belabour that point, but it is out of our realization that violation of human rights has occurred because of misconduct in Government, and certainly in Mr. Kibaki's petition, there was misconduct by the courts and the person who is the Executive. I have said in this Parliament many times that, at least, when we sit in this Parliament as an institution, 200 of us constitute Parliament, but the Executive is only one man. Only one man is the Executive authority. As Ministers sit there, it is really one man who has got the Executive authority of the Government of Kenya. If he does not comply with the law, then we are in a lot of trouble. You will be made to defend the impossible, just like Mr. Raila was trying to defend the

impossible.

Mr. Temporary Deputy Speaker, Sir, I see a great future for this country, but we can only see that future if we listen to--- I liked a lot of what Prof. Anyang'-Nyong'o said this afternoon about ethnicity and people's rights. We must think positively about some of those views as we go into corridors of power or lead our political parties. Unless we are conscious of our roles, to make sure that Kenya remains one just nation, then I think we are going to be in a lot of problems. That we can create positions in Government or in parties in order to satisfy ethnic famine for jobs, I think that is in itself planting seeds of discord. If that is the approach we are going to have even in the Constitution making process that we are involved in now, then I can assure you, however beautiful the document will be, unless we are conscious of our unity as a nation, and of the fundamental rights that can make Kenya a greater nation, then we will fall like Fiji, where a great Constitution was written, but they just got into more trouble. It is important that we put these issues in mind.

Mr. Temporary Deputy Speaker, Sir, again, if you look at the Bill, I would like a situation where, the body so created will have some teeth.

Like now, we have an Electoral Commission which is not independent. I really love this man called Mr. Kivuitu, who we have worked with for a long time, but I think he has just gone berserk. I do not think we can have a free and fair election so long as the Electoral Commission is a one-man band without teeth. That Electoral Commission should actually be disbanded. If this Commission that we are creating is going to be of any use, we should make sure that it will not be a one-man band; where you have somebody in charge, and he is the Alfa and Omega.

I beg to support.

Mr. Omingo: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this Bill.

First, I will start by giving an analogy of the people who are supposed to give Kenyans their basic rights. These are the likes of my good neighbour, Mr. Raila, who is now walking out of the Chamber. Basically, the Government is entrusted with resources in order to give Kenyans what they deserve, but, unfortunately, we wonder why Kenyans are increasingly living below the poverty line. I would like to draw a parallel with the social set-up. There is an instance of a parent who is entrusted with a baby's food and the mother goes to attend to other duties and leaves an old man to attend to that tender baby. Instead of that baby being cared for by a responsible old man, he eats up all the food meant for that child. That is exactly what is happening in this country. You cannot expect people to have equitable distribution of resources and basic rights with such kind of father. I keep on saying that if I were the wife of such a man, I would never cook for him again. That is what I am urging Kenyans to do; that this old man who is eating the baby's meal should not be allowed to be in power again.

Mr. Temporary Deputy Speaker, Sir, I want to analyze this Bill from three angles; the political, financial and social. The Government has got a social responsibility of making sure its people have justice and fairness in distribution of resources. Socially, Kenyans have suffered. For example, why is the HIV/AIDS pandemic prevalent in prisons? I am a Member of the Departmental Committee on Administration of Justice and Legal Affairs. We know that prisons are heavily congested, and that is why there is homosexuality. People sell their bodies because they have no food in prisons. Prisoners sell their food in order to get a cigarette or something like that, simply because there is inadequate food in those prisons. It is very unfortunate that it is happening when we are spending billions of shillings putting up monuments, starting white elephant projects, and engaging in corrupt deals where we lose billions of shillings at the expense of our people, and yet prisons are there to correct the culprits. They are supposed to rehabilitate them and make them good citizens upon release from prison. Unfortunately, our prisons are torture chambers, where people do not get their basic rights. There are no sanitary facilities in our prisons. Even taking a sanitary towel to a female prisoner is a criminal offence. If the Government is serious in pursuing social justice, prison conditions must be improved. It calls for a total transformation of the whole set-up, because, having very many people in jail means we have an ineffective Judiciary. The wrong people are jailed because there is corruption in the Judiciary. There is need for an all-round approach to these issues. We have even commercialised our schools. Our children are supposed to live in environments that make them healthy leaders of tomorrow, but they have been pushed into the jungle, for example, the Kyanguli Secondary School case, which had congested dormitories.

The Government should improve the social amenities of Kenyans. There is gender imbalance and social ills. It is true that women's rights are human rights. So, when Mrs. Mugo talks here and gentlemen shout her down, it is because they are guilty of particular ills they have done to women. Some of them are not even married. We should lead by example. If you are a man who cannot stand a lady, and if you do, it is only by violence, how can you lead by example? We cannot lead by example if we cannot avail a good job to a lady to enable her earn a living and bring up a family the way a Minister or a senior executive somewhere can do. It is unfortunate, and I sympathise because there have been several cases where ladies are not considered for jobs, simply because they are ladies. This is a social ill that we must stop. The laws are very clear. I tend to agree that if this piece of legislation is passed without the seriousness

of the Government, it will not be of any use at all. We should let the people enjoy their social rights. They must not sell themselves in order to get jobs. Men ask for bribes, while ladies are asked to give sexual favours. Unfortunately, ladies are asked for their bodies. It is as dirty as it is, but it just goes without saying that, that practice is prevalent in this nation. It is a rotten set-up all over that we require to overhaul.

Child labour is not the issue, but it is unfortunate that some of those parents who subject their children to child labour do so because they cannot afford a square meal a day. I sympathise with them. We should empathise with them, but again, we have somebody somewhere who has caused that particular ill to the society. That is caused by bad governance. We are saying that if those parents was given basic access to food, shelter and clothing, I believe they will struggle to pay a little fees for those dear girls who are house girls somewhere. But, unfortunately, the same Government has impoverished all citizens, perhaps to downtread upon them, so that they could look upon it as the liberator for the purpose of continuing to be in power. That is why sometimes it is not possible to have somebody from a semi-arid area voting independently. Why? They vote because of a kilogram of maize. We have subjected our people, through breakage of the infrastructure and raping of the agricultural sector, to untold suffering, so that we can be able to continue sitting on their heads while pretending to be protecting their rights. Woe unto them! Time is coming and we will catch up with them! That is because the economic ills that have been subjected to this nation are so big that, sometimes, as I said a while ago in this House, it calls for the mercy of Jesus to forgive the perpetrators of such crimes.

Mr. Temporary Deputy Speaker, Sir, child labour is a big issue that we need to look into. The only way to go about it--- It does not start overnight. It goes on for a generation and transformation of minds of the people entrusted with the resources of this nation.

With regard to tribal clashes, I, unfortunately, share a border with a Minister in charge of internal security. Today, our border is so insecure that I wonder whether I benefit from sharing that border with that kind of Minister, if he was not in charge of a Ministry called "insecurity!" If we had a Minister in charge of security as a neighbour of mine, I would be bragging around, saying: "Let me have a full sleep overnight!" A case in point is where a 14-year old boy was shot by the police along the Kisii-Trans Mara border. The police argued that they shot in the air to disperse a rowdy mob. But I was wondering; the kind of geometrical co-ordination of that gun is astonishing; that you shoot in the air, the bullet comes down and by some superior forces, the bullet is attracted to the boy's arm and he gets shot. The arm has now been amputated and that is what we call justice and fairness in terms of societal relationships. We are saying that if we were serious, and we should be, the kind of Constitution that we have today--- Section 70 of the Constitution talks about protection of life and property of Kenyans. The basic human rights of Kenyans are entrenched in the Constitution. Somehow, I hope this piece of legislation ought to be like the "Ghai Commission" that everybody is now touting around, including the Chairman of the Parliamentary Select Committee, casting doubts on the same Commission that he belaboured too much to formulate. I hope it is not the same thing.

If it is, this House should forget about this Bill and work on the Constitution. We hope that, that is going to happen. We are saying that if people were given basic human rights as per the Constitution that we have, we would not be belabouring on this particular matter. We are saying: Why then should we have an independent Commission, while Clause 15(3) talks about co-option? How sure am I that the co-opted member is not contaminated with a virus of Executive sycophancy? That section talks about a member co-opted from the Government. I think we should fight that clause tooth and nail, to leave the Commission independent. If it were to be independent, Sub-Section 4 of the same clause should be thrown out. That is because it requires the Commission to be independent. It should not be like any other. It should not be a guzzler of public resources in the name of a Commission chaired by politically-correct X, Y and Z. Taxpayers' funds are put in an amorphous body to deal with that particular issue, when it can only be related to, as a public relations exercise.

When we look at the issue of demolitions of kiosks, we ask: How do you want to empower Kenyans economically, if you do not want them to have food on their table? An economic ill such as kiosk demolitions pushes people into poverty. That is why you find families letting their children go out there to beg or engage in prostitution. We are saying that those children belong to some of us here and they are our daughters, and we are subjecting them to that evil because we do not care. You are a Nassir in Mombasa and Kisumu for that matter. When I sit back and remember that 70 per cent of our people are living below the poverty line, and you want to deny them bread on the table while pretending to be their servant, history is going to judge you very harshly. We need to watch out what we are doing.

Again, I am saying that the Japanese are paying for their war crimes 40 years down the line! I am not spelling doom for a wonderful Government led by the "young turks" whom I have a lot of respect for, but we are saying that those who have committed ills should rest assured that whether it is day or night, they will account for it, if this Commission is going to be independent, regardless of the time.

Mr. Temporary Deputy Speaker, Sir, then we have got the political wrangle over the injustice in terms of

human rights violations. How many rallies have been broken, with the excuse of being unauthorised and a security risk, while in an adjacent place, there is one organised by blue-eyed politically-correct boys? That is a basic right to associate, share experiences and educate our people.

There is no reason why liberalisation of the airwaves has been restricted to some areas because certain people need not be educated. If you go to Keiyo, where Mr. Biwott comes from - I hope he is here - you cannot find a single newspaper, let alone anything else! They only listen to the Kenya Broadcasting Corporation (KBC), which starts with Mtukufu and ends with Mtukufu! There is no single newspaper. Why? They want to keep those guys in the dark as long as it takes, so that they can walk on their heads perpetually, for the purpose of enhancing authority and power. So, we need to have freedom of expression guaranteed to those people.

I know my fellow brothers used to be in KANU. They know how much they suffered at that time. But no sooner had they crossed, they forgot the pains they experienced in terms of whips and police batons. Remember the bad treatment and pain that awaited you for saying: "Give us equal rights and chances to express our views." That, in essence, would enable Kenyans to know what they are doing, and even challenge the system. That is because you cannot have leadership without accountability. How do you pretend to be accountable when you do not care what happens to your mum back in the village? We require leaders who are accountable. Let the people know, so that they can challenge the system. I thank God for my being here because I am here today because of the struggle of Kenyans through civic education, where people got to know that there was something else other than KANU. The Government is still trying to fight this vice, but it is unfortunate that the driving force behind the change is beyond the capacity of the Government to control the same. They use all manner of people like the Provincial Administration.

When I was in a DDC meeting in my district, one DO was overheard saying that they would only provide security to those people in the Opposition who are not so vocal and antagonistic. This is selective application of our resources. A whole DO was saying that so-and-so should not worry because they will provide security. What about Omingo? Since he is an errand boy, he will wait for his time to be provided security. This is happening, and yet I am a taxpayer. My people pay cess, duty and other taxes and yet they are not provided with security. It is unfortunate and yet I keep on mentioning this matter. Why, for heaven's sake, can those who want to ascend to power not advise the people who are propelling them to power that they should not create that kind of friction, because sooner than later, the reaction will be equal and opposite when tables turn?

Mr. Temporary Deputy Speaker, Sir, let me comment on political killings. I am very lucky to survive and speak in this House today because I was meant to die. I was being denied my right to lead South Mugirango people. Cases of assassinations and violence against politicians are on the rise. I am here today by the grace of God to lead the people of South Mugirango. They pretend to say: "The youth are tomorrow's leaders, *na mkae hivyo hivyo*." When I demand for leadership my head is supposed to go and yet I believe I fall under the category of young leaders. When you demand that chance to lead, your head is supposed to go. This amounts to curtailing my right of expression and leadership. That is a responsibility that each one of us can get. It does not matter how long it takes. Nobody has mentioned Ouko for over ten years, and then somebody wakes up in the middle of the night and says: "I did not kill Ouko". You will be haunted for a very long time.

We do not want you to be haunted through natural forces. We want to have this Commission introduce measures of dealing with such kind of people who are known. You can kill as many people as you want, but how long will it take before you go berserk? When you kill someone you are not only curtailing his right to live, but the family of that politician suffers and the children are denied of fatherly or motherly love. You are saying here you want to provide leadership to our people by encouraging the youth to lead, but when the youth demand the chance to lead, they are clobbered. It is a big shame. There is excessive use of Executive power and authority, which is in total disregard of the priorities and needs of the people you are leading.

You will find someone authorising the building of a road which only animals will sleep on. It is true that the roads in some areas are used as a "mat" to dry crops or cereals. They were advised that the chemicals put on the mat will poison the food and they will surely die. You think you are helping your people by giving them a mat to spread their maize, but instead, you are killing them. No vehicles pass through those roads because of excessive use of executive power. You can have that power, but are you applying it for the purpose of justice and balance in terms of equitable distribution of resources? The answer is no. The unfortunate thing is that we are following the example of the people who are supposed to safeguard our rights, but do not actually have any sensitivity at all regarding human rights.

What will the liberalisation of the airwaves do to our people? They will know that road. They will know about a sleeping Member of Parliament who has had a big lunch. They will know that there is a "white elephant" project. I am still complaining that without liberalisation you can misinform the public and actually get away with it because information is power. It is the right of Kenyans to be informed. Let them know if there are adverse reports against the Government and then the Government will have a chance to defend itself. You may be sleeping for too long without proper reflection from the people that you lead. Let people know what you are doing. Very soon - I hope

nobody will bring hitches - it will be revealed to the public who sleeps in Parliament. There are some of us who sleep here and do not actually pay attention to the Presidential Speech during the opening of the Session. They cannot not withstand a 20 minute speech and yet those rural people have entrusted leadership in their hands. The right to information is a basic right that Kenyans must have.

Financial mismanagement has a big bearing on the social set-up and the political dependency of our people. This Government has deliberately impoverished our people so that they can always be their subjects, regardless of their autocratic system of handling issues. An empty stomach will always accept anything because the basic need of food is lacking. That is why they sometimes manage to get massive votes in Ukambani. They make sure that they buy all the food from Ukambani, export it and wait for the election time when they exchange food for votes. This is economic mismanagement of this nation. If our people do not have their basic needs through economic empowerment, then there are no rights we are talking about. We cannot talk about any rights without economic independence or justification of our people's existence. If our people are not empowered they cannot have shelter. They do not have shelter. They cannot do anything to cover their heads, for food or clothing. This is very painful.

What I do not understand is this: Does this Government know that these girls who are subjected to economic impoverishment and move to the streets for prostitution are people's daughters? Do they also remember that in the coming generation, their great-grandchildren may be subjected to the same? Why do we not do things unto our people that we would want to be done unto us at the end of time? Economic empowerment of our people is the key answer to all these injustices. We can only give people what they desire if their basic needs are covered. They cannot be covered when you take your crops to the factory and you cannot get paid. The trickle-down effect is so massive that the entire population is impoverished. Most of my colleagues here are economists and they know that what they are doing is the deliberate distortion or misuse of resources for political expedience.

We require to liberate our people economically so that all other justices and rights can follow. I am pleading with the current Government, which I served a while ago before they chopped my hand when I was persuaded by an alternative view. I believe that the Deputy Leader of Government Business who is here, will take note of this: Please, do not be that father who drinks from the baby's bottle. Do not be that father who sells Cerelac at the expense of his child.

With those few remarks, I beg to support.

Mr. Mwakiringo: Thank you, Mr. Temporary Deputy Speaker, Sir. "Human rights" is a heavy phrase and a natural phenomenon which we have to live with. Violation of human rights started since Independence. We cannot say that it started in the latter years; it started since Independence. We thought when the colonialists moved away, we would live as better Africans in this country of ours.

Mr. Temporary Deputy Speaker, Sir, if this Commission is established, the first office it should go to for investigation is the office of the Attorney-General itself. Why has it taken the office of the Attorney-General too long to bring this Bill to this House? That is a violation of human rights. Does it really have to take us 38 years since Independence for us to realise that there is human rights violation in this country? Do we really have to be pushed by the donors for us to bring this Bill to this House? What were we doing for all those years?

Mr. Temporary Deputy Speaker, Sir, I thought we had intellectuals in Kenya. I admit I am not a lawyer, but I think the manner in which this Bill has been drafted leaves a lot to be desired. As a layman, I can criticise it. If you look at Clause 5 (1) (A), it states:-

"A person shall be qualified for appointment as a Commissioner if such a person is a citizen of Kenya."

Clause 5 (1) (B) states:-

"If such a person is of high moral character and proven integrity and has knowledge and experience in matters relating to human rights".

This is a laughable issue. If we have people who were mentioned as being corrupt in the PIC and PAC Reports and they are still appointed to higher offices in this country, what morals are we talking about in this Bill? It is surprising! If we are to exercise these human rights, then we should start with those who have already been mentioned in these reports. They should be sacked and never, never and at any one time be given public offices to hold.

Mr. Temporary Deputy Speaker, Sir, these laws which become laws when one speaks in public is a violation of human rights in this country. I do not know whether it is really frightening. It is an abuse of hon. Members of Parliament's positions when a simple Officer Commanding Station (OCS) confronts an hon. Member of Parliament and tells him or her that: "Your meeting has been cancelled for security reasons". Imagine an OCS who cannot even speak English tells an hon. Member of Parliament that: "Your meeting has been cancelled". My question is: Who is more important. Is it the hon. Member of Parliament or a simple OCS?

Mr. Temporary Deputy Speaker, Sir, I want to give an example which took place in Taveta two months ago when we went to hold a rally. An OCS came to tell us that our meeting has been cancelled for security reasons, and yet

we had given a notice one week in advance. However, just because either we are in the Opposition, or the hon. Member of Parliament for that area is a Taveta, but with Kamba ethnic background, our rally was cancelled. I cannot tell, but my question was: Is he not a Kenyan? Are we not allowed to address our people who elected us?" We need a proper Commission to look into these human rights violations.

Mr. Temporary Deputy Speaker, Sir, I want to give an example of how human rights are violated even in our own prisons. Instead of prison warders rehabilitating those who are imprisoned, they abuse the lady prisoners in the jails. A lady was imprisoned for two years in Voi and came out with a baby, and yet she went in when she was not pregnant. When I asked her how it happened, she said she was misbehaving, if I may put it politely, with one of the warders. In another language, why should the warder "wash his gun" with this lady? Why?

Mr. Achola: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member not misleading the House that there was a violation of human rights in the example he has just given? What was the violation of human rights there because the end result was beautiful?

(Laughter)

The Temporary Deputy Speaker (Mr. Muturi): Mr. Achola, do you think the hon. Member is describing beauty?

Mr. Achola: I think so, Mr. Temporary Deputy Speaker, Sir.

Mr. Mwakiringo: Mr. Temporary Deputy Speaker, Sir, I think the paramount duty of our prison warders is to rehabilitate those who have been jailed so that they can become good citizens after they complete their jail term, instead of making love with them.

The Assistant Minister for Education, Science and Technology (Mr. Poghio): On a point of order, Mr. Temporary Deputy Speaker, Sir. I tend to believe that the hon. Member is misleading this House. The people charged with guarding female prisoners are usually wardresses. How does it happen that they get pregnant?

Mr. Mwakiringo: Mr. Temporary Deputy Speaker, Sir, my good friend has been to jail, but he should realise that wardresses do not guard the jail compounds at night. They go to sleep and take care of their children. So, it is the men who guard prisons overnight, and that is when the action took place. He even knows that it is written in the Bible that these things are never done during the day. They have to take place at night when it is dark.

(Laughter)

The Assistant Minister for Education, Science and Technology (Mr. Poghio): On a point of order, Mr. Temporary Deputy Speaker, Sir. First of all, I never went to jail.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Muturi): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 16th April, 2002 at 2.30 p.m.

The House rose at 6.30 p.m.