

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 16th April, 2002

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Annual Report and Accounts of the Medical Practitioners and Dentists Board for the year ended 30th June, 1996 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts the Medical Practitioners and Dentists Board for the year ended 30th June, 1997, and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of the Medical Practitioners and Dentists Board for the year ended 30th June, 1998, and the Certificate thereon by the Auditor-General (Corporations).

*[By the Assistant Minister for Agriculture and Rural
Development (Mr. J.D. Lotodo) on behalf
of the Minister for Medical Services]*

Annual Report and Accounts of the Agricultural Finance Corporation for the year ended 30th June, 1999, and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of the Agricultural Finance Corporation, Agency Seasonal Crop Credit Loans, for the year ended 30th June, 1999, and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of the Agro-chemical and Food Company Limited for the year ended 30th June, 2000, and the Certificate thereon by the Auditor-General (Corporations).

*[By the Assistant Minister for Agriculture and Rural
Development (Mr. J.D. Lotodo) on behalf
of the Minister for Agriculture]*

Annual Report and Accounts of the Kenya

Literature Bureau for the year ended 30th June, 2000, and the Certificate thereon by the Auditor-General (Corporations).

*[By the Assistant Minister for Agriculture and Rural Development (Mr. J.D. Lotodo) on behalf
of the Minister for Education]*

ORAL ANSWERS TO QUESTIONS

Question No.086

NUMBER OF RETRENCHED CIVIL SERVANTS

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

- (a) whether he could table the list of all civil servants who have been retrenched by the Government, local authorities, universities and parastatals, indicating the reasons of retrenchment, age of the employee and how much each of them was paid as retrenchment benefits; and,
 (b) whether he could also table the list as per (a) above of all civil servants whose retrenchment is under consideration.

(Mr. Haji moved and sat next to Mr. Nassir and engaged him in consultations)

Mr. Speaker: Why do the Ministers in the Office of the President have to re-group? What is happening, Mr. Nassir?

The Minister of State, Office of the President (Mr. Nassir):---(Inaudible).

Mr. Speaker: There is a Question for a Minister of State, Office of the President.

The Minister of State, Office of the President (Mr. Nassir): Mr. Speaker, Sir, the Question does not fall under my docket.

Mr. Speaker: What about you, Mr. Haji?

The Assistant Minister, Office of the President (Mr. Haji): Mr. Speaker, Sir, the Minister who is supposed to answer the Question has just come in.

(Mr. J. Nyagah walked into the Chamber and proceeded to the Dispatch Box to answer the Question)

Mr. Speaker: Mr. J. Nyagah, why are Ministers in the Office of the President always late or absent?

The Minister of State, Office of the President (Mr. J. Nyagah): Mr. Speaker, Sir, we try our level best---

Mr. Speaker: Do you try your level best to be late and absent?

(Laughter)

The Minister of State, Office of the President (Mr. J. Nyagah): Mr. Speaker, Sir, I apologise for coming late.

Mr. Speaker: Very well!

The Minister of State, Office of the President (Mr. J. Nyagah): Mr. Speaker, Sir, if you recall, I answered this Question last week. I wonder whether I should go through it again.

Mr. Speaker: What were you asked to come and do today?

The Minister of State, Office of the President (Mr. J. Nyagah): Mr. Speaker, Sir, I had answered the Question, and Mr. Muchiri requested that because I had brought a carton full of documents containing the information he had sought, he should be given time to go through them first before he could ask supplementary questions.

Mr. Speaker: You are right. I remember that request by the hon. Member very well. So, you do not have to go through the Question again. It is now Mr. Muchiri's turn to ask supplementary questions.

Mr. Muchiri: Mr. Speaker, Sir, I have gone through the information contained in the carton, which is, indeed, very small. I have gone through the list contained and found that the majority of the people who were retrenched from the public service come from Central, Eastern, Western and Nyanza Provinces. I believe this list was kept away from the House, so that we did not make this observation. So, could the Minister inform the House the criteria used to retrench only public servants who come from areas where the Opposition is popular?

Mr. J. Nyagah: Mr. Speaker, Sir, as I stated last week, the criteria used was age, sickness and discipline. The region from which one came was not among the criteria used. However, due to the varying regional representation in the public service, retrenched from the North Eastern Province, for example, would appear to be fewer. So, that observation is due to a statistical fact rather than a deliberate effort by the Government to marginalise anybody from

either KANU or Opposition zones.

Mr. Speaker: Mr. Muchiri, how did you know who among the retrenchees comes from the Western, Central and Rift Valley Provinces?

Mr. Muchiri: Mr. Speaker, Sir, I have gone through the list for more than four days. I have, for example, realised that out of the 884 workers who were retired from Egerton University only nine were from the Rift Valley Province. What criteria was used to retrench these people at that university?

Mr. Speaker: How did you know that?

Mr. Muchiri: I have checked through the list, which I have with me here.

Mr. Speaker: How did you know the origin of the retrenchees?

Mr. Muchiri: Mr. Speaker, Sir, I checked through the list.

Mr. Speaker: Order! Mr. Muchiri, are you suggesting that the list indicates the province from which each of the retrenchees come, or are you suggesting that you came to that conclusion because of their names?

Mr. Muchiri: Mr. Speaker, Sir, I came to that conclusion because of their names.

Hon. Members: Aah!

Mr. Speaker: Maybe, the Minister can tell us whether that is the way the exercise was carried out.

Mr. J. Nyagah: Mr. Speaker, Sir, I wish to re-assure this House that the region from which one came was not part of the criteria used in carrying out the exercise. In the case of Egerton University, which is in a very cosmopolitan province, that might appear to be the case. However, I would like to assure the hon. Member that there were no tribal considerations during the exercise. Every Department, Ministry or any other public entity had a committee which went through the names of those who were identified for retrenchment before a final decision was taken.

Mr. Wamae: Mr. Speaker, Sir, because of the fear that has gripped many public servants about further retrenchments, these officers are not giving their best service to the public. Could the Minister assure this House that there will be no further retrenchment of public servants, so that those who have remained in the public service can continue to work without fear?

Mr. J. Nyagah: Mr. Speaker, Sir, the hon. Member will recall that Parliament did demand a Sessional Paper on the retrenchment programme. So, we have stopped further retrenchment of public servants until we bring that Sessional Paper to this House.

Mr. Anyona: Mr. Speaker, Sir, there is one hidden factor in this matter, which the Government seems not to be willing to explain. Retrenchment, whatever it means, was one of the conditionalities given to the Government by donors. We were told that we must retrench our public servants before any further aid could be released to us. There was a package which the donors were supposed to give in order to make the retrenchment exercise possible. Could the Minister confirm or deny that the donors never released the package they had promised in support of this programme, and that, that is why the Government was unable to pay public servants their early retirement dues? Could he tell us how much money the donors and the Government were supposed to pay in support of this programme?

Mr. J. Nyagah: Mr. Speaker, there were commitments by the donor community to support the retrenchment programme. Also, the Government successfully requested for the approval of some funds for that exercise. We have spent Kshs4.4 billion on civil servants retrenchment, and a further Kshs1.2 million to meet the retrenchment costs of public universities and parastatal workers. In total, we have spent about Kshs5.6 billion. The bulk of this money came from internal resources because, half-way through the exercise, as part of the freeze of aid to Kenya, the donors withheld part of the support they had pledged for this exercise. However, the aid freeze notwithstanding, we had some internal resources which would have enabled us to implement the remaining phases of the programme, but because of the demand by Parliament for a Sessional Paper on the exercise, whose preparation is now at an advanced stage, we suspended the exercise. Because of the need for a Sessional Paper to this Parliament, we stopped any further action.

Mr. Muchiri: Mr. Speaker, Sir, according to the list, the Minister has indicated that the Government paid all these civil servants their dues between 15th October, 2000, and 13th February, 2002. As late as yesterday, there were people in court claiming that you have not paid them their dues. Which is which? Have you paid all the civil servants their dues or you have not paid them? If you have not paid them, when will you pay them their dues?

Mr. J. W. Nyagah: Mr. Speaker, Sir, I wish to confirm that there are sufficient funds in the Budget for that. The whole exercise involved a total of 24,405 Kenyans. Of that, 20,705 Kenyans have been paid, and they have collected their money. They have gone home. In fact, 1,038 people have so far refused or have not completed the form that they were given to complete so that we can pay them their dues. Finally, 1,521 people are in the process of being paid; that is, they have brought in the forms, and they are being processed. They will be paid as the forms are processed. That will make a total of about of 2,500 people; those who have not yet been paid and those who are at different levels of being paid. I suspect that the ones the hon. Member is speaking about might be somebody who

might have been dissatisfied with the package that they got.

Question No.074

SHOOTING OF MR. KAGWI IN SWAZILAND

Mr. Speaker: Is Mr. Gatabaki not here? We will come back to his Question!

Question No.119

PROVISION OF SPEEDBOATS TO
PROTECT FISHERMEN IN BUSIA

Mr. Speaker: Is Mr. Wanjala not here? We will come back to his Question!

Question No.108

MEASURES TO RESOLVE TEA CRISIS IN GUSII

Mr. Anyona asked the Minister for Agriculture:-

(a) whether he is aware that the crisis between the tea farmers and the directors of Kebirigo, Nyankoba, Nyansiongo and Tombe tea factories in Nyamira District; Kiamokama tea factory in Kisii District; and Nyamache and Ogembo tea factories in Gucha District, because of astronomical operational costs and poor second payment for 2000/2001, has not been resolved;

(b) whether he is further aware that the directors of all the said tea factories have not held any annual general meetings and laid before the tea farmers income and expenditure accounts, in contravention of the provisions of section 131(1) and (5) and section 148(1), (2) and (3) of the Companies Act, Chapter 486 of the Laws of Kenya; and,

(c) what remedial measures he will take in order to resolve the crisis in the tea subsector in Gusii as proposed in the Memorandum, Ref. No.KM/04/02, dated 10th January, 2002.

The Assistant Minister for Agriculture and Rural Development (Mr. Sumbeiywo): Mr. Speaker, Sir, you will remember that this Question was answered last week, but because some information and documents were not available then, you directed that it be answered again today.

However, I beg to reply.

(a) I am not aware.

(b) I am aware that the said tea factory companies have held their annual general meetings except Kiamokama and Ogembo which are scheduled to hold their AGMs before 31st May, 2002.

I would like to lay on the Table the minutes of these tea factories. They are five of them in number, and I cannot read all of them out. It will take a long time, unless the House does not mind if I read out all these minutes. But I will lay them on the Table. I have given the dates when the meetings were held. For example, for Kebirigo, whose minutes have been laid on the Table, it held its meeting on 11th March, 2002. Nyamache, whose minutes have been laid on the Table, held its meeting on 12th March, 2002. Nyankoba held their meeting on 13th March, 2002; Sanganyi, 15th March, 2002. Tombe did that on 18th March, 2002, and Nyansiongo held its meeting on 19th March, 2002. In addition to that, I would like to lay on the Table the reports and accounts by the auditors for all these tea companies for the year ended 30th June, 2001.

(Mr. Sumbeiywo laid the Minutes on the Table)

Mr. Speaker: Mr. Anyona, are you happy?

Mr. Anyona: Mr. Speaker, Sir, I am not happy because I have not seen them. In fact, I am somehow handicapped, yet I know that you have been very generous in giving us more time. I do not think I would want to ask for more time. But could he, for instance---

Mr. Speaker: Do you want more time?

Mr. Anyona: Mr. Speaker, Sir, I would rather look at the minutes, the reason being that, for instance, I have a

letter from Ogembo. It says that they are supposed to hold their meeting before---

Mr. Speaker: Mr. Anyona, you cannot have it both ways; either you are prepared to proceed or you are not.

Mr. Anyona: Mr. Speaker, Sir, I will opt to have a chance to look at the minutes.

Mr. Speaker: Is that okay with you, Mr. Sumbeiywo?

Mr. Sumbeiywo: Mr. Speaker, Sir, I think Mr. Anyona is being unfair to the Ministry and the House because we went flat out looking for these minutes. I am sure Mr. Anyona saw the Minutes by himself before he came to the House and asked this Question. It is unfair for him to ask for more time, unless he wants to wait until Kiamokama and Ogembo hold their meetings before 31st May, so that he can look at their minutes.

Mr. Anyona: Mr. Speaker, Sir, I think the Assistant Minister is not being fair to me. I am not being unfair because I have not seen the minutes. My information is that no meetings have taken place.

Mr. Speaker: Now that you have the minutes - I think let me be fair to all of you - I will defer this Question to Thursday. But on Thursday, Mr. Anyona will begin by asking supplementary questions and the Assistant Minister will not give a written reply. The hon. Member will begin by asking the supplementary questions. So, the Question has been asked. Mr. Anyona will only ask supplementary questions on Thursday. So, the Question has not been deferred. Mr. Anyona, it is your supplementary questions that have been deferred at your request.

(Supplementary question deferred)

Question No.152

COMMUNAL BENEFITS FOR RUMA RESIDENTS

Mr. Speaker: Is Mr. Kanyauchi not here? We will come back to his Question!

Question No.024

NON-APPEARANCE OF A-G BEFORE COMESA COURT

Mr. Muihia asked the Attorney-General:-

(a) why he failed to appear before a COMESA Court in Lusaka in the case filed by Coastal Aquaculture Versus the Republic of Kenya, recently; and,

(b) whether he could explain why costs arising out of the case are charged to the Exchequer instead of individual officers in the Government, who were actually responsible for litigation.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

(a) The Attorney-General did not fail to appear before a COMESA Court in Lusaka in the case filed by Coastal Aquaculture Vs the Republic of Kenya.

(b) It is the Republic of Kenya and the Commissioner of Lands who are parties to the case and, therefore, responsible for costs (COMESA COURT OF JUSTICE REFERENCE No.3 of 2001: Coastal Aquaculture Ltd Vs the Republic of Kenya and the Commissioner of Lands of Kenya).

Mr. Muihia: Mr. Speaker, Sir, I have no question to that answer. According to the answer that was given to part (b) of the Question, I have asked the Attorney-General to explain why costs arising out of the case are charged to the Exchequer instead of individual officers in the Government who are responsible.

Could he deny or accept that the Government of Kenya was ordered to pay Kshs1 million for failing to attend? Mr. Attorney-General, did you attend the court proceedings?

Mr. Wako: Mr. Speaker, Sir, I deny it, most emphatically!

Mrs. Mugo: Mr. Speaker, Sir, those of us who have followed this case in the Press stand to be corrected. It appears as if most of that land was given out because of corruption. Those are wet areas and that land should not have been given out in the first place.

Mr. Speaker: Mrs. Mugo, do you know what the dispute in Lusaka is? If the issue is in dispute, why do you not wait for the decision of the court?

Mrs. Mugo: Why should the Government pay for corruption cases which are costing the taxpayer so much money?

Mr. Wako: Mr. Speaker, Sir, I do not know what the hon. Member is talking about. The hearing of our application to have that case struck out is due to start on Thursday, 18th April, 2002. Therefore, I do not want to go

into the substance of the case which is already pending before the COMESA Court.

Mr. Muihia: Mr. Speaker, Sir, I do not want to go into the litigation at Lusaka, but the Attorney-General did not attend court proceedings earlier on, and the Government has been asked to pay Kshs1 million, which they have done. This Question arises out of a contract between a Greek firm, Papaeliopoulos, and the Government for land which was given to them to do prawn farming. Thereafter, Gideon Moi and Fares Kuindwa took over the land---

Mr. Speaker: Order, Mr. Muihia! Would you like to go to Lusaka and be a witness?

Mr. Muihia: That is not in dispute. Could the Attorney-General tell us---

Mr. Speaker: Mr. Attorney-General, did you attend or did you not attend the proceedings of that case?

Mr. Wako: Mr. Speaker, Sir, if I may enlighten the hon. Members, the Republic of Kenya was duly represented by a person duly authorised by myself in accordance with Rule 25 of the Rules of the COMESA Court. So, that is not an issue. The issue is on adjournment costs. The court recognised that it was partly their fault in that we were applying for adjournment. I would like to read to you excerpts from that ruling:-

"However, in this particular case, the court is also aware of the fact that the court's own cause list has been changed many times owing to unavoidable circumstances. The frequency and rapidity of these changes has no doubt, contributed to confusion to the minds of the parties and in the alignment of their calendars. In the premises, the court is willing to give the benefit of doubt to the applicant, the Republic of Kenya, who had made that application and to grant the adjournment paid for."

The adjournment was paid for because the court had informed us that our application to have this case struck out for being frivolous and for being an abuse of the process of the COMESA Court would be heard on 30th October. The dates were quickly changed so that the application was to be heard on 20th October, which is a public holiday in this country. Therefore, my agent was right to go there and apply for adjournment. How could they give us only four days to argue out such a complicated case? As a matter of fact, the court agreed with us. On the issue of the Kshs1 million, the court is yet to assess the costs of the adjournment. But I am confident that if our application succeeds, then the other group will pay us millions of shillings in costs.

Mr. Kamolleh: Mr. Speaker, Sir, this Coastal Aquaculture is in Malindi, Magarini and Garsen. It affects about 30,000 people. Why is the dispute being taken to Lusaka? It affects us here in Kenya!

Dr. Kituyi: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Order, Dr. Kituyi! You cannot give information during Question Time!

Mr. Kamolleh: What measures has the Attorney-General of the Republic of Kenya taken to ensure that the proceedings do not go on in Lusaka, but here in Kenya? There are about 30,000 Kenyans whose means of livelihood is at stake!

Mr. Wako: Mr. Speaker, Sir, I agree entirely with the sentiments raised by the hon. Member of Parliament. That is why the Attorney-General has moved very fast to file an application, in order to have the whole matter struck out on two grounds, which include what he has said. As I said, that application is coming up the day after tomorrow.

Question No.153

EXPENSES INCURRED ON PROSECUTION WITNESSES

Mr. Speaker: Mr. Attorney-General, Mr. Michuki has asked me to defer this Question. When do you think you will be comfortable enough to answer it?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, as you can see, this Question requires a lot of statistical data. The Judiciary has asked for two weeks to complete it.

Mr. Speaker: All right; the Question is deferred for two weeks. I am sure Mr. Michuki should be informed in good time.

(Question deferred)

Mr. Gatabaki's Question for the second time! Mr. Gatabaki, you are always late these days and that is very unusual! What is happening to you? Will you apologise to the House?

Mr. Gatabaki: Mr. Speaker, Sir, this added responsibility takes a lot of our time. However, for this particular case, I had to travel all the way to Githunguri today, to find out whether there is any new development from the family with regard to their dead son. So, I apologise for coming late because I had to go deep inside Githunguri to find out about this matter. However, I beg to ask the Question.

Mr. Speaker: Very well, I accept your apology but next time, inform the House about those meetings.

Question No.074

SHOOTING OF MR. KAGWI IN SWAZILAND

Mr. Gatabaki asked the Minister for Foreign Affairs and International Co-operation:-

- (a) whether he is aware that Mr. George Kamau Kagwi was shot by carjackers in Swaziland recently;
- (b) whether he could table the names of Kenyans who have been killed in the South African Region from 1994 to date; and,
- (c) what measures the Government has taken to ensure security of Kenyans living in the South African Region.

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Mr. George Kamau Kagwi, a Kenyan national, was killed on 16th March, 2001, at a place called Makanyane, Kingdom of Swaziland. He was a taxi driver, and according to available information, he was approached by unknown people who hired his taxi. Mr. Kamau's body was later found, but his car could not be traced. The Ministry was informed of this incident on 7th May, 2001, by the Kenya High Commission in Harare. The Kenya Government contacted the Government of the Kingdom of Swaziland and has been assured that investigation have been launched and we will be appraised of the outcome.

(b) The names of Kenyans killed in the Southern Africa Region since 1994 include:-

(i) Mr. Peter Kimani Ndome. He was a student pilot at Johannesburg Flying School. He was killed in 1996 in Johannesburg, and the case is under investigation.

(ii) Mr. Tedd Kamau was a prominent businessman at Bruma Lake in Johannesburg. He was shot in his house in Johannesburg, and the case is still under investigation.

(iii) Mr. John Agonya was working in Mafikeng in South Africa and he hanged himself on 15th February, 2000. An inquest file has been opened.

(iv) Mr. Josephat Wambugu King'ori was shot on 14th July, 2000, in Cape Town, and the case is under investigation.

(v) Mr. David Wachira Nyamu was shot on 6th January, 2001, in Cape Town and the case is still under investigation.

(vi) Mr. Stephen Ogada Yambo was admitted to Central Hospital in Bulawayo, Zimbabwe, on 15th May, 1999, while on transit to Botswana from Kenya. He was later found dead on 21st May, 1999, in a bathtub in the ward. The body was repatriated to Kenya for burial by relatives. An inquest was launched.

(vii) Ms. Njeri Neto: She died in May, 1995, in Kadoma, Zimbabwe, due to a fatal road accident and was buried in Warren-Hills Cemetery in Harare.

(viii) Mr. Jacob Nguta Mulu: He died on 18th May, 2000, in Kotwa, Zimbabwe, due to a fatal road accident involving a public vehicle heading for Mozambique. He was buried in Greenville Cemetery in Harare, by relatives who travelled from Kenya. The Kenya High Commission in Harare is following up the issue of compensation with the Zimbabwe police and the insurance company.

(ix) Mr. Fanwell Makanga: He was the Commercial Attache at the Kenya Commission in Lusaka, Zambia. He died in a fatal road accident in 1998. The Kenya High Commission in Lusaka is following up the issue of compensation. The deceased's lawyer in Lusaka had requested for copies of his pay slip or any other evidence of his salary.

(x) Mr. James Mulwa Musau: He drowned in a swimming pool in the year 2000 in Zambia.

(c) The Government is aware of its obligations to ensure the safety of its nationals living abroad, including the Southern Africa region. However, there is a limit to which the Government can discharge its obligations, especially when it has to respect the sovereignty of other independent states.

The obligation of providing security to individuals and their properties lies with the internal security arrangements of individual states, over which the Kenya Government has very little influence.

Mr. Gatabaki: Mr. Speaker, Sir, the people of Githunguri Constituency have asked me to, through you, thank the Kenya Government for the first time for showing concern about them. The President of Kenya visited Githunguri about three months ago and promised a facelift to Githunguri Health Centre and provide a vehicle. I want to

request the Assistant Minister to provide that vehicle. However, the number of Kenyans who have died in the Southern Africa region is alarming. Considering this kind of slaughter, could the Government consider issuing an alert about the insecurity in the Southern Africa region to Kenyans living there?

Mr. Affey: Mr. Speaker, Sir, the Government will not consider issuing an alert. I am not sure whether the region is more insecure than here. We will consider the first request that was made by the hon. Member, but we are not prepared to issue an insecurity alert.

Mr. Munyao: Mr. Speaker, Sir, going by the list of names which were read out by the Assistant Minister, it appears that since 1994, out of all the cases which have been investigated, nothing has been concluded. How long will the Government of Kenya keep the bereaved families waiting for these investigation reports? What hope do we have that we will know the causes of these deaths?

Mr. Affey: Mr. Speaker, Sir, we are pursuing these matters through the diplomatic channels. We will continue to pursue the issues until we get this information.

Mr. Kibicho: Mr. Speaker, Sir, the Assistant Minister has said that the Government will not issue an alert informing Kenyans that some parts of the Southern Africa region are insecure. If you go to South Africa, South Africans themselves will tell you not to visit down towns. Many Kenyans are going to the Southern Africa region and if they leave Kenya without knowing which areas they should not visit, then what is the Government's obligation to Kenyans on security?

Mr. Affey: Mr. Speaker, Sir, when Kenyans visit our missions abroad, we advise them on the areas which they should visit and which they should not in the capital cities. But in as far as a general alert is concerned, the Kenyan Government cannot issue an alert for Kenyans travelling abroad.

Mr. Gatabaki: Mr. Speaker, Sir, before I ask my last question, let me thank the Ministry for supplying this kind of an answer. It is comprehensive, to the point and meets the requirements of the Question. We are seeing a new awareness in the Government and, maybe, this is as a result of the dot.com generation.

However, wherever nationals of other countries die - and we have seen that in the case of the Americans, Israelis and the British - no stone is left unturned in establishing the causes of their deaths. Every citizen matters and everything is done to ensure that the causes of deaths are established. Has the Ministry of Foreign Affairs and International Co-operation, in conjunction with the Kenya Police and the National Security Intelligence Service (NSIS), for which this Parliament votes about Kshs5 billion every year, done anything to ensure that the life of every citizen of this country, wherever he or she is, is safeguarded?

Mr. Speaker: Very well, Mr. Gatabaki!

Mr. Affey: Mr. Speaker, Sir, it is the responsibility of the Government to ensure that its citizens are safe wherever they are.

Mr. Wanjala: Mr. Speaker, Sir, first of all, I apologise for having come late. But before I ask my Question, I want a clarification. I have an answer which is not signed or even headed. I do not know from which Ministry it has come. I need a clarification because this might be a forged document.

Mr. Speaker: First of all, ask the Question so that it will be before us!

Question No.119

SPEEDBOATS TO PROTECT FISHERMEN IN BUSIA

Mr. Wanjala asked the Minister for Environment:-

- (a) how many vehicles were bought by Lake Victoria Environmental Management Programme (LVEMP) since its inception and how they were distributed;
- (b) how many speedboats were bought under the programme during the same period; and,
- (c) what urgent measures the Minister is taking to ensure that speedboats are sent to Busia District to be used by security officers in protecting Kenyan fishermen against Ugandan security officers in the lake.

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

(a) The Lake Victoria Environmental Management Project (LVMP) has bought nine pick-ups; 21 four-wheel drive station wagons, and four saloons for use by the departments implementing the LVEMP in the Lake Victoria basin as per the agreement between the International Development Association (IDA) and the Government. The vehicles were distributed to Government departments as follows:-

Fisheries Department - 7

Water Department	-	7
Forest Department	-	2
Ministry of Agriculture and Rural Development	-	1
Moi University	-	1
National Environment Secretariat	-	2
LVEMP National Secretariat	-	4
Kenya Agricultural Research Institute (KARI)	-	3
Kenya Marine Fisheries Research Institute	-	7

(b) The project is in the process of procuring boats and dinghies for use by the departments implementing the LVEMP activities in the basin. The project will purchase 10 boats and 12 dinghies for distribution. The 12 dinghies will be distributed as follows:-

Moi University	-	2
Fisheries Department	-	3
Kenya Marine Fisheries Institute	-	1
Water Department	-	5
Kenya Agricultural Research Institute (KARI)	-	1

The 10 boats will be distributed as follows:-

Moi University	-	1
Fisheries Department	-	5
Kenya Marine Fisheries Institute	-	2
Water Department	-	1
KARI	-	1

The boats will be used for research and fisheries co-management activities in the lake. The department involved in Lake Victoria Environmental Management Project (LVEMP) implementation, however, collaborates with Provincial Administration in ensuring security operation and other related activities within the lake.

(c) The boats purchased by the project shall be used in all riparian districts of Lake Victoria, including Busia, for data collection and co-management activities. We shall, however, support the efforts of the Provincial Administration in ensuring security and safety of Kenyan waters of the lake.

Mr. Wanjala: Mr. Speaker, Sir, you have heard clearly that LVEMP which is supposed to work on Lake Victoria--- The Ministry decided to buy 34 vehicles, as a priority, and up to now they have not bought a single boat, since its inception, seven years ago. Could the Assistant Minister tell this House why the Ministry saw it fit that buying 34 vehicles, which are used on land, as a priority, yet the project is supposed to manage activities; including the fish, the water hyacinth and security, on the lake? There are islands in the lake which the management is supposed to reach, like Mageta, Chilo, Suba and other islands. How can the Pajeros, which the Ministry bought, be used to pass over the water to reach those islands?

Mr. Speaker: Mr. Assistant Minister, how do you drive over water?

Mr. ole Ntutu: Mr. Speaker, Sir, first of all, I want to assure the hon. Member that we are in the process of purchasing boats, and before the end of May, 2002, the equipment will be on site. We have already awarded tenders for the purchase of boats, and before the end of May, everything would be in place. But concerning vehicles, I think that is a bit personal; let me not answer it.

Mr. Speaker: Personal to who?

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

Mr. Speaker: Yes, what is it?

Mr. Wanjala: What is personal here, when I have asked a very clear question?

Mr. Speaker: What is "personal" in the question, Mr. ole Ntutu?

Mr. ole Ntutu: Mr. Speaker, Sir, I think the main reason why the hon. Member is complaining is because one of his colleagues from the same area wants, probably, to contest a parliamentary seat in Budalang'i. The hon. Member is probably jealous when he sees the aspirant using Government vehicles to patrol and supervise Government projects in the area.

Dr. Ochuodho: Mr. Speaker, Sir, it is not the first time LVEMP has misused resources. In the year---

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

Mr. Speaker: What is it?

Mr. Wanjala: Mr. Speaker, Sir, there has been a very serious allegation from the Assistant Minister. Hon. Members ask Questions on the Floor of the House because of what their constituents are facing, and what they want done rightly. How can the Assistant Minister relate this to politics when I have asked a clear Question? The vehicles were bought and are being used on land when the Ministry was supposed to buy boats to be used on the lake! Is he in order to impute a wrong motive on an hon. Member of Parliament, like hon. Wanjala?

Mr. Speaker: What is the relationship?

Mr. ole Ntutu: Mr. Speaker, Sir, I think I have answered the hon. Member's Question the way he wanted.

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

Mr. Speaker: Order! Order, all of you! Dr. Ochuodho was on the Floor before he was interrupted on a point of order.

Dr. Ochuodho: Mr. Speaker, Sir, in the year 2000, LVEMP was given Kshs100 million to remove water hyacinth from the lake. The then Minister for Environment told us in this House that Kshs70 million out of the Kshs100 million was used to refurbish their offices in Nairobi. This is another case where they misused resources.

In October, 2000, when I was being transferred from Homa Bay Prison to Kodiaga Prison, they used a LVEMP vehicle, one of these pick-ups, they are talking about. Could the Assistant Minister tell this House if LVEMP must subsidize security operations? If the Assistant Minister thought he gave adequate funds for the project, why not give the Provincial Administration boats to save those many people who die daily when boats capsize in the lake? Why does the Assistant Minister not give boats to save the many lives of fishermen lost in the lake, instead of buying vehicles?

Mr. ole Ntutu: Mr. Speaker, Sir, I would like to inform the hon. Member that my Ministry does not deal with security. The boats are there only to carry out research activities and monitor other activities carried out on the lake, but if the hon. Member wants to ask anything concerning the security of the lake, he should contact the Office of the President.

Mr. Imanyara: Mr. Speaker, Sir, the Chair has heard the Assistant Minister clearly imputing improper motives on Mr. Wanjala by suggesting that the Question was asked out of jealousy since he is facing an opponent in his constituency. That issue was raised by hon. Wanjala and probably the Chair has not issued guidelines on that matter. I think it is totally out of order for the Assistant Minister to impute improper motives on a Question the Speaker has approved and put on the Order Paper. Is the Assistant Minister in order to stand before this House and suggest that the Question is being asked because the hon. Member is facing an opponent?

Mr. Speaker: I think you are right. Could you now ask your question?

Mr. Imanyara: Under what authority did the Assistant Minister divert funds that were meant to purchase equipment to be used on the lake to buy motor vehicles?

Mr. ole Ntutu: Mr. Speaker, Sir, I would like to inform the hon. Member that we diverted funds to buy motor vehicles instead of buying the boats because the Ministry has plans which it gives first priority. We assessed and saw that the vehicles were the first priority, and we are in the process of buying the boats within a very short time.

Mr. Wanjala: Mr. Speaker, Sir, I am sorry that the Chair has overlooked the issue I raised about the Assistant Minister imputing improper motive, and you have not protected me against such motive.

Mr. Speaker: I have already warned the Assistant Minister.

Mr. Wanjala: But he has not withdrawn the allegation, Mr. Speaker, Sir!

An hon. Member: Yes, the Chair has overlooked it!

Mr. Speaker: Order! Order! Mr. Assistant Minister, hon. Members are entitled to bring Questions from their constituencies all the time. There is nothing political about that, and in any case, the business of hon. Members is that of politics! So, there is nothing wrong with that. If you have implied any motive other than that of the discharge of duties by the hon. Member, you must withdraw.

Mr. ole Ntutu: Mr. Speaker, Sir, I withdraw the allegation and apologise.

Mr. Speaker: Very well, that matter ends there!

Mr. Wanjala: Mr. Speaker, Sir, the Chair can see that the Ministry of Environment and Natural Resources saw that it is a priority to give Kenya Marine Fisheries Research Institute a vehicle, and yet research is done in the lake. The Ministry bought 34 vehicles and it intends to buy only 22 boats, which will be used in the lake. The lake is very big and the project is supposed to be done in the lake. The Ministry wants to give Moi University, Eldoret, a boat! I do not know whether that boat will be driven on a tarmacked road, and yet we have Maseno University, which is closer to the lake--- Could the Assistant Minister now tell this House why the Ministry has taken so long to buy boats, and yet the project is expiring in December, 2002?

(Laughter)

Mr. ole Ntutu: Thank you, Mr. Speaker, Sir. I think I answered the question raised by the hon. Member when I said that we are already in the process of procuring the boats and dinghies. Before the end of May, these items will be on site. Again, I would like to inform the hon. Member that the project does not cover the lake alone. We are also trying to focus on the catchment areas. I am talking about the Moi University boat. The personnel at this institution are researchers, who do their research at the lake.

Question No.152

COMMUNAL BENEFITS FOR RUMA RESIDENTS

Mr. Speaker: The Question by Mr. Kanyauchi is deferred.

(Question deferred)

(Loud consultations)

Order, hon. Members! I am sure you cannot hear me! There is a very joyous communication between yourselves. I appreciate when it is joyous, but keep it down!

QUESTIONS BY PRIVATE NOTICE

IMPOUNDING OF FISHING EQUIPMENT
BY UGANDAN FORCES

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

(a) Is the Minister aware that on 17th March, 2002, Uganda Army personnel crossed to Kenyan waters in Lake Victoria and impounded a boat, an engine and 14 nets, all worth Kshs58,000, belonging to Mr. Tom Olwanda of Budalan'gi Constituency, Bukoma Sub-Location?

(b) Is he further aware that Mr. Olwanda followed the army personnel to Sigulu Island, who only released the boat and engine after receiving Kshs20,000 and that they refused to surrender the nets despite producing a letter from Budalan'gi Divisional Fisheries Officer?

(c) What urgent measures is the Minister taking to ensure that Mr. Olwanda receives back his nets from

Uganda Government and that the harassment of Kenyan fishermen in Lake Victoria ceases forthwith?

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

(a) I am not aware of any incident that took place on 17th March, 2002, as none was reported.

(b) As no incident was report on 17th March, 2002, I am further not aware of any payment alleged to have been made to Uganda Army officers for the release of impounded boats, out-board engines and fishing gear.

(c) As a continuous process, consultations are going on between the District Security Committee of Busia, Kenya, and Uganda. The committee met on 8th March, 2002, along with the Fishery and Special Revenue Protection Officers from Uganda and deliberated on issues pertaining to the harassment of Kenyans fishing in Ugandan waters. Other meetings are being planned with the security committee of Bugiri and Mayuge Districts in Uganda where most of these cases are said to occur.

Mr. Wanjala: Thank you, Mr. Speaker, Sir. The Chair has clearly heard that the Assistant Minister is not aware that Mr. Olwanda lost his fishing gear worth Kshs58,000. The Chair has also heard the Assistant Minister say that there were some consultations held on 8th March, 2002, in Uganda, over insecurity in Lake Victoria. Since the Assistant Minister is not aware that the matter was reported at Port Victoria Police Station, could I be in order to ask the Chair to give him some time to investigate this matter?

Mr. Haji: Mr. Speaker, Sir, we do not need---

(A mobile phone rang)

Mr. Speaker: Who has a mobile phone here? Where is it?

Hon. Members: It is in the HANSARD Box!

Mr. Speaker: Could you find out wherever it is?

Hon. Members: It is in the handbag!

Mr. Speaker: In whose handbag?

(Laughter)

Well, I suppose it is now off! Always remember to switch off these gadgets! The noise they make is so irritating!

Could you proceed, Mr. Haji?

Mr. Haji: Mr. Speaker, Sir, we do not need more time to answer any Question. The meeting which was held on 8th March, 2002, has nothing to do with the alleged incident which happened on 16th March, this year. As I said earlier on, these meetings are on-going because they are of security nature between the two countries. However, on the night of 17th and 18th February, 2002, the Uganda Special Revenue Protection Officers intercepted Messrs. Olwanda, Mukhendu, John Odede, Origi Odede, Alex Ojiambo, Mara Odede, Nyambuga Olwanda and Stephen Gangala of Bukoma Sub-Location and confiscated fishing gear and boats on the Ugandan side of the border. These included seven boats, seven out-board motor engines, a five-kilogram Nile Perch, 450 fishing hooks, one empty drum and 23 floats, all of unknown value. Mr. Mukhendu and Mr. John Odede alleged to have payed Kshs20,000 each for the release of four out-board motor engines and two boats. Mr. Origi Odede and Alex Ojiambo paid Kshs10,000 each for two out-board motor engines and two boats. Mr. Nyambuga Olwanda did not follow up his five kilogram Nile Perch, while Mr. Stephen Gangala gave up on the 450 hooks and the empty drum. It was against this background that the meeting of 8th March, 2002, took place. It was agreed that other districts of Uganda, for example, Bugiri and Mayuge, participate in future meetings to discuss fishing in Lake Victoria.

Dr. Kituyi: Mr. Speaker, Sir, I have had a privilege to be a Member of a Parliamentary Committee from this House which had an audience with the Minister for Foreign Affairs of Uganda. In that formal meeting, the Minister from Uganda admitted that members of Uganda Defence Forces (UDF) had killed what they considered a pirate and they discovered that they had done that on a Kenyan island or territory. How can an Assistant Minister, Office of the President, in Kenya rush to the defence of Uganda by saying that, first, it was not the defence forces, and, secondly, it was the revenue officers; but even more importantly, he believes the argument that it was in Ugandan territorial waters? Why should he rush to the defence of Uganda instead of investigating the interest of Kenya?

Mr. Haji: Mr. Speaker, Sir, discussions in a private place cannot be taken as evidence in an honourable place like this one. So, I am not aware about what they discussed with the Ugandan Foreign Affairs Minister. If they did that,

it would be better if the Minister would---

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

Mr. Speaker: Order, Dr. Kituyi!

Dr. Kituyi: No! I must---

Mr. Speaker: Order! What is the matter with you, Dr. Kituyi?

Dr. Kituyi: Mr. Speaker, Sir---

Mr. Speaker: Order! You will not take over the House! You will sit there patiently and attract my attention, if I deem it necessary!

Mr. Haji: Mr. Speaker, Sir, I have said that we cannot act on a private discussion between the hon. Member and the Minister for Foreign Affairs in Uganda. We are not aware of any Kenyan who was killed.

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

Mr. Speaker: Order!

Proceed, Dr. Ochuodho!

Dr. Ochuodho: Mr. Speaker, Sir, the problem of Ugandan security forces confiscating fishing gear is not isolated. Last month alone, two Homa Bay fishermen lost their fishing gear to the so-called "Ugandan security forces". Considering that the fish which is caught in Uganda is actually "born" in Kenyan water, and considering the new spirit of the East African Co-operation, could the Assistant Minister enter into dialogue with his Ugandan counterpart to allow fishermen, regardless of which part of the lake they come from, to move freely? Before that agreement is reached, could the Assistant Minister avail boats to Kenyan security personnel to ensure that they guard our fishermen?

Mr. Haji: Mr. Speaker, Sir, I quite agree with the suggestion by Dr. Ochuodho that in the spirit of the East African Co-operation, there is need for us to co-operate more deeply on the use of the waters of Lake Victoria. The hon. Member will agree with me that boundaries in the water are not like boundaries on land where there is a mark to show whether somebody has crossed over to the other side or not. We depend on the good will between communities around that area.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. I did preambulate a legitimate question by stating that I was referring to an official meeting which is on public records between a Committee of this House and the Ministry of Foreign Affairs of the Republic of Uganda. That notwithstanding, the Assistant Minister has chosen to denigrate that meeting as a private discussion. Are you satisfied that my substantive question has been answered?

Mr. Speaker: First of all, I do not know anything about the meeting you held because you have not given the minutes to the Assistant Minister.

Dr. Kituyi: Are you satisfied that my question has been answered?

Mr. Speaker: I really do not know whether your question has been answered. Mr. Haji, did you answer Dr. Kituyi's question?

Dr. Kituyi: Mr. Speaker, Sir, could you now oblige the Assistant Minister to answer my question?

Mr. Haji: Mr. Speaker, Sir, I answered his question very eloquently. I said clearly and loudly that I am not aware of the allegation that the hon. Member is talking about.

Mr. Wanjala: Mr. Speaker, Sir, you clearly heard the Assistant Minister denying that he is not aware. Later on, he agreed that he was aware that several people were arrested on the same day, including Tom Olwanda and Antony Nahendo, among others. Now, the Assistant Minister goes further and says these people were arrested in Ugandan waters.

However, these people were arrested at River Nzoia delta, which is right inside Kenyan waters. Could the Assistant Minister undertake to demarcate this lake, so that Kenyans will not cross to Uganda side? Ugandans are reaping enormous wealth on our side. The Assistant Minister is justifying the arrest of our people by Ugandan security personnel.

Mr. Haji: Mr. Speaker, Sir, I want to deny vehemently that I am not aware about the discussions. What I am not aware of is the incident which happened on 17th March, 2002. As I said, the meeting which took place is related to an incident which happened on 17th and 18th February, 2002. On the demarcation of the lake, I think the hon. Member should tell us more because sometimes he says those people were in Kenya, and other times, he says they were in Uganda. If there was no demarcation, how would they know whether they were in Kenya or in Uganda? We know the lake is properly demarcated. We do not need to go and demarcate it.

Mr. Wanjala: On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister clearly say that

sometimes you cannot know whether you are in Kenya or Uganda. I told him clearly that even a Kenyan island has been deliberately ceded to Uganda. Ugandans have taken it over deliberately because there are no security men on the Kenyan side. Since the Assistant Minister says he does not know the boundary, could he, on behalf of the Government, undertake to demarcate the lake so that fish bred in Kenya does not cross over to the Uganda side?

Mr. Speaker: Mr. Wanjala, are you suggesting that there should be a "Berlin Wall" in the lake?

Mr. Wanjala: Yes, Mr. Speaker, Sir.

Mr. Speaker: Secondly, are you also suggesting that the fish should be given passports?

Mr. Wanjala: Mr. Speaker, Sir, you have said the truth. If Ugandans claim ownership of fish bred in Kenyan waters, then we should either give the fish passports or build a Berlin Wall in the lake.

(Laughter)

Mr. Speaker: Mr. Haji, would you like to comment on that?

Mr. Haji: Mr. Speaker, Sir, I do not know whether the hon. Member wants me to speak in the Luhya Language because I said in the English Language that there is a boundary in the lake between Kenya, Uganda and Tanzania.

Mr. Speaker: Very well. Mr. Haji, we have not heard the last of this. As you can see, Question two by Private Notice by Dr. Oburu is exactly the same. Last time he asked me to defer the Question beyond today. Unfortunately, it came up today. So, I will defer it because he sought my permission to be out of the country.

Again, Mr. Haji, look at this Question and prepare well in advance because they could, possibly, have conspired with Mr. Wanjala. I will defer this Question.

ARREST OF KENYAN FISHERMEN
BY UGANDAN FORCES

(Dr. Oburu) to ask the Minister of State, Office of the President:-

(a) Is the Minister aware that Uganda Security Forces have impounded 20 fishing boats and arrested several fishermen around Wichlum, Wagusu and Rusinga Island beaches on 20th March, and detained them at Wayasi Island?

(b) Is he further aware that this action has completely paralysed fishing activities in the area?

(c) What urgent steps is he taking to ensure security of Kenyan fishermen and the restoration of fishing activities in the area?

(Question deferred)

PAYMENT OF COMPENSATION TO
MASTER GATUTHU'S FAMILY

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

(a) Is the Minister aware that six-year old Master Daniel Gatuthu drowned in an open sewer late last year in Lunga Lunga Village in Mukuru?

(b) Is he further aware that in an effort to recover the body of the deceased, Nairobi City Council dug up the sewer and left it open to date?

(c) Could the Minister, as a matter of urgency, order the City Council to cover the open sewer and pay compensation to the family of Daniel Gatuthu who lost his life due to the negligence of City Hall?

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

(a) I am not aware of the alleged drowning of a boy at Lunga Lunga village although I am aware that a report to that effect was made to the City Council, and the same also appeared in the local media.

(b) Following the report that a small boy had drowned in a manhole, the City Council Fire Brigade and sewer

operations maintenance unit personnel visited the scene and found out that the cover to the manhole where the boy was alleged to have fallen had been removed. The City Council personnel made frantic efforts to locate the body by following both the sewer line and the storm drainage line up to the Dandora Sewerage Treatment Works Plant, but the body was never found. After failing to recover the body, the area residents, in an effort to locate the body, excavated the storm drain line and after some distance, they gave up and left the storm drain open.

The Council personnel did not excavate any area as they were using special unblocking equipment.

(c) I have already instructed the City Council to cover the excavated storm drainage and action has already to be taken. As regards the issue of compensation, the normal legal process has to be exhausted before the Minister can intervene. As it is now, it is a civil matter which should be handled through the normal court process.

(Mr. Mugeke sat on the Front Bench)

Mr. Speaker: As a matter of curiosity, Mr. Mugeke, which Ministry do you shadow?

Mr. Mugeke: The Ministry of Local Government.

Mr. Speaker: Very well. Have you replaced, Mr. Maitha?

Mr. Mugeke: No, Mr. Speaker, Sir.

Mr. Speaker: Are you a Shadow Minister?

Mr. Mugeke: Mr. Speaker, Sir, I am the Assistant Minister.

Mr. Speaker: According to the records given to my office, the Official Opposition has no Shadow Assistant Ministers. Proceed to the Back Bench, Mr. Mugeke.

(Mr. Mugeke proceeded to the Back Bench)

Mrs. Mugo: Mr. Speaker, Sir, the problem of open sewers affects all parts of the City. It poses a grave danger to the children and residents of the City. In addition, it is a breeding ground for pandemic diseases, especially during this rainy season. Could the Assistant Minister assure this House that all open sewers will be covered as a matter of urgency? The Assistant Minister is not even listening to the question; he is busy talking.

Mr. Kiangoi: Mr. Speaker, Sir, maybe the hon. Member does not know the Assistant Minister who was answering the Question. I have been listening very attentively to her question.

The City Council and the Ministry are concerned about open manholes, but we are getting problems because, normally, wherever there are manholes, *wananchi* build on them and then use them as toilets. We will endeavour to ensure that this kind of trend is checked so that there is no open sewer in any place.

Mr. Wamae: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to say that people are building on top of the sewer when he is supposed to make sure that nobody builds on top of the sewer?

Mr. Speaker: Order! That should have been a supplementary question. But, Mr. Wamae, you live in Kenya, and know that they even take roadsides and not just the sewers.

Mr. Mugeke: Mr. Speaker, Sir, it is very unfortunate that this child comes from a very poor family. When we talk of compensation, I would want to think that it is not fair for the Assistant Minister to ignore the Question and refer the family to the courts of law. Whose responsibility is it to ensure that all manholes are covered? I would like to suggest that the City Council should compensate the family.

Mr. Kiangoi: Mr. Speaker, Sir, the court process is necessary because it will have to establish, in the first place, whether any human being died as alleged. There will have to be an inquest, and if at all the boy drowned in that sewer on that particular day as alleged, we will have to find out whose negligence it was. We cannot run away from the court process because it is part and parcel of our work in this country.

Mrs. Ngilu: Mr. Speaker, Sir, there has to be a specific person in charge of this department, because time and again, when we find these open manholes and we try to call the City Council to alert them of the problem, you are transferred to so many telephone extensions that you would not know who actually you are talking to. We could save lives if only we had a specific person who is in charge of this and who can take responsibility over something like this.

For instance, there is one manhole that is open opposite Nyayo Stadium. It has been like that for the last four months and several people have fallen into that pit and lost their limbs.

Could the Assistant Minister tell the House who is actually responsible for their maintenance so that we can

Speak to them?

Mr. Kiangoi: Mr. Speaker, Sir, all correspondence and communication from Nairobi residents - if that is the case - should be addressed to the Town Clerk.

Mr. Speaker: Next Order!

BILLS

First Readings

THE KENYA CORRUPTION CONTROL BILL

THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL

*(Orders for the First Readings read -
Read the First Time -
Ordered to be referred to the relevant
Departmental Committees)*

Second Reading

THE KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS

(The Attorney-General on 3.4.2002)

(Resumption of Debate interrupted on 11.4.2002)

Mr. Speaker: Mr. Mwakiringo, you have 25 more minutes!

Mr. Mwakiringo: Mr. Speaker, Sir, as I was saying last week, this Commission should have tenure of office, so that it can have the teeth to investigate and the power to plan whatever it has to plan within the stipulated timeframe of the Commissioners. As it stands now, the Commission has no tenure of office, which means that this Commission can be disbanded any time when somebody is not happy with what it is doing. If we have to be honest and truthful to ourselves, in order to empower this Commission, it must have the tenure of office.

Mr. Speaker, Sir, Clause 21(1), reads as follows:-

"The Commission shall submit an annual report to the President and the National Assembly through the Minister, and might at any time submit special reports to the President and to the National Assembly on any matter".

This clause should be expanded. I am suggesting that the report should be first presented as it is to the President and to the relevant Departmental Committee of this House for scrutiny. In order to avoid the question of doubt; whether there were any amendments done before it was submitted to the this House or to the President, it is important that the original report is submitted simultaneously to the President and to the relevant Committee of this House.

Mr. Speaker, Sir, Clause 21(3) states:-

"The Minister shall lay the annual report of the Commission before the National Assembly within two months of receipt thereof, with any comments thereon which the Minister considers necessary".

As I was saying here, again, this should be done in conjunction with the relevant Departmental Committee of this House.

Mr. Speaker, Sir, violation of human rights takes very many forms. I would like to dwell on situations where human rights have been violated in various spheres in our own country by the Government. There is the Poverty Reduction Strategy Paper which, as much as it has a lot of contents in it, has no owner. Who is supposed to implement the PRSP? If we are to get serious and implement what is contained in that Paper, we should empower the rural

development authorities so that they can operationalize the PRSP. That is because, as it stands now, it is a hanging document with nobody to control or monitor what is going to happen. So, it is important to have somebody who can operationalize and monitor what is going on in this country, if we have to be successful by using what is contained in the document.

Currently, I know that the Ministry of Rural Development is in the process of launching the Rural Development Strategy Policy Paper. But again, it will still have no owner and nobody to monitor what is contained therein. Therefore, the best that the Government can do is to empower rural development authorities like the Kerio Valley Development Authority (KVDA), Tana and Athi Rivers Development Authority (TARDA), Coast Development Authority (CDA), Lake Basin Development Authority (LBDA) and others, to operationalize those strategy papers. The authorities have qualified manpower to implement such projects. Most of the authorities have been in operation since the 1970s. Therefore, they have the experience to monitor and operationalize the strategy papers that the Government keeps on producing.

Mr. Speaker, Sir, it is sad to see that when the KVDA and TARDA were generating energy, they used to make a lot of profits. I am sure that by now, they would have been self-sustaining and other rural development authorities would have been borrowing from the two authorities. But when power generation was transferred to KENGEN, everything went under! That forms part of violation of human rights because we cannot meet our day-to-day power needs.

Mr. Speaker, Sir, I am perturbed by the Government's laxity and continued violation of human rights when I see many street children in our urban areas. It is sad, and that has affected the economy of this country in that tourists cannot come to this country because of adverse reports being given that our urban towns are full of street children, who keep on harassing local citizens and even the tourists. I would like to give an example. When I was working in Dar es Salaam, there were many street children. But a decision was made to collect all street children, who were put into special homes, rehabilitated and became good citizens of Tanzania. It is on the same note that the rapid removal of street children in most urban towns of Tanzania that it became a hub of tourists in the East African region. Kenya, having all the best hotels in Africa, has no tourists coming here because of the street children menace. The issue is: What plans have been put in place to arrest the thugs who sell glue to the street children to sniff? One time, I was walking along the street and asked one of the street children: "Can I sniff that glue?" He was quick enough and generous and he gave it to me. Although I did not sniff it, I asked him: "Who is the supplier, because it looks like a good substance to use?" He said: "No! Kuna chali huja hapa na Benz kubwa sana saa kumi na mbili jioni!"

Mr. Speaker, Sir, if we have to market Nairobi and other tourist destinations in this country, we must arrest and prosecute those who supply glue to the street children. If we can get hold of the suppliers and put the street children into special homes and rehabilitate them, I am sure Nairobi and other tourist destinations in this country will attract many tourists. Let us get hold of the people who sell the glue to the street children and compete with Tanzania in terms of tourism.

Still on cities, of which two were elevated recently, they are not secure than Nairobi itself! Insecurity is a major problem, which constitutes part of human rights violation, when you are not safe during the day and night. We fought for Independence from colonialists, so that we can enjoy the freedom of movement in this country, govern ourselves, and plan the destiny of our country. If we have to control and ensure security of each individual and visitors in this country, we should put more money into the security organs, so that we can have, at least, two policemen per every 100 metres all over the country, so that Kenyans could be assured of security during day and night. Some of our own policemen, who are also our sons, are so cowardly that even if you report to them that there is a thug around the corner, they will tell you: "Go arrest him and bring him here", yet, you are not armed with a gun like him! But he is so cowardly that he cannot go there. To remove the cowardice, let us budget more money for our security organs, so that we can have double or triple the current number of policemen that we have in this country. That way, we can station them two per every 100 metres.

Mr. Speaker, Sir, I am very perturbed by the insecurity in this country. When a police officer, administration police officer or an army officer is sacked or retired from the service, his or her movements must be fully monitored and known. That is because, at the end of the day, most of them turn out to be criminals. Therefore, they threaten the lives and security of unarmed civilians. So, it is important to monitor and know what all the retired and sacked security officers are doing at any one time of the year, day and night. They turn out to be criminals and mastermind most of the robberies in our streets and banks. So, it is important that their movements are known.

Mr. Speaker, Sir, in order for us to be safe from global harassment in terms of violation of human rights, we should start with our own civil servants. A good office is determined by the receptionist wherever he or she is working. I am talking about civil servants because some of them do not have good public relations skills.

When I went to a general hospital, I was so unhappy when I saw the way nurses were treating pregnant women in the labour ward. It was very disturbing. I could not imagine a nurse telling an expectant mother: "Push to deliver! I was not there when you were doing it!" I wondered what kind of public relations that was. This amounts to violation of human rights. A woman who is delivering for the first time will vow never to give birth to another baby again if that is the kind of treatment she will get from the hospital staff. This woman was being told: "Sukuma, uzae! Mimi sikuwepo mkifanya hii maneno! Unakuja hapa na kulialia nini?" I said: "What is all this?"

Mr. Speaker: Order! You do not have to repeat vulgar words on the Floor of the House.

The Minister for Public Health (Prof. Ongeru): On a point of order, Mr. Speaker, Sir. Is it in order for Mr. Mwakiringo to make a blanket statement about the good work being done by nurses when this was a misdemeanour done by only one individual? He should not generalise everybody else. Is he not, by making that statement, infringing on the human rights of others to exist and practise their profession?

Mr. Speaker: I hope we will tone this all down and proceed.

Mr. Mwakiringo: Thank you, Mr. Speaker, Sir. I will tone it down because when such a Minister goes to a hospital, he has to alert the staff there; therefore, they get prepared. As for me, I dress in a rural way and go there unnoticed. Therefore, I end up listening to everything. That makes the difference between him and me.

I was saying that starting with our own civil servants, we should polish our language regardless of whoever we receive in our offices, be it a patient, client or customer. Let us start practising that good hospitality in our hospitals. We should note that this lack of courtesy amounts to violation of human rights. We have some dignitaries up there who are listening to what is being said here. This also applies to us, as parents. Some of us treat our own children inhumanly to an extent that you fail to understand whether it is our own child or not. Therefore, this Commission should be given more authority to go into houses where they feel there is violation of human rights against children. Children have become victims of unstable families and parents who revenge on children after quarrelling. This kind of treatment even frustrates the child's performance in school.

Our own courts take too long to deliver judgement. That is part of violation of human rights. Why should a case take so long? It hounds the defendants and the complainants. You will find a case dragging on for 10 to 30 years. It remains pending in court while investigations continue indefinitely. That is violation of human rights. I am happy that our Attorney-General was a member of international committees on human rights for a long time. Unfortunately, as smart as he is, it has taken him 38 years for this Bill to be brought to this House. Why has it taken too long for us to realise that there is violation of human rights in this country? Courts should do their duties expeditiously so that people can be free to go about their business. Let the courts take as short a time as possible because when you take somebody to court, the evidence is there. Let us not accept unnecessary adjournments from lawyers, some of whom are incompetent. Let the courts have the teeth to say "yes" and "no" when they feel it is right for them to do that.

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

Mr. Temporary Deputy Speaker, Sir, as much as we separated the Special Branch from the office of the Commissioner of Police, they are supposed to work independently, but some of them are not independent. They use the gutter Press to hit at those perceived to be potential Members of Parliament and sitting MPs who want to come back to this House. They should monitor the security of this country and advise the system accordingly. We have had a number of questions asked today about some of our islands in Lake Victoria being taken over by Uganda. What were they doing? They should be appraising the Government of the position. Instead of doing what they are supposed to do, they go to the gutter Press to hit at individuals who they think are not wanted by the system. If they continue that way, we will expose them further. We will even go to an extent of mentioning their names because that is not part of their duties, nor the reason why we allocate them money.

When you reach an agreement with somebody, it is binding. It is very disappointing to see that an agreement reached between the Government and the KNUT four years ago has not been implemented. You cannot reach an

agreement and then say, after four years: "Let us sit down and renegotiate". That is a violation of the teachers' rights for whatever they want to get. You do not sign an agreement when you know that you do not have sufficient funds. You cannot play around with the lives and salaries of teachers at the expense of politics. Now that this is an election year, the issue has come up again. The President has been forced to come in and say: "Yes, it is good for teachers to be paid well, but unfortunately, we do not have the funds to pay them." Why, in the first instance, did you as a Government sign an agreement that you could not honour? This is a violation of human rights. That is why we are saying that this Commission should have tenure of office so that it can plan, work and have teeth to bite.

As it stands now, you might hear in the 1.00 o'clock and 4.00 o'clock bulletins - that is when the firing and hiring takes place - that this commission has been disbanded because it mentioned somebody who is a "good boy" in the system. Let us be strict in whatever we want to do. Let Kenya be Kenya now, and let us forget the 38 years we have lived without this Commission. If anybody is mentioned for having done something that is not in line with his relevant code of conduct, he should resign immediately. Whether you are a Minister or a Permanent Secretary, you should resign immediately you are mentioned in these corrupt deals. That is why I have very high regard for the hon. Charles Njonjo, the late Dr. Josephat Karanja and the others who wrote resignation letters immediately they were mentioned in these corrupt deals. It is fortunate I am "Mr. Clean", but if I were mentioned as being corrupt anywhere, I would be the first person to resign as a Member of Parliament. Some of you assume that you are indispensable and cannot resign once you have been mentioned in corrupt deals. I am happy because quite a number of those who are holding high positions and have been mentioned in corrupt deals will be given red cards by the electorate when elections take place this year. I am not confident of coming back, but I will be here to count how many hon. Members who were mentioned in those reports will come back. I am not in KANU, but, please, for God's sake---

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Mwakiringo, do not address the hon. Members on the KANU side directly; just address the Chair.

Mr. Mwakiringo: Sorry, Mr. Temporary Deputy Speaker, Sir. However, for God's sake, you can clean KANU by resigning, especially those who were mentioned in corrupt deals. You may protect a lot of people here because you know who they are to you, but will you protect them in Heaven when they are asked by God: "What did you do to Kenyans?" Will you be there to protect them? You will not be there! The Bible tells us that whatever is done here on earth will be judged in Heaven.

Mr. Kitonga: Which verse?

(Laughter)

Mr. Mwakiringo: Mr. Temporary Deputy Speaker, Sir, this is because God sees whatever bad thing you do here on earth and He will pass judgment on you in Heaven. You will start suffering here on earth and Kenyans will see you suffering before you die and meet God's judgment in Heaven. Therefore, let us give teeth to this Commission. Let the Attorney-General exercise his powers as he says that he is powerful. Let him use that power and let it be seen. Mr. Attorney-General, exercise your powers by giving this Commission the power.

I beg to support.

Mr. Twaha: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this debate. Much has been said and much will be said, but I will be very brief.

Mr. Temporary Deputy Speaker, Sir, I would like to say the first people whose human rights should be looked after are policemen. This is because they are grossly under-paid and poorly housed. They end up being corrupt on the roads and start harassing motorists and matatu operators. In Lamu where we do not have matatus, the police have started violating people's rights by checking each and every passenger's personal belongings under the guise of looking for drugs. From what we have gathered from the public, bhang comes from Migori and the Mount Kenya region. I, therefore, do not know why they do not search buses coming from those regions, but wait until they reach Lamu District and then start opening even women's personal belongings like handbags in their presence or absence. I think this has to be stopped because I do not think there is any law in Kenya which allows them to do that on the roadside. If there is any suspicion about drugs coming into Lamu, the police should gather some intelligence information and identify and apprehend the suspects, but not conduct blanket searches on each and every passenger, regardless of ones age, under the guise of looking for drugs.

Mr. Temporary Deputy Speaker, Sir, this has to stop and I hope the Attorney-General is going to take note of

it and advise the police accordingly. That is one form of human rights violations in Lamu.

With those few remarks, I beg to support.

Mr. Murathe: Thank you, Mr. Temporary Deputy Speaker, Sir. The Attorney-General had to wait until it became a conditionality by the donors that he should publish this Bill for the protection of human rights.

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to say that it was a conditionality that this Bill be enacted when we know that it has never been a conditionality? The only conditionality, as far as I know, is in respect of two Bills, one of which was read for the First Time this afternoon.

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, could the Attorney-General be so kind and table the list of the conditions set forth by the Bretton Woods institutions? One of them was that he should prosecute some of those magistrates and judges under his jurisdiction, and some of those officers who work in the Office of the Registrar of Societies, which falls directly under his office. We are talking about the right of every Kenyan to life, own property, freedom and access to basic needs. Basic needs are basic rights. Hon. Members have spoken about the extensive abuse of the rights of Kenyans under this regime.

Mr. Temporary Deputy Speaker, Sir, you are a victim of the abuse of human rights under the infamous *Mwakenya* nonsense, when the Government incarcerated some of us for up to 85 days. Some of us were incarcerated for 15 days without food and water in the Nyayo House cells while naked under water, and then whipped under trumped-up charges. I wish the Attorney-General knew the amount of money that was spent harassing innocent Kenyans. I personally was collected from Kisumu by police officers in three vehicles as if I was a murderer or something on a trumped-up charge. I was incarcerated in Nyayo House for 85 days. The Government would take suspects to court at 6.00 p.m. at night. Once you pleaded not guilty, they would take you back into the cells and then be subjected to severe punishment, torture and forced confessions. Some of those officers who had a blank cheque to hound innocent Kenyans are still walking scot-free in the streets as Senior Assistant Commissioners of Police. Never again should it happen! It was like Gestapo. You would actually wonder whether this was Kenya. You can understand how it worked in Russia, Communist China or Italy under Mussolini. The perpetrators of these crimes against Kenyans walk scot-free in this country.

Mr. Temporary Deputy Speaker, Sir, this Bill does not go far enough. There must be retribution, or a way must be found so that the perpetrators of these crimes are made to pay for the crimes they committed against Kenyans. People died in the Nyayo House cells. Some were thrown from the 24th floor of Nyayo House by the Government agents like creatures. Some of those people who were responsible for these crimes have died through some very cruel hand of nature.

Mr. Temporary Deputy Speaker, Sir, other violations of human rights are the tribal clashes. The tummies of pregnant women were split to check whether they were carrying baby boys. As we are sitting here, some of those people who had information on these atrocities, like the human rights Forodeca(?) organisations based in Nakuru, are today citizens in countries like Denmark because they are afraid of losing their lives here in Kenya. The smiling Attorney-General does not think that it is important, at least, to give an assurance to those people to come back home because there is nothing to run away from any more. Those torturers will be taken care of under this Bill.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Murathe, the Bill before us is the Kenya National Commission on Human Rights and that is not what you are discussing.

Mr. Murathe: That is what we are talking about. We are talking about its establishment, functions, the objectives and memoranda. If we are just going to set up another Mutungi Commission here, we might as well not have it. What is it for? Let us give it teeth. We have had the Mutungi Commission, but has it stopped the killing of suspects in police cells? Is there a provision under which those people who are offended can seek redress under this Bill? Are we just a talking-shop? What are we trying to do here? We are setting up a Commission which, under Section 16, gives the functions and objects of what we are trying to achieve.

Mr. Temporary Deputy Speaker, Sir, basic rights are human rights. Basic freedoms include freedom of movement, the right to life, the right to own property and the right to justice. When we become a society, we are strong and we can, with total impunity, suppress the weak. That is the greatest violation of human rights. If we are just creating one of those commissions which the Attorney-General sets up whenever there is a crisis in the land and others which have never brought their reports here although they spend a lot of money--- Where is the report by Justice Akilano Akiwumi? This is not a commission of inquiry which will be required to report back to Parliament.

This is a Standing Commission which is supposed to guarantee Kenyans a recourse to justice. It is supposed to recommend certain actions that need to be taken. A time will come when people will be held personally liable for their actions and they should not hide under the veil of working for the Government.

Mr. Temporary Deputy Speaker, Sir, 48 years after the holocaust, the Jewish nation is still pursuing the members of the Gestapo to as far as Argentina in South America and bringing them to justice. Where are the provisions in this Bill which will ensure that those people who violated the rights of Kenyans, who were talking about their own democratic rights or democratization of this country from 1982, will be brought to justice? For instance, Mr. Anyona and company were detained for talking about freedom to associate with other Kenyans freely. The editor of the *Nairobi Law Monthly* was also detained for fighting for the democratization of this country! Where is the restitution in this Bill?

Mr. Temporary Deputy Speaker, Sir, the violations of the rights of the people of Kenya cannot adequately be covered under this Bill, which, again, has come about because of the concerns of the donor community about the continued violation of the rights of Kenyans; as one of the benchmark about which there will be no foreign aid.

With those few remarks, I beg to oppose the damn thing!

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order, Mr. Murathe! It is not a "damn thing", it is a Bill!

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, I beg to oppose the Bill!

The Minister for Public Health (Prof. Ongeru): Thank you, Mr. Temporary Deputy Speaker, Sir. I also rise to support this Bill not so much because of what has been vented by my colleagues on the opposite side but because it seeks to set out the parameters of obligations on both sides. It seeks to set out obligations of individuals to adhere to the statutes and the law hereby established by this Parliament. It also seeks to set out obligations on the part of the lawmakers, including the Government, to see that those are carried out in accordance with the spirit of that law which has been promulgated in this Parliament.

There is also the obligation of society to act in a civil manner so that we are able to take into account the feelings and aspirations of the communities or individuals around us. For instance, it is a provocative issue or a breach of the fundamental right of an individual for one to smoke with impunity around, in the precincts or within the crowded hall when we fully know that, that smoking itself will by influence cause a problem to passive non-smokers. That in itself is a breach of the individual right. You have no business to transfer to me an illness that I do not take part in, in the process of smoking, but perfectly, passed on to me as a result of your habit. These are the types of breach of human rights and we want to contain them with the passage of this Bill which is before this House.

Mr. Temporary Deputy Speaker, Sir, I have argued before and I continue to argue that one of the issues that I hope will be addressed during the constitution-making process is the right to health. I hope that all Members will accept this as a normal thing to do because when we talk of moral obligation, I think we are all being obligated that Kenyans should have a right to good health. I think it is a good thing to prescribe it clearly in our statutes and that is why I support this particular Bill. It sets out the paradigm norms that we need to follow in order to create a conducive and enabling environment for society to thrive and exist in. I think that is a very important point that we should not lose sight of. We can catalogue misfortunes that might have happened one day or the other, but this will not help us in this current mood in which we are. We know that the world is becoming a global village and, therefore, there are bound to be those who can make it and those who cannot make it. It is a highly competitive world and, therefore, we risk being marginalised in many ways. For instance, going beyond the domestic scene, what fairness is there for the global partners to treat our commodities as second rate and, therefore, fetch very poor prices? Is that fair practice? Is that not a breach of the very existence of the developing nations, that they need support from other partners who are developed? Is that what we call equity in development pace at the international level? One could argue that we need that same equity at the domestic level, but suffice it to say that it is important that when we cast our minds on the human rights, we are looking within and beyond the boundaries of Kenya and how it will best serve our interests. It is, for instance, unfair for our coffee, pyrethrum, and other agricultural products, to fetch poor prices at the world market. Is the world conforming to universal human rights conditions by not according us a decent price structure? That is why I am very happy that initiatives that are currently on board will enable us to redress some of these rather funny and difficult issues, which tend to infringe on the very survival of the human specie. We are talking about the survival of individuals, whether you survive against non-availability of food, or on the basis that you are inundated and overburdened with diseases that are largely preventable, or you are inundated by some level of violence that cannot be

contained, or inundated by issues like insecurity. These are the composite issues that we want to see embodied in this document. I believe that one of such things has been clearly stated.

Mr. Temporary Deputy Speaker, Sir, I am quite happy with the manner in which the Commissioners will be appointed. They must be people of repute, highly recognised and who understand the human psychology, feeling and the basis upon which we exist. I can recollect that, earlier on, an hon. Member from the Opposition did indicate that God was very fair in creating a man and a woman. When the first man and woman were still in Heaven, he threw them onto this world to struggle and be able to vindicate themselves in order to go to Heaven. I do not think that it should be an easy passage for anybody to just stand up and start hurling blame after another at the Government alone. It takes two to tango. Admittedly, there are certain things we, in the Government, could do better. I am not discounting that, but there are other things the Opposition side can do better. What we are looking for is a balance where we can, together as Kenyans, be able to function in an enabling environment that guarantees us those fundamental human rights. That is why I agree with the spirit with which this Bill has been set out.

There have been some misgivings about the tenure of office of the Commissioners. Clause 16 of this Bill is quite clear; it does confer security of tenure on the holders of this office. Until such a time that the tribunal to be appointed by the Chief Justice will spell doom for such commissioners, they will obviously enjoy a tenure of office as long as they will discharge their responsibilities well. But the most fundamental issue that we must always look at when appointing these commissioners is that they should not be people who will just jump at something on which they will not have been able to carry out a thorough investigation on. They will have to investigate any matter that will come up as a result of somebody complaining to them, or if they will have any suspicion. I recommend that, when this Bill becomes law, the holders of this office should be very meticulous and judicious in the discharge of their responsibilities, so that they will not become another hounding body, which will just jump up on the spur of the moment and create hullabaloo and problems for others just for the sake of causing inconvenience. I hope that when they do occupy these positions, they will be able to discharge their responsibilities very effectively and fairly as per what is expected of them.

Secondly, looking at this Bill's Memorandum of Objects and Reasons and what is set out to be done once this Bill becomes an Act of Parliament, there are very many good things that we can achieve. It is, for instance, important to know whether inmates in our prisons are being treated well. I would be interested, as the Minister for Public Health, to know that they are receiving proper nutrition and good health care. That is why, earlier on, I alluded that health should be a right to everybody, whether one is in prison or not; there should not be any segregation in accessing the health facilities by Kenyans in whatever circumstances one may find himself in.

The very reason as to why we put inmates in prison is not because we want them to be in prison. It is prison there is a particular law which has been broken, which must be conformed with. Otherwise, we would have so many people running around and creating so much insecurity. There is already some level of insecurity that we need to take care of. I think it is incumbent upon each of us to spot out anti-social elements in our society. By protecting them, we risk the very basis upon which human dignity is based. I think that is an important factor which we should bear in mind when this Bill eventually becomes law.

Mr. Temporary Deputy Speaker, Sir, one other thing the commissioners will bear in mind as they conduct their business is that this will not be a witchhunting body. It will not be a body meant to terrorise individuals; it will be meant to educate and tell Kenyans about their civil rights, their responsibilities as members of the society, their responsibilities vis-a-vis their places of work as well as their responsibilities at their homes. I am glad that, shortly after the passage of this Bill, we will debate the Domestic Violence (Family Protection) Bill. This is part and parcel of the problems that we encounter in some of these situations.

I hope that the task force that was appointed by the Attorney-General to look at the legal and institutional framework on patients suffering from HIV/AIDS will come quite clearly on the basis of the menfolk insisting to their womenfolk that tradition demands that they must continue doing whatever they are doing without due care. If you force your partner to have sexual intercourse with you without the use of a condom, you will obviously be infringing the human right of that individual since you could be exposing that individual to the HIV/AIDS virus and, therefore, unknowingly, making that individual an HIV/AIDS victim. Why can you not use a condom? The condom is a safe glove which males are anatomically well-suited to wear. The female glove is a bit complicated because of the woman's complicated anatomical position.

So, I recommend to men to get used to the good habit of using condoms as a way of protecting the human

rights of other people, who may wish to have sexual satisfaction but because of the scare of the HIV/AIDS, they tend to recoil back. I do not want to get into trouble with my male colleagues here, but this is an issue which is very telling, and which has contributed a lot to breaking up of homes. It is a forerunner to rape in this country despite the fact that rape is a serious crime. It is one way of human rights violation which leads to infection of the victims with dangerous sexually transmitted diseases (STDs) such as HIV/AIDS, among other infectious diseases which are transmitted through sexual contact.

Mr. Temporary Deputy Speaker, Sir, therefore, in whichever way you want to look at it, whether at the family, village or country's setting, in Parliament and institutions that we have put in place; in our courts, prisons, police force and all companies, we must all be aware that being mindful of other people's welfare should be the main clarion that we should all champion as hon. Members and people who firmly believe in correct human rights observance. I think we should look at it on a balanced way. I do not like when an hon. Member just stands up from the Opposition side and blames this Government. Of course, it is the responsibility of everybody. It is not a responsibility of the Government. If there is insecurity, it is not the Government that causes it; it is the individuals who cause insecurity. Therefore, we should address the core issues that bring about insecurity in the country and create rapists in our society. We should address the core issues, for instance, that give false and bad habits to our youth. For example, they start by smoking one cigarette and, then, they end up smoking bhang. There must be people who grow bhang in various places and who stock it in various places. This is a poor forerunner of some of these anti-social problems that we see in our society.

Therefore, this particular Bill is important because it over-urges and encompasses all the evils and ills that are prevalent in our society. I think everybody who is mindful of this Bill should support it wholeheartedly rather than punching holes where there are no holes to punch. I think we should create a document that is sustainable and for our posterity so that when our generations look at it, they will say: "Yes, indeed, this Eighth Parliament did discuss the Human Rights Bill and passed it in a manner in which it should be looked at."

For instance, if you look at the information technology sector, there are so many frauds that are being committed through the use of the electronic media; fashionable technology, internet and what-have-you, against very many unsuspecting ordinary individuals. Is that not a breach of their human rights; by taking advantage of their ignorance and their wish of knowing what must happen at any particular stage? How will they be protected from this sort of vandalism? We are vandalising their lives and taking advantage of their ignorance. How are we going to counter this particular thing? One other Bill that must be introduced by the Attorney-General to this House for debate is one which will regulate IT for development and not for anti-social activities.

With those few remarks, I beg to support.

Mr. Kibicho: Mr. Temporary Deputy Speaker, Sir, Kenya fought for Independence for two reasons; land and freedom. In order for them to enjoy their freedoms, they had to get rid of Colonialism, and have their Constitution. In that Constitution, there was the Bill of Rights which spelt out the rights of the individuals. Under it, it was also recognised that where these rights have not been prescribed, the Commonwealth of England and the Doctrine of Equity shall apply.

This Commission that we are creating under this Bill does not prescribe any rights as it exists in the Constitution, or in the existing law. It has become necessary to have this body enforce and educate Kenyans on human rights because of the breaches on human rights. If the breaches were not there, this Bill would not have been necessary.

Then, it follows that *per se* this Commission itself is not going to make Kenyans enjoy more rights than they enjoy today, unless those who are enjoined with the responsibility of enforcing human rights take it upon themselves to know that it is the right of Kenyans to enjoy these rights.

If you look at that Constitution, one of the rights prescribed therein is the right to freedom. The Government of the day looks at the Constitution and says: "You enjoy these rights subject to enjoyment of others." That particular clause has been misused by this Government. It is through that exception that this Government found it necessary to detain people without trial and prescribe regulations for retaining people without trial on the pretext of national security. The Attorney-General is here, and I would like him to listen. This Bill is deficient in the sense that we, Kenyans, have recognised that human rights are recognised by the Constitution; it is only that they are not being enforced. There is no penalty against those people who breach these rights. It does not prescribe anywhere penalties to be imposed on those who will breach these rights. This is because in Kenya you will realise that a lot of people, acting on powers from above, have taken away people's rights; they have breached people's rights. If their pretence of acting

on powers from above is to be curbed, there must be surcharge on anybody who breaks these personal rights so that whenever he or she is given these instructions, he or she does not exaggerate or decline them. This is because he or she would know the consequences.

Whether we like it or not, Kenyans themselves are not going to enjoy their rights in full unless our attitude changes, values in this country improve and those who administer over others and those administered cultivate a certain culture. There is a very simple provision in the law which says that if you are to arrest somebody, you do not need to use a bit of force unless it is necessary, without exception, which incidentally has been a subject of debate in this House. The Attorney-General does not require any complaint because such cases are all over in the Press, where the police use such powers. No action is taken against those people. Where is the deterrence? It is those people who are entrusted with responsibility of enforcing the law who are encouraging these breaches. These Acts *per se* are not going to change anything. But I do not want to be understood as having not supported this Bill. I still think it is a very good thing which we have done for this country. I still believe that this particular body is going to be very important in monitoring human rights campaign, and educating, enforcing and allowing people to enjoy their rights.

I support the Bill.

But if the Government is serious, then a lot needs to be done. You heard the Minister for Public Health say that health issues should be a constitutional issue. Did it have to take this Government 38 years to realise that the right to life was more crucial than anything else. This is the only country where people are detained in Government hospitals because of lack of payment of hospital bills. In this country, we pretend that we respect human rights. Kenyans are not going to be cheated by the enactment of this Bill to think that their rights are being protected. Kenyans should go to the Constitution of Kenya Review Commission and ask for their rights to be entrenched in the Constitution. Every Kenyan should have the right to access medical treatment when he or she is sick. It is the obligation of this Government to give every Kenyan medical treatment and education. I am aware that we recently enacted the Children Act. But that does not give the Government absolute obligation to ensure that Kenyans get basic education. Although this Bill is being debated when we are in the process of amending the Constitution, Kenyans must be warned that they should insist that their rights should be entrenched in the Constitution.

Mr. Temporary Deputy Speaker, Sir, the only important aspect of this Bill is Clause 16. The rest of the clauses are not important. It is in that clause that some powers are given to the Commission. All the other areas of the Bill deal with how to appoint the Commission and who will do what. Since many Kenyans are not lawyers, they will be duped to think that a great thing is happening in this country when very little is going to be achieved. It is the obligation of the Government to enforce the rights of Kenyans as prescribed in the Constitution. For the avoidance of doubt, Kenyans must demand that the Government enforces their rights. But with the level of ignorance in this country, Kenyans are not going to enjoy their rights. If your rights are breached today, you still have the right to go to court. But why are Kenyans not going to court? It is because they do not know their rights. So, when this Bill is enacted into law, the greatest responsibility is to educate Kenyans about their rights. They are suffering because of their ignorance but not because their rights do not exist.

Mr. Temporary Deputy Speaker, Sir, if you file a case today in court, it will take about three years in the High Court before you get a judgement. Is that what Kenyans expect from this Government? Is that what Kenyans expect of their Members of Parliament? Is that how human rights are supposed to be respected? If the Government wants Kenyans to enjoy their human rights, then there must be huge investment in the Judiciary and the Police Force, so that police officers can change their behaviour. Most of the violation of human rights in this country - about 90 per cent - are committed by law enforcement officers. The other percentage of violation of human rights in this country is committed by the Provincial Administration. It is those people in authority who violate the rights of other people. If those people are still in this Government and even if we pass this Bill, violation of human rights will continue. Unless Kenyans rise up and demand that their rights must be enforced, this Bill is going to form part of the literature in our libraries. It is not going to change the level of abuse of human rights.

Mr. Temporary Deputy Speaker, Sir, we urge the Attorney-General to promulgate a regulation on how to arrest Kenyans. By so doing, a Kenyan will know his or her rights when a police officer is arresting him or her. In South Africa, when you complain about a crime, you are told to go home, and until investigations are completed, there will be no arrest. Why is it necessary in this country that even before investigations are started, Kenyans are arrested and put in police cells? If the Government wants the level of human rights to improve, then we do not have to wait until this Bill is enacted into law. If you go to any prison in this country and see how the prison warders treat prisoners,

you will know that human rights are not being respected. So, we should make sure that all these things are put right in the Act. The ball is in the court of the Government, unless they want to cheat Kenyans that by enacting this Act, their human rights are going to be respected.

Mr. Temporary Deputy Speaker, Sir, we cannot talk about human rights in this country until such time when the economic development of this country improves. It is the right of every Kenya to have shelter, food and clothing. We urge the Government to respect the human rights of Kenyans. If we are not careful, very soon, Kenyan will reach the level of India. I visited India for the first time in 1982 and what I saw there was that the society was so stratified that if you came from a particular caste, you cannot be respected even if you are earning a million shillings. So, the Government must act very quickly before Kenyans reach that level. It is our obligation as a nation, to make sure that every Kenyan enjoys his or her rights.

With those remarks, I beg to support.

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, over the last eight years, I have had the privilege, or misfortune, of attending workshops, seminars and other discussions on human rights law in Kenya with the hon. Attorney-General. All the time, when Mr. Wako is asked something about the defects in the administration of justice, he says: "The law is coming." "I have published a Bill" or "there is a White Paper."

That is something good, but insufficient. It is insufficient because very many Kenyans can be deluded that by having a Bill establishing the Kenya National Commission on Human Rights, human rights abuse in Kenya will come to an end.

Mr. Temporary Deputy Speaker, Sir, many Kenyans must be mistaken to assume that now they have a panacea for their problems. In fact, eventually, I will argue here today that one of the main weaknesses of the Bill being presented before us today by the Attorney-General, like other good Bills that have been here before us, is that the system can find an excuse in flawed drafting to kill it, or to kill the action that is underway. You know very well how the system has done that very effectively.

Let me first go back to the issue of human rights as a whole. This Bill is only trying to set up a Commission which is purporting to be competent to do what the Kenya Human Rights Commission and other civil society undertakings have not done. In fact, if the Attorney-General - who is busy with the Vice-President and cannot hear what I am saying - was being fair to himself, he would have ensured that, in recognition of the role of the civil society in prosecuting the struggle for human rights respect in Kenya, any legal mechanism establishing a Government human rights watchdog, accommodated and recognised the role that has so gallantly been borne at immense personal and collective sacrifice by the civil society and individual human rights crusaders. To prosecute a public awareness on human rights in Kenya it is, first and foremost, necessary to confess and admit that the Government can only be facilitative. The civil society had developed over the years the capacity, which has served us extremely well, to do some of the things that the now proposed Kenya National Commission on Human Rights is being proposed to be set up for. In a changing world, the Attorney-General should have created some provisions in the lacuna that exists between these civil society initiatives and Prof. Mutungi's Standing Committee on Human Rights that is now being turned into a Commission.

Mr. Temporary Deputy Speaker, Sir, many times in this country, pieces of legislation are used as an excuse to cover up for official misdeeds of the past. Once you have a relatively good law, you can now pretend away crimes of the past. If you now set up an anti-corruption authority, you can forget about all the stealing that has been done by Ministers, relatives of people in the Government and sons of big people; because now you have a good law, you appear to be good. It is not sufficient that we have a Kenya National Commission on Human Rights created by an Act of Parliament. The foundation of justice and respect for human rights in Kenya must be nurtured upon truth and reconciliation initiatives. You cannot tell us about respecting human rights if you cannot punish those who slaughtered Kenyans in 1992. The perpetrators of the Molo clashes, the criminal acts in Mount Elgon and the genocidal activities in Londiani and Burnt Forest cannot be pretended away just because we have a Kenya National Commission on Human Rights set up by an Act of Parliament. The starting point of establishing respect for human rights must be to punish those who are responsible for past abuse of human rights. This Government may pretend to turn its back on these cases. It will be a collective duty of the next Government of this country to punish those criminals in this Government, who used murder and genocide to win elections and remain in power. We cannot pretend that away.

I was listening to a colleague, and in any way he is my younger brother, who was in student politics years after me, painfully recollecting the torture he suffered, and wondered if this Government could be asked to respect human rights and not to let this happen again. I wondered how trusting he was. Can the Government understand what

he was talking about? Can it know what he has gone through? I remember that in the early 1980s, I made arrangements with friends from the United Nations High Commission for Refugees (UNHCR) to help the late Mr. Adungosi get out of this country. We struggled and, in the middle of the night, we smuggled him out of Kenya. We later met him at a relative's place in Uganda. He said that he must die in his country and would not abandon the struggle in Kenya. He came back and within a week, he was arrested never to be seen again. He was killed by the agents of this Government. Can you tell the family of the late Adungosi that now that you are establishing a Kenya National Commission on Human Rights justice has been done?

In fact, you can go further and ask yourself who was this, who was prosecuting and forcing people who had been tortured by the police to lie after sunset that they were members of illegal organisations? This was Mr. Chunga. Mr. Chunga was the compliant prosecutor who was prosecuting people after sunset and forcing them to cheat that they had been conniving to overthrow the Government. These people were thrown into jail. Now, Mr. Chunga is the Chief Justice. Do you expect the pursuit of the fight against abuse of human rights in his courts? You must be kidding! If we lived in a society where we were serious that we wanted to fight for respect for human rights, we would start by saying that we must heal the wounds of the past. This must be eminently visible to all, that those who were compliant in perpetrating those crimes against us do not appear to hold offices of reward, and are not enjoying any gain from being used as tools by a regime that was ready to go to great lengths in order to retain power.

Mr. Temporary Deputy Speaker, Sir, I had a privilege, with you, in the early 1990s, to go around this country doing something that then was very noble, namely, telling Kenyans that there was a possibility of rallying around new ideas. It only hurt me when you had to break short your trips around the country, rush back to Nairobi and be hospitalised in Nairobi Hospital for an emergency operation associated with migraine you suffered because of being incarcerated by this Government. As a person, you may even put up a pretention of being Mr. Mandela, who can forget all these incidents. But does the society learn that abusing people's rights should not be rewarded, if all of us will be in a hurry to say that we should forgive and forget the past. Those who perpetrated these crimes are the ones who are the main consumers of "a forgive and forget policy". At the end of apartheid, the perpetrators of apartheid were the new missionaries of "forgive the past", but those who have been victims must say that justice must be built on a just piece. There has to be restitution and a mechanism through which our society looks at itself, not just through the Opiyos of this world, who were the monsters torturing people in Nyayo House Torture Chambers. But the paymasters of the Opiyos of this world must be ultimately exposed, if they are not ready to confess the crimes they have committed against Kenyans. They must be punished for those crimes. That is the only way in which you will build a foundation for respecting human rights.

Many times over the past few years, there is an image that has kept coming back to my mind. There was a story about a pregnant Marakwet woman who was going to the hospital. At the foot of the Embobut Hills in the Kerio Valley, she was found by some Pokot warriors. She was accompanied by another woman. The warriors did not touch the other woman, but slit open the womb of the pregnant woman saying: "Let us see if she is carrying a future Marakwet warrior or not". She died! That has happened in this country. If you talk to persons who were in the theatres of the brutal political clashes of the early 1990s, you will find that there were very many cases of such criminal and callous action. Apart from the outrage of this as a crime, it touches on another matter that we are not addressing as a society. Respect for human rights can only be founded on respecting the humanness of the other person. If I cannot assign you human value, I cannot in any way start defining you as having human rights.

If I cannot assign you human value, I cannot, in any way, start defending you to have human rights. We live in a society which has only one short century, from the time when heroism was defined in terms of how many of the other tribes you had killed. We have not yet cultivated a sense of solidarity between the former targets of murder, as an expression of heroism, who are now fellow citizens for whom we must have citizen compassion and mutual identity to say "their rights have been recognised." We are still in a society where you increase your chances of going to Parliament, from some parts of the country, like West Pokot, if you declare that you are going to slaughter so many people and claim so much of your land for Pokots, and others will die or go away. But they should manage the human value or the human worth of those that they define as "others" than yourselves, which is nothing to them. How can you protect their rights not to be tortured, if you cannot recognise a right to be equally human beings like yourselves?

Mr. Temporary Deputy Speaker, Sir, over the past one week, there has been a very disturbing news item in the news broadcast. It was neither in Kenyan newspapers nor in the Kenyan radio, but in the BBC news broadcast. The news item stated that, about 10,000 members of the Garreh community in West Mandera, Wajir and some parts of

Moyale, are seeking refugee status in Ethiopia because they are brutalised on their own territory because of being in the wrong clan, according to the localised political domination, and that there is nobody they can turn to and who can listen to their concern in Kenya.

Mr. Temporary Deputy Speaker, Sir, the Chair and I know how harsh the living conditions are in Southern Ethiopia, and the diminished possibilities of being a refugee; worst of all in a country like Ethiopia. If 10,000 citizens of this country opt to seek refuge in Ethiopia, in spite of the problems we know to be existing in Ethiopia, as a relatively more secure place for themselves, what are they saying about how we regard them in our own country? How are we going to gain the capacity to recognise, respect and protect human rights, if 10,000 citizens of this country feel so alienated that they want to risk death to go as refugees into a neighbouring country, with more hard conditions than our own? This means, even our own sensibility about what human beings are, is still very diminished.

Mr. Temporary Deputy Speaker, Sir, I want to touch a little bit about the Judiciary again. You and I and many others, have spoken here and agreed that the Judiciary is at the core, the very centre or heart of the struggle for respect for human rights. Whereas we have fought and opened up space in the political theatre, and we have opened space for civil society, this country is continuously pretending away the unfinished business with the reform in the Judiciary. We cannot for ever continue pretending away the fact that when Government loses battles on this Floor of the House, the legislative will of Kenyans is being sabotaged by the Executive, with the compliance of sections of the Judiciary.

(Applause)

Mr. Temporary Deputy Speaker, Sir, the good Attorney-General knows that when the Executive has felt that too much heat is building up, they have manufactured cases to go to the Judiciary to pervert the will of Parliament. Such was the Kenya Roads Board; in a very dubious ruling, they "killed" a beautiful legislation. Next was the Attorney-General's own KACA! If you look at a law the way you look at the book of statistics, you can always find an excuse to force something. But if we live in a country where we focus on reforming the Judiciary or weeding corrupt officers out of the Judiciary, KACA and the Kenya Roads Board would not have been "killed" by the Judiciary! The Donde Law would not be in ambivalence because of the Judiciary! The great stake in the struggle, not just for a democratic state, but for respect of human rights, must focus on how to get rid of the Judiciary compliant corrupt judges.

Mr. Temporary Deputy Speaker, Sir, there is a hotel in this City, where, if you go there, they will tell you that "this is the hotel of a judge who can spend Kshs3 million on a white woman in three days." Yet that judge is sitting on the benches of this country! He is a judge in the High Court of Kenya.

The Attorney-General (Mr. Wako): On a point of order, Mr. Speaker, Sir. Whereas I understand the emotions of the hon. Member, is he in order to mention a specific incident of some corrupt dealings in some hotel, without doing the civic duty of reporting such incident to the police for investigation?

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, the Attorney-General is supposed to interpret the law to the Government, and if he cannot understand the Standing Orders of Parliament, then there is a problem. The Attorney-General has officially acknowledged the receipt of a complaint about a senior judge, who has been using the Grand Regency as a recruitment ground for people he wants to be given jobs, and he has been blowing up a bill at Grand Regency Hotel. The Press knows it, and the Attorney-General knows it! Is he trying to tempt me to mention the name of Oguk, or what is he trying to do?

That is not the matter that I want to talk about. My focus is this: For too long, we have been pretending that, if you fix the Press, without fixing the Judiciary, you can have justice and democratic governance. We can pass very good laws here, but this is not a very good law. It has been mentioned before to the Attorney-General and there is a very good evidence in this law; there is a lacuna about the relationship between this law and the Evidence Act; the relationship between this law and constitutional provisions, for example, on matters of contempt of court. When the enemies of justice find that heat is piling up on them, they will go to the compliant judge, and he will shoot down this law! Then the people will be asking: "Where were you clever people in Parliament when this law was being passed?" Sometimes you wonder, Mr. Attorney-General. Is it that you are too busy to identify these things or is it that the political battles are not yet won and, therefore, you have to allow these guys space, so that they can have an exit route? Sometimes it sounds very bad. But the Attorney-General should shout and seek assistance; we can strike out some of these anomalies! But when a piece of legislation comes, the spirit is good, much of the content is good, but there are

vacuous provisions which can be used as an excuse for the Executive--- The Executive in this country remains a reactionary Executive, it is the same Executive which presided over the ethnic clashes; the Government you should serve like an old hyena which cannot change its spots. They can stand here and say that they also respect human rights. They do not know what human rights are! They have been clients of violence and violations of Kenyan people's rights. They will still find an excuse here, to shoot down the law, when it comes too close to them.

Mr. Temporary Deputy Speaker, Sir, there are a number of things that have also worried me about prison. There are two or three things that I want to highlight about prisons. The first one is something very glaring. One of the worst abuses of human rights of this country is actually torture. But even as we talk now, there is no specific law which criminalizes torture in Kenya. The Attorney-General is always prosecuting people on the charge of assault because he has no law against torture. I thought that the opportunity of the Statute Law (Miscellaneous Amendments) Bill, will be a legal opportunity for him to set out a specific crime called torture. Let torturers be charged with torture, not to find some other routes to charge them.

Secondly, on the matter of torture, this country signed and acceded to the UN Charter, Convention against torture, in 1997. One of the provisions of that Convention, which we signed, is that we have annual reporting about the status of respect of the international law on torture. Up to the time we speak today, there has not been a single official report filed by the Kenya Government in consistence with its international obligations. The Attorney-General should have provided here, a commitment by the Government that, apart from the provision here that they will obey international conventions, that now implementation of responsibilities would be undertaken. We need assurances that the state of torture in Kenya, which has been a basic function of the civil society, will now become an annual responsibility of this Commission; both for the domestic consumer, and for satisfying international obligations.

Mr. Temporary Deputy Speaker, Sir, let me touch on the issue of prison because there are two things that concern me. I have suffered the task of being a driver of a volunteer doctor who has visited prisons many times to see victims of torture. Two or three things worry me. How can a society that is trying to open up, try to reduce torture, and document conditions in prison, continue, with statutory provisions that make it very difficult for a lawyer or a doctor to visit a person in prison? If he is opening up in tandem with this Bill, the Attorney-General should have brought us provisions in the Statute Law (Miscellaneous Amendments) Bill which cut out the bureaucracy, like a doctor has to go to a court of law and get official permission before he or she visits a person in prison. But there is also something that the Government has been doing with the doctors which is very unfortunate. For many years, there are some doctors who have been used by the Government to go to prisons, inspect prisoners and say that this person is physically fit and has to be whipped.

Mr. Temporary Deputy Speaker, Sir, a cruel Government is making persons in what should be a noble profession become accessories in a brutal act. In international standards, flogging is supposed to be a thing of the past. It is one of those primitive acts we expect in some *Sharia* courts in Kano, northern Nigeria. But as we come to the 21st Century, if we are trying to be an open society, how can we continue to have doctors who go and verify that persons are ready to receive demeaning and humiliating punishments? How can we allow such doctors to practise? In fact, the Kenya Medical Association (KMA) should take a position and threaten to deregister all doctors who are compliant in such criminal conduct as to abet the inhuman flogging of prisoners. There is another matter I would like to raise here. There are some doctors who are clients of the establishment and will pretend that prisoners are not as sick as they claim to be. These doctors make people suffer in police custody or in prison and by the time they go to hospitals, they are too sick to survive and they die. It is necessary that a culture of outrage against this kind of conduct develops, if we are going to develop a culture of respect for human rights.

Mr. Temporary Deputy Speaker, Sir, before I finish with the police and prisons, there is one aspect that has been disturbing me. What is wrong with Nyeri - King'ong'o Prison? The criminal callous act of prison officers pretending to free prisoners and then killing them was committed in Nyeri. We cannot finish three or four months in this country without hearing about people being beaten to death by police in Nyeri. What is it about Nyeri that the most callous conduct of policemen killing civilians is more frequent there than other areas? Is it that the worst hardened criminals in the police force are usually deployed in Nyeri? Is it that the suspected criminals in Nyeri are resisting police so much, or what is it that statistically, Nyeri gets more than its fair share of this abuse of citizen rights?

We are at a critical time. We see this as an important step in trying to improve the legislative environment, but we should not accept this as an excuse not to do the more difficult work that has to be done in this country. Unfortunately, we know the difficulty the Attorney-General operates under. Mr. ole Ntimama has worked in that

Government more than the current Attorney-General and he knows. Even if you are paid or not, it is very difficult to break the stranglehold by the forces of reaction; those evil groups that are ready to kill to achieve their goals. It is very difficult to break the stranglehold on the behaviour of the Government. But to cry out for those who can help to increase public awareness--- In a society where Alcapone is the mayor, the fight about some of these things requires very fundamental changes in governance. You cannot change these old hyenas. Their appetite has been regular for 24 years. You cannot change them. Even when they talk about human rights, they just use these words because they are fashionable; the way they have learnt to talk about stakeholder and gender-dimension. They just use their words perfectly, but they are devoid of meaning because their whole lives and political fears about retention of power or stopping what they perceive as enemies taking power, is the fear of what they have done to this society for 24 years; the skulls in the cupboards! But do not help them appear legitimate by deliberately allowing possibilities in draft legislation for them to shoot down critical matters at a critical stage.

You know as well as I do that, that exists in the current piece of legislation. You know that negative spirit of playing circus with Kenyans; let them go on but when they are getting a bit too close, you shoot them down. You know they are still going to play it. That is the game that killed the Kenya Anti-Corruption Authority (KACA). You ask yourself: If these guys are so brazen that they can rig the Vice-President of Kenya from a list of candidates, what can they not do?

(Laughter)

If they have the guts to remove the name of the Vice-President of this country from a list of candidates, what can they not do?

Hon. Members: Tell them!

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, to what extent can they not go? The challenge for all of us is not to pretend that things are all right, but to continue exposing the reality that there are forces that are inimical to the interest of the country. The battle for change in this country is how to save it from these vicious forces which hold a lot of you captive, silence some of you who otherwise speak with a very good voice; which even reduce the glister of your international credentials as human rights crusaders. That war should be enjoined as a collective war. At the end of the day, it means that defeating KANU politically is a national and patriotic duty. That the only way we can have a society which respects human rights is to ensure that the owners of KANU are not in power. So long as they continue calling the tunes; putting the clean face of some of the better ones, but behind the scenes they are as vicious as ever; we can continue to talk nicely or about new legislations, but where are we headed to? It is in the same old direction, and given a chance, they will do exactly what we were doing many years ago.

In fact, I looked at the Vice-President sitting near the Attorney-General and I thought that Prof. Saitoti was very lucky. That, the start of his political fall comes when the forces of diversity and opposition are strong in the country. Today, he would be talking another language. He could be in the basement of Nyayo House.

(Applause)

We have made it possible that they have to soften how much they take him on. We have made it possible that the excesses they use against many of us are not used against those of you who start falling out. So, even if you do something for them, do not praise them too loudly because tomorrow you will need the forces that are arraigned against them for your survival and the survival of your children.

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

Mr. Keynan: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill. A lot has been said about it. First of all, I would like to congratulate the Attorney-General for bringing this Bill to Parliament. Before we talk about the implementation of this Bill, we need a Truth and Reconciliation Commission in this country. We use history to judge the present and the future.

I am saying that we need a Truth and Reconciliation Commission because there are some communities that have been condemned by both the colonial and the successive governments. I am glad that you are one person who has written a lot on the District Contentious Act, the Emergency Law, Indemnity Act and the Screening Card. All these laws were meant to address issues concerning particular communities in northern Kenya.

Mr. Temporary Deputy Speaker, Sir, before we set up this Commission, we need to establish a Truth and Reconciliation Commission so that Kenyans, in a spirit of forgiveness, can forget the past and focus on the future.

A whole generation of the community in North Eastern Province was maimed, raped and disabled. Today, they lead miserable lives. For us to overcome the psychological trauma from their minds, we need to establish a Truth and Reconciliation Commission so that our people will have an opportunity to express the truth about the tortuous life they were subjected to, in solidarity with other Kenyans. Just like the British Government has accepted to compensate members of the Samburu community for the injustices committed by its soldiers in Kenya, this Government should compensate people of North Eastern Province.

Mr. Temporary Deputy Speaker, Sir, I believe issues of human rights are not something that can be debated and implemented today. We need to reflect on the past so that our children know exactly the stages we have gone through as a society. Before the colonialists came to Kenya, there were many small "states" in this country. However, we were brought under the umbilical cord of colonialism by virtue of sharing the same land. Having been brought together, in our own diversity, both the colonial Government and the Kenyatta Government failed to appreciate our diversity. The entire people of North Eastern Province were condemned by these two governments. Recently, I moved a Motion here, and I am glad that this House granted me leave to introduce a Bill, to repeal the Indemnity Act. This Act says that as long as Kenya soldiers raped the innocent girls of Northern Kenya with good intention, they were permitted to do so by the law. This Act is still in force. I would like to challenge Mr. Wako because we will not accept this Commission until and unless he brings a Bill here to repeal the Indemnity Act. This is because we do not see how this Commission will work while the Indemnity Act is still in force.

Mr. Temporary Deputy Speaker, Sir, there are a number of Acts in our statutes that need to be repealed before this Commission can be operational. For example, we have the Indemnity Act. The Legal Notice on the screening of our people is still in force. It discriminates against a whole community in North Eastern Province. How will this Commission work before we repeal those Acts, Mr. Wako? How will this Commission benefit the people of North Eastern Kenya? It will be mere rhetoric, or enacted for the sake of saying we have passed a Bill in this Parliament. We need to go beyond that.

Mr. Temporary Deputy Speaker, Sir, there are a number of malpractices committed by the security forces in our country. Some times we have seen the way some individuals feel when we talk about the past. I am on record as having said that I lost a brother. I was a bit shocked when Dr. Kituyi talked about flogging of our people by security personnel. My brother was killed with a sword by none other than the Kenya police force. So, when we talk about flogging, or other things, those are things that will endear our people because they have suffered for a long time. You can imagine when your own brother is killed. Some of those officers are today serving as senior police officers in this Government. We need to retrain these officers. It is not enough for Mr. Wako to just bring a Bill here without a provision for the retraining of the entire police force and the Provincial Administration. We also need to retrain our army officers so that they can also enjoy some psychological comforts in pursuit of this law. Without retraining them, there is nothing we are discussing in this Bill. This Commission will be under the chains of the Chief Justice and the Attorney-General. That is not what we need. We need a Commission which will be effective and Commissioners who will address all shortcomings as far as human rights abuses are concerned in this country. The entire Act should be tailor-made for the benefit of the entire Kenyan society.

Mr. Temporary Deputy Speaker, human rights abuses encompass so many fields. I am glad that this Bill is from the donors. Here, we are talking of good economic and political governance of our country. It is a shame to recall the way we were brought up in northern Kenya. I would like to quote one teacher, a Mr. Abor, who taught us in primary school.

One time the Kenya Armed Forces, in pursuit of bandits, came to our primary school and sprayed bullets all over the place. Mr. Abor advised us to take cover under a shelter. Mr. Abor today is one of the most respected professors in one of the national universities in this country. He removed me from the shelter in order to hide himself there. That is the kind of life we lead in North Eastern Province.

Therefore, we need a Commission that will recollect the past; reflect on what has happened, and give us a new direction. We do not need a Commission that will say let by-gones be by-gones. We need a Commission that will be effective. We do not need a Commission like the one being proposed by Prof. Mutungi. We need a Commission that will address the real human rights issues. About 87 per cent of the residents of Wajir West today rely on relief food. How can human rights be respected in this province when our people need water, medicine and other basic

requirements of life? We are talking about a society that is highly stratified. That is why I say we need a Truth and Reconciliation Commission so that Kenyans can open up and develop a culture of forgiveness, a spirit of acceptance and Kenyanhood. We are now degenerating into a state of tribalism. This is because of nothing else but the malpractices that are taking place in our midst.

Mr. Temporary Deputy Speaker, Sir, I started my contribution by congratulating Mr. Wako. We want him to go ahead because before he was appointed as the Attorney-General of this country, he was one of the most respected human rights lawyers in the world. We want him to devote the remaining time of his tenure to repealing those Acts that are not compatible with modern Kenya. Some of the Acts, like the Indemnity Act which is in force, cannot even wait for the Ghai Commission.

Mr. Temporary Deputy Speaker, Sir, I would like to sue the police officer who killed my brother, but as long as that Act is in force, I cannot do so because I am constrained by law. We need equality and justice. We all know that justice delayed, is justice denied. While accepting this Bill, I would urge Mr. Wako to go back to his chambers and bring to this Eighth Parliament Bills to repeal some of the Acts that are not acceptable to our people. That is why hon. Members have been clamouring to bring Private Members' Bills here to repeal some of these Acts. They feel the office of the Attorney-General has not adequately addressed these issues.

Mr. Temporary Deputy Speaker, Sir, it is high time we introduced the issue of human rights as a subject in the school curriculum. The modern world is becoming a global village, and we cannot operate in isolation. Kenya must become one of the dynamic countries in the modern world. We cannot just sit and wait for other countries to pass legislations in order for us to borrow a leaf from them; we should show them the way forward.

Mr. Temporary Deputy Speaker, Sir, as we prepare for a major constitutional review, the Attorney-General should consider some sections of the Kenyans society which were affected by the existing laws. I have in mind, members of the former NFD. The colonial Government left Kenya with a Constitution that also colonized us. All along, we have been chained by the current Constitution. As a matter of urgency, we would like the Attorney-General to repeal the Indemnity Act. I know the police officer who killed my brother in 1984, but I cannot sue him because of this Act. I want the Attorney-General to give me an opportunity to sue that officer. Gone are the days when we used to come to this House, make a lot of noise and forget about discussing issues. The Kenyan society has become highly judgemental and well informed. For the remaining time, the Attorney-General, who will not be in office forever, should repeal that Act, so that he can go into history books as the man who fought for justice and equality of Kenyans. There is a Legal Kenya Gazette which declares all Somalis to carry a Yellow Card called the Screening Card, and here we are talking about human rights.

I would like to challenge the Attorney-General to visit the National Registration offices and see what is happening there. For example, if I have to seek an identification card for my brother or myself, I must produce a Yellow Card called the Yellow Card or the Screening Card. I would have shown him one had I not forgotten to come with it. As long as members of the Somali community continue carrying that card, our basic human rights have not been addressed. We would like to count on the Attorney-General as the chief Government legal advisor to bring the Indemnity Act to Parliament for repeal, remove the Screening Card gazette and, bring a Motion or a Bill to repeal this contentious Act, because we are also governed by the same laws. We have never thought of the idea of cessation which was a creation of the Press.

Mr. Temporary Deputy Speaker, Sir, I am sure you will be comfortable with the residents of the former NFD. We would like him to use that as part of national integration, because we are degenerating into tribal states. I would like to view Mr. Amos Wako as a Kenyan of great repute and not a Luhya from Busia. I would also like him to view me as a Kenyan leader and not a Somali from Wajir. As long as we still have some of these rules in place, psychologically and morally, I will always feel that I am being denied my rights because I come from a particular section of this country. These are issues that should be addressed, and not simply having a commission in place. We have had so many other commissions before. Could we give the present Constitution of Kenya Review Commission a level playing ground to address some of the issues we would like corrected?

Mr. Temporary Deputy Speaker, Sir, we should not expect angels to come from outside this country in order to address pertinent social, political and economic issues affecting us. I raised the issue of a whooping 87.5 per cent of the residents of Wajir West who are relying on relief food. This Government has the capacity to remedy the situation. There was a survey done by the Israeli Government on the Lorian Swamp which marks the end of Uaso Nyiro River, and it can provide water for irrigation, both for human and livestock use for the entire East African region. We should

tap some of the national resources that are being wasted, so that we enjoy our basic rights to food, shelter and medicine.

Mr. Temporary Deputy Speaker, Sir, year in, year out, there are atrocities committed against the people of North Eastern Province by the security forces. I remember, and I said it one time here, that when I was trying to get an identity card, I approached the former DC, Mr. ole Mosiany. I want to mention this incident because these are some of the events I remember in history. We were about 11 people who had been offered jobs, but could not get identity cards, when we went to see him, because he was also doubling as the District Magistrate, I was put in remand for two days, for allegedly being a rebel. Where on earth would you find a man acting as a provincial administrator and a magistrate?

Mr. Temporary Deputy Speaker, Sir, I would also like to challenge the Attorney-General that, in the entire Wajir District, there is only one Magistrate who appears once every three months. The same applies to Garissa and Mandera districts. Where is this administration of justice that we are talking about? The residents of that region are arrested arbitrarily and put in custody. The same culture has been transferred to Eastleigh Estate. The security personnel in Eastleigh Estate act with impunity on any member of the Somali community who is arrested. They are arrested and taken to the famous Pangani Police Station, and in the wee hours of the night they are asked to part with Kshs5,000 each. That means that, everyday, the Officer Commanding Pangani Police Station collects over Kshs1 million. I am sure that money does not all end up in his pocket; it must be a cartel that benefits from the loot. We are disturbed in the villages and also discriminated against in the City. The Attorney-General should direct the Police Commissioner to protect us. We also need to retrain the Police Force. If they used to undergo training for six months, they should now be retrained for two years on basic human rights.

Mr. Temporary Deputy Speaker, Sir, we also need to redistribute the national cake. There are areas that are disadvantaged by nature because they do not have the right development agenda. For quite some time, we have been talking about lack of water and insecurity which does not exist. The definition a Standard Seven child from Wajir Township Primary school gave when he was asked to define what a tarmac road is, was that: "it is a black substance which is normally found down Kenya". Where is this down Kenya? When will that child develop to be a national leader? For hon. Members of Parliament to serve effectively and justifiably, we should be taken around the country for orientation. For example, the Minister for Roads and Public Works should be made to travel by road all the way to Mandera District, so that he can see for himself the living standards of the people of Mandera. We have Cabinet Ministers who are not well informed about the needs of Kenyans they are supposed to serve. How can they appreciate the difficult conditions of the people they are supposed to serve if they do not have the practical reality of where they live? These are the basic rights we are talking about. There should be national integration. There should be a truth and reconciliation commission, so that we can appreciate one another. For example, I should be appreciated as a Somali, so that I can appreciate you as a Meru, Luhya, Maasai or Kikuyu, so that we can develop the Kenyan tribe.

Mr. Temporary Deputy Speaker, Sir, that is why one time, when the East African Community was about to collapse, and the late Mwalimu Julius Nyerere was asked about the cause, he gave one salient reason as being that, the Kenyan society was a "man-eat-man society!" It is not the ordinary Kenyans who are "man-eat-man society" but the leadership. That is because we are elected and those who are governed have also the right. Those are some of the things that have been lacking. That is why, today, when Kenyans go to the United States of America and other countries which do not have tribes, they identify themselves by tribes! That is why they are lost. It is high time we addressed that problem because we are setting up a cultural crisis. If we walk in the streets with name tags that we wear and those in our identify cards, we can be identified by our tribes. Some have been bundled as people from one tribe. Even the parties that are being formed are almost going the same direction. When are we going to have the Kenyan tribe? Why are we killing our country? Anybody holding a public office will serve, first of all, members of his or her tribe! What about those who come from minority tribes? Would they expect somebody from heaven to come and serve them? That is why I am saying that we need to make the issue of human rights a must and part of our curriculum, starting from primary up to secondary school level. Secondly, we should also incorporate the history of this nation in the curriculum. I am sure that even some Members of Parliament here do not know the history of Kenya. That is an issue that we need to address as a matter of urgency and national importance, so that we can inculcate a spirit of acceptance and forgiveness in the minds of young Kenyans. That is because 60 per cent of the Kenyan population comprises of youth.

Mr. Temporary Deputy Speaker, Sir, we are oppressed in the entire hierarchy of needs. The basic one is the issue of shelter. Then, there is the level of self-actualization. Those who are demanding - and I hope this is not the

intention of the Attorney-General in bringing this Bill--- There is a section of the Kenyan society who are self-actualised. They have everything from the best schools, water and 90 to 100 per cent literacy level. I want them to appreciate that where I come from, there is no electricity, tapped water or even a single plantation of agricultural crops. I want them to accept that the residents of Griftu, the headquarters of my constituency, are not at par with those who come from Nyeri, Kisumu and Nairobi who have everything. When are we going to create a just Kenyan society, if we are not going to address that as part of our reforms today? It is incumbent upon us and the leadership of this country to come up with policies that are going to be acceptable, nurture good relations and brotherhood in the minds of Kenyans.

Mr. Temporary Deputy Speaker, Sir, history repeats itself. I want to say the following for Mr. Wako to hear. On the day he was appointed, we were saying: "This is the best Attorney-General this country is going to have!" That was because of his track record as a human rights lawyer. Before you are removed from that office, and I am sure members of the Somali community and northern Kenya are listening, we want you to repeal the Indemnity Act. I want you to de-gazette the Kenya Gazette Notice of 17th August, 1989, which declared members of the Somali community as second-class citizens, by forcing them to apply for additional identification cards for screening purposes. It is still in force and I wish I came with mine. We want you to remove the District Contagious Act(?) which is still in force. What was amended was the Emergency Law in 1991. I want to say that if there was any community that benefitted from multi-partyism in this country, it is the Somali community. That is because we were virtually held hostage by the Provincial Administration. That is why a section of the Fourth Estate has still continued to doubt the existence--- The other day, one of the columnists of the *East African Standard*, Mr. Mwenda Njoka, wrote a nasty article about the people of northern Kenya and Somali community. He was doubting the performance of the current Provincial Commissioner of North Eastern Province. I want to go on record that, that is the best administrator northern Kenya has ever had! He has done so well that the issue of insecurity is no more in northern Kenya. That is because his predecessors commercialised the issue of insecurity in order to get money from the Government and discourage potential investors to northern Kenya. That is why we are not regretting. I wish the Government will continue localising the Provincial Administration in northern Kenya. We have one Provincial Commissioner. We challenge the Government to post a District Commissioner from Mandera and Ijara because those are the people who have grown up with those problems. They appreciate, understand and learn how to cope with the people. So, I would like to warn agents of doom like Mr. Mwenda Njoka---

I am sure he must be representing forces who have been part and parcel of a cartel that has used the current Constitution to colonise the people of northern Kenya. We are saying that we have no room for such evil-minded reporters. We want them to get sacked and we will never take it lightly.

Mr. Temporary Deputy Speaker, Sir, we are talking about the new Kenya and re-writing our Constitution. Again, I would like to go on record that we are colonised by the current Constitution. We were the beneficiaries of multi-partyism in Kenya. We would like a comprehensive constitutional review that is going to create equality, fairness and one Kenya. That is why we will not accept to go to the next general elections without a comprehensive constitutional review. The residents of the entire northern Kenya are ready and yearning for that opportunity. Once again, since other Kenyans chased colonialism in 1993, we want to remove and discard our second colonial masters; that is the current Constitution. That is why we are saying that it is a matter of life and death for the people of northern Kenya. The review is very important to our life. Those at the level of self-actualization and who are taking the review process lightly just because of political expediency, we tell them no! That is not our agenda. The review process is in our hearts. We want to tell those who want to use it for their political reasons that we are very sorry! We will not allow them to do that. We will not give them an opportunity to use the review process just to put themselves at the helm of this country.

With those remarks, I beg to support the Bill.

Ms. Karua: Thank you, Mr. Temporary Deputy Speaker, Sir. Coming after so many other speakers, I do not intend to speak for a long time or to repeat what has already been said. I will go straight to the few points that I have. I want to begin by saying that the Government is the greatest violator of human rights. When it comes to setting up a commission to investigate human rights abuses, the Government cannot be allowed to appoint a commission that will oversee the violations perpetrated by it. Today the Provincial Administration, the police, Government officers and other disciplined forces are leading in violation of human rights. With this background in mind and knowing that the real culprit is the Government I would want to examine this Bill to find out how the appointment of the commissioners will be done and what the structure of the commission is. It does not make sense for the commission to be

Government-heavy. It ought to be an all-involving commission.

Clause 4 talks of the membership of the commission. It talks of the chairman and seven other commissioners nominated by the National Assembly and appointed by the President. I do not think that it is democratic for the National Assembly or the President to appoint the chairman of the commission. The chairman must be elected by his or her fellow commissioners when the commission is constituted. The Attorney-General should look at this section as we will bring amendments on the Floor of the House at the Committee Stage to ensure that we democratise the commission and we do not hand-pick the chairman. A commission of eight people is too large. We do not need eight commissioners investigating human rights. After all, the people on the ground will be employees of the commission. A commission consisting of three commissioners, at the very most five, is sufficient. The country is wasting a lot of money forming large and unwieldy commissions. I think that we should look into the issue of numbers. I propose that this Clause be looked into with a view to amending it to trim it down to a number of three and at the most four persons.

Clause 6(3) deals with the procedure of appointing the commissioners. I do not think that this Clause can serve the purposes of the kind of independent commission we are looking into. It talks of the Speaker of the National Assembly. The Speaker, with due respect, cannot be seen to be independent of the Government of the day. Traditionally, the seat of the Speaker in Commonwealth Parliaments - and that is where we are - belongs to the majority party. By extension, the Speaker is a friend of this Government. You cannot have the Speaker sitting with the Chief Justice on the panel to appoint the commissioners. The Speaker is one person. It is not a committee. Chief Justices the world over mostly lean towards the Government of the day. This again is a Government person.

The Attorney-General is the advisor of the Government. How can the Attorney-General be able to nominate commissioners along with other people who are in the Government if the commission is to investigate human rights abuses? I am suggesting that the role of the Attorney-General here is useful, but not with the Chief Justice and the Speaker. The Chief Justice and the Speaker should have no business here. Instead of the Chief Justice the other panellists should be the chairperson of the Law Society of Kenya. We should have other stakeholders like the Federation of Women Lawyers of Kenya. We should also have the Association of Professional Societies of East Africa. We could even go as far as having COTU and religious organisations so that the consumers of human rights are represented on the body that nominates commissioners. The Government is not a consumer of human rights. Why does the Government want to appoint the commissioners who are supposed to check its own excesses? This is totally undemocratic and will result in a lame duck commission like the one we have today.

I would urge the Attorney-General to look into that. If he does not, then we will assist him at the Committee Stage. In Clause 3(7) we talked about election of the chair. This ties with what I said of Clause 4; that the chair of the commission should be elected by the commissioners. On Clause 9, this being a very important commission, it should only serve for one term. Commissioners should never serve for two terms. They should serve for one term of five years and since there is no shortage of talent in this country, there should be no basis for re-appointment. We might get worried about the continuity of the work of the commission, but like any other body, it will work through its chief officers. Therefore, there will be continuity whether or not the commissioners come back. A human rights commission mainly deals with abuse of power and other excesses. If they go beyond five years they are likely to start being prone to the very abuses that they are investigating.

On Clause 10, the salaries and allowances payable to the commission and other terms and conditions of service of the commissioners should not be determined by the commission and the Treasury. The Treasury is a Government department so, we are retaining total control of the commission by the Government. We are also allowing the commission to award themselves whatever amount they feel is adequate. With the history of the commissions we have seen in this country, we need to reign in spending. The only way to do this is to introduce a system where the Parliamentary Departmental Committee for Legal and Constitutional Affairs, and the Minister of Finance, come together to determine the remuneration, conditions and terms of service of the commissioners. I would suggest that this clause be amended to reflect that, so that we democratise the commission. The committee will be composed of many parties; with Members from both the ruling party and the Opposition parties. It is more heads than one. They will work in consultation with the Minister for Finance, because he is the one who knows what the country can afford through the Treasury. We should not let the commissioners determine their own pay.

The same applies to their budget. Therefore, Clause 30 should also be looked into. Let the commission prepare its budget, but let it be approved by the Departmental Committee on Legal and Constitutional Affairs and the Minister for Finance so that we reign in spending, in case we have any rogue commissioners who may want to

bankrupt the Treasury. I think that we also need to look at Clause 10 which talks of salaries, Clause 26 which talks of the finances of the commission and Clause 30 on annual estimates and ensure that they are all amended to reflect involvement of the Minister for Finance in consultation with the Parliamentary Committee on Legal and Constitutional Affairs. I find Clause 11, which talks of termination of the appointment of commissioners, in certain circumstances, a bit curious. Clause 11(3) talks of a situation where the President has the power to remove the chairman of the commission when a tribunal has been appointed to investigate him. This is totally undemocratic. It will make the chairperson of the commission live in perpetual fear of the Executive. I think this should be re-worded so that if the chairman of the commission or any commissioner is under investigation by the tribunal, they automatically stand suspended. The tribunal should do its work speedily and its findings should guide the Minister or the Attorney-General in ensuring that justice is done and the particular commissioner is removed. If it be the chairperson, the vice-chairperson should automatically assume the chair while the chairperson goes under suspension and awaits investigations. Let us keep the hands of the Head of State off the Commission if we really intend it to be truly independent.

Mr. Temporary Deputy Speaker, Sir, you will note that the wording of this Section 11 does not say on what instances the President can suspend. It leaves it to be at the President's whim leaving the possibility that the chairperson could be under investigation and the President decides he continues with his job. Again, depending on the President's whims, he can remove him or return him. This is a totally undemocratic situation which will only lead to the Commission losing its independence.

Mr. Temporary Deputy Speaker, Sir, I have looked at Section 16 which talks of the functions of the Commission and I am looking at Subsection (H) of Section 16 which charges the Commission with the right or powers to investigate and conciliate complainants and also Section 16 (A) which again talks of investigations on its own initiative or upon complaints made by any person or group of persons. While those sections are necessary, I would urge the Attorney-General to look at Section 26, Subsection 4 of the Constitution to see whether there is any possible conflict with his role which gives him supervisory powers of the police in their investigative duties so that we do not get another constitutional crisis with the Commission being declared unconstitutional.

Mr. Temporary Deputy Speaker, Sir, if the Attorney-General is of the view that since these are not criminal investigations but human rights violation investigations - there is no conflict - could we then define what human rights abuses are and what they amount to in order to avoid any busybody later on coming and saying that there is conflict between Section 16 of this Act and the Constitution? It has become the preoccupation of Kenyans to have Bills declared unconstitutional and for that reason we should go through this Bill with a toothcomb to see any possible conflicts.

Mr. Temporary Deputy Speaker, Sir, we also need to look at other laws. Section 16 (F) allows this Commission to monitor the Government's compliance with its obligations under international treaties. I am wondering because of the previous inability by the Government to honour its reporting obligations. Would it not be prudent and this is for the Attorney-General to ponder, to charge this Commission with the responsibility of ensuring that the Government complies with its obligations to report or with preparing the reports on behalf of the Government? This is because most of these international treaties and conventions on human rights should not be the province of the Government alone to report, but we should report on the actual situation. If Kenyans want accurate reports, then we could have a Commission like this one, which is envisaged to be independent, to be the one making the report on behalf of the Government so that they can be presented to the Minister in charge for onward transmission to the relevant receiving authorities.

Mr. Temporary Deputy Speaker, Sir, we need to look at other laws. The Commission has been given wide powers, including the power to order the release of somebody detained. The question that immediately arises in my mind is: "Does this conflict with the existing criminal laws and procedure, civil laws and procedure and can the Commission order the release of a person detained in a prison pursuant to an order of the court?" This appears to bring in some sort of conflict unless if we are very specific on the instances the Commission can issue a release order, and I would imagine that is to people held in custody. Can the Commission overrule a court of law when we have an appellate system? We are again creating conflicts which will allow busybodies to have this particular Bill struck out as unconstitutional. Let us spell out especially in what instances we envisage the commission issuing a release order.

Can the Commission issue a release order, for instance, to a person committed to civil jail for failure to pay a debt, for contempt of court or, like I said, serving a criminal sentence? We have an appellate system for all those. So,

the instances that come to my mind that it can legally order release, is for a person held in custody against the law and not for a person lawfully held. Here again, should the commission not take the matter to court, it also brings to mind that we, perhaps, may need a constitutional court to handle some of these issues because if we go through our court procedures as they are, the person may serve a very long time before the Commission gets a chance to be heard.

Mr. Temporary Deputy Speaker, Sir, we need to entrench the Human Rights Commission into the Constitution. Unless we do that, we shall not give it the necessary protection and the powers that it deserves. Since this is a time that for constitutional review, it is a time for all those who believe in human rights to submit their views to the Ghai Commission and to have this particular commission entrenched into the Constitution.

Mr. Temporary Deputy Speaker, Sir, I am glad to observe that the commission is also charged with the responsibility of educating Kenyans and raising awareness on human rights issues. This awareness is so much needed also in this Parliament. There are a few hon. Members of Parliament that are busy insulting sections of Kenyans on basis of ethnicity, gender and even disability. We are the ones who need this education so that as leaders, we may be able to defend the rights of all Kenyans and to uphold the rights of our Constitution. I would go further and say that if we are serious about raising the observance of human rights in this country, the commission must be charged with not just educating the public, but also Government officers especially those who are wielding powers over citizens namely the Police, the Provincial Administration, which I hope we will soon scrap, and all other persons who sit in authority.

Mr. Temporary Deputy Speaker, Sir, I am wondering whether this idea of having the Human Rights Commission will make it unnecessary for us to have the office of the Ombudsman. However, this can only happen if, perhaps, we allow the commission to have inspectors based in the regions so that violations of human rights can be reported closer to where the public is. I think that we all need to further look at the Bill as it comes to the Committee Stage so that we propose necessary amendments to it and consult with the Attorney-General with a view to having the best statute possible on human rights. The idea of this Bill is commendable.

With those few remarks, I beg to support.

The Assistant Minister for Transport and Communications (Mr. Keah): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. From the outset, I want to say I support it. I want to begin with the Constitution of Kenya, Cap.5, Section 70 which deals with the protection of fundamental rights and freedoms of individuals. I take it that this Commission will implement the human rights entrenched in the Constitution when they are violated. If that is the intention of this Bill, then it has my total support. I do not see much conflict when I look at the particular clauses relating to Cap.5 of the Constitution *vis-a-vis* what is contained in this Bill. So, I would merely want to emphasize a number of issues relating to this Bill as they are affected by Cap.5 of the Laws of Kenya.

First, the preamble of this Bill talks of "An Act of Parliament to provide for the establishment of the Kenya National Commission on Human Rights for the better promotion and protection of human rights and for connected purposes." The words "human rights" and "freedom" are mentioned in the Constitution and I wonder why this Bill has not done that. I would like the Attorney-General to reflect on that and be absolutely sure that what is in the Constitution has been captured in the preamble. The preamble talks of human rights, but it does not talk about freedom.

The Constitution has quite a number of explanations in its preamble and I would like this Bill, in its preliminary, to explicitly spell out the instances of human rights abuses so that Kenyans are quite clear in their minds on what is transgression against their human rights.

Mr. Temporary Deputy Speaker, Sir, I would like to join my colleague, Ms. Karua, in saying that a little time ought to be spent to make sure there is no conflict between this Bill and the other laws relating to human rights. We do not want to find that the Bill is in contravention of the Constitution after it has become an Act of Parliament.

Having said that, let me go straightaway to Clause 4 of the Bill. While I agree with Ms. Karua on certain aspects, I think there ought to be one commissioner for each province, and not just three or four, who will be based in Nairobi. Apart from having one commissioner for each province, there should be an office in each province. It is either we have a commissioner elected or appointed from each province, or we have a human rights office in each province so that they can be closer to the people. This will help the people to make their complaints there about human rights abuses instead of travelling all the way to Nairobi.

Mr. Wamalwa: We have both!

The Assistant Minister for Transport and Communications (Mr. Keah): As an accountant, I was looking

at the cost, but thank you, Mr. Wamalwa, for adding flavour to that particular point.

Mr. Temporary Deputy Speaker, Sir, let me now turn to Clause 6; on the appointment of commissioners. Clause 6 talks about putting up an advertisement in the *Kenya Gazette* or, at least, three daily newspapers. Now, which are the three daily newspapers, is it the *Citizen*, *Sparrow*, *Kenya Times*, *Daily Nation*, *The East African Standard*, *The People Daily* or the gutter press? This is a little bit ambiguous and I think some attention ought to be given to it for fairness.

The next issue is about the people who will form the panel. I have no problem with the Speaker of the National Assembly, the Chief Justice and the Attorney-General. Even if they are friends of the Government, does it matter? If the Government must rule, it is imperative that we have their officers or people friendly to the Government in the panel. I see absolutely nothing wrong in having the Speaker of the National Assembly, the Chief Justice and the Attorney-General in that panel. But I do agree that we need to add more people. Perhaps, the Law Society of Kenya, the Professional Societies in East Africa and the religious communities should be represented. But to exclude the Government of the day in issues of this nature, how do you expect the Government to rule?

Let me go to Clause 10 which talks about terms and conditions of service of the chairperson and the commissioners. I do not have much problem with Clause 10. I agree that the Treasury must be represented and a parliamentary select committee, which is probably the Judicial Committee of the House, ought to be there. But the Treasury must be represented because they know the weight of the national purses.

Let me now turn to Clause 16 which talks about the functions of the Commission. I totally agree with the functions of the Commission and I do not think I want to add anything. But the functions of the Commission must not in any way be in conflict with any other law or with the contents of the Constitution in so far as civil rights and freedoms are concerned.

From there, I will go straightaway to the financial provisions---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Manyara): Order, Mr. Keah! You have another 20 minutes and you can continue tomorrow! It is now time for the interruption of business. Therefore, the House stands adjourned until tomorrow, Wednesday, 17th April, 2002, at 9.00 a.m.

The House rose at 6.30 p.m.