

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 24th May, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the Constitution Implementation Oversight Committee (CIOC) on the Independent Electoral and Boundaries Commission Bill, 2011.

(By Mr. Abdikadir)

QUESTIONS BY PRIVATE NOTICE

DETAILS OF NAROK-MAASAI MARA ROAD CONTRACT

Mr. ole Lankas: Mr. Speaker, Sir, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) Can the Minister clarify when the contract for the construction of Narok-Maasai Mara Road was awarded and state which firm was awarded the contract, what was the cost and duration of the contract?

(b) Could the Minister state what works have already been achieved and explain why the contractor abandoned the site soon after award of the contract?

(c) What urgent measures will the Minister take to ensure the construction commences and is completed before the imminent peak season of tourism?

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

(a) The contract for rehabilitation of the Narok-Maasai Mara, that is, Sekenani Gate was awarded on 22nd November, 2010 to M/s Petra Construction Company Limited at a contract sum of Kshs378,034,797. The works commenced on 29th January, 2011 and are scheduled for completion on 28th January, 2012.

(b) I want to assure the hon. Member that the contractors have not abandoned the site. Since the contract commenced the contractor has undertaken the following:-

1. Mobilization and setting up of the site.
2. Site clearance.
3. Shoulder grading and benching.

4. Installation of asphalt concrete plant.

The contract is now fully mobilized to undertake all the major works.

(c) As I have mentioned, the works have fully commenced and my Ministry through the Kenya National Highways Authority (KeNHA) will supervise and issue instructions to the contractor. Further, this is a one year contract that is scheduled to end in January, 2012. Nevertheless, my Ministry will put necessary measures to ensure that the smooth flow of traffic through the area under rehabilitation is undertaken.

Mr. ole Lankas: Mr. Speaker, Sir, while I thank the Assistant Minister for the answer, I would like to say the following: The contract began in January, 2011 and is expected to end in January, next year. We are in May, 2011 and I would like to confirm to this House that it is not true that the contractor has completed or achieved the works the Assistant Minister alleged. This is because I was there this morning. The problem we face is that the contractor lacks the capacity. Could the Assistant Minister confirm the capacity of the contractor against the works he has cited as having been achieved so far?

Mr. Kinyanjui: Mr. Speaker, Sir, I want to agree with the hon. Member that, indeed, the pace of works on this road has not been as per our expectations. Four months, which is about 30 per cent of the time, have already lapsed. This is against the completion of about five per cent of the works. Clearly, the contractor does not match the work that is there. However, we have issued instructions that he increases the pace of work and the equipment required for these works. If no appropriate remedy is undertaken, we will not wait until the contract is over. We will take the necessary action.

Mr. Linturi: Mr. Speaker, Sir, I am really uncomfortable with the admission by the Assistant Minister that the contractor lacks capacity. I wonder whether due process was followed in the evaluation of contractors before commencement of this contract. One of the areas that the evaluators are supposed to look at is the capacity of a contractor to undertake certain works. Why did it escape the attention of the evaluating team that the contractor did not have enough capacity to undertake this contract with the speed required?

Mr. Kinyanjui: Mr. Speaker, Sir, I have not indicated that the contractor lacks capacity. I have only said that the works that he has done right now do not match our expectations. The reasons for this would vary. Nevertheless, I would like to express our frustration. As you know, the contractors in this country for a long time have complained that works have been awarded to foreign companies, and more so, Chinese Companies. This is the case but the Ministry would like to give the local contractors a fair chance. The opportunity for a fair chance has sometimes come at the cost of works. It is for that reason that My Ministry together with the Ministry of Public Works will table the Construction Bill to ensure that we have a proper categorization of these contractors and, indeed, they are able to match the category they have been given. In the meantime, we will ensure that this contractor lives up to the terms of the contract.

Mr. Konchella: Mr. Speaker, Sir, it is clear that this is a briefcase contractor. We have a big problem with the Ministry of Roads. They have created very many entities to enhance corruption. We have KeNHA, Kenya Urban Roads Authority (KURA) and so on. Could the Assistant Minister tell us whether this particular briefcase contractor has ever done any work? This is because the problem is all over the country and something must be done by this House to abolish all these entities and create a Ministry that will enhance the usage of money to develop Kenya. We are talking about Kshs378 million

being carried by a briefcase fellow. Five months have gone and works are supposed to end in January, 2012, but the contractor has not even started the job. Could the Assistant Minister, therefore, cancel this contract without doing any valuation because that is a waste of time?

Mr. Kinyanjui: The hon. Member has alleged that there is corruption in the Ministry involving contractors. If there is any corruption, then it is with specific individuals and we would like to deal with that at that level. To institutionalize corruption and claim that the Ministry is corrupt will be grossly inappropriate. Nevertheless, I also want to inform the hon. Member that part of the money we have been using to maintain our roads goes through the Constituency Roads Committee where the hon. Member is also a member. Therefore, if there is any allegation of corruption, then he must also be part of it. Lastly, I would also like to take this opportunity to say that the terms of contract between the Ministry and the contractor are guided by a legal document that exists between the two. If it is found that, indeed, the contractor has flouted the set conditions, we will take the necessary action.

The Assistant Minister for Tourism (Ms. Mbarire): On a point of information, Mr. Speaker, Sir. I want to thank the hon. Member for asking this Question, but also inform the Assistant Minister that this road is very critical when it comes to the tourism sector. There is growing concern among tour operators that nothing has been done on this road for a very long time. Last week I was in the USA marketing this country and the question everywhere was: “What have you done about the Narok-Maasai Mara Road?”

I would like to inform the Assistant Minister that it is important he takes this matter very seriously and as a priority.

(Applause)

Mr. Kinyanjui: Mr. Speaker, Sir, I stand informed on that. While acknowledging my colleague, who is the Assistant Minister for Tourism, the challenge has been from Mai Mahiu all the way to Maasai Mara. My Ministry has now completed the Mai Mahiu-Narok Road. I think that is commendable. I am sure the remaining part will be completed as we have indicated. I wish, however, to note the concerns raised by the hon. Member.

Mr. Bahari: Mr. Speaker, Sir, 30 per cent of the time lost has a lot of implications in terms of opportunity costs of services that have not been rendered to the community and the visitors to the national park. The Assistant Minister agrees that this contractor has not lived to the expectations. Could he tell us, for purposes of accountability, what reasons have been given by the contractor not to have utilized the period between January and May as is required?

Mr. Kinyanjui: Mr. Speaker, Sir, no adequate explanation has been given to date regarding the delay. However, I wish to note that the setting up of the asphalt concrete plant is also significant in terms of being able to access the materials close to the site. We believe that if the contractor is able to increase the mobilization that is required to complete the road within the remaining period, I have no doubt that we will be able to finalize this road on time.

Mr. Speaker, Sir, I wish to assure the hon. Members as I said earlier on that very critical issues will be included in the National Construction Bill. Some of these have to do with the mobilization of our local contractors and how we can upgrade them when

they do good jobs and also reprimand them. We are aware that in the infrastructure sector there are various Ministries that award different contracts and there is no co-ordination. Therefore, you have one contractor making a mess on one side and yet get all the jobs in another Ministry. This Bill will help on that.

Mr. Pesa: Mr. Speaker, Sir, the Assistant Minister has said that the contractor is about to complete mobilizing his machinery to the site and yet, four months have gone by. Could he inform the House what fraction of the works have been done and how much money, if any, has been released to the contractor?

Mr. Kinyanjui: Mr. Speaker, Sir, I indicated earlier that only 5 per cent of the works have been done and no certificate has been raised to pay the contractor. Therefore, no taxpayers' money has been used in this respect.

Mr. Njuguna: Mr. Speaker, Sir, while I thank the Assistant Minister for that broad answer, could he inform the House what action has been instituted against the contractor who is months behind the contract?

Mr. Kinyanjui: Mr. Speaker, Sir, I have indicated that, when we awarded the contract, the terms were very clear. We have a performance bond that is clearly given by a reputable bank and once he is not able to perform his duties, we will be able to recover that through the performance bond.

Mr. Litole: Mr. Speaker, Sir, now that, that man is four months behind, chances are that he is going to ask for an extension. What assurance is the Assistant Minister giving the House that such an extension will not be granted because it will be a waste of Government money and time?

Mr. Kinyanjui: Mr. Speaker, Sir, there has been no request of extension of time. That road is very critical to Maasai Mara and any delay in construction will greatly impact on that economy and tourism at large.

Mr. ole Lankas: Mr. Speaker, Sir, the Assistant Minister has confirmed that, that road is very critical to the economy of this country. Indeed, in 2008, the Maasai Mara was declared one of the "seven wonders of the world". The Assistant Minister has said that from Mai Mahiu to Narok - a stretch of 80 kilometres – they used about Kshs4.2 billion. On the stretch from Narok to Maasai Mara, they gave a paltry Kshs378 million. Why the contrast if you have to achieve the required standard of the Maasai Mara Road? Also, this Assistant Minister---

Mr. Speaker: Order, hon. ole Lankas! It is Question Time. I allow one question at a time.

Mr. ole Lankas: Mr. Speaker, Sir, could the Assistant Minister explain to the House why they committed about Kshs4.2 billion from Mai Mahiu to Narok, which is a distance of 80 kilometers while, from Maasai Mara, which is a stretch of 100 kilometres, they only gave Kshs378 million?

Mr. Kinyanjui: Mr. Speaker, Sir, indeed, it is true that the Mai Mahiu to Narok Road had substantial investments. It was given more money mainly because of the design of the road, weight and the traffic. But I also wish to note that, indeed, we would have required close to Kshs2.5 billion to rehabilitate that road to the right condition. However, as you maybe aware, our budget, especially for last year, was slashed. We felt that we still needed to maintain that road until such a time when we will have enough funds to do full rehabilitation, so that it can last for a long time. But in the meantime, the Kshs378 million is to restore the road to a motorable condition as we look for a long-term solution.

Mr. Speaker: Order! Mr. Assistant Minister, you will note that we allowed interaction on this Question to continue for 13 minutes because of its importance. So, please, ensure that you give this matter immediate attention because it also generates a lot of revenue for this country. So, the excuse cannot be money and should not be money. That is because that road generates revenue for this country.

Next Question by Mr. Mbadi!

DISPOSAL OF POSTAL CORPORATION LAND IN KILIMANI

Mr. Mbadi: Mr. Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Does the Government plan to dispose of a parcel of land charged to the Postal Corporation of Kenya (PCK) situated in Kilimani in Nairobi to Ms Bharti Airtel Company Limited and, if so, is the planned disposal being done in compliance with the Public Procurement and Disposal Act?

(b) Will the proceeds of the sale be transferred to PCK?

The Minister for Information and Communications (Mr. Poghisio): Mr. Speaker, Sir, I beg to reply.

(a) Yes, the Government intends to dispose of a parcel of land owned by Postal Corporation of Kenya (PCK) situated in Kilimani in Nairobi to Ms. Bharti and IBM Companies to build their headquarters for their operations in Africa. This is because PCK is in need of the money to restructure its operations and reduce its personal liabilities. My Ministry proposes to sell the land in accordance with the Public Procurement and Disposal Act of 2005. However, I am also alive to the fact that the Government policy is to attract foreign investment into the country. Ms Bharti and IBM are renowned multi-national companies with huge investment portfolio worldwide. They will be beneficial to the country in terms of financial inflows, employment opportunities and transfer of technical knowhow. It is in line with this that we sought and obtained concurrence from the PCK Board and the Deputy Prime Minister and Minister for Finance to dispose of the land to the companies. In addition, my Ministry is in consultation with the Attorney-General Chambers or office for legal advice on the way forward on this matter.

(b) Evaluation carried out by the Ministry of Lands has valued the land at Kshs543 million. The proceeds will be transferred to PCK which is expected to utilize the funds to restructure its operations and improve its service delivery.

Mr. Mbadi: Mr. Speaker, Sir, from the Minister's answer, it is very clear that the Government has decided to sell that land to that company. The land, according to the Minister, is valued at Kshs543 million. One would, therefore, expect that, that should go through the open tendering system. The question I would like to ask is this: Was there an open tender for the selling of that land or how have you complied with the Public Procurement and Disposal Act of 2005?

Mr. Poghisio: Mr. Speaker, Sir, this is a subject of debate as to whether we feel we complied or not. We think we have followed every step as allowed in the Public Procurement and Disposal Act. I think if you look at it, it allows for this kind of situation where an international investor would come to the country and ask to be given land. Then it would go through the normal process of making sure that the land is valued. The Ministry of Finance, Ministry of Lands and the PCK Board have agreed on the same. So,

we think that according to the Public Procurement and Disposal Act, we are within the law in this matter.

Mr. Oyongo Nyamweya: Mr. Speaker, Sir, could the Minister inform the House whether they have sought authority from the Director of Public Procurement because that is public land? The only way it can be disposed of is by asking for permission from the Director of Public Procurement.

Mr. Poghiso: Mr. Speaker, Sir, even in the Act, you will not find it necessary to do that. The procedure mostly is that if the board concurs and the Ministry of Finance and Treasury concur--- That is where the money goes through. After that, the process is basically done. What happens is that if there are any questions asked by the Director of Public Procurement on the matter, we deal with them. We can then go back and discuss with them. If there is any legal matter that needs to be addressed, then we seek the Attorney-General's guidance on the matter. But we think we are within the law in this matter and we are making it known that the land is being disposed to those particular companies for a particular purpose of Government interest. It is Government land, the valuation has been done and the approval has been given. So, we think that we are within the law.

Mr. Imanyara: Mr. Speaker, Sir. If his intention was to raise money for the CCK, would it not have made more sense to let as many foreign investors as possible to participate by seeking offers rather than doing it secretly and privately through a process that is fake and one that clearly breaches the law that the Minister claims to follow? The eight questions do not permit you to deny other investors, who may be interested, the opportunity to make offers. Why was this not done?

Mr. Poghiso: Mr. Speaker, Sir, it is not every day that public land is on sale. This is always available. If an investor wants land, he can go to the Ministry of Lands.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Did you hear the Minister say that this is public land when, in fact, he has said that the land belongs to the Postal Corporation of Kenya? There is a difference between public land and land that belongs to parastatals that wish to raise money. Is that in order?

Mr. Poghiso: Mr. Speaker, Sir, I do not see the need to deal with that point of order because it is more of another question. What I am trying to say is that, it is not every day that Government land or land owned by Government parastatals is for sale. The history of this land is that Bharti Airtel and IBM want to build their regional headquarters here. They want to do it so that they can employ thousands and thousands of our youth and create business access outsourcing outlets for us as a country. They approached the Head of State and the Prime Minister and asked that they be given land. It so happened that the piece of land that was available was the one owned by the Postal Corporation of Kenya. We then wrote for concurrence. If there was any objection within Government systems, it would have come out as a matter of question and caution and an audit would be asked. However, we wrote for concurrence. The board said that it was okay and I also gave concurrence as the Minister. I also wrote to the Deputy Prime Minister and Minister for Finance asking him to give concurrence in the matter because the land had been valued by the Government and , it was available and these people were not going to ask us for a price other than for the valuation. We felt that there was need for the Government to interact with Airtel and IBM and for our Vision 2030 projections.

This is also allowed within the Public Procurement and Disposal Act. The Government can seek that kind of concurrence.

Mr. Oyongo Nyamweya: On a point of order, Mr. Speaker, Sir. The Minister is misleading the House. The rules of procurement are very clear. There is no asset that can be disposed off by the Government without following a competitive process. The Minister is not in order.

Mr. Speaker: What you have done is make a statement. So, I am afraid I will not allow it to pass for a point of order.

Mr. Shakeel: Mr. Speaker, Sir, could the Minister kindly inform the House which valuers they used? Was it an independent valuer or the same Government valuer who has previously made very grave errors in valuation?

Mr. Poghio: Mr. Speaker, Sir, as I stated before, the valuation was done by the Ministry of Lands Government valuers. This is Government land which is owned by PCK. For our purposes, we chose to do a Government valuation. We did not try to get an independent valuer. Just to go back to the State Corporations' Act, Clause 13(i), page 10, on how assets of State corporations may be disposed, you will see that there are various options. If you move on to 1(c), it says:-

“By way of sale or otherwise with approval of the Minister and the Treasury where such disposal has not been taken into account in the estimates”.

Mr. Speaker, Sir, we have followed the law in respect of disposing certain lands as a matter of exceptions. In two---

Mr. Ruto: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to continue to mislead the House that there was actually a disposal of this land while his answer indicates that there was an allocation of this land to an investor? Is this an allocation or disposal of land? If, indeed, it is disposal---

Mr. Speaker: Order, Member for Chepalungu! The first part of your point of order as far as I am concerned does not pass for a valid point of order because as far as I know and I have followed the Minister, he has not been misleading the House. So, you cannot ask whether he is in order to continue to mislead the House because there is no continuity here. The Minister has been giving information to the House. The second part is a matter of argument, naturally.

Minister, proceed!

Mr. Poghio: Thank you, Mr. Speaker, Sir. I had said that there was no allotment. The land is not yet in the hands of the investor. We are still in a process and that is why it is possible for the Questioner to ask this Question. We have not even given the land to this investor. In fact, they are waiting for a response from us. The process is long and tedious. We have just obtained the concurrences that are needed. It is, therefore, for us to put ourselves openly to the House, that we intend to do this and we have followed what we think is procedural, we have obtained all the necessary documentation and it is just a matter of time that we begin to talk to the investor whether they are still interested in this land or not.

Mr. Mbadi: Thank you, Mr. Speaker, Sir. Even though the Minister has quoted the State Corporations' Act, my Question was with regard to the Public Procurement and Disposal Act 2005. Part “c” of the State Corporations Act is after other methods of procurement and disposal have been done. The first preference is by open tendering. The Minister has told us clearly that this investor wrote to the President, and maybe in

consultation with the Prime Minister gave authority. Could he tell us where he derived the authority to give the Executive the mandate to order for allocation of land to a private investor without following the correct procurement procedure? Where did the Executive get the powers to dispose of public land to an investor without following the requirements of the Public Procurement and Disposal Act of 2005?

Mr. Poghiso: Mr. Speaker, Sir, I do not know how I am supposed to respond to a question which seeks to know where the powers of the President come from. Those are constitutional powers. No one gives the President those powers.

Mr. Mbadi: Mr. Speaker, Sir, you have just heard the Minister talk of constitutional powers. I do not know whether he is referring to the current Constitution or the old one. Could he specifically tell us which constitutional powers have given the President the power to dispose of public land in this country?

Mr. Poghiso: Mr. Speaker, Sir, the hon. Member is now misleading the House, because it is not the President who is disposing of this land, or giving it away to anybody. Therefore, I cannot talk about powers given to the President to do this, because procedures insulate the Office of the President. Even the hon. Member has a right to write to the Minister now and get land. Somebody who is coming in has a right.

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

Mr. Speaker: Order, Member for Gwassi! Relax.

Mr. Poghiso: Mr. Speaker, Sir, in fact, any Kenyan has a right to write to the Minister for Lands and get land. You can ask for land, but you may not get it.

Mr. Speaker: Order, Minister! Address the House!

Mr. Poghiso: Mr. Speaker, Sir, I am sorry for that. So, it is possible that if a foreigner wants to invest in Kenya, and the Government feels that this is in line with Government policy, he will write. The President can only ask but you will find some land, if it is available, and follow the procedure for disposal. There is no direct allocation from the President or the Prime Minister. We follow certain procedures. That is where we are now. At this point in time, we have got all the concurrences. So, we are about to start talking. If they are still interested, we have now followed the procedures.

Mr. Speaker: Next Question, Member for Juja!

ORAL ANSWERS TO QUESTIONS

Question No. QPM/ 014

DISCHARGE OF SEWAGE INTO RIVER RUIRU

Mr. Kabogo asked the Prime Minister:-

(a) whether he is aware that sewage from Ruiru Town flows into Ruiru River resulting in several deaths caused by water borne diseases; and,

(b) what immediate measures the Government is taking to curb the menace.

Mr. Speaker: Minister, please, note that you have substantially answered this Question. You have just gone back on it.

The Minister for Public Health and Sanitation (Mrs. Mugo): Mr. Speaker, Sir, I beg to reply.

Following my answer of 11th May, 2011 regarding the status of Ruiru water and sewerage, hon. Kabogo asked to be provided with additional information on immediate measures my Ministry and the Ministry of Water and Irrigation are undertaking to curb the overflow of sewage into the immediate environment. As I promised the House, serious consultations have taken place between my Ministry, the Ministry of Water and Irrigation, and the Treasury, and I wish to respond as follows:-

The Githurai Sewerage Project, which is also in Juja Constituency, is currently under implementation with funding from the African Development Bank (ADB) to the tune of Kshs1.6 billion. This project will be completed by December, 2013.

With respect to the Ruiru Sewerage Project, which will cost Kshs2.5 billion, the Ministry of Water and Irrigation wrote to Treasury, requesting for funding for 2010. Consequently, the Treasury is engaged in funding discussions with our development partners – the French Government – with a view to leveraging funds for the projects. So, a solution is expected soon.

Further, with regard to the immediate contingency measures that the Government is undertaking to avert further discharges into the river, I am happy to report that reasonable progress has been made following a review meeting by an inter-Ministerial technical team on Saturday, 21st May, 2011, comprising of my Ministry, the Ministry of Water and Irrigation, and the Ministry of Roads, who were joined on the ground by representatives from the Office of the President, technical representatives from the Ruiru/Juja Water and Sewerage Company, the District Water Officer, Ruiru, and the District Public Health Officer, Ruiru.

The team was conducted on a review tour of the entire town's sewerage treatment and soak sites, after which a consultative meeting was held. The following are the visible areas of progress observed by the team:-

- (i) exhausting of the septic tanks is being carried out on a daily basis;
- (ii) all the overgrown vegetation around the septic tanks and soak pits has been cleared;
- (iii) incomplete dislodging of the three main septic tanks is complete;
- (iv) three additional soak pits have been dug and two more rehabilitated;
- (v) a local contractor has been engaged to construct extra septic tanks and five extra soak pits;
- (vi) a budget of Kshs24 million has been drawn by the Ministry of Water and Irrigation for these contingency works for the next two years; and,
- (vii) missing manhole covers have been replaced, and my Ministry will continue with surveillance to ensure compliance.

Mr. Speaker, Sir, two meetings were held, and the minutes are here. I will table them as well as photographs of the site before and after the work had been undertaken. We will continue to survey the area.

(Mrs. Mugo laid the documents on the Table)

Mr. Speaker: Member for Juja, you should now ask the last supplementary question.

Mr. Kabogo: Mr. Speaker, Sir, you can see that the Ministry has worked really hard, including on Saturday last week. As I thank the Minister for that very comprehensive answer and work done, I want to draw her attention to the fact that, on the septic tanks she has referred to, it has been reported in the minutes that they have been grabbed and that they sit on private land. So, I am not sure whether the Minister will be able to liaise with her counterpart in the Ministry of Lands to recover that land.

Something else which is reported in those minutes, is that the team went to the stadium and saw the sorry state of sewage disposal where storm water is mixing with overflowing sewer. The action they took was to tell the municipal council that they need to build radial arms. So far, this has not been done, and it is still a health hazard. What is the Ministry going to do?

Mrs. Mugo: Mr. Speaker, Sir, I thought the hon. Member was really satisfied. If you look at the pictures I have tabled, you will notice that, that area is completely dry. Water is no longer flowing on the surface.

Mr. James Maina Kamau: On a point of order, Mr. Speaker, Sir. While answering this Question last time, the Minister admitted that several lives had been lost. We now expect her to tell us what plans she has to ensure that those who lost their lives are compensated.

Mr. Speaker: You stood on a point of order, Member for Kandara!

Mr. James Maina Kamau: Mr. Speaker, Sir, as I listened to the answer given by the Minister, I expected her to mention what they are doing to compensate the lives that were lost, because she admitted last time that lives had been lost. So, is she in order not to say what they are doing to compensate the lives that were lost?

Mrs. Mugo: Mr. Speaker, Sir, I do not believe that, that is a point of order. However, to add to what I said, our work is to treat water, and we do treat it. On compensation, you cannot say for sure why these people died. Compensation comes in only where you link the death directly to a certain action. We do our very best to treat the water. We get very many deaths from cholera, and I doubt that the Government can compensate for all those deaths. I just urge the people to make sure that they boil or treat water before taking it. We do a lot of public campaigns in this regard.

(Mr. Kabogo stood up in his place)

Mr. Speaker: Member for Juja, that must be the last item on this matter.

Mr. Kabogo: Mr. Speaker, Sir, I just want to request that the Minister liaises with the Deputy Prime Minister and Minister for Finance and the Minister for Lands in as far as that land that is grabbed is concerned and on the issue of the amounts that they have requested from the Office of the Deputy Prime Minister and Ministry of Finance so that, at least, some money is found in the coming year.

Mrs. Mugo: Mr. Speaker, Sir, I will do that.

Question No.752

NUMBER OF INDUSTRIAL ESTATES IN KENYA

Mr. Speaker: Order, Hon. Members! I am advised that the Member for Nyatike is on a diplomatic mission on behalf of this country. He is accompanying His Excellency the President to Addis Ababa. So that his constituents know that he has not abdicated responsibility, this Question will appear on the Order Paper when the Member returns to the country.

(Question deferred)

The Assistant Minister for Industrialization (Mr. Muriithi): On a point of order, Mr. Speaker, Sir. Would I be in order to tender my apology to the House that this Question was not answered two weeks ago, even though the hon. Member is not present?

Mr. Speaker: Yes, you may if it is relevant to that Question.

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Speaker, Sir, it is. I do apologise to the House that the Question was not answered a couple of weeks ago when it first appeared on the Order Paper.

Mr. Speaker: Very well! Your apology is accepted. Those sanctions imposed against you are, therefore, lifted.

COMMUNICATION FROM THE CHAIR

TABLING OF REPORT ON SPECIFIC MUSLIM CONCERNS

Mr. Speaker: Hon. Members, before we move to Question No.728 by Mr. Yakub, I have the following Communication to make.

Hon. Members, you may recall that on Wednesday, 4th May, 2011, Mr. Yakub rose to ask Question No.728 in the day's Order Paper by which he sought to have the Minister of State for Provincial Administration and Internal Security table the Report of the Special Presidential Committee on the Specific Concerns of the Muslim Community chaired by Eng. Abdullahi Sharawe, which was submitted to the President in the month of July, 2009. In reply, the Assistant Minister of State for Provincial Administration and Internal Security, Mr. Ojode informed the House that he did not have an answer to the Question as the appointing authority had not released the Report, which he was required to table before the House. The Question was accordingly deferred to enable the Assistant Minister provide a written answer. The matter arose again before the House on Thursday, 19th May, 2011 and the Chair undertook to give directions on the same after taking into consideration earlier rulings regarding production of similar reports.

Hon. Members, the Chair had on Wednesday, 8th December, 2010 issued a Communication regarding the production of reports of various Commissions of Inquiry which had been requested for by Ms. Karua. On that occasion, the Chair ruled that before the enactment of the Commissions of Inquiry (Amendment) Act No.5 of 2010, which came into force on 30th August, 2010, a Commission of Inquiry established under the Commissions of Inquiry Act, Cap.102 of the Laws of Kenya, had no obligation to make a report to the National Assembly on its findings upon completion of an inquiry. The Chair noted in that ruling that the amending Act did not have a retrospective effect and there was, thus, no legal obligation for reports of inquiries conducted before this date, to be laid before the House. However, that amendment imposed an obligation for reports made after

30th August, 2010 to be tabled before the House. The Chair further noted that as the law stood before 30th August, 2010 there was no obligation on the part of the President to make public the findings of a Commission of Inquiry.

Hon. Members, the Assistant Minister of State for Provincial Administration and Internal Security, Mr. Ojode informed the House on 4th May, 2011 that he did not have an answer to the Question raised by Mr. Yakub, as the appointing authority had not released the requested Report. In view of the earlier ruling by the Chair, I rule that there is no statutory obligation for the Minister to produce the report of the special Presidential Committee on the Specific Concerns of the Muslim Community as requested for by Mr. Yakub as the said inquiry was concluded before 30th August, 2010.

Thank you.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir, while I appreciate the ruling that you have made and without questioning it, I would like your clarification on the effect of Article 35 of the Constitution on previous information. This is because if you look at Article 35, you will realise that it does not give any discretion to any person of whatever rank to withhold information that a Kenyan citizen is entitled to. I would like to have your clarification on whether your directive today means that we may not be able to realise the benefits of Article 35 of the Constitution.

Mr. Speaker: I have heard you the Member for Central Imenti. I will give further directions as may be necessary, warranted by the passage of the Constitution, as did take place last year. I will among other things, look at the import of the effective date of the Constitution and the rights that it confers or vests upon the citizenry of Kenya. I will give appropriate directions in due course.

Let us move to Question No.930 by Mr. Affey!

(Resumption of Oral Answers to Questions)

Question No.930

COMPLAINT AGAINST BOMET OCS
BY HUSSEIN ALI MURSAL

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

(a) whether he is aware of a complaint against the Bomet Officer Commanding Station (OCS) by one Mr. Hussein Ali Mursal;

(b) what the status of the investigations into the conduct of the OCS is; and,

(c) what measures the Government has taken to arrest and prosecute the persons involved in the robbery at the complainant's shop in Bomet Town.

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

(a) I am aware about the complaint against the OCS, Bomet, by Mr. Hussein Ali Mursal.

(b) The DCIO, Bomet, opened an Inquiry File No.3/2010. It was recommended that the OCS No.230833, Chief Inspector, Susan Wekesa Opuki be dealt with departmentally in Orderly Room proceedings. She was found guilty for being idle and negligent in the performance of duty and sentenced to pay a fine of Kshs8,000.

(c) A warrant of arrest against the suspect, Philip Cheruiyot Mutai was applied for and issued by Bomet Court on 1st April, 2010 vide Police Case No.803/534/2010 and Court file No.265/2010. All efforts are being put to arrest the accused person and arraign him before the court.

Mr. Affey: Mr. Speaker, Sir, I wish to thank the Assistant Minister for the answer he has given. However, I must bring to the attention of the House that this is a very serious matter. This Kenyan, Mr. Hussein Ali Mursal, whose shop was broken into in November, 2009 by his watchman had gone to every possible department of Government where he could get help to report this matter. First of all, he went to the Kenya Anti-corruption Commission (KACC) and then to the Police Commissioner. The Police Commissioner, in his letter, instructed that this matter must be undertaken by the officer in charge Nakuru. This letter was done in January, 2011. He confirms that Philip Cheruiyot Mutai, the suspect, had taken off with over Kshs500,000 belonging to Mr. Hussein. He had said that investigations must be done.

That Kenyan had gone to Kenya Anti-Corruption Commission (KACC) and also to the Kenya Human Rights Commission (KHRC) to get justice. That was the final stop for him to get justice. I want to find out from the Assistant Minister why it has taken the police two and a half years to arrest a suspect who actually was released by his officers. This suspect resides and has property in Kenya. Why has it taken them two and a half years to arrest him?

Mr. Ojode: Mr. Speaker, Sir, the shop for Hussein was broken into in August and not November as alleged by the Questioner. It was raided on the night of 7th August, 2009.

Goods valued at more than Kshs530,000 were stolen. What happened is that the watchman, a Mr. Philip Cheruiyot Mutai, who was guarding the shop, disappeared after it was raided.

Mr. Speaker, Sir, on 15th March, the investigating officer, PC Njagi booked and registered the case at the Principal Magistrates Court after he found him.

After that, that particular OCS released him. That was something unique; a Government officer in the name of an OCS releasing a criminal! It has never happened. He could only be released while being taken to court. That was the reason why we had to arrest the OCS and fine her. She paid Kshs8,000 upon being proved guilty.

The reason why the whole thing has taken a long time is because Philip Cheruiyot Mutai had disappeared. He had gone underground. The good thing is that we have identified where he is and a file of inquiry has been opened.

We will act on this particular matter just the same way we have done with the OCS. As the Questioner said, if there is any land which was bought using the same proceeds, I would recommend to the Attorney-General that, that particular parcel of land be confiscated, sold and the proceeds be paid to the complainant. Due process must be followed. We must follow the law to the letter.

Mr. Joho: Mr. Speaker, Sir, I heard the Assistant Minister mention that they have now identified the location of the suspect. If it is true that he has information concerning whereabouts of the suspect, why has he not taken any action?

Mr. Ojode: Mr. Speaker, Sir, yes, we have identified where the suspect went to. We have ordered our detectives to arrest him. The only problem we have is that he stays in one location for days and then moves to another. We are getting very good leads. We will arrest him.

Mr. Imanyara: Mr. Speaker, Sir, given the seriousness of the complaints and the confirmation that the officer was involved in a corrupt practice, is the Assistant Minister satisfied that dealing with the matter through orderly room proceedings was the appropriate method instead of sending her to court where stiffer penalties would have been imposed and where they would have kept her in custody rather than releasing her?

Mr. Ojode: Mr. Speaker, Sir, the OCS will get stiffer penalties. I have instructed the Police Commissioner to act on that particular officer. He did agree that he will act on the officer, because that is to entertain corruption. I believe that within this a week, some action will be taken by the Commissioner of Police as per my instructions.

Mr. Affey: Mr. Speaker, Sir, it is important, first of all, for the Assistant Minister when he is answering the question, he should be bound by some timing. It is unfortunate that the money that Mr. Mutai took, he used it to buy a piece of land in Bomet. I have a copy of the land sale agreement. This is the money that Mr. Hussein lost that Mr. Mutai spent to buy a piece of land. This is being confirmed by none other than the Commissioner of Police in a letter to his officer in Nakuru. I want to table this because this is a letter which confirms that, that money actually was used to purchase that piece of land. Could he undertake to recover the land so that Mr. Hussein can get back his money to continue with his business? This is an old man. All the money that he had was stolen. He is now suffering; he is depressed. He has children to take care of. His children are not going to school. Could he undertake to recover the piece of land and give it to Mr. Hussein who will sell it to offset his expenses?

(Mr. Affey laid the document on the Table)

Mr. Ojode: Mr. Speaker, Sir, it becomes very difficult for me to recover the parcel of land which was bought using the proceeds from the shop which was broken into. The law does not favour me. The law does not allow me to confiscate the piece of land. It is the court, through the Attorney-General, which can do the confiscation. The law must be followed in order to recover that kind of piece of land.

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

Mr. Speaker: Order! We will now move on to the next Question.

The Assistant Minister in a way is right. Unfortunately for Mr. Affey, your Speaker is a lawyer; so I understand that.

Question No.719

CHARGES OF TRESPASS/MALICIOUS
DAMAGE AGAINST CLAN

Mr. Speaker: Hon. Members, regarding Question No.719, the Member for Kisumu Town West is out on official parliamentary duty. So, this Question is deferred until after his return.

(Question deferred)

Question No.821

HIGH POLLUTION LEVELS IN RIVER ATHI

Mr. Nyamai asked the Minister for Environment and Mineral Resources:-

(a) whether he is aware of the high levels of pollution of River Athi and what measures the Government will take to reverse that state; and,

(b) what interventions he has put in place to ensure that residents of Kitui West who live along the river access uninterrupted clean water from the river.

The Assistant Minister for Environment and Mineral Resources (Mr. Kajembe): Mr. Speaker, Sir, I am requesting for more time to answer this Question. I have discussed this with Mr. Nyamai. I would request that I answer this Question preferably on Tuesday, next week.

Mr. Speaker: Mr. Nyamai, do you agree?

Mr. Nyamai: Yes, I do agree in view of the issues he advanced.

Mr. Speaker: The Question is deferred to Tuesday, next week. It is so directed.

(Question deferred)

Question No.832

DELAY IN PROCESSING OF APPLICATION FOR ESTABLISHMENT OF PRIVATE UNIVERSITIES

Mr. C. Kilonzo asked the Minister for Higher Education, Science and Technology:-

(a) whether he is aware that the Commission for Higher Education is frustrating educationists and investors by refusing to approve applications to establish universities without justification,

(b) whether he could provide a list of all the pending applications for the establishment of universities and reasons why the applications have been denied and/or are pending, provide the names of the applicants, dates of the applications and indicate the reasons why each application has not been approved; and,

(c) how long should an application to establish a university take.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that the Commission for Higher Education (CHE) is frustrating educationists and investors. That is because nobody has made a complaint about the same to my Ministry or to CHE. I am aware that CHE operates within the laid down rules that

guide the process of establishing a university. That mandate is drawn from the University Act Cap.210 (b) of the Laws of the Kenya.

(b) I hereby wish to show hon. Members a list of pending applications for the establishment of the universities and the reasons why the applications have been denied or pending, dates for the applications and the reasons why each application has not been approved by CHE. I have given a list to the Questioner that shows the applicants, names of the proposed universities, dates of applications and comments on the status of each and every university. I have given him a list of about 20 universities that have applied so far.

(c) It takes 15 weeks, upon receipt of any application, for the CHE either to approve, give recommendations or reject the applications.

Mr. C. Kilonzo: Mr. Speaker, Sir, there is a Swahili saying that goes: “*Akufukuzae hakuambii toka.*” If you look at the applications in 2001 - that is ten years ago - 2004, 1998, 1996, 1999 and 2005, most of them are six years and over. What happens is that the CHE keeps on shifting the goal posts. What is the Government doing to fast-track registration of universities?

Mr. Kamama: Mr. Speaker, Sir, what the hon. Member has said is quite true. Sometimes, we take a longer time to inspect or visit the place, to make sure that each and every university meets the standards or laid down regulations. I will refer him to the regulations that were formulated in 1989. He can access them through the website of CHE; www.che.org.ke. You can access that information from that website and I want to assure the House that we take time to ensure that those universities meet the proper standards that are supposed to be met by any university before it is accredited or registered. So, we do not just register it on the first day or within two months. We have to be meticulous to give Kenyans value for their money.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to avoid answering my question? My question is very simple. What is the Government doing to fast-track registration of new universities? It is just as simple as that!

Mr. Kamama: Mr. Speaker, Sir, CHE is under a performance contract. We have given them 15 weeks within which to approve, reject or give recommendations before they are given a certificate for registration or an interim letter of authority.

Mr. Njuguna: Mr. Speaker, Sir, could the Assistant Minister inform the House what measures the Ministry has put in place to stop mushrooming of illegal universities that are issuing fake degrees in our country?

Mr. Kamama: Mr. Speaker, Sir, we have a team of serious professionals at the CHE offices. They have been given instructions to inspect all universities to ensure that we do not get those fake universities. I want to assure the House that we have the mandate of ensuring that mushrooming of fake universities is stopped once and for all. I want to confirm to the House that this year alone, we have closed more than three universities that were established in a very dubious way. So, we inspect and close the ones that do not meet the standards.

Mr. C. Kilonzo: Mr. Speaker, Sir, it is easier to register a university in Uganda. That is why there are over 20,000 students from Kenya in Uganda. Ugandans have relaxed the rules for setting up universities. Now, the Assistant Minister has said that it takes 15 weeks to respond. In your answer, there is No.20. The name of the proposed university is Riara. It was submitted to you in December. This is almost six months. That

is 24 months and the CHE has not responded. That is a clear-cut indication that your answer is misleading. Why has CHE not responded to a simple application by Riara University, which has been pending for 24 weeks? That is against your 15 weeks?

Mr. Kamama: Mr. Speaker, Sir, first of all, I just want to assure the House that our standards are higher than Uganda's. So, we believe in giving Kenyans the best in the region. On the issue of Riara University, I want to confirm that their proposal is being evaluated for further action. That is because there are a few things that, that proposed university has not met. So, we are considering the case. Let us not hurry up on this matter because if we do that without making sure that those universities meet the required standards, we may end up giving Kenyans shoddy or sub-standard universities.

(Mr. Twaha stood up in his place)

Mr. Speaker: Mr. Twaha, you are just standing and I am afraid, you have not caught my eye to do anything! That is because we have taken the last question already from the Member for Yatta. Next Question by Mr. Isaac Muoki!

Question No.915

CREATION OF EDUCATIONAL ZONES IN MUTOMO DISTRICT

Mr. Muoki asked the Minister for Education:-

(a) whether he is aware that the Mutomo District Education Board requested to have more education zones because the area, with 12,500 km², 180,000 people and 222 primary schools, is too vast;

(b) whether he could consider creating Maluma, Kalivu, Kasaala, Mathima and Kyatune zones; and,

(c) if he could post more officers to those areas.

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

(a) Yes, I am aware that Mutomo District Education Board requested for more education zones due to the vastness of the area and large number of primary schools.

(b) The Ministry will consider creating Maluma, Kalivu, Kasaala, Mathima and Kyatune zones after analysing the report of the National Task Force on the alignment of the education sector to the new Constitution. The task force visited all the counties, including Kitui, between May 8th and May 13th, 2011, and gathered information and views from stakeholders. That report will form the basis of criteria for creation of new educational administrative structures, including the zones in Mutomo District.

(c) The Ministry has engaged the Ministry of State for Public Service and the Public Service Commission on the new staffing establishment and, currently, it is in the process of advertising the existing vacant posts. Once that is done, officers will be posted to the districts, and Mutomo will be considered alongside others.

Mr. I. Muoki: Thank you Mr. Speaker, Sir. I would like to thank the Minister for that elaborate answer and confirm that this taskforce visited our area and took views from the stakeholders. My concern is that this is a very vast area. The number of schools coverage for supervision coupled with lack of teachers is hampering learning. Could the

Minister assure me that when he gets the report, he will take affirmative action in terms of creating more zones?

Prof. Ongeri: Mr. Speaker, Sir, the norm for creating new zones is based on the number of schools that the officer would be administering at any given area, including the geographical terrain and vastness of the area. In the case of Mutomo District, you are aware that we have 143 schools. Applying the standard rule of 30 schools to a zone, then you are entitled to five zones. Currently, you have three zones. Whatever the outcome of the taskforce, we can only add you two additional zones to effectively administer the educational services in Mutomo District.

Mr. Mwangi: Mr. Speaker, Sir, the Minister in answering the Question, has admitted that the district is short of two zones. I do not see the reason why he should wait for a report while he is already aware that the district has a shortage of five zones. This does not only affect Mutomo. The entire country is in shortage of officers who are supposed to be supervising and getting the educational system running properly. What plans does the Minister have, even before the report is out, to assure the nation that they have enough officers covering the country, including the new districts?

Prof. Ongeri: Mr. Speaker, Sir, if the hon. Member listened to me very carefully, in part “c “of my answer, I said that we have now engaged both the Ministry and the Public Service Commission on the staffing norms of the Ministry of Education. Once this decision is made, then the new posts will be advertized which, obviously include the new zonal offices. Once they advertize, qualified officers will apply for the posts and we will, accordingly, post the two to Mutomo District.

Mr. Njuguna: Mr. Speaker, Sir, while commending the Minister for the answer, could he indicate to this House what the Ministry is doing with regard to supplying vehicles to the new districts in order to enhance effective administration and supervision of education in our schools?

Prof. Ongeri: Mr. Speaker, Sir, in the Supplementary Estimates, my Ministry got a little money; more than Kshs40 million. Currently, the tendering process has reached an advanced stage, on the type and model of the vehicle that we want to buy for some of the remote districts that have not been able to receive vehicles. It may not be possible to get every district a vehicle because if you remember, originally we had 76 districts but now we have 286 districts. That creates a nightmare for us in terms of transport facilities for our officers. However, as a Ministry, we have petitioned the Treasury to include additional resources in ensuring that we offer transportation to the new districts.

Mr. I. Muoki: Thank you Mr. Speaker, Sir. The Minister has said that he will create new zones once he gets the report of the taskforce. Could he assure us that the taskforce will finish its work in time and implement its findings so that we have the zones appropriately covered?

Prof. Ongeri: Mr. Speaker, Sir, I gave the taskforce six months. The earliest that I expect the preliminary report is next week. I will expect to get the final report sometimes between August and September. Despite what the report says, I will do an accurate analysis and if there are any areas of omission or commission which may not have been attended to, we will go back to the stakeholders to refine the document and finally prepare both the Sessional Paper and Bill to Cabinet, which will eventually find its way to this House for further debate and policy enunciation and legal framework.

PERSONAL STATEMENTS

INVITATION TO NINTH NATIONAL PRAYER BREAKFAST

The Assistant Minister for Agriculture (Mr. Ndambuki): Thank you Mr. Speaker, Sir. I stand to issue a personal statement as the Chair of the Ninth National Prayer Breakfast.

Hon. Members, I am sure that by now, you all have invitation cards. On Thursday, May 26th 2011, the day after tomorrow, Kenya will host its Ninth National Prayer Breakfast. The annual event has slowly but surely started to entrench itself in the national calendar. It has been in many ways, one of the most positive things we have to do together as a shared leadership. It is one of those rare occasions where our fellow countrymen see many of us from the august House agreeing together and united.

Hon. Members, this is your event. It is you who is hosting this event. Time and again, I get comments from people all over the country who watch the prayer breakfast from live cameras about how encouraged they are that we would even do something like this. There is some sort of intangible quality that seems to come across the people, that we, in the House, actually care enough about our national destiny; to pause and pray before we enter again in the rough and tumble of the national debate.

Therefore, I would like to take this opportunity to invite all of you to note that date and try to make a point to be with us. Keep in mind that this is our event alongside other events in leadership from other walks of life in this country. Therefore, it behooves us to attend and participate.

Hon. Members, I would like to take this opportunity to thank you so much for your generous contribution because we have managed to collect from Parliament, more than Kshs1 million, to fund this event. I would like to thank you very much for that generosity. This year, we have contributed more than Kshs1 million from this House. In fact, even His Excellency, the Right hon. Prime Minister and His Excellency the Vice President have also contributed to this event just to show its importance. When I participate in other national prayer breakfasts in the world, I am often asked about the gathering here. In fact, many have heard about our event and have spoken about it and the desire to attend. Our event which is organized by this Parliament is second to the one of the US. In Africa, there is no one else who holds such an event. Therefore, I would like to thank you, hon. Members.

So, I would like to thank you, hon. Members, and ask you to come because we will also have an opportunity to introduce hon. Members to the participants. Since this time round Parliament is still on, I would like to urge each one of you to attend. I have come to learn how much our event means on the international calendar of this sort of events around the world.

Let me also remind you of our second session that will be held following the prayer breakfast session itself. Three years ago, Speaker Marende suggested that we, in some way, begin to initiate what he called “national conversation session”. The national conversation session will be for the leadership of the country – not for us as political leaders but for us and leaders from other professions such as the education sector, the Government, the private sector, the religious community, *et cetera*. So, I would

encourage as many of you as possible to come and participate in the national conversation session.

In case there is a Member of Parliament who has not received his invitation, you can see me so that I give you one. We are supposed to be seated by 7.30 a.m. The event will kick off at 8.00 a.m., and it will last for only two hours. So, hon. Members, you are all invited. I remind you once more that it is your event. It will be held at Safari Park Hotel. I hope to see all of you there.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Hon. Members, please, note that that is an important national event. That Statement puts you on notice and extends invitation to all of you to come and join, among others, His Excellency the President and your colleagues as well as other Kenyan leadership, to pray for this nation. So, come and provide leadership in prayer at Safari Park Hotel on Thursday, 26th May, 2011, at 7.30 a.m.

Yes, Member for Juja!

REBUTTAL OF REMARKS CONTAINED IN HON. MBAU'S PERSONAL STATEMENT

Mr. Kabogo: Mr. Speaker, Sir, I rise to make a Personal Statement, under Standing Order No.76, regarding an incident which occurred within the precincts of Parliament as well as regarding a Personal Statement made on the Floor of the House by hon. Elias Mbau on Thursday, 12th May, 2011.

First and foremost, I think it is unfair for hon. Members to use the Floor of the House to clear themselves of mischief that may well be attributable to their acts, without their counterparts having the right of reply. This is a case where the aggressor ran to the House to accuse the victim.

Mr. Speaker, Sir, I am accused of uttering unpalatable words at a public meeting in Nyeri. It is true that I was at a meeting in Nyeri. The words I am accused of uttering are "*Huyu alitoka kwa mzungu na sasa ako nasi.*" These words are a translation. Video tapes are available for anyone who would wish to acquaint himself with the truth. Facts are facts and remain as such. As Elvis Presley said, truth is like the sun. You can shut it out for a while but it will not go anywhere.

I am also accused of accosting the Member for Maragwa along the Speaker's Walkway. In his Statement, he has mentioned three hon. Members as having been present when that happened. They are hon. Baiya, hon. Muturi Mwangi and hon. Peter Kenneth, though the name of hon. Peter Kenneth is missing from the HANSARD. I would want to table a copy of a Statement by hon. Mbau as contained in the HANSARD. I do not want to read mischief into this. I think this was a typographical error. He was at the scene. It is only that he took off quite fast.

Mr. Speaker, Sir, you are also aware that Parliament Buildings are covered by CCTV cameras. The corridor on which I was accused of having accosted the hon. Member is well covered by CCTV cameras. I request that the Serjeant-At-Arms does a preview of the tapes, so that we can have the true picture as regards the incident. In the company of the four hon. Members mentioned, was the Member for Chepalungu, hon. Isaac Ruto, but for some strange reasons, hon. Mbau left out his name. This was done because if hon. Ruto was asked, he would tell a different story.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Yes, Member for Central Imenti!

Mr. Imanyara: Mr. Speaker, Sir, as early as the 30th of March, I requested a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs regarding the advertisement of senior positions in the Public Complaints Commission. On at least three occasions, the Minister promised to give that Statement but it has not been given, and I am just wondering whether the Leader of Government Business could let us know when it will be given.

Mr. Speaker: Deputy Leader of Government Business, are you aware as to when this Ministerial Statement will be available?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I will consult further and establish why it has not been brought to date, and---

(Mr. M. Kilonzo entered into the Chamber)

Mr. Speaker, Sir, since the Minister has come, I would like him to respond.

Mr. Speaker: Minister for Justice, National Cohesion and Constitutional Affairs, if you followed the proceedings just before you stepped into the House, will you, please, give a response? Indicate when the Ministerial Statement will be delivered.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, actually, that is an in-house problem because the Ministerial Statement is with my Personal Assistant. I can deliver it tomorrow, because I have met him on his way out. I sincerely apologize.

Mr. Speaker: Tomorrow morning?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, Mr. Speaker, Sir.

Mr. Speaker: It is so ordered!

Yes, Member for Kisumu Town East!

Mr. Shakeel: Mr. Speaker, Sir, on 4th May, 2011, I requested a Statement from the Minister of State for Immigration and Registration of Persons in respect of a particular musician who was given permission to perform some very immoral concerts at the Kenyatta International Conference Centre (KICC). I have not yet had the opportunity of getting a reply.

Mr. Speaker: Minister of State for Immigration and Registration of Persons, where is the Statement sought by the Member for Kisumu Town East? Member for Kipipiri, perhaps you want to indicate when the Ministerial Statement will be issued?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I will follow upon the matter and try to have it brought to the House on Thursday afternoon.

Mr. Speaker: Very well!

Yes, Member for Gachoka!

INVASION OF HON. MUSYIMI'S HOME BY ARMED PEOPLE

Mr. Musyimi: Mr. Speaker, Sir, I would like to request a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security regarding

my personal security and that of my family in view of an incident which took place between 2.30 a.m. and 5.30 a.m. on Thursday, 12th May, 2011.

During the incident, heavily armed people wearing balaclavas forced their way into my house in Karen, where they stole goods of significant value. At the time, my wife and I were out of the country. The matter was immediately reported at Karen Police Station.

In his Statement, could the Minister clarify whether this was an ordinary act of crime unrelated to:

1. The association of my name to the 2012 presidential elections as an aspirant.
2. My chairmanship of the Departmental Committee on Lands and Natural Resources, which recently tabled a Report on alleged corruption in the Ministry of Water and Irrigation and its agents, which was adopted by this House.

Mr. Speaker, Sir, we discovered very strong cartels in the Ministry and, indeed, the former Chief Executive Officer (CEO) of the National Water Conservation and Pipeline Corporation was murdered.

3. The Land Adjudication in Mwea, Gachoka Constituency where some forces are unhappy about my role in the provision of title deeds to residents. The murder of Mr. Stephen Kisilu, a councilor of many years' standing in Embu County was deemed to be linked to this land question. The said Stephen Kisilu, I might add, was my late father. We did have reason to believe that the Government may have been in the know in the respect of his death.

Mr. Speaker, Sir, finally, the Provincial Administration in that area seems to be very interested in the local politics. In general terms, implementing programmes is quite an issue, especially for those officers that report to the District Commissioner. It is an uphill task to get anything done. But in particular, there seems to be apparent hostility directed at me, specifically, which culminated in the withdrawal of security in my area of residence.

Mr. Speaker: Very well! Yes, the Minister in charge of Internal Security!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I will give a Statement on Thursday, this week, at 2.30 p.m.

(Mr. Ojode spoke from the Back Bench)

Mr. Speaker: Thursday, at 2.30 p.m! The Member for Gachoka, please, note and be present to hear the Assistant Minister's Statement.

What is it the Member for Kilgoris?

Mr. Konchella: On a point of order, Mr. Speaker, Sir. You have just seen the Assistant Minister speak from the Back Bench; that is away from the Dispatch Box. Would I be in order to ask that he, therefore, moves and speaks from the right place?

Mr. Speaker: Order, the Member for Kilgoris! There is something called equity, which is part of our law. He who seeks equity must do equity. You are a Back-bencher and you are speaking from the Front Bench. So, I am afraid, I will not make any finding against the Assistant Minister.

Yes, the Member for Gichugu!

Ms. Karua: Mr. Speaker, Sir, last week, I asked Question No.679, and on a point of order raised by the Member for Mutito, Mr. K. Kilonzo, you said that you would give a ruling. He said that the matter was *sub judice*, but on that day, you did not give us a date. Is it in order for me to request you to give indication when your ruling might be ready?

Mr. Speaker: The Member for Gichugu, that is valid. As a matter of fact, my ruling is under process and I think I will, definitely, deliver it on Tuesday next week, at 2.30 p.m.

We will now move on to the next Order!

BILL

Second Reading

THE COMPANIES BILL

Mr. Shakeel: On a point of order, Mr. Speaker, Sir. The Companies Bill and The Insolvency Bill involve a lot of financial input and yet, the Committee on Finance, Planning and Trade has not been involved. This was also the case with the Limited Liability Partnership Bill and that has raised a lot of concern. Is it in order for me to request that this Bill be considered by the Joint Committees on Legal Affairs and Finance?

Mr. Speaker: Order, hon. Members! Although on the face of it, the point of order raised by the Member for Kisumu Town East may appear to be valid, I am afraid that it does not hold any water, considered alongside the provisions of the Standing Orders.

Hon. Members, we are now at Order No.8, which entails the Second Reading of The Companies Bill, Bill No.23 of 2010. According to the copy of the Bill, which I have now, this Bill was published on 31st December, 2010. That, therefore, goes to say that the relevant Committee has had a period of close to five months to consider the Bill. So, if there is any fault, then it must be on the part of the relevant Committee. It cannot be the responsibility of the Attorney-General or any other Minister, for that matter, nor can it be the fault of the Speaker. If you go by the provision of Standing Order No.111, it is very clear on what Committees are supposed to do. It provides as follows, the Member for Kisumu Town East and for the benefit of other Members as well: "A Bill having been read a First Time, shall stand committed to the relevant Departmental Committee without question put." It shall stand committed, in which case, no act is required on the part of the Speaker or for that matter, the relevant Ministry, and in this case, the Attorney-General. The Attorney-General, as a matter of fact, did his part and way back on 30th March, 2011, this Bill was read for the First Time. So, what excuse will your Committee have, Mr. Shakeel, not to have done what it ought to do, for a period of upwards three months? You are the best person to answer. I will make no directions. Just go and do your work as you ought to.

Proceed, Mr. Attorney-General!

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move, that The Companies Bill, Bill No.23 of 2010 be read a Second Time.

Mr. Speaker, Sir, I will crave leave to refer extensively to my notes because of the technical nature of this Bill. I think it must be the biggest Bill that this House has to pass, consisting as it does, over 623 clauses. Many of these clauses have subclauses and a number of those subclauses have sub-paragraphs. So, it is my pleasure and privilege to move this Bill.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, this Bill is as a result of the reform process that was undertaken by the Attorney-General in the 1990s, when he set up a task force to review the laws relating to companies, investments, partnerships and insolvency. All the stakeholders were represented in that taskforce. We had representation of such institutions as the Kenya Association of Manufacturers, Federation of Kenya Employers, COTU, National Chamber of Commerce and Industry, accountants, chartered secretaries and lawyers, particularly those who specialise in corporate practice. We had representations from eminent industrialists and so on.

Mr. Temporary Deputy Speaker, Sir, the reason why the Attorney-General then, who is the one now speaking, set up that task force composed of such personalities is because these were the people who were involved in matters related to company law on a day to day basis.

They had complained. The major complaint of the stakeholders was that the company law, the insolvency law, the law relating to investments, the law relating to partnerships, was completely out of date with the modern needs of the Kenyan society.

Mr. Temporary Deputy Speaker, Sir, the company law that we have today, Cap.486 of the laws of Kenya came into force in 1948, well before Independence and immediately after the Second World War. For students of history of the law, if they go to the library here, and check out the details of the company law which was in force in the United Kingdom in 1948 and compare it with the company law which is now our law today, they will find that it is the same, word for word, except that instead of the words “Her Majesty of the United Kingdom and Ireland”, they will find “the colony of Kenya” or now “the Republic of Kenya.” That is all.

Whereas in the United Kingdom that law of 1948 has undergone numerous changes to take into account the developments in the economic, social and commerce areas, our law has become stagnant. Therefore, it is no wonder that the stakeholders were pleading that the company law and all laws related to commerce should be reformed and amended. It is also no wonder that those who are interested in investments in this country, institutions such as the World Bank and the IMF were also of the view that a review of our commerce laws, including the company law, was long overdue.

So, that task force was set up and it worked very professionally. I can confirm that they compared the best practices; first of all, our neighbouring countries like Uganda and Tanzania who had also a similar law, but were ahead of us in reforming the laws. We looked at what they have come up with. We also looked at the laws in countries such as

New Zealand, Australia, the United Kingdom, the United States of America and other countries to see what the best practices are, as far as the company law is concerned.

This Bill which I am now asking this august Assembly to approve and to pass has taken into consideration the current trends on globalization and regional integration with particular reference to the East African Community. It reflects the present day circumstances of carrying on businesses, including modern patterns of regulations and partnership.

Mr. Temporary Deputy Speaker, Sir, this Bill has also taken into account the need to simplify registration processes by reducing the administrative burdens on the Government Departments that administer these laws to ensure that business entities are managed by their officers in an efficient and transparent manner and to provide the legal regime for the informal or *Jua Kali* sector in Kenya. That is why I will be explaining later that whereas under the company law the company is registered--- Here we now have different types of companies; a small company or a big company that can be registered under different criteria and processes.

On the issue of the registration processes, simplifying them and so on, I am glad to say that this is in tandem with what my office has done under the Rapid Results Initiative (RRI). We were the first department in the entire Government to undertake such.

Mr. Shakeel: On a point of order, Mr. Temporary Deputy Speaker, Sir. As much as the hon. speaker would like to take credit for the RRI, they were erroneously given the first position. I think it is not---

The Temporary Deputy Speaker (Mr. Imanyara): What is your point of order?

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, is it in order for the Attorney-General to say his office was awarded the first position in RRI when we know they were erroneously recognized?

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Attorney-General, you may continue.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, the hon. Member has commented on something I never even talked about. The fact of the matter is that if he is talking about the first Ministry to get that prize, we, indeed, got it and we still retain the cup. It has not gone to any other Ministry.

What I was referring to was not even that. Listen carefully. What I was referring to is that as far as RRI is concerned, the State Law Office was the first to complete that in 100 days. The area we chose for that particular RRI was the computerization of the registry of companies which was launched. Those who have been there and those who used it before, now notice the differences between what was there before and now.

The Temporary Deputy Speaker (Mr. Imanyara): Order! We overruled him. So, why do you re-visit the issue?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker Sir, the objective of the Bill is to develop a modern company law to support a competitive economy in a coherent and simple form.

The reforms of the Company law contained in the Bill rest on three key objectives:

- (a) enhancing shareholder engagement and a long term investment culture.
- (b) ensuring better regulation.

- (c) making it easier set up and run a company.
- (d) providing flexibility for the future.

The terms contained in the Bill will affect the role and responsibilities of executives as I can point out and non-executives, including finance and human resource directors.

The key features of the Bill include new obligations relating to the directors' duties, the corporate reporting, shareholder relations and e-communications. We are now into e-communications. It is all there in the new Bill. Hard copy, soft copy, all those terminologies are there under this Bill and also the responsibilities and obligations relating to indirect investors.

Mr. Temporary Deputy Speaker, Sir, the Bill also seeks to introduce various new provisions of private and public companies. The Bill seeks to introduce qualifications existing under common law principles such as those relating to the director's duties. I will be coming to them to explain how that is done.

Mr. Temporary Deputy Speaker, Sir, if I may now look at the Bill, we have Part I which deals with the preliminary matters, including definitions of various words, including who is an associate and so on. That is at page 1161. Part II of this Bill provides for the various types of companies that may be incorporated in Kenya; it also provides for the formation of companies. That is the methods for forming the companies, requirements for registration and the effects of registration. It also makes it possible, under Clause 6 at page 1172, for just one person to form a company.

Mr. Temporary Deputy Speaker, Sir, Part III provides for the constitution of the company; it provides that a company must have Articles of Association. This part also gives the Minister power to prescribe model articles of association to make the registration of companies cheaper and easier. Members, of course, will note that when it comes to, for example, the registration of societies even now, there are models – constitutions of registered societies. So, that is a concept that we have brought to the Companies Act because we would want it to cater for the big ones which are complicated and the simple companies which are operated by just a single individual. Therefore, the Minister, under Clause 17 at page 1180, has the power to come up with model articles of association which can make it easier for somebody to read and be able to register a company, maybe, instead of going to an advocate who will charge you a lot of money.

Mr. Temporary Deputy Speaker, Sir, under Part II, you will find issues such as employees' share scheme – the definition of what that means is not there under the current Companies Act. It will take care of the employees. The modern trend, as we know, is for companies to encourage employees - as part of the incentives - to own shares where they are working. It will not just be employees providing labour, directors earning their salaries and shareholders earning the profits out of the employee's sweat. The employee, in addition to his salary, is encouraged to own part of the company. In addition to the salary, he can also share in the sweat of his brow and in the profits of the company. It is a new concept that has been introduced in this Bill.

Mr. Temporary Deputy Speaker, Sir, Part II deals with company formations in general. It defines what a limited and an unlimited company is. It also defines what a private company is and what a public company is. Also in there, is a good definition of subsidiary companies, holding companies and so on.

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

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, with regard to what I had earlier stated relating to the democratic system of running those companies, you will find that under Clause 26, the company is obligated, on the request of a member, to supply all the information therein set out, which the member of that company, that is the shareholder, will want to have access to.

Mr. Deputy Speaker, Sir, under Clause 28, there is the right to participate in the profits by a member. Now, that particular clause actually forbids somebody who is not a member to participate in the profits of that company. That way, the shareholders' interests are protected.

Mr. Deputy Speaker, Sir, if you come to page 1193, Clause 48, you will find that, for the first time, we have for now been reading the name of the company ending with the word "limited". That will continue in some cases. That "limited" has been applied whether or not it is a private company or a public company. However, you find in Clause 48 that the name of a limited company will now, of course, bear the word "limited". But if that private company is also a public company, then the abbreviation "public limited company" will appear after the name with the abbreviation "PLC". This is coming for the first time under the new Companies Act. Of course, the word "limited" will still continue, particularly, where a company is not a public company. But the word "limited" under Clause 50, can be done away with, particularly in companies limited by guarantee. Normally, in companies limited by guarantee, they are formed to pursue a particular noble objective such as promoting some charitable work, social work and even some foundations. They do not use the "limited" because of the fact that they are not limited in the sense that there is a share of profits. When you see a company, where approval has been given, doing away with the word "limited," it means that, that company is more or less a charitable company and is not supposed to declare any profits. Profits are supposed to be ploughed back to further the charitable objectives of the company.

Clause 5 provides for the Register of Companies and Clause 66 gives the public and members a right to respect that Register.

Mr. Deputy Speaker, Sir, I did state earlier that it will now be possible to form a one-member company. Clause 72 on page 1205 provides for that and how it should be done among other things. It also provides that it is possible for one to begin a three-member company and after two of them resign, it becomes a one-member company. In which case, the Register of Companies must so reflect so that the rules of a company with one member apply to that person. It is also possible for one to begin as an individual, form a company and then be joined by others. In this case, one must inform the Registrar so that the laws applicable to a bigger company apply. That is provided for in clause 72.

It is also stated that if you are a private company under clause 22, you should have at least, one director. However, if you are a public company, you should have at least two directors. Something that was not very clear in the old Company's Act was that it was possible for a director to be another company because the company is a legal person in law. Therefore, it was possible to have a company but you find that the

directors of that company are another company which is a legal person. Under this new law, a director must be a natural director, like you and me and not an artificial person who is a person by virtue of the legal provisions of law. That is in clause 92 of the Companies Act.

Mr. Deputy Speaker, Sir, formerly it was possible even for minors to be directors of companies, particularly for small companies where, for example, you and your wife are the directors. You could appoint your first born who may be 17 years old to be a director of the company. It is a family affair as we may call it. Whereas that was possible, now the law states that a director must be one who has attained the age of 18 years. That is very clear. Any appointment in contravention of this rule shall be void.

It also provides in the case of public companies that the appointment of a director for a public company shall be voted on individually. I think most of you have gone to annual general meetings where it is said that so and so have offered themselves to be reappointed and the directors are voted in collectively. Now there is an obligation that each director must be voted in individually to take individual responsibility and not an enmass reappointment of directors as it happens in annual general meetings.

Mr. Deputy Speaker, Sir, there are very numerous regulations regarding how the register is to be kept and how alterations should be made and how they can be deleted and inserted again and so on. Written procedures are there. I do not have to go through them right now.

Then we have part 11 of the Companies Bill which introduces another new concept which goes into the details of disqualification of directors. Clause 130 states that in the circumstances specified in this Section, a court may make a disqualification order that a person with regard to whom the order is made shall not be a director of any company. The grounds are there. Amongst the grounds is that the director may have been convicted of an offence. The director may be disqualified over fraud that he has undertaken. Another type of disqualification is that the director has been involved in running the activities of an insolvent company. If that is proved, one cannot be a director of another company. That is because of the rule of law.

Mr. Deputy Speaker, Sir, the court can make those orders on proper hearing of the case. This is a very important clause. It is important because in this country, we have seen people running a company down and it becomes insolvent or runs into liquidation and so on. The same person goes elsewhere and starts to run another company. Who suffers? The people who suffer are the members of the public and the investors in those companies because the man is a sweet talker and so on. This law stops a person who has completely failed in running a company from running it to the ground. If one has been convicted of an offence in relation to running a company or if one has acted fraudulently in running companies, then he is not worth being a director not only in that company but in any other company. I think this is a very good thing.

You may also find people who have failed in running those companies somehow getting appointed into corporations where again the same thing goes on. They run the corporations down and so on. Therefore, this whole chapter is carefully drafted, taking into account the rights of a person to be heard by the courts before the disqualification orders are imposed on him.

Mr. Deputy Speaker, Sir, Clause 143 provides that if a person has committed those kinds of crimes abroad and he comes here, he is also disqualified from running

businesses here. This happens particularly here in developing countries where people from the so-called First World run away from their creditors in those countries where they have run down companies and somehow find their way here. This becomes a haven where they quickly make profits and become millionaires. From clause 143 onwards, such people will not be allowed to run companies here. Clause 143 onwards provides for that.

Mr. Deputy Speaker, Speaker, Sir, another thing which the current company law does is to withhold information. This sort of shields the directors to such an extent that they even mismanage a company completely. There have been cases where a number of creditors could not be paid and so on, or the directors they knew that the company was insolvent, nevertheless they continued doing business as if the company was not insolvent and incurred more debts and so on. This new law provides that the veil must be pierced. Such people will not hide behind the shield of a body corporate and hide away their properties. They will be held personally liable for the debts of the company, if it is so proved.

A number of financial institutions were formed in this country. The owners of those institutions got a lot of money, after which they withdrew it and put it into their personal accounts. The argument behind this is that it is a company, and you cannot be liable for the debts of the company. The process of getting that debt is very long and winding, through the courts and everything else; it only succeeds through sheer determination. I am glad to say that that process will now be easier according to this Bill.

Mr. Deputy Speaker, Sir, I would like to, quickly, refer to Chapter 14 and just say that to hold a share is in itself like having a title deed. Therefore, the whole of that Chapter deals with ownership of shares. Shares can now be charged and redeemed. It is just like having a piece of land. These detailed provisions are not in the current Companies Act.

Another important area for hon. Members to look at is Part 19, regarding financial statements, which have been captured in great detail. There is a distinction between a financial statement required in the case of a small company regime and the financial statement required in other companies, which do not qualify to be small companies. What is a small company? You will find the definition under Clause 347, which partly provides that the qualifying conditions are met by a company, in a year, which satisfies two or more of the conditions listed therein.

The first condition is that the turnover should not be more than Kshs30 million. The second one is a statement of financial position of a total of not more than Kshs15 million, and thirdly the company must not have more than 50 employees. If you satisfy any two of those conditions, then you qualify to be a small company, and your regime is simpler. The procedures are also simpler for you.

Mr. Deputy Speaker, Sir, the law has also created, in effect, a situation in which even the small companies can also have group companies. Now if the small companies are in a group called “the group of companies of all these companies” then the entire group would also be treated as small if it has:-

(a) an aggregate turnover of not more than Kshs750 million net, or Kshs900 million gross; or,

(b) an aggregate statement of the financial position totalling not more than Kshs375 million net or Kshs450 million gross; or,

(c) an aggregate number of not more than 50 employees.
So, that is the regime of small companies or group of small companies.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, at the beginning I stated that directors are now going to be held more accountable. You start getting the inkling of that in Clause 366, which provides for matters about which information may be required, and particularly on the directors' benefits and remuneration. I am quite sure that these are matters which my learned friend, hon. Baiya, knows about since they relate to income and law. There was a situation where the directors were really employees, but the shareholders could not get any money because their remuneration packages swallowed almost all the profits.

So, there has to be a check on the amount of money that the directors may be remunerating themselves. That is why you will now be required to give information, under Clause 366, on gains made by directors on the exercise of share option. You can employ a director and agree that if the company succeeds, he will have so many shares. What are the gains such a director will have in respect of those share options? There are also provisions on benefits receivable by directors under long-term incentive schemes in terms of contributions for the purpose of providing benefits. This may be in respect of past services of a person as director, or in any other capacity while director.

Mr. Temporary Deputy Speaker, Sir, this continues under Clause 367, where the advances and credits granted by the company to its directors must be disclosed. Guarantees of any kind entered into by the company on behalf of its directors must also be disclosed. For example, a director may want to buy a particular property and the security becomes the company. That is a very major liability of the company. So, all that must be disclosed. By the way, all the information that is disclosed must also, on demand by any shareholder or any member of that company, be shielded, so that the director can be taken to task.

What are the details? This is a very detailed law. If you look at page 1400, you will see that the details required in the case of these advances, credits and guarantees include; the amount, the interest, its main condition and any amounts repaid. Apart from the information that must be there, the director is also under duty to prepare a directors' remunerations report which, of course, will be tabled at the annual general meeting, where all the members of the company gather. Any director who does not prepare a full report on such activities is committing an offence, under Clause 374.

Mr. Temporary Deputy Speaker, Clause 414 (2) (a) gives rights to members to require an audit. I thought I should mention that as part of the rights of the members.

It is now an offence to give false information to an auditor. This was not very clear before, but if it is proved that you gave false information to an auditor then you have committed an offence under Clause 433.

Mr. Temporary Deputy Speaker, Sir, I will try to move fast because it is a big document. Another concept that has been introduced on page 1475 is that each quoted

company must appoint an audit committee which is appointed by the shareholders and not by the directors to make directors accountable. The concept of corporate governance, which we have been hearing of, is incorporated under Clause 468. This clause deals with corporate governance principles that are appropriate for the nature and scope of the business, established policies, strategies for achieving them annually, ways of measuring adherence to these policies and strategies, establishment of standards of business conduct and ethical behaviour for directors, managers and other personnel, including policies on private transactions and self-dealing and other transactions. That will be the duty of the audit committee appointed by the shareholders. It will come up with the corporate governance policy.

Whereas under the old Companies Act we just had a passing reference in the definition that there will be a Registrar of Companies, here you have a whole chapter devoted to the Registrar of Companies and his or her powers. That is on page 1495, part 24.

Mr. Temporary Deputy Speaker, Sir, as you can see, the Bill has four Schedules attached of forms and everything else. So, that task force, to me, has come up with the best law on the companies. If this is enacted, I know as a fact that it will be the best company law in this part of Africa, being the latest and taking into account the best practices from the region.

The company law is the basis for commercial activity in this country. Therefore, an early passage of the Companies Bill, which is long overdue, is required. I do hope that we shall have a very good debate here and take on board good suggestions so that we come up with the Companies Law. Personally, I am very happy that I have survived long enough to move this Bill, which has come out as a result of the task force that I appointed way back in the 1990s. It is not just a task force which looked at this. I also want to pay tribute to the Law Reform Commission, which after the task force had done its job, went and held many stakeholder meetings and so on to ensure that they come up with the best piece of legislation. This is because the Law Reform Commission falls under the Attorney-General in matters of drafting laws, but in terms of policy, it falls under the Minister for Justice, National Cohesion and Constitutional Affairs, Mr. M. Kilonzo, who has agreed to second me on this Bill.

Mr. Temporary Deputy Speaker, Sir, I beg to move.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to second.

Mr. Temporary Deputy Speaker, Sir, before I make my formal presentation, I really think we should also appreciate Mr. Murungi, who was my predecessor in the Ministry of Justice, National Cohesion and Constitutional Affairs. He is actually the one who started this work and I think credit must be given where it should. Although he started his politics as an academic, he has proven that he is a politician of vision because this is an idea whose time has come.

In supporting this very important law, I am a little surprised that the House is not full. This is because this is perhaps one of the single most important laws we are passing after the Constitution. You will be well aware that modern trade or global trade and competition is about the facilities that are available in each country. Although they will not tell you freely, the fact of the matter is that global trade nowadays is attracted by two things. The first one is legal infrastructure; and legal infrastructure is the Bill that the hon.

Attorney-General has presented this afternoon. We owe him a debt of gratitude for going through this process for a period exceeding ten years.

Mr. Temporary Deputy Speaker, Sir, the other thing that global competition looks for apart from legal infrastructure is governance. Since 27th August, last year, this country has shown the world that it can produce international best practice governance. Therefore, I think the timing of the presentation of this Bill is now.

I have heard some murmurs from hon. Members, who are already criticizing the Limited Liability Partnership Bill that we passed in Second Reading only recently. I want to tell and persuade them very humbly that they are making a mistake. This is because to commence blocking the Limited Liability Partnership Bill is to commence telling this country that notwithstanding the fact that we have a new Constitution and governance, nevertheless, we want to proceed and continue managing partnerships in the old way, which has given way to many challenges. I would rather recommend to hon. Members who have any questions to pose, to put those questions to the hon. Attorney-General or my office, so that we can address these issues as quickly as possible before we reach the Third Reading of that Bill. The same thing applies to this Bill.

Mr. Temporary Deputy Speaker, Sir, if you gave the English the English Companies Act of 1948 that the hon. Attorney-General has referred to today, they will reject it because it is archaic law. They revised it in 1970. They have revised it even further since the establishment of the European Union. Therefore, our time has come. My only disappointment is that it has taken so long to bring it.

Mr. Temporary Deputy Speaker, Sir, allow me without anticipating debate, to recommend very seriously the next Bill which will be the insolvency law because they go together. Can you imagine, over all these years since 1948, we have had a company law that combined registration of companies and their management, including auditing and at the same time, it is also the one which covered such things like insolvency and so on?

The Vision 2030 that this country has embraced over a number of years is encouraging us to look forward and to stop looking behind us and using archaic practices.

One of the most beautiful attractions of this law is the challenge that this country is facing on employment. I want to say this without fear that the foreign direct investments in the world, is only attracted by quality company legislation. It is only attracted by quality political management systems as envisaged by the new Constitution. Therefore, if this country wants to compete with the rest of the African countries and, for that matter, Asian tigers and even European countries from the old Russian bloc, the timing of this law is very essential. The sooner we pass it, the better.

Mr. Temporary Deputy Speaker, Sir, whichever investor brings money into Kenya, automatically by investing, they start creating employment by recruitment of secretaries or hiring lawyers to prepare the contracts or even buying toilet papers for the toilets because all human beings must go to the loo.

This is an essential part of revenue increase. I want to remind the country that under Article 203 of the Constitution, we have assigned 15 per cent of annual revenue to counties. Therefore, the sooner we bring forth quality law even before we pass the law on the management of counties--- It is very important we realize that even if you prescribe 15 per cent of revenue to counties, but you do not open up global trade for Kenya by attracting people to our legal infrastructure on companies, then devolution will become just that, a word appearing in our Constitution.

For the benefit of those who are interested will be the law that will enable companies that want to do tourism, banking, insurance, to invest in agriculture, fishing, mining, exploration in oil, taking contracts for construction of our infrastructure and, above all, even areas like the film industry. Therefore, the timing of the law is very good.

I would like also to mention that in the modern world, an investor in California today only needs to go on the internet to check the legal regime in Kenya. I want to tell you without fear that any lawyer advising an American who wants to invest in Kenya will tell him outright that the law of companies in Kenya is that of the last century. In fact, it is of the 19th century because that is where the British got the 1948 law.

Allow me also to mention another mischief that the Attorney-General has not mentioned. This is the miasma of dirt that has accompanied land-buying companies in this country. People who go out there, they start land-buying companies, they fleece the shareholders; they mistreat them; they steal from them; they go and live wonderful lives, but in the end, the shareholders are limited to court cases that run forever. One of the most attractive aspects of this law is the power given to courts under Clause No.478 to order an inspection of a company and an investigation, so long as an application is made by shareholders.

Kenyans are tired of being cheated, particularly by land-buying companies and the like whose cases when you see them in the Press are only useful to Kenyans for enabling newspaper companies to sell those newspapers, but not for the investment that the shareholders thought they were making.

Recently, this country has also been very badly hurt by the pyramid schemes, otherwise internationally known as *ponzi* schemes. This law that is on the Table will be a cure for those thieves and people attracted to taking investors' money.

The pyramid schemes of Kenya even stole money from worshippers. They were organized to collect money from people who were going in good faith to churches. They were organized by people who were taking advantage of the faith of our citizens. Therefore, this requirement for registration of proper management of companies is long overdue, so that our people are not exploited as they have been.

The other thing is that this country, quite apart from foreign direct investments, is a very attractive destination for major corporations based overseas. You have seen recent reports that up to nine major corporations, including banks like HSDC, are now interested in opening their headquarters in this country.

The best way to speed up this process in order to create employment and open up our country for investments is to have a law that is widely recognized. In fact, speaking for myself, I salute those major corporations that have already opened up offices in Kenya even before we modernize our law and we reform it.

The other one is protection of shareholders as the Attorney-General has mentioned. The law that is on the Table will bring greater protection of shareholders, so that the share certificate is recognized as a record of title and the shareholder will have greater protection, including the cost.

Allow me to talk about foreign companies and encourage hon. Members to look at Part 29 of the Bill starting from Clause 598 to Clause 607. This is a very fertile ground for attracting companies from all over the world, so that they can come and employ our people, take advantage of the major location of this country relative to the East African

Community and COMESA, so that our people can gain further benefits from incorporations.

The mechanisms introduced including electronic transfer of documents is really a revolutionary concept that I want to salute the hon. Attorney-General, the Law Reform Commission and many others who have participated in this law including my own Ministry.

The other one is takeovers and mergers. If you look at Clause No.314 onwards, you will find that for the first time in this country, we have made provisions. We are tabling in this House proposals for managing takeovers, so that they do not occur under the table or in darkness like the mating of cockroaches. The timing of these proposals is very important, so that the public can participate and be aware of companies that are merging or are proposing takeovers. You will find the Capital Markets Authority expressly mentioned in those provisions.

The other one is auditors. I have a lot of time for professionals of this country. However, the shareholders of companies in Kenya have suffered greatly over the years because of inadequacies of the legal provisions regarding how companies are audited and how those reports are made available to them. For this reason I recommend the Bill.

The other one is debentures. They are also provided for. For the first time, express provision is made to enable companies to tap capital without necessarily just going out there, borrowing direct loans which are highly expensive. Debentures are also provided for. They are an essential source of capital for companies. The provisions in this Bill will enable companies to take advantage of them in a manner that taps the potential of Kenyans.

Mr. Temporary Deputy Speaker, Sir, recently, this country was surprised to know that the recent electronic transfer of funds moves close to, if not, more than Kshs1 billion a day. Therefore, the opportunity in this country to harness savings for the benefit of revenue generation in this country is very important. As I have said from the beginning, one of the most attractive features of this Bill is the capacity of the court to order investigation of companies where shareholders are being misled or cheated and, above all, the method of managing the documentation.

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

(Question proposed)

The Minister for Environment and Mineral Resources (Mr. Michuki): Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill that the Attorney-General has brought before this Parliament because time has come to continue making our laws current and relevant, following what we have done in this country in terms of having a new Constitution. The tabling of this Bill is very timely. I think this law will assist especially at a time when we are working very hard to attract investments and trade. Kenyans continue to manage and even form new companies in this country. The culture of management of companies is taken care of in this Bill. The responsibilities of directors whether they are shareholders or purely people of capability who have been appointed by shareholders---

The directors in every company must be prepared and, indeed, they must be forced by law to take their responsibilities seriously. This is to take care of the shareholders' interests and properties and also to make sure that the bottom line is acceptable to the investors. Unless these conditions are met, and made by law very clear, that they are the basis on which businesses would thrive, it would not be proper for directors to be permitted to do things which are not in the interest of the shareholders as we have seen in many companies. This is particularly the companies that bought coffee farms and other farms with many cattle and other things. However, all those farms have now disappeared because of poor management.

Mr. Temporary Deputy Speaker, Sir, not many people know that poor management has reduced the planted acreage of coffee in Kenya by 85,000 acres. This is roughly more than one-third of the coffee that used to be produced in Kenya. Consequently, the production of coffee at a time when the prices are the best ever is very low because coffee companies were mismanaged. However, we must continue to learn from the mistakes we make. The worst thing we could do is to repeat the same mistakes.

The Companies Act must this time make it clear that where a company wants to borrow, that responsibility must not be placed on the directors. The lending institutions must examine the viability of the company and not depend on the guarantee of directors. I hope the Attorney-General will take note of the fact that no longer in future shall we have lending institutions requiring directors to pledge assets other than those that are the subject of that borrowing. This is because these have nothing to do with the business. Any borrowing that any bank or lending institution has to give must be based on the viability of the company and not on the guarantees of the directors. So, I would request the Attorney-General to make sure that the aspect of borrowing and the aspect of security are outlawed in this country so that companies do not depend on what assets Michuki has because of that guarantee, but more on the business that that company will conduct to ensure that the company will repay the loan. If they are not satisfied, then obviously it will be foolish on their part to lend just because they are guaranteed by directors. That is one point I would like to emphasize in so far as this law is concerned.

Mr. Temporary Deputy Speaker, Sir, the existing law requires that if a company has to go public it must have published its accounts for not less than three years so that those who are investing can see and assess the performance of that company over that period. In my opinion, the period of three years is too short. I think companies should be required to publish their accounts for a period of five years before they qualify instead of three years.

We need investments now than ever before. Our target within the Vision 2030 to create a society that no longer sings about poverty is a commendable one, but it must be supported by laws that encourage more and more assets and earnings. It should also encourage more and more people to get out of poverty.

Mr. Temporary Deputy Speaker, Sir, sometimes, I wonder as I listen to the debate in this House, whether we came here to praise poverty, or whether we came here to promote investments and trade. There is too much talk about poverty. Yes, by all means, we are aware that poverty is not a very good attribute to anybody but we are over-praising poverty at the expense of other opportunities. Instead of discussing the variety of opportunities that will get our people out of poverty, we seem to have been employed in this House to praise poverty. I do not think that is why we came here. We came here to

seek opportunities that will improve the living conditions of our people. That is where our minds should be.

With those few remarks, I beg to support.

Mr. Baiya: Thank you, Mr. Temporary Deputy Speaker, Sir. I also wish to support this truly very timely Bill. I support this Bill, first, because it seeks to repeal a piece of legislation that has done injustice to this country for so long – that is the old company law. The old company law was borrowed from the English system that dated way back to 1948. Basically, legislation is normally meant to serve the economic needs and dictates of a country, particularly with regard to companies and the most effective mode of conducting business. It, therefore, always follows that the business environment and conditions keep changing. When legislation does not keep pace with the trading practices, challenges and so on, it exposes all the players in the country to a lot of mischief, crimes and general breakdown of the company law.

Mr. Temporary Deputy Speaker, Sir, even as we put this legislation in place, we should not lose sight of the fact that even within the English and international commercial system, there are challenges. There was the ponzi scheme. Such schemes are simply not a monopoly in Kenya. We had the Enron case in the United States (US) in the year 2000 that still demonstrated that there are a lot of challenges that need to be taken into account. Indeed, even the current global economic crisis has to do with some of the problems posed by company directors and chief officers - specially coming from the US - where we see the chief executive officers paying themselves exceedingly hefty payments and also engaging in speculative practices, making decisions on behalf of the company that do not reflect the best interests of the company. Those decisions are meant to artificially create the impression of huge profits with a view for the directors and chief executive officers to benefit from bonus scheme arrangements and so on. That is happening in the international system. But in the local scenario, we need to worry about those problems. We have carried forth all the rot that has been generated in the historical evolution of companies, especially from the English system.

Mr. Temporary Deputy Speaker, Sir, if one was to look, for instance, at the process of incorporation of companies, the whole idea of the company is to create an avenue for interested traders or investors to acquire a vehicle through which to conduct business under the benefit of limited liability concept, which restrict their liability to what they have invested in the company. However, in our particular experience, that has been grossly abused. Companies get registered not to engage in business, but even to conduct fraud. We have seen companies being formed to access illegally acquired properties and funds. It is even on record that some companies have been formed to conceal the names of those who are doing that. The legislation, I hope, will seal those kinds of purposes or scope of the company registration to ensure that it is defined. Rather, the companies are being incorporated for very specifically legitimate purposes.

Mr. Temporary Deputy Speaker, Sir, we are also party to experiences of the Office of the Registrar of Companies. Without a strong enforcement mechanism within the Office of the Registrar of Companies, there is no doubt that companies that get formed and do not actually achieve their purposes. They ought to be expeditiously dissolved so that the register is kept clear and clean.

That brings me to the conditions of the maintenance of the Office of the Registrar of Companies. Under the current set-up, members of the public who desire to do a public

search for existing companies, be they public or private, have a lot of problems accessing that information. Those are basic prerequisites. That information should be managed and maintained by the Registrar of Companies so that members of public can access it expeditiously and get informed to make the decisions that they desire. Indeed, some of the perpetrators of fraudulent transactions make use of that problem in the Registrar of Companies to ensure that they form companies and even manage to conceal their identity, so that members of public or anybody else who wishes to know have no access. Those kinds of practices must, indeed, be brought to an end, if the legal creature of the company is going to deliver the public good for which it is meant to do.

Mr. Temporary Deputy Speaker, Sir, perhaps, I also want to uphold the Bill especially for the provisions regarding the directors. I want to support the speakers who have spoken before me. In this country, we have cases of people who have established companies and are allowed to--- It is like they become rogue directors. They operate completely oblivious of the law. They conduct themselves in complete abuse of the laws and so on. In other words, the standard expectations are that the directors of a company will act in the best interests of the company, will not involve themselves in conflict of interest and that they will also ensure that proper records, returns and all other documents are maintained and held appropriately. All those things have been disregarded in practice and, as long as the Office of the Registrar of Companies and the Minister are not sufficiently in a position to monitor and enforce the law, we may have the best of legislation but impunity that has been allowed to thrive will continue to thrive if the consequences and penalties are not visited upon those who are tempted to default. The current law is very clear.

Mr. Temporary Deputy Speaker, Sir, the law is also very clear in providing for situations where the Corporation Bill would deny those who are guilty or those who are involved in malpractices to enjoy the protection of the Companies Bill. The challenge again, even under the current law, has been impunity. There are many incidences where the law ought to have taken its course but nothing has been done. In this regard, we are saying that irrespective of the kind of law we come up with, in the absence of a clear enforcement mechanism, it would still not deliver to Kenyans. We have some cases in mind that have also been mentioned like the pyramid schemes. These are companies that were formed by Kenyans. They were registered and after they committed serious crimes; collected money from ordinary Kenyans, some of whom relied on their trusted peers to make decisions to invest in these companies, they closed shop and disappeared. The Government cannot tell Kenyans who these directors were and what action has been taken against them, if not for anything else, to deter similar conduct in future and more so, to restore the confidence of people of this country with regard to governance of companies.

There are also issues that have been touched on in this new Bill that are also very relevant particularly to governance issues and management of companies, more so, the area of financial providence. Public companies are public institutions that are supposed to interact, not just with the shareholders but also with other members of the public in general. They deal with financial institutions and those that they engage in business with. So, the stakeholders of these companies are the entire economy and the entire public. This also includes the employees. The manner in which these companies are run is not just a matter for the directors alone or even the shareholders, but all stakeholders have

legitimate interest. This is a welcome aspect that this Bill has made provision for, particularly with regard to the management and transfer of shares.

Under the current law, we have a situation where companies that are expected to maintain a share register do not do it. Even where they do it, you will find that there is no established mechanism of upgrading shares. You may find that a member who bought shares 10 years ago at Kshs1, 000, it becomes a matter of guess work to determine what that member is entitled at the end of the year because the share register is not maintained. This is particularly serious when the shareholders are gullible citizens, as some of our people have entrusted the companies to themselves. The aspect of share management has been notorious when it comes to transfer. It has been found to be a standard practice that when companies and directors want to defraud members, they use the share register to duplicate shares without due regard to the maintenance of the original value of the shareholders and they distribute the shares to their cronies, friends and supporters whom they expect to depend on, in order to maintain them in offices. At the end of the day, you will find old shareholders whose contributions have helped to bring up the company losing out to newcomers who take up the benefits. This is a practice all over the country. We expect that the Office of the Registrar, having been furnished with the right information, will ensure that there is clear and proper filing of returns to check on potential abuses that would affect the whole concept of running a company.

Lastly, I would like to say that the role of the Judiciary is very critical. We have seen that even with the best law, if you do not have a proper functioning court, the interpretation and enforcement of these rights takes the shareholders and all the players nowhere. In case of a dispute relating to directors and shareholders with regard to elections and handling of the company's assets and properties, we have seen serious flaws arising from our judiciary. It cannot be said to have established any system that lawyers can use to competently advise their clients. They cannot say that based on what the court may have decided on previous cases, this is what we predict. Instead, we find litigations pending within our court system year in, year out, while the problem that those who went to court wanted to solve lingers on. We have notorious cases, for instance, where one company in my area in Kiambu, belonging to ordinary shareholders lost a piece of land of about 530 acres to a forced sale by the court for a paltry Kshs1 million. This process was sanctioned by the court. That tells you that our courts have played a very big role in causing the problems we have today in the Company Law System. Otherwise, the Register is very much welcome.

However, we still expect to continue to monitor the implementation, identify where there may be weaknesses and loopholes and continuously ensure that we update the registration so that it delivers to the best interests of the economy and to the country.

With those remarks, I beg to support.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir, for this chance to contribute to this important Bill. First of all, let me thank the Attorney-General of the Republic of Kenya for the bold manner in which he has presented the Bill to this House. I am excited because I could note from the presentations that wider consultations were done by the Attorney-General's Office. The Kenya Association of Manufacturers, COTU and the lawyers associations were also consulted. Their views, suggestions and ideas are properly incorporated in this Bill. I would have wished that views from KNUT and KUPPET were also embraced and incorporated in this important Bill. Our country

requires a Bill of this nature if we want to improve the investment climate in this country. Those countries that are advanced and have modernized their company laws like Malaysia and Korea have many companies. Therefore, it is very appropriate and timely that this Bill has been brought to this House for review and passage.

Mr. Temporary Deputy Speaker, Sir, globalisation enhances commerce and trade in our country. If our laws are also in tandem with the changes taking place in the world, new investors will also come to this country and create job opportunities for our youths. There are companies which have already exited from this country, an example of which is the Overseas Trading Company, which used to be quite vibrant in the early 1950s. This means job opportunities got lost. The Rift Valley Railways Company has not done much even in terms of improving the company's image, or creating adequate job opportunities for our youths. This is an investment which needs to be checked by the new legislation.

We have seen big companies investing in this country and improving the revenue base for our country. Examples are the British American Tobacco (Kenya) Limited, the East African Breweries and Bata Shoe Company Limited. Even small companies have done a great job in this country. Revenue collection is very important if this country is to grow socially and economically for the advancement of the population of this country. We need an increase in industrial, financial and mining investment in this country. In order to attract investment, we need a modern law. We need to have small and big cars assembled in this country, so as to improve the economy of this country.

Mr. Temporary Deputy Speaker, Sir, a good investment climate will translate into improved security. Security is a very important component in terms of economic development. When there are no jobs, the youth become idle and, consequently, resort to crime to earn their livelihood. This law will create the necessary investment and reduce insecurity. It will enable the youths in this country to improve their income. The performance of the tourism sector will also improve if this law becomes a reality. The GDP of this country will also go up. Again, this is in line with our Vision 2030, under which we envisage to industrialise the whole country by the year 2030.

This Bill encourages private and public investment in our country. This is a new development, which will be supported by this law. We have seen stockbrokers in this country go under with massive resources of poor Kenyans. If this law was in place a decade ago, Kenyans would not have lost their money. Millions of shillings belonging to Kenyans have been lost through stockbrokers and pyramid schemes. We have seen people commit suicide in this country for lack of this very important law. We have seen the pioneer of pyramid schemes jailed for almost 100 years in the United States of America (USA). So, our laws should provide for adequate punishment to those people who do not follow the laws of this country.

Mr. Temporary Deputy Speaker, Sir, it is also envisaged in this law that workers in various companies will have an opportunity to buy shares and earn salaries at the same time. Companies which have been involved in contraband and counterfeit goods will also face very heavy penalties. It is indicated in this Bill that a fine of Kshs100,000 will deter people from indulging in such activities. There is an important provision in this Bill, which states that a new company will be registered within 21 days. This will attract more investors and bring in funds from all over the globe. It will enhance confidence amongst investors and bring about competition amongst them.

This law outlaws bogus companies. Such companies will cease to operate as heavy penalties will be slapped on their owners. In the recent past, some people have been minting money. Fake currencies have been circulating in our economy. The Banking Fraud Unit at the Central Bank of Kenya must rise to the occasion because the image of this country is getting tarnished. We should not allow idle people to continue enjoying rights which do not belong to them. Jaws must be opened for those people who are making millions of shillings through fraud.

Mr. Temporary Deputy Speaker, Sir, this is a very timely Bill. Therefore, I fully support it.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, there being no other contributors, I call upon the Mover to reply.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I really want to thank hon. Mutula Kilonzo, who seconded this Bill. I also want to thank hon. John Michuki, hon. Njoroge Baiya and hon. Njuguna for their positive contributions, which clearly highlighted the spirit of the Companies Bills that we are now enacting into law. I am very grateful for the comments they have made.

With those few remarks, I beg to reply.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Mr. Ethuro): Next Order!

Second Reading

THE INSOLVENCY BILL

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I think I under-estimated the length of time it would take to debate The Companies Bill. I have prepared to move this Bill, but I have not come with my notes on it. So, I cannot move it today.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, the Attorney-General had already indicated that hitch to the Chair.

(Bill deferred)

Next Order!

THE NATIONAL CONSTRUCTION AUTHORITY BILL

The Minister for Public Works (Mr. Obure): Mr. Temporary Deputy Speaker, Sir, I beg to move that The National Construction Authority Bill be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir, this Bill has been sponsored by both the Ministry of Public Works and the Ministry of Roads. In addition, extensive consultations have been carried with other infrastructure Ministries of Government namely, the Ministry of Housing, the Ministry of Water and Irrigation, the Ministry of Transport, the Ministry of Energy, the Ministry of Nairobi Metropolitan Development, Office of the Deputy Prime Minister and Ministry of Local Government and the Ministry of Agriculture.

The Bill seeks to address various challenges in the construction industry with a view to making the industry more responsive to national development goals and aspirations. As you will appreciate, the construction industry is the core of infrastructure development and maintenance. It relies on professionals, contractors, skilled and unskilled workers to execute all projects undertaken in the country. You will recall that way back in 1967, the Government formed the National Construction Authority, whose objectives then were to assist indigenous contractors to develop their potential and to meaningfully engage in the various activities within the construction industry. The corporation met its mandate at that time, but collapsed because many contractors defaulted on their financial facilities and obligations. Consequently, there was a huge vacuum created. There was a long period of absence of a legal and institutional framework which was required to stimulate, improve and regulate the sector.

Over the recent past, many local construction firms have collapsed. Some have been deregistered while others have even been downgraded. On the other hand, we also know that the construction industry has experienced substantial growth over the years. In the latest economic survey, the industry posted the second highest growth rate of 14 per cent, only exceeded by tourism. However, despite this substantial growth, the industry faces many challenges. Among the challenges is the fact that today many major works are being undertaken by foreign firms. This is not necessarily a welcome move and it is something that we feel should be addressed over time. This happens because we do not have adequate capacity in the local construction industry.

Mr. Temporary Deputy Speaker, Sir, furthermore, the construction industry is fragmented, lacking in skills and organizational capacity and, therefore, we cannot take advantage of the opportunities available nationally and within the region. The local industry, further, lacks a legislative framework for centralized registration. Therefore, this leads, again, to fragmentation of the registration process. Therefore, you will find situations where Government Ministries are doing their own separate registration for administrative purposes. There is no central registration mechanism and, therefore, we cannot discipline contractors. If one contractor has been found to do a shoddy job in one Ministry, he quickly moves to another Ministry and enjoys the same privileges, because he can work in other Ministries even when he has been blacklisted in another Ministry. This is all undesirable and the consequence of all these is what we have seen, including collapsing buildings in urban centres often occasioning loss of lives. We have seen poorly constructed infrastructure, delays in completion of works with cost overruns, pending bills and stalled projects all impacting very negatively on the national economy.

We have seen that because of the inability of local firms to undertake meaningful construction assignments outside Kenya, of course, the entire economy suffers. We have not been able to enjoy foreign exchange earnings from services which we ought to be rendering, particularly in this region where our economy is the most vibrant.

Mr. Temporary Deputy Speaker, Sir, you will also recall that Vision 2030 Development Framework banks on an efficient infrastructure network for sustainable economic development. For this Vision to be a reality, the construction industry has a crucial role to play in the development of high quality infrastructure which is critical for socio-economic transformation. Therefore, unless addressed, the current weaknesses will render the construction industry, in its present state, incapable of executing all the anticipated projects within the Vision 2030 and beyond. There is, therefore, a pressing need to develop and advance the local construction industry to enable its meaningful participation in the construction assignments to be generated under the accelerated developments in Vision 2030 and beyond.

This is why we propose this Bill which specifically seeks to provide a legal and institutional framework for the development of the local construction industry. This will be achieved through capacity building and training as well as registration and regulation of contractors. Specifically, the mandate of the National Construction Authority will be to register and accredit contractors and regulate their activities in the construction industries. It will also have the mandate to register and accredit skilled construction workers and site supervisors. The additional functions will be to promote and stimulate developments, improvements and expansion within the industry. It will also make recommendations to the Government on matters affecting or connected with the construction industry and more broadly, to seek ways in which to reduce the cost of construction.

Mr. Temporary Deputy Speaker, Sir, the proposed Authority will not facilitate contractors with financial assistance and hiring on credit of plant machinery and equipment, which can satisfactorily be covered by the banking sector and the Ministry of Roads, through the Mechanical and Transport Department. Therefore, we have tried to keep away from engaging in activities that led to the collapse of the former National Construction Authority. We are keeping clearly away from those functions and concentrating mainly on streamlining the sector, centralizing on the registration of contractors and making sure that the industry is focused properly on the key areas to enable it to move forward.

Mr. Temporary Deputy Speaker, Sir, this Bill will have financial implications to the Exchequer because we will require support to the tune of Kshs225 million over the next three years to facilitate the establishment of offices, appointment of staff and initial core activities of the authority until it becomes self-sustaining.

In conclusion, I want to say that the Bill is fairly simple and straightforward. The Bill is structured in six parts with four schedules. Clause 1, for example, is short title and commencement. Clause 2 covers definitions of terms used in the Bill. Clause 3 relates to the establishment and incorporation of the National Construction Authority as legal entity with the headquarters in Nairobi under Clause 4.

Clause 5 stipulates the functions of the authority. Clause 7 talks about the membership of the board which will consist mainly of seven members drawn from the private sector stakeholders with four members representing Government Ministries involved in infrastructure development and one member appointed by the Minister from the special interests groups.

It is a fairly straightforward Bill. I appeal to hon. Members to support it because it will help us a great deal in ensuring that the reforms currently under place are completed for the benefit of the economy as a whole.

I, therefore, wish to move and request my colleague Mr. Franklin Bett, the Minister for Roads to second this Motion.

The Minister for Roads (Mr. Bett): Mr. Temporary Deputy Speaker, Sir, I beg to second this Motion.

The reasons which have been given by my colleague are, indeed, what we anticipate this piece of legislation will achieve once it is enacted. The precursor of this institution we are proposing is National Construction Corporation (NCC) which was established in 1967 and collapsed in 1998. This institution we are now proposing, to me, should have been established immediately when the National Construction Corporation Act was repealed. Why do I say so? Because that piece of legislation was the source of stability; pressing on professionalism and ethical behavior in the sector. When that particular piece of legislation was not in place, then it created a long absence of legal and institutional framework to promote, stimulate, improve and regulate the sector. The sector then suffered in that we had situations whereby contractors could not care on how they were performing their duties as contractors. That is being put to a stop by this piece of legislation.

One other thing which my colleague may not have mentioned because I do not want to repeat what he already said, is that in the current situation, the Minister for Public Works and other Ministers within the construction sector are not authorized in law to go into a construction site for purposes of ascertaining the works that are being conducted in there. This is because the law would declare them *persona non-grata* in those particular construction sites. This law will now give authority to the relevant Minister and the necessary personnel to go in and inspect the works. They will find out whether they are in accordance with the law, so that the standards of works are maintained.

We have suffered a lot when these buildings which are constructed haphazardly without due regard to standards and specifications of works even in terms of putting together materials have collapsed, thus occasioning death to our people. This will be put to a stop. So, the construction industry would, therefore, play its rightful role when this law is passed in generating wealth and improving the quality of life for our people.

It has got a multiple effect. The moment you are in construction, the manufacturing sector is into business because of the inputs that are required in the construction sector. Financial services will also be at play. This is because people in construction will borrow money from the financial sector. That sector is also put into an impetus level.

The professional services will not be left behind in this Bill. Our people will be stimulated into appreciating their professional qualifications.

There are also elements of a healthy functioning economy. For example, we see a lot of construction of houses, commercial buildings and other property coming up in this construction sector.

It is needless to say, it will create employment for our youth in a very decent manner. Again, this will enhance the quality of life of our youth.

The other area which is of great importance is the issue of research. I know my colleague also touched on it. It is important for us to research in the construction sector as we do in other sectors of the economy. This would give us opportunity to improve on the quality of our facilities. It will also allow us to be cost-effective in our works.

This particular piece of legislation will be insisting on placement of funds to promote research and encourage the use of newly emerging technologies and materials amongst contractors.

Another area is training and re-training of our people even those ones who are unskilled being placed on training in particular fields of trade, so that they can also participate on matters of our national economy.

Finally, in essence, this piece of legislation is intended to embed professionalism and ethical behaviour in the industry for the benefit of the country and for the benefit of the people.

With those few remarks, I beg to second the Motion.

(Question proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. This is a very important Bill because, as you are aware, the economic development of any country depends on construction; whether it is the construction of roads, buildings and so on.

You sort of judge the development of any country when you go there and you see a lot of construction taking place. What this Bill is trying to do now is something dear to my heart and that is to professionalize the construction industry. If you look at other professions, be they advocates, doctors and others and you go to the neighbouring countries, you will find that this country has produced enough professionals even to serve in those countries. What is this Bill doing? One of the objectives of this Authority is to standardize and improve construction techniques and materials; accreditation and certification of skilled construction workers and construction site supervisors.

Mr. Temporary Deputy Speaker, Sir, we want to be in a situation where we have professional contractors in charge of the construction industry so that whatever construction takes place in this country is up to the mark. We want to be in a situation where, ultimately, we can even begin exporting constructors out of Kenya to do construction work outside Kenya. There are a number of Chinese companies which are now here and are doing a very excellent job. So, from that point of view as a professional, I support this Bill and urge that it be adopted without any delay.

The Assistant Minister for Industrialisation (Mr. Muriithi): Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support this Bill. We have been criticized that most of the large construction contracts, be they in the sector of roads or in other pieces of infrastructure like stadiums, large buildings and so on, end up with foreign construction companies. We have also been criticized in terms of the slow pace with which some of the pieces of infrastructure are being delivered. But if you look behind the reasons why these things are happening, a key question is lack of capacity at the company level. So, in terms of Kenyan indigenous construction companies being able to bid and tender for large pieces of infrastructure both in Kenya and globally, there is lack of capacity as some of the other speakers have said. There is lack of capacity within companies to have the requisite professionals within the requisite skills set in order to deliver those pieces of infrastructure.

Mr. Temporary Deputy Speaker, Sir, so, this piece of legislation will create a platform that we can use, as a nation, to build that world class capability amongst

contractors. I think it is not lost on us, as a House and Kenya at large, that, for example, on key pieces of infrastructure that are ongoing now, whether it is Thika Highway, by-passes, the Northern Corridor, expansion of the airport, dredging of our port, building a new port in Lamu or building a new transport corridor between Lamu and Juba, the volumes required, the size of company and balance sheet required--- That is because if you are going to execute a contract whose scope is Kshs20 billion to Kshs30 billion, you cannot approach it with Kshs200,000 in your balance sheet. That is the key challenge that we have been facing as an economy. Therefore, we must have concerted efforts to see how to actually change the circumstance. How do we help Kenyan contractors to build up their balance sheets and skills set to ensure that they can deliver on those large pieces of infrastructure?

Mr. Temporary Deputy Speaker, Sir, the other point is to create a change in the approach of delivery of contracts. Many foreign contractors approach it as a 24 hour proposition. If you look at some of those pieces, contractors are at work throughout the day and night so that we can have a quick turnaround.

Mr. Temporary Deputy Speaker, Sir, the question of building and the point of professionalizing the companies and works has already been spoken about but it goes just beyond professionalizing. There is the question, for example, of equipment and the ability of local contractors to put proper and significant pieces of construction equipment on which they can be able to tender.

Therefore, this will enable us create a platform as Government, in order to positively respond, because we know the challenges that they face and so we cannot blame the local contractors. We must respond as Government in a way that we should, which is to create a programme to improve their lot.

Right now, without doubt, the country has significant challenges in terms of supplying housing stock. In the area of housing, it is not just the volume or the number of houses we can deliver into the economy per year. It goes also to the quality of stock and the standards of quality. This country has a significant shortfall in the quality of housing stock that is brought into the market that is significant and that financiers are able to give mortgages against. This has something to do with our ability and the quality of our construction industry. That is why this piece of legislation is important so that we do not just leave it to our own pledges as a nation in terms of providing adequate housing but provide adequate housing that is of good quality.

Mr. Temporary Deputy Speaker, Sir, one of the key areas is the question of having the right set of skills that are certified. As a citizen of Kenya, if you are building a house or engaged in construction, you can be certain that the people that you contract as key trades people; whether it is plumbing or electrical, among others, give you value for money. I am sure that it is not lost to Kenyans if you go further into the last 36 months, you will see a significant rise in the rates of masons. We have moved from paying masons Kshs400 per day to Kshs1,000 a day in most urban areas. The reason for this is a simple case of supply and demand. There are many buildings coming up, but we do not have the requisite number of certified masons and, therefore, the rates end up going up significantly. This also applies to the other trades.

In order to expand tertiary education, we had to convert a variety of middle level colleges including polytechnics into universities. This has created a void which we must fill. But to do so, it is necessary to have an Authority that can be able to say that this is

the kind of curriculum we need in our middle level colleges in order to serve the construction industry.

Finally, the world over when you measure economic activity, construction sites or the number of new buildings coming up is a key indicator of economic activity. Indeed, in most urban centres, there is evidence of significant economic activities. Therefore, the creation of a platform that ensures quality will ensure that this country gets value for money.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Ethuro): Yes, hon. Francis Baiya!

Mr. Baiya: Sorry, Mr. Temporary Deputy Speaker, Sir. I am Njoroge Baiya.

The Temporary Deputy Speaker (Ethuro): You do not have a future name!

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, it is not “Francis”.

(Laughter)

Mr. Temporary Deputy Speaker, Sir, I would also like to support this Bill. This is also a very important Bill, having regard to the enormous work that is going on in the country, and having regard to the contribution to the economy of this country players in this industry, particularly contractors, are engaged in. More importantly, now that we are being told that construction is one of the leading economic players in terms of contribution to growth, I have looked at this Bill and felt a bit disappointed that it is only establishing the National Construction Authority in the standard manner of setting up the Authority and providing for its powers, functions, finances, *et cetera*.

The issue I have is that, having regard to what the Minister said, and to the clearly very important contribution that this Authority is supposed to make in the country, it does not really give us the flesh, so to speak. The Bill does not even attempt to give us the substantive provisions that need to be made. There are lots of problems which we would have expected this Bill to address. The authorities’ failure to effectively enforce existing legislations has, indeed, led to a lot of problems and brought about a lot of challenges in this country. If you look at the building of commercial houses, for instance, you will appreciate that this House has witnessed, for a couple of decades, unplanned constructions as if there were no building codes and regulations. You find a lot of ongoing development which in totality has aspects of under-development by virtue of the fact that they do not adhere to any planned development. Such developments do not provide for provision of services such as road transport, fire fighting services, *et cetera*.

Mr. Temporary Deputy Speaker, Sir, the main failures in all these areas are the parent Ministries we are talking about and the relevant civic authorities. So, I would have expected a substantive legislation which would allude to how this body would also harmonise and co-ordinate the upholding of these standards by all the contractors, and even the clients who undertake works. I am sure that if the law makes it mandatory for regulations to be upheld, it will be much easier to require a contractor not to undertake work when he knows that there is no approved plan, or when that plan does not comply with certain specific requirements. So, it is very important that we do not just come up with a skeleton law establishing an Authority without giving it the substantive provisions, which it will be enforcing to ensure that standards that are set up by the various other

branches of the law are upheld by the various contractors. We very well know that even the quality of the works undertaken by contractors---

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Njoroge Baiya, you will have another 15 minutes when debate on this Bill resumes.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, it is now time for interruption of business. Therefore, the House stands adjourned until tomorrow, Wednesday, 25th May, 2011, at 9.00 a.m.

The House rose at 6.30 p.m.