

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 8th November, 1995

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No. 903

CONVICTION OF ASSISTANT CHIEF

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

(a) whether he is aware that the Assistant Chief of Ndurio Sub-Location, Aldai Division, Nandi District, has previously been convicted and sentenced to a prison term for forgery of academic certificates; and,

(b) if the answer to "a" above is in the affirmative, does he consider such a person suitable to act in a public office.

The Assistant Minister, Office of the President (Mr. Awori): Mr. Speaker, Sir, this is a very serious Question and I have discussed it with Mr. Kirwa. I requested him to give me a week to get the correct position and then report back to the House next week.

Mr. Kirwa: Mr. Speaker, Sir, I have no objection to that request.

Mr. Speaker: Very well. The Question is deferred.

(Question deferred)

Question No. 805

STRIPPING OF SUSPECTS

Mr. Karan asked the Minister of State, Office of the President what section of the law enables the police in Kisumu to strip suspects in police cells half naked.

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

There is no law in this country which empowers the police in Kisumu or elsewhere in the Republic to strip suspects naked in the cells.

Mr. Karan: Mr. Speaker, Sir, I do agree with the Assistant Minister that there is no law which empowers police to do exactly what he has said, but by practice, if you visit police cells in the entire Republic, you will find suspects in those police cells half naked. For example, I was subjected to this kind of harassment when I was striped half-naked and kept in police cells despite being an hon. Member. Could the Assistant Minister tell this House what he will do to ensure that the Kenyan public is not subjected to this treatment?

Mr. Awori: Mr. Speaker, Sir, the Question contained the phrase "completely naked" and now my friend is talking of "half naked".

Hon. Members: The Question talks of "half-naked"

Mr. Achieng-Onoko: On a point of order, Mr. Speaker, Sir. In actual fact the Question---

(Loud consultations)

Mr. Speaker: Order! Hon. Members, I want to hear the point of order by Mr. Achieng-Onoko. There

is too much consultations and I am unable to hear him.

Continue Mr. Achieng-Oneko!

Mr. Achieng-Oneko: Mr. Speaker, Sir, I want to alert the Chair to the fact that the hon. Assistant Minister had used the word "naked or completely naked", but here on the Order Paper it is written "half-naked".

Mr. Speaker: You are right, Mr. Achieng-Oneko.

Mr. Awori: Mr. Speaker, Sir, which half was naked?

(Laughter)

Mrs. Ndetei: Mr. Speaker, Sir, I think you realise that as Africans we have our moral values. I think it is important for the hon. Member to tell this House which part of the body was naked. This is a serious matter affecting an hon. Member. Was it the upper or lower that was naked?

(Laughter)

Mr. Karan: Mr. Speaker, Sir, both cases have happened. However, in my case I was made to strip clothes from the upper part of my body. I was also made to remove my shoes and remained with the trousers. I consider that to be a very serious matter for an hon. Member of this House. Could you now tell the House if there is such a law?

Mr. Awori: Mr. Speaker, Sir, it is completely illegal. There is no law that empowers the police to do what you have said. If the hon. Member could substantiate, I will take the necessary action.

Mr. Karan: On a point of order, Mr. Speaker, Sir. Unless the Assistant Minister wants me to remove this shirt, shoes and probably lay myself on the table, I do not know how I can substantiate the matter.

Mr. Speaker: Order! Mr. Karan, it is illegal to do that in the police station and it is even worse to do it here!

(Laughter)

Mr. Shikuku: Mr. Speaker, Sir, the hon. Member has told the Assistant Minister nothing, but "naked-truth". Could the Assistant Minister take it upon himself--

An hon. Member: Half naked!

Mr. Shikuku: To get, not half-naked but naked truth. Could he take it upon himself to ensure that steps are taken against the officer concerned on that material day and that he reports back to the House?

Mr. Awori: Mr. Speaker, Sir, I will certainly investigate if the hon. Member can give me the date, time and place.

Question No.389

SUPPORT FOR TEA GROWERS

Bishop Kimani asked the Minister for Agriculture, Livestock Development and Marketing if he could consider giving financial support to tea growers in Kabazi and Bahati areas to enable them increase their tea production.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Dr. Misoi): Mr. Speaker, Sir, I beg to reply.

The areas of Kabazi and Bahati in Nakuru North are not covered by the Tea Development Act and are, therefore, outside the Authority's area of operation. In actual fact tea growers from these areas deliver their tea leaf to Subukia Tea Factory, which is a private tea processing factory.

As is the case with other enterprises, such factories are licensed directly by the Tea Board of Kenya to grow their own nurseries and process their tea independent of KTDA. They are therefore, not dependent on KTDA for financial support. The Government will, however, continue to extend credit opportunities through financial institutions such as the Kenya Commercial Bank to such enterprises so as to boost the production in these areas.

Bishop Kimani: Mr. Speaker, Sir, the answer given by the Assistant Minister is completely misleading because the management of this tea factory has disagreed with the farmers. We have talked to the Ministry officials and they have said that they are going to assist the farmers. Can the Assistant Minister consider asking

the Kenya Tea Development Authority (KTDA) to come in and help these farmers so that they are able to grow the crop that will give them cash? Everything that they have now is going to waste!

Dr. Misoi: Mr. Speaker, Sir, the Ministry will, through the Tea Research Foundation (TRFK) and the KTDA, attempt to find out what other assistance can be given to the farmers of tea in that area. What is important is that these farmers who are supplying their tea leaves to the private factory should actually grow more tea so as to reduce the costs they are being charged.

Mr. J.N. Mungai: Mr. Speaker, Sir, the answer given by the hon. Assistant Minister is not only discouraging but is also very discriminative. These farmers are growing tea because it can grow in their area and also because this cash crop is very important as a foreign exchange earner for this country.

If the Assistant Minister knows that he can only support the farmers if the KTDA is operating in the particular area, can he himself direct - we must encourage wananchi to grow such crops - that the KTDA extends assistance to such farmers? If this help is given it will become an incentive to the local farmers to grow tea and in turn this will attract future development of tea factories in the area by the KTDA.

Dr. Misoi: Mr. Speaker, Sir, I will not direct the KTDA but I will recommend to the KTDA Board of Directors to look into the plight of those farmers and find out whether expansion of tea growing can be carried out so as to make it economically viable for even consideration of construction of a factory to process that tea. But that tea must be in enough quantity which can support such a factory.

Mr. J.N. Mungai: On a point of order, Mr. Speaker, Sir. I think the hon. Assistant Minister is trying to run away from the question I asked. I asked him if he could direct the KTDA to extend facilities to such small farmers so that this could act as an incentive to more farmers to grow tea and enable the KTDA to move into that area and build tea factories. That is what I am asking. He cannot give me a different answer. We are asking that the farmer be given an incentive.

Dr. Misoi: Mr. Speaker, Sir, I do not know what incentive the hon. Member is asking the Ministry and the KTDA to provide to the farmers, apart from extending technical advice to them through the extension officers.

Secondly, I have said that the TRFK and the KTDA will be requested to look into the problems facing the farmers in that area. So, I have given a good answer.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, the Question is asking the Assistant Minister to consider giving financial support to the tea growers in Kabazi. It is not asking the KTDA to do it. If the Assistant Minister thinks that the KTDA is difficult to approach, could he find other ways of helping these farmers? As to the question whether this area has enough tea, I can say it has enough tea because it is supporting a factory which is functioning all the time.

Dr. Misoi: Mr. Speaker, Sir, it is regrettable that the hon. Member did not listen to my answer which stated that the Government will, however, continue to extend to tea farmers credit facilities through financial institutions such as the Kenya Commercial Bank (KCB) so as to boost production in the tea sector. The KCB is extending credit to all small-scale farmers and the farmers in that area should make use of that opportunity.

Question No. 840

TAX RELIEF FOR WORKERS

Mr. Speaker: Hon. Members, this Question by hon. Ngilu will be deferred.

(Question deferred)

Question No. 878

PAYMENT OF MR. NYANGAGA'S PENSION

Prof. Anyang-Nyony'o asked the Minister for Local Government why Mr. Francis Omolo Nyangaga, PF No. A03-01862, a former employee of the Nairobi City Council, has not been paid his pension and terminal benefits.

The Assistant Minister for Local Government (Dr. Wameyo): Mr. Speaker, Sir, I beg to reply. Mr. Francis Omolo Nyangaga was paid all his terminal benefits by the Nairobi City Council (NCC) on 20.12.77.

Prof. Anyang-Nyong'o: Mr. Speaker, Sir, arising from the answer that the Assistant Minister has given and the detailed analysis that has been given to me here - I hope these are the details - would he confirm to me and

the gentleman in question that these figures are not a mere book entry in the NCC to try and reconstruct history? If they are mere entries to try and reconstruct history, will the Assistant Minister undertake to give me an assurance that Mr. Nyangaga will actually be paid his terminal dues and benefits as provided for in his contract and in law?

Dr. Wameyo: Mr. Speaker, Sir, I confirm that if it is proved that Mr. Nyangaga has not been paid I will make sure that he is paid.

Mr. Achieng'Oneko: Mr. Speaker, Sir, is the Assistant Minister aware that files in the pensions office have "legs" to walk away and that sometimes when you pay something small to somebody the files resurface? Can he do something to prevent these malpractices in the Pensions Office, so that people from upcountry to Nairobi are helped and their time saved and the expenses incurred also avoided?

Dr. Wameyo: Mr. Speaker, Sir, I am not aware of that. However, if I am made aware of a specific case I will act.

Mr. Shikuku: Mr. Speaker, Sir, arising from the previous reply to the effect that this gentleman was paid and taking into account the assurance by the Assistant Minister that if it is proved that this gentleman was not paid he will do something about it, could he tell the House how much he was paid in 1977?

Dr. Wameyo: Mr. Speaker, Sir, Mr. Nyangaga was paid as follows: Leave pay, Kshs487.55 and the pension, amount Kshs7,922.05. The total amount paid was Kshs8,409.60 on 20.12.77.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, arising from that clarification from the hon. Assistant Minister could he again give me an assurance that were I to supply him with documents and information from the said gentleman which is contrary to what he has said he would oblige and undertake to ensure that the gentleman is actually paid his rightful dues?

Dr. Wameyo: Certainly, Mr. Speaker, Sir.

Mr. Speaker: Next Question!

Question No.378

SUB-DIVISION OF PLOT

Mr. Speaker: Mr. Ndicho is not here yet? Next Question, Prof. Mzee.

Question No.846

WATER SHORTAGE IN MOMBASA

Prof. Mzee asked the Minister for Land Reclamation, Regional and Water Development:-

- (a) if he is aware that Mombasa Town is receiving less than 40 per cent of its water requirement;
- (b) what short and long-term programmes he has to alleviate the water shortage in the town; and,
- (c) when the Ministry will start sinking boreholes at strategic areas in Mombasa Town.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Mombasa Town and other areas in the Coastal region receive a total of 83,000 cubic metres of water per day which is about 46 per cent of the water requirement, as opposed to a demand of about 180,000 cubic metres of water.

(b) The National Water Conservation and Pipeline Corporation (NWPC) which is the main water undertaker in the coastal region is currently undertaking several short and long term programmes to alleviate the water shortage in the area as follows.

SHORT TERM PROGRAMMES

1. It is increasing water production of Sabaki Pipeline by 36 per cent from the current 35,650 cubic metres to 100,000 cubic metres of water per day by drilling four boreholes near Baricho Water Works.
2. It intends to increase water production at the Tiwi Water Works by 53 per cent from 4,000 cubic metres to 7,500 cubic metres of water per day by sinking an additional five boreholes.
3. By rehabilitating the Baricho Water Treatment Plant and replacing the old pumps in the station with new ones.

In all, short term measures will increase the supply by approximately 37 per cent.

LONG TERM PROGRAMMES

1. It intends to construct the Second Mzima Pipeline.
2. It also intends to rehabilitate and extent existing distribution pipelines in Mombasa Town.
3. Construct a sewerage system for Mombasa Town.

(c) In view of my answer to "b" above, and the fact that boreholes on the Island cannot deliver portable water, there will be no need of sinking boreholes in Mombasa Town.

Prof. Mzee: Mr. Speaker, Sir, I have personal interest in this Question because my house which is on the Island does not receive a single drop of water. So, even this 40 per cent which he is talking about is a very doubtful figure. Even the percentage he gives does not add up. He says the corporation intends to increase the water supply by 36 per cent to 100,00 cubic metres per day. Mathematically, this increment does not add up to 36 per cent. In fact, he is increasing, not by 36 per cent, but by 300 per cent. However, my question is: The situation has been there for the last three years. We have been receiving less than 40 per cent of water for the last three years, and this is the second time I am asking this question in the House. The reply has not changed, in spite of the fact that the last time I asked the Question was about two years ago. The situation has not improved. If anything, it is becoming worse. In addition, we are paying for water, and yet we do not receive any water. Can the Assistant Minister be more serious and tell us when this increase in the water supply is expected to occur?

Mr. Ligale: Mr. Speaker, Sir, I do agree that we have not added any appreciable water supply in the coastal area for the last two years. It takes time to plan, get funding, do the tendering and, finally, get contractors on the site for a number of these projects. However, I can confirm here that for two of the projects, we have already gone to tender. In fact, for one, the tenders have been adjudicated. We are only awaiting World Bank approval. As soon as we get it, the contractors will be on site. Most of these projects that I have outlined here are being undertaken with the assistance of the World Bank and we have to clear any tenders with them. We are actively pursuing this matter.

Mr. Muite: Mr. Speaker, Sir, does the Assistant Minister concede that, given the present state of knowledge on computers and what have you, it should be possible to predict the population of Mombasa in five or 10 years time and, therefore, to provide for these facilities in advance? Does he concede that a major contributing factor to the non-availability of adequate water supply in an important area like Mombasa and elsewhere in the country is because of the attendant delay in looking for ways and means of getting "kitu kidogo" in the awarding [Mr. Muite] of tenders? That is what has contributed to this delay.

Mr. Ligale: Mr. Speaker, Sir, that is a ridiculous suggestion.

Mr. Mcharo: Mr. Speaker, Sir, we believe that the long term solution to the water problem in Mombasa Town is the construction of the Second Mzima Pipeline. This question has been discussed in the past for quite a long time, and nothing seems to be happening. May we know what specific plans the Ministry of Land Reclamation, Regional and Water Development has to finally construct this Second Mzima Pipeline. This will not only solve the water problems in Mombasa, but it will also solve water problems in parts of Taita-Taveta, especially Voi. What has the Assistant Minister to say about that?

Mr. Ligale: Mr. Speaker, Sir, that option is very actively being pursued. As a matter of fact, consultants have been appointed to study and to come up with ideal design proposals which will be the basis of awarding tenders, to ensure that the Second Mzima Pipeline is constructed.

Mr. Mumba: Mr. Speaker, Sir, can the Assistant Minister confirm or deny the fact that at one time, the Mzima source of water for Mombasa was about to be constructed but it was diverted to another part of the country?

Mr. Ligale: Mr. Speaker, Sir, I am not aware.

Prof. Mzee: Mr. Speaker, Sir, when I asked this Question two years ago, the then Minister for Land Reclamation, Regional and Water Development told me that he has got plans to sink, at least, five or six boreholes in Mombasa. He told me in no uncertain terms that the first borehole would be sunk in Mvita constituency, at Mwembe Tayari and the second one at Kongowea. We now have the Ministry rigs in Mombasa, that is the huge water rigs. They were moved from Taita-Taveta where they sunk about 40 boreholes. When will these rigs be used to sink boreholes in Mombasa Town? We have plenty of water there.

Mr. Ligale: Mr. Speaker, Sir, I have indicated earlier in my reply that Mombasa Town cannot produce wholesome water, and that is the reason why we are not going to sink any boreholes within the town.

Mr. Speaker: Next Question, Mr. Raila!

Question No. 848

INTIMIDATION OF HOSPITAL WORKERS

Mr. Raila asked the Minister for Labour and Manpower Development:-

(a) if he is aware that employees of Kenyatta National Hospital, who are members of the Kenya Union of Domestic, Hotels, Educational Institutional, Hospitals and Allied Workers (KUDHEIHA) are intimidated and denied promotion by the hospital management, merely because of their union membership; and,

(b) if the answer to "a" above is in the affirmative, what measures he is taking to ensure that KUDHEIHA members are not intimidated or discriminated but given promotion on merit.

The Minister for Labour and Manpower Development (Mr. Masinde): Mr. Speaker, Sir, I beg to reply.

I am not aware.

Mr. Raila: Mr. Speaker, Sir, it is absurd that the Minister is not aware, yet this matter has been brought to his attention several times. I have a letter here, written by 76 employees of Kenyatta National Hospital which says that 60 employees were promoted in November, last year, and they were again up-graded in May, this year.

In July this year, a letter was written to these people by the Director, Kenyatta National Hospital, saying that the promotions had been cancelled and this was after they had been paid on the higher grade from November last year up to July this year. Can the Minister tell this House now that he has been made aware, why promotions of these 76 members of staff were cancelled if it was not because they were being discriminated against for their being members of this union?

Mr. Masinde: Mr. Speaker, Sir, the hon. Questioner is quoting a letter which I am not aware of and, therefore, it is very difficult for me to comment on it. However, from the Question, the hon. Member seems to have become the Secretary General of Kenya Union of Domestic, Hotels, Education Institutional, Hospitals and Allied Workers (KUDHEIHA) because he is asking whether I am aware that Kenya Union of Domestic, Hotels, Education Institutional, Hospitals and Allied Workers (KUDHEIHA) are intimidated and denied promotion by the Hospital Management. Now, by the very fact that these employees are unionisable members, they have a union. KUDHEIHA is one of the oldest trade unions around and in fact most experienced union led by a very able man in the name of Mr. Mugo. He cannot have kept quiet if his members were being molested.

Mr. Speaker: Just before I give hon. Raila another chance to ask a question, I would like to advise the House that in the event of Member speaking and he relies on a document or letter which [**Mr. Speaker**] he wishes to the table in the House, my advise is that letter or document that you wish to refer to must be tabled at the earliest opportunity to allow other Members to have a look at it to either agree or disagree with you. So, Mr. Raila, I will give you a chance and if you want to rely on that document, you table it now.

Mr. Raila: Thank you, Mr. Speaker, Sir. I table this letter and the Minister can have a look at it. It is signed by 76 members of staff.

(Mr. Raila laid the document on the Table)

This House is a supreme law-making organ of this country and, therefor, I think the Minister should not evade answering a Question that has been put to him in this House because there is a union which is supposed to be catering for the interest of these workers. Can the Minister tell this House why employers of Kenya National Hospital continue to deny the members of staff of the Hospital their right to become members of a union by discriminating against them and by denying them promotion merely because they are members of a union while he is the Minister for Labour and Manpower Development?

Mr. Masinde: Mr. Speaker, Sir, I am not trying to evade the Question at all. We have trade unions established under the Act of Parliament which was passed through this House and it is Parliament that gave the trade unions powers to operate in this country and the trade unions have that authority to operate until it is withdrawn by this Parliament. So far the authority has not yet been withdrawn. However, I do not think there is any dispute as far as recruitment of members is concerned because the hon. Member seems to indicate that way. All that he is talking about is promotion. Now, trade unions get into negotiations with the employer and they agree on certain issues on how to conduct their business under what we call Collective Bargaining Agreement. Now as far as I know, they have been negotiating the Collective Bargaining Agreement but came to a disagreement. The matter was referred to my Ministry last year and I referred it to Industrial Court and so far it has not been finalized. So the question the hon. Member has brought up does not apply at the moment.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, arising from the answer that the Minister has given which at least is an attempt to explain how issues like these are settled, I would like to ask a supplementary question to the Minister which may also refer to other Ministers as well. We on this side of the House ask these questions so that institutions can be better managed. Could it be in order to request the Minister that when a question like this is asked he at least explains to the Questioner whether some thorough investigation has been done and what the results of that investigations are rather than the immediate temptation to deny what is asked. There is a tendency

on the other side to do that and I think they are rather defensive and not very helpful.

Mr. Masinde: Mr. Speaker, Sir, the immediate denial does not arise. The situation is that I am being asked whether I am aware or not and I said on the onset that I was not aware but I have explained the surrounding circumstances.

Question No. 286

PAYMENT OF PLAINTIFF'S DUES

Mr. Obwocha asked the Attorney-General:-

- (a) whether he is aware that in Civil Case No. PMCCC375 of 1989, M/S Nico Auctioneers, New Silver House, Hospital Road, P.O. Box 598, Kisii, sold a vehicle (Toyota Land Cruiser) No. KLL 954, belonging to the defendant in this case;
- (b) whether the money was remitted to Court; and
- (c) when the plaintiff will be paid.

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

(a) I am aware that vehicle registration No. KLL 954, a Toyota Land Cruiser belonging to the defendant in Civil Suit, Kisii, PMCCC No. 375 of 1989 was attached on order of the court and sold by M/S, Nico Auctioneers of New Silver House, Hospital Road, Kisii.

(b) As to "b" the answer is yes.

(c) As to "c", the plaintiff may collect his dues from the Kisii Law Courts or through his advocate at his convenience.

Mr. Obwocha: Mr. Speaker, Sir, this case was filed in 1993. This Toyota Land Cruiser KLL 954 was in good condition. The amount of money involved in this case was Kshs 26,623.65. The complainant has even written to the complaints Commission about the remittance of this money.

Can the Attorney-General tell this House how much money was received or paid through the sale of this vehicle and how much is pending at the law courts in Kisii?

Mr. Speaker: Order! But surely if these parties have their own advocates or even themselves can they not peruse the court records?

Mr. Obwocha: Mr. Speaker, Sir, this is one of my constituents who has written to me because he has even written to the---

Mr. Speaker: Order! Order! It does not matter who wrote to you. What matters is that a matter that is in public domains, a matter that can be found on public records, should not be pursued here because any person can peruse a public record but nevertheless, I will give you the last chance but next time be mindful of the Standing Orders.

Mr. Wako: Mr. Speaker, Sir, according to the information I have, the Toyota Land Cruiser was valued as a scrap at Kshs 12,500. On the first occasion nobody bid for that amount. The plaintiff was even allowed to bid. On the second occasion, it was sold for Kshs 10,000 of which a sum of Kshs 8,091.05 was recovered by the Court Auctioneer and the balance of Kshs 1,908.95 deposited in court on 18th December, 1990.

Mr. Obwocha: Mr. Speaker, Sir, you can agree with me that there is a lot of injustice in this case. Two tyres of a car, leave alone a Toyota Land Cruiser, do not cost Kshs 10,000! This is a case where the Attorney-General should investigate these Auctioneers because this is a rip off. Now, he is saying that this man is supposed to collect Kshs 1,900 from the court having sold a whole Toyota Land Cruiser. Can the Attorney-General tell this House what action he is going to take against these Auctioneers because there is some law that governs the auctioneers in this country?

Mr. Wako: Mr. Speaker, Sir, the Toyota Land Cruiser was listed as a scrap and valued at Kshs 12,000 but as we all know as far as the court brokers, auctioneers and re-possessors are concerned, I did set up a Task Force to look into these issues. I am pleased to inform this august Assembly that last week the Task Force submitted its final report together with a recommended Bill which touches on all the issues of concern of this House and which has been explained from time to time about court brokers and so on. Very soon we will be debating a Bill to deal with the court brokers.

Mr. Obure: Mr. Speaker, Sir, the price of Kshs 10,000 for a vehicle is illegal, it is a fraud and it is the responsibility of this Government to make sure that people are not deprived of their property. Is the Attorney-General aware that the auctioneers do collect rogues, murderers to come and collect things from people's houses and they cause havoc and tremendous damage when they are transporting the properties? What do you plan to do about that?

Mr. Wako: Mr. Speaker, Sir, I think, I have already answered that question. This august Assembly

will soon be debating a Bill to deal with court brokers. With regard to the point in question, the complainants can be advised to complain properly to the Court Brokers Licensing Board to find out whether the court broker in this particular instance charged the collect amount.

Question No.378

SUB-DIVISION OF PLOT

Mr. Speaker: Mr. Ndicho still not here? We go to Questions by Private Notice.

(Question dropped)

QUESTIONS BY PRIVATE NOTICE

ETHNIC CLASHES IN MOLO

Mr. J.N. Mungai: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President the following question by Private Notice:-

(a) Is the Minister aware that there have been occasional ethnic clashes in Olenguruone Division of Molo Constituency?

(b) What immediate measures is the Minister taking to stop these clashes before they get out of control?

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

(a) Mr. Speaker, Sir, I am not aware.

(b) Arising from (a) above, this part of the question does not arise.

Mr. J.N. Mungai: Mr. Speaker, Sir, it is very unfortunate that the Assistant Minister can afford to say that he is not aware when the same answer was given in 1992 when we said that people were going to the forest and at that time we saw what happened. The tribal clashes broke out. It was only last weekend we saw Dorobos demonstrating in the whole of Nakuru District and they went all the way to State House where they said that they wanted to be addressed by the President. I am sure, if it were other tribes, they would have been killed by the police. What I want to say here is, I just want to save my people from losing lives. I want to save my people from--

Mr. Speaker: Do you want to say or you want to ask?

Mr. J.N. Mungai: I want to ask a question, Mr. Speaker, Sir.

Mr. Speaker: Very well, ask.

Mr. J.N. Mungai: I am building it, Mr. Speaker, Sir. What I am saying here---

Mr. Speaker: Order, Mr. Mungai! Other Members are interested in that Question so, please put the question because I believe before you framed that Question, you already knew what supplementary questions to ask. So, can you proceed and do that?

Mr. J.N. Mungai: Mr. Speaker, Sir, may I ask the question. I have already made the Assistant Minister aware that there are such tribal clashes in Olenguruone Division. May I say that there are tribal clashes that do not involve tribes but they involve the Kalenjin community in their sectional clan. The community of--

Mr. Speaker: Are you asking a question or making a speech? Order Mungai! Order! Order! If you want to make a speech, move a Motion or wait for the Bill. But for now, it is Question Time. Question means you ask a question.

Mr. J.N. Mungai: The clans of Tugen, Elgeyo-Marakwet and the Keiyos are being fought by the clans of Nandi and Kipsigis in Olenguruone because of being rewarded with land. What is the Assistant Minister intending to do now that I have informed him to make sure that such tribal clashes do not continue because they are going to make them lose property and lose their lives. Last week but one some of them---

Mr. Speaker: Order! Would you like to respond?

Mr. Awori: Mr. Speaker, Sir, first of all I am grateful to the Member for his concern about the sacred lives of Kenyans. We have a channel through which we get the information. If we do get information that indeed there are circumstances are likely to bring about ethnic clashes, appropriate action will be taken to avoid that.

Mr. Muite: Mr. Speaker, Sir, given the extreme pain and suffering that this issue of ethnic clashes has caused in this country, can the Assistant Minister on behalf of this Government reiterate to this House the commitment, the acceptance by this Government, that it is a Constitutional right of any Kenyan irrespective of his or her tribe to own property and live anywhere within the Republic and to be accorded protection by this

Government? Can he acknowledge that to this House publicly?

Mr. Awori: Mr. Speaker, Sir, is that necessary really? Is it necessary to state to the obvious? In my own area of Samia in Busia District, there are people from practically every part of Kenya. They own land there, the Government protects them, they do business there, they do transport. Is there any need for me to reiterate on behalf of the Government the obvious?

Dr. Kituyi: Mr. Speaker, Sir, arising from the Assistant Minister's reluctance to unequivocally give an answer as requested, can this Assistant Minister now explain to this august Assembly why senior Ministers in this Government including the Deputy Leader of Government Business in this House have declared certain areas out of bounds to other Kenyans without anything being done to them? Can the Assistant Minister explain how that relates to his claim that they are actually committed to---

Mr. Speaker: Order! Mr. Moody Awori, you will not answer that. If he wanted to take issue with the Deputy Leader of Government Business, follow the Standing Order, move a substantive Motion against him. Order! Order, Njenga Mungai! You have no absolute right to any question. Order! Order! I will do exactly that. Mr. Njenga Mungai, I think, it is in your own interest not to belittle this House. Whatever else you think of yourself, you certainly are not and you will never be bigger than in this House. Order! Order, Mr. Wamae! It does appear to me that in his usual manner, the hon. Member for Molo wants to play some theatrics so that he is expelled for misconduct in this House and if you insist, I will do so.

Mr. Wamae: Mr. Speaker, Sir, in view of the fact that the hon. Assistant Minister now, has been made aware that there are plans to destabilize the Olenguruone area by the hon. Member for that Constituency; would he give a warning that the Government will take stern action against anybody who interferes with peace in the area against any community?

Mr. Awori: Mr. Speaker, Sir, my Ministry is in charge of the police, security and the Administration and we have staff right from the grass root to the top. If there are signs, as indicated by the hon. Member, we will get the information through the right channel and we will take appropriate action.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, we are talking about these things because we have seen signs ahead and we do not want anybody to lose their life whoever it is or whatever clan. Is the Assistant Minister aware that just right at the same place, there is a brewing animosity between the Ogiek or the Dorobos and the people from Kericho who have come to settle there and they said they will fight? Could the Assistant Minister take steps so that there is no fight in the forest reserves which have been sub-divided?

Mr. Awori: Mr. Speaker, Sir, unless the hon. Members are trying to provoke it, as far as I am concerned the Members of Parliament have got a right to go to the nearest Police Station in Molo to report and through that channel we will get the information.

Mr. J. N. Mungai: Mr. Speaker, Sir, the Assistant Minister has already denied that and we already know that in Olenguruone Division, so many communities have been evicted from that area and they are no longer there. One, some people like the Chairman of the County Council of Nakuru, cannot now live in Olenguruone Division because he comes from Keiyo. What is the Assistant Minister going to do to make sure that all the people who have been evicted from Olenguruone Division, are returned back to their farms and the Chairman of Nakuru County Council, Bidii arap Too, also goes back to his home and given protection? What is the Assistant Minister going to do to make sure that all those people are returned back to their farms and that he reports back to this House?

Mr. Awori: Mr. Speaker, Sir, we have yet to receive a report from Mr. Bidii arap Too, that he is unable to return to his legally owned farm in Olenguruone Division.

Mr. Speaker: Mr. John Mutere's Question by Private Notice.

ASSISTANCE TO FIRE VICTIMS

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

(a) Is the Minister aware that fire gutted Mukuru slums on 25th October, 1995, and rendered hundreds of families shelterless?

(b) If the answer to "a" above is in the affirmative, could the Minister give the names of the families affected?

(c) What food and other relief measures have been taken to assist the affected families?

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

(a) I am indeed aware that there was a fire outbreak but not at the Kiberera slums in Commercial or Industrial Area but in the Mukuru slums on that very date of 25th of October, 1995.

(b) The families affected are a total of 187 and it will take a long time to read their names so I am laying

it on the Table.

(c) The Government has sent out an appeal to well wishers to assist the victims. The Lions Club of Westlands, the Kenya Red Cross Society and the Catholic Church have promised to assist them with food relief and other materials.

(Mr. Awori laid the list on the Table)

Mr. Mutere: Mr. Speaker, Sir, could the Assistant Minister inform the House what is going to happen to these people before this appeal that have been sent out to the various donors? What is going to happen to these people in terms of relief services which they expect from their Government to which they pay their taxes?

(Applause)

Mr. Awori: Mr. Speaker, Sir, the responsibility of the Government is to try and find assistance for these helpless people from anywhere and it is finding the relief assistance from the three organisations that I have mentioned.

Mr. Wamalwa: Mr. Speaker, Sir, the Assistant Minister's answer is very disturbing. It sounds like the Government is abducting its responsibilities over its citizens because he states categorically that the Government's responsibility is to find donors who can help Kenyans who have suffered this sort of calamity but the Government as a tax collecting agent, what cannot it do and what has it done by itself before sending the appeal out for its citizens?

Mr. Awori: Mr. Speaker, Sir, since the Government made the appeal and got assistance immediately, was there any reason, why it should do otherwise?

Mr. Raila: Mr. Speaker, Sir, three weeks ago, we had a similar case in Kibera slum, and the Government actually assured the residents of Kibera that they are going to help them with relief food and also blankets and so on. To date nothing has been done, people are sleeping outside and even the dead have not been buried. Mukuru slum is also in Nairobi, now the Assistant Minister is promising the same thing.

Mr. Speaker, Sir, can the Assistant Minister assure this House that the Government is going to do something not just about the people in Mukuru slum but also the people in Kibera slum and that they are actually going to honour the promise by His Excellency the President himself to help the people whose relatives were killed in Kibera slum?

Mr. Awori: Mr. Speaker, Sir, any promises made by His Excellency the President, will be honoured.

Mr. Speaker: The last question, Mr. Muite.

Mr. Muite: On a point of order Mr. Speaker, Sir. Is it in order really for the Assistant Minister to answer this Question by mentioning the efforts that the Government is going to take without making any mention about the Disaster Relief Fund which was set-up by the Government? Why can't he refer to it and give us the accounts and says that, the Disaster Relief Fund is going to be used to assist the Mukuru people who are among the most deprived people in this country? What is happening to the Disaster Relief Fund?

(Applause)

Mr. Awori: Mr. Speaker, Sir, that is entirely different question to which I can bring the answer in the near future.

Mr. Speaker: I am afraid that question is legitimate.

Mr. Awori: Mr. Speaker, Sir, I said I will bring the right answer in due course.

Mr. Speaker: Very well then. Next Question, Mr. Badawy.

HARASSMENT OF SQUATTERS

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

(a) Is the Minister aware that Malindi Municipal Council has for the last one week been evicting and harassing genuine squatters and legal settlers on Plots Nos. M3 and M3A in Malindi and that a resident of the quoted plots died during the brutal exercise?

(b) What urgent measures is the Minister taking to stop this eviction?

(c) Can the Minister give the list and members of all the beneficiaries of this scheme as at 30th October, 1995, and state whether they qualify under the Ministerial approval given in 1991?

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

- (a) I am not aware.
- (b) No measures will be taken for something that does not exist.
- (c) Here is the list of the beneficiaries.

(Dr. Wameyo laid the document on the Table)

Mr. Badawy: Mr. Speaker, Sir, I am very much surprised by the Assistant Minister's answer stating that he is not aware of the evictions and harassment in spite of the fact that there has been a brutal assassination of one of the residents in that area last week. I have evidence to show that the Town Clerk in the Malindi Municipal Council, has issued eviction orders to more than 100 people and whatever happened last week, that transpired into the murder of one of the residents, is as a result of the so-called identification exercise on foreigners---

Mr. Speaker: Are you asking a question?

Mr. Badawy: Yes, I am asking a question. Is the Assistant Minister justified in saying that he is not aware, rather than accepting that he has been misinformed by the officers in the Malindi Municipal Council?

Dr. Wameyo: Mr. Speaker, Sir, I still insist that I am not aware, but if the hon. Member has the names of people who have been evicted and whose names appear in this list, may I have them please?

Mr. Speaker: Order!

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, arising from the answer that the Assistant Minister has given to part "a" of the Question, could I ask him whether, indeed, he understands what it means when we say "is the Minister aware?"

I think the import of the word "aware" is to call attention of the Minister to an event or a problem, not to ask whether it exists in his head or not. When the Assistant Ministers come and say that they are not aware I think we need to teach them a lesson on how to answer these Questions!

Mr. Speaker: Prof. Anyang'-Nyong'o, if you intend to do that can you take them to some college somewhere but not here!

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I would volunteer to organise a seminar for hon. Members.

Mr. Speaker: Very well. Order! Meanwhile, may I also teach you that you must ask a question when given a chance!

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, arising from the answer to the part "a" of the Question, can the Assistant Minister explain to the hon. Member of Parliament for Malindi whether indeed he has carried out any investigation on the concerns of the hon. Member?

Dr. Wameyo: Mr. Speaker, Sir, may I confirm Prof. Anyang'-Nyong'o that it has been carried out and it is here!

Mr. Mumba: Mr. Speaker, Sir, I think the Assistant Minister is misleading this House, and I do not think that it is entirely true that he is not aware. It is only yesterday that the Assistant Minister, Office of the President, confirmed in this House that an inquest file has been opened in Malindi court. It was on the same issue where somebody died and it was considered that it was a riot. How can the Assistant Minister for Local Government come to the House and say that he is not aware? Is it in order for him to mislead the House that he is not aware.

Dr. Wameyo: Mr. Speaker, Sir, it is true that somebody has died, not only in Malindi, but in the whole of Republic. Many people have died!

(Laughter)

Mr. Wamalwa: Mr. Speaker, Sir, I rise to seek the guidance of the Chair on this matter. The Assistant Minister seems to have an answer to part "a", and instead of giving it to this House he only waved it that he has done research and it is here. Is that good enough? If he has done the research and he has the answer, why does he not give it to the House?

Mr. Speaker: I think any Question that is asked by hon. Members, its answer must be given [Mr. Speaker]

orally if it is question by Ordinary Notice, it is not adequate, in my view that hon. Minister or hon. Member has information in a paper or document, known to himself or herself, and it is not communicated to the House. I do not think that is how business is supposed to be transacted in this House or in any other House.

Anyway, let us finish it. Time up.

Mr. Anyona: Point of order, Mr. Speaker, Sir.

Mr. Speaker: Yes, is it on this Question?

Mr. Anyona: I want to seek a clarification, Mr. Speaker, Sir.

Mr. Speaker: What is it?

Mr. Anyona: Mr. Speaker, Sir, at least in the old days, there was a tradition in this House that if a hon. Member does refer to a document in the House, then he or she was obliged to lay it on the Table. Now, would the Assistant Minister lay that document on the Table so that it becomes the property of the House?

Mr. Speaker: Indeed, that is the tradition of this House. There are rulings to that effect. I saw you wave a document as Dr. Wameyo. Can you table it?

Dr. Wameyo: Mr. Speaker, Sir, with due respect this is the answer I have been giving to the House. I believe that the hon. Member has been supplied with answers to the Question.

Mr. Speaker: So you are referring to the answer?

Dr. Wameyo: Mr. Speaker, Sir, I was referring to the answer.

Mr. Badawy: Point of order, Mr. Speaker, Sir.

Mr. Speaker: I think it is time up!

Mr. Badawy: Mr. Speaker, Sir, my point of order is that I have not been supplied with the answer and that is why probably the Assistant Minister has been waving the answer.

Mr. Speaker: Well, I am afraid now you can lay it on the Table.

(Dr. Wameyo laid the document on the Table)

COMMUNICATION FROM THE CHAIR

CONSIDERED RULING

Mr. Speaker: Just before we go to the next business, there is a little matter that I would like to clarify or to communicate. This morning during a debate on the Office of Ombudsman, hon. Assistant Minister, Mr. Koech, did wonder that there was an editorial by a section of the Press about a Motion that is pending and he thought it was not proper for the Press, or the public for that matter, to comment on Motion before this House. As you can see, I have not made any written communication, but I want to respond as follows because the hon. Temporary Deputy Speaker, deferred that issue for my consideration. I think I should give it straightaway because, in my view, it is not a matter that should wait for considered opinion.

I think I am on record as having ruled in the past that the Press has a right not only to report fairly and accurately matters that come to this House. But it is also desirable, and they have the right to do so, to comment on matters that have come before this House.

(Applause)

In the same breath, the public at large, have a right to comment on matters that are before the House. They have the right to criticise what is happening in this House or in the end it is their House and you in the other end are their representatives and representatives can never be senior than their principals.

MINISTERIAL STATEMENT

HARASSMENTS OF MEMBERS

The Minister of State, Office of the President (Mr. Kalweo): Mr. Speaker, Sir, this is in reference to allegations by the hon. Members of Parliament on Tuesday 31st October, 1995, that the Provincial Administration officials are harassing and intimidating hon. Members of this august House. It has been alleged that the officers have been snatching microphones from hon. Members of Parliament at public rallies and this has been seen to lower the dignity of the hon. Members of Parliament before the public. In this regard, I have this to say in this august House. Mr. Speaker, Sir, while I agree to some of these allegations that their public rallies had been stopped, we need, first of all, to understand how this incident came about.

First, I would like to assure this House that my officers are not there to frustrate any Member of Parliament. They have the responsibility of maintaining law and order and all of us are respected leaders and have also a role to ensure that this is achieved by adhering to the law.

Mr. Speaker, Sir, it has been observed that, in some of these public rallies that have been licensed, some Members of this august House, have used the fora to abuse, incite against the Government and, in particular,

against the person of the Head of State. When such utterances are made in public, no rightful-thinking Government officer, be he or she, in the Provincial Administration or the Police Force would allow such kinds of utterances to be made, because, such utterances are cleverly calculated to incite the public, and when allowed to continue, can easily disrupt the prevailing peace. In such cases, these meetings are either stopped or some of the speakers who thrive in abusive or inciting statements, are cautioned to stop the abusive language and inciting the public. However, when the speakers continue to issue abusive and inciting statements, despite the warning, any senior officer in charge of the meeting is authorised by the law to either stop the meeting or deny that speaker to continue addressing the public.

In other instances, Mr. Speaker, Sir, it has been observed that, some Members of Parliament are fond of holding unlicensed meetings contrary to the law requirements. When such meetings are detected, they have to be stopped by law enforcement officers. It will also do us all good, if everybody, including Members of this august House, adhered to the law requirements. As long as they do not adhere to the laws of this land, incidents of Members being interrupted or stopped from conducting public meetings or being given a chance to address the public will continue to occur, because, law and order must be maintained at all costs.

However, Mr. Speaker, Sir, I must state clearly here that, my officers are under firm instructions that leaders, including hon. Members of this august House, whether in KANU or Opposition, must be licensed when they want to hold public meetings in accordance with the law provision and each case should be considered on its own merit. The officers are also under firm instructions to ensure that, while maintaining law and order in public meetings, the dignity of Members of Parliament, where they are affected, should be preserved and should be seen to be respected.

However, as hon. Members are aware, respect is a two way traffic. If you would like to be respected, you must also respect the other party. Where an officer has erred or committed a mistake, the Government will not condone or hesitate in reprimanding or taking appropriate steps against the officer.

Thank you.

Mr. Shikuku: Point of clarification, Mr. Speaker. Thank you, very much, the aim of raising this point was in respect of the treatment hon. Members receive in front of their own electors, where microphones are snatched from them by the Administration Officers and it appears, we are under the Administration Officers. Could the Minister clarify this point? Is he the one that has instructed them to behave the way they are behaving and now he is telling that to us now? Could he assure this House that the Members of Parliament, if he has said something that he considers against the law, even the colonialists never used to do that - stop you from speaking - but immediately after the meeting, a day after, then you would be "facing the music", by being arrested and charged for whatever reason? Could he make sure that they do not do so, or humiliate Members of Parliament in front of electors, because, this may bring a breach of peace, one day, wananchi will get fed up and they will resort to some funny behaviour?

The Minister of State, Office of the President (Mr. Kalweo): Thank you, Mr. Speaker, Sir. Certainly, that is what I mean, because, I am not denying that they are not misbehaving. But, let us be respectable Members of Parliament, and let me receive information from Members, if they are mistreated. Since those officers can hear what I am saying here, and I am not joking with them, I need Members of Parliament to be respected, but you will also respect them because, it is common sense for Members to be respected and also Members to respect.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I rise to seek clarification. Could the Minister explain to the House, what constitutes a public meeting, because that is the crux of the matter? What constitutes a public meeting?

The Minister of State, Office of the President (Mr. Kalweo): Mr. Speaker, Sir, he knows it and I do not know what he is driving at.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, the reason why I am asking that, is because, from the Act, "a closed meeting" of a Board of governors, a society, a party in a room is not a public meeting, and yet down there in the provinces we are required to get licenses to have seminars for political parties which are not public meetings, since they are in rooms.

The Minister of State, Office of the President (Mr. Kalweo): Mr. Speaker, for my officers to be able to run the districts or divisions, for that matter, what is wrong by them knowing what is happening.

(Loud consultations)

Mr. Speaker: Order! Order! I do appreciate the interest Members have in this issue. But, as you know, this was a Ministerial Statement, if the Members want to pursue that further, you can put like, the hon. Member for Kisumu Rural, to know what constitutes a public meeting, he can put a Question, it will be

given due treatment.

Next Order.

BILL

First Reading

THE COPYRIGHT (AMENDMENT) BILL

*(Order for First Reading read -
Read the First Time - Ordered to be read
the Second Time tomorrow)*

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Mr. Wetangula) took the Chair]*

THE EXCHANGE CONTROL (REPEAL) BILL

Clause 2

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, this single Clause that is seeking to repeal the Exchange Control Act, I would like to seek clarification from the Minister that the door we appear to be closing the front door by repealing the Exchange Control Act. But in fact, opening a back door, it looks that the liberalisation we are seeking to achieve by repealing the Exchange Control Act, we are introducing control through the Bill that is going to be debated later, the Central Bank of Kenya (Amendment) Bill. Now, the control that the Central Bank is loosing---

Mr. Temporary Deputy Chairman, Sir, what I am saying is that we wish the Government to assure this House, that we are not indulging in an exercise in futility, that this is not cosmetics that we are indulging in by repealing the Exchange Control Act and reintroducing the same control through the amendment that the Government is seeking to introduce.

The Assistant Minister for Commerce and Industry (Mr. Osogo): Mr. Temporary Deputy Chairman, on a point of order, I am at a loss at what hon. Member for Kikuyu is referring to.

The Temporary Deputy Chairman (Mr. Wetangula): The Member of Parliament for Kikuyu is grossly out of order because he is talking about the Central Bank of Kenya Bill which we are debating after this. We are only dealing with the repeal of the Exchange Control Act. And those views you are voicing, I heard you voice them yesterday, and they were heard louder and clear. Let the Minister respond to what hon. Muite has said, if he has anything to respond.

The Assistant Minister for Finance (Mr. arap Koech): Mr. Temporary Deputy Chairman, I thought the sentiments of the hon. Member may come up later.

Prof. Anyang' Nyong'o: Mr. Temporary Deputy Chairman, I had a point to make about this Exchange Control (Repeal) Bill, and has to do with a Memorandum of Objects and Reasons. My contribution is purely a point of logic. The Attorney-General says that the Bill proposes to liberalise the exchange and trade system in order to enhance the confidence of both domestic and foreign investors, to facilitate a more competitive and efficient allocation of resources, to reduce bureaucratic red tapes in the exchange and trade system, and increase investment opportunities and economic growth. I thought it would be much more logical to say that the Bill proposes to liberalise the exchange and trade system in order to; one, facilitate a more competitive and efficient allocation of resources; two, reduce bureaucratic red tapes in the exchange and trade system; three, increase investment opportunities and economic growth; and, finally, enhance the confidence of both domestic and foreign investors. Because those are the things you do in order to enhance confidence, you cannot enhance confidence first before you do this other things. So, I think that the Memorandum of Objects and Reasons is faulty. That is my contribution.

The Temporary Deputy Chairman (Mr. Wetangula): And you talked very eloquently, but you did not say this.

Prof. Anyang' Nyong'o: No, I did not debate this Bill, Mr. Temporary Deputy Chairman, I was not here. But I have observed really that needs to be amended.

The Temporary Deputy Chairman (Mr. Wetangula): Minister, what do you say about that? I do not understand how one can amend the objectives, but---

The Assistant Minister for Finance (Mr. arap Koech): Mr. Temporary Deputy Chairman, Sir, I also do not understand it, because this is very clear and there was no proposal of any other amendment by the hon. Members.....

Mr. Shikuku: On a point of order. I thought Mr. Temporary Deputy Chairman, it has been the practice that at Committee Stage, this is the Committee of the whole House, if there is any amendment, normally comes from the Minister concerned or from the Opposition side of the House, but normally that amendment is submitted and must appear on the Order Paper.

The Temporary Deputy Chairman (Mr. Wetangula): You are absolutely right, Mr. Shikuku, thank you Shikuku!

(Question put and negatived)

Hon. Members: Division! Division! Division!

The Temporary Deputy Chairman (Mr. Wetangula): You do not have enough hon. Members to call for Division! Order, I do not see any reason for excitement. Can we have order? You do not have enough hon. Members for Division.

Next Order!

[**The Temporary Deputy Chairman**]

(Applause from the Opposition)

Order, hon. Members, the Chair does not need any support from any Member. Order, Mr. Shikuku, give me a minute. The rule is Standing Order 20.

Mr. Shikuku: On a point of order---

The Temporary Deputy Chairman (Mr. Wetangula): Order! Mr. Koech, can you report to the House? I do not need any assistance, hon. Shikuku. Can you get orderly?

Mr. Kamuyu: On a point of order---

The Temporary Deputy Chairman (Mr. Wetangula): Order, hon. Kamuyu, those unsolicited and unkind remarks are very unnecessary for orderly debate in this House.

The Assistant Minister for Finance, (Mr. Koech): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its consideration of the Exchange Control (Repeal) Bill and its disapproval, thereof.

(Question put and agreed to)

(The House resumed)

(Mr. Speaker in the Chair)

CONSIDERATION OF REPORT AND THIRD READING

Mr. Wetangula: Mr. Speaker, Sir, I beg to report that the Committee of the whole House has considered the Exchange Control (Repeal) Bill and its disapproval thereof.

The Assistant Minister for Finance (Mr. Koech): Mr. Speaker Sir, I beg to move that the House doth agree with the Committee in the said Report.

(Question proposed)

(Question put and agreed to)

(The Bill was defeated)

(Several Members stood up in their places)

Mr. Speaker: What is it?

Hon. Members: Division! Division!

Mr. Speaker: You mean you have enough numbers?

Hon. Members: We have enough numbers!

(Loud consultations)

Mr. Speaker: Order! Order! At the first instance when I asked you whether you had the numbers, there were only three of you. Hon. Members must know what a division entails and if you want to call for one, you have to act promptly.

Next Order!

Second Reading

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL

*(The Assistant Minister for Finance
(Mr. Koech) on 2.11.95)*

(Resumption of debate interrupted on 7.11.95)

Mr. Maore: Thank you, Mr. Speaker, Sir, for this opportunity to contribute on this other equally important Bill. Like any other institution, the viability, stability and the integrity of the institution of Central Bank is extremely important as far as the monetary and fiscal policies of this country are concerned. It is very important that our Government or the leadership does---

Mr. Michuki: On a point of order, Mr. Speaker, Sir. I am seeking your guidance because at this stage, I want to contribute to the Bill before the House but I am confused as to whether in the light of what has just taken place here, we are actually discussing about a law which already exists in the sense that the amendments in this Bill were meant to fill the void created by the repeal.

Mr. Speaker: But listen, Mr. Michuki, I do not vote; you vote and you have already voted to disallow the other. It is up to you to decide what you do in this Bill. If you pass it and it becomes meaningless, you do not blame the Chair, blame yourself. Proceed The so called crisis is imaginary. This House has the power to agree or to disagree on any law. It is up to you to decide. We have already left that other Bill and we will proceed with this one.

Mr. Michuki: Mr. Speaker, Sir, I was seeking your guidance in the light of this development. You as the Speaker, is it possible to guide us at this moment so that we know how to approach this issue.

Mr. Speaker: Order! I will not. You should have guided yourselves before you defeated the other Bill. Proceed!

Mr. Maore: Thank you, Mr. Speaker, Sir. It is important that we do have a leadership that has some reverence and some decorum towards the Central Bank. As of now, we are seeking to have the Central Bank to be accorded its autonomy. It is one thing to say that it is an independent institution and it is quite another when it comes to the practice.

[**Mr. Maore**]

What we do have now is a situation whereby the laws are changed and then a clause is inserted in the Banking Act Section 56 that provides for the appointment of an external auditor for the bank. The irregularity over this aspect is whereby the Governor of Central Bank and his deputy appoints the auditor. Currently, the auditors will go and do the report and they come and report to the two gentlemen who hired them; in this case, the Governor and his

deputy. It is very difficult if you have some irregularities at Central Bank that have been sanctioned by the deputy and the Governor to be detected and exposed on time by the same auditors whom they hire.

Mr. Speaker Sir, it is important that the Central Bank has been classified or exempted from the Exchequer and Audit Act. It should be classified under the Controller and Auditor-General. This will give the public a very important perspective of what goes on there. After that it will be very important to note that it does not make sense to have the other departments and all the Ministries audited by the Controller and Auditor-General and the "mother of all those institutions" which is the Central Bank is not audited by the Controller and Auditor-General.

Mr. Speaker, Sir, another issue that arises is that I want to explain about an irregularity that happened in July, 1995. In the process of trying to pay for the work that was being done in Eldoret Airport in July, the Minister for Finance did admit that \$10.9 million was spent but in essence it was \$20 million that was sent. Where is the \$.9.1 million?

If you try to ask the Government to explain who had authorised them to pay, there is nobody. It is another scandal that the Central Bank has been trying to facilitate by allowing extra payments, while they are very much aware, that the 10 million dollars was paid on top of what the Government had still irregularly committed over the 25.2 million dollars that was paid in December, 1994.

We are not trying to bring in the issue of whether the Government had done the cost benefit analysis of the Eldoret Airport, but the issue I am raising is on the irregular aspect in which the Central Bank did participate in, by paying foreign currency to a bank in New York called SNC Lavalin International, yet there was no authorization from this Parliament.

We do wish to have a Central Bank where the Permanent Secretary (PS) in the Treasury does not have a right to get money for whatever purposes he wants. We want to have the Central Bank autonomous because it will be able to send a regret note to the Permanent Secretary, Treasury when he tries to do an irregular transaction because the political establishment wishes to finance some projects whether they are right or not because of might.

Another issue that we need to raise with the Central Bank is that of excessive borrowing. These short term Treasury Bills are not meant for the long term economic management of a country. Instead, they are only valid when there is a crisis. In 1993 we had a crisis of excess liquidity in the economy, and it was acceptable to have a lot of high interest rate on Treasury Bills and Treasury Bonds. In 1995, we are hearing about enormous amounts of money being pumped into the economy especially between the later part of this year. When we have those interest rates papers in the market, the banks will rush to buy them, and then there will be no money available for the other sectors in the private sector, with which to finance their activities. It has some adverse effects of raising the interest rates. Upon expiry of the maturity date, whether it is 90 days or 60 days, whatever time it was, such money---

Mr. Mbeo: On a point of order, Mr. Speaker, Sir. We cannot hear and we cannot even concentrate. There is a problem going on across the Floor on the other side. Can you kindly, Mr. Speaker, Sir, tell them to keep quiet because we cannot concentrate?

Mr. Speaker: Order! Order! Order including you, Mr. Mbeo. Order!

Mr. Maore: Thank you, Mr. Speaker, Sir, when you have a very high interest rates in banks, that has the negative effect of raising inflation. If we are running an effective physical disciplined Central Bank, or where the Government is observing the monetary discipline aspect part of it, we should not be having these Treasury Bills and Treasury Bonds in a very short period like the way we are having now.

Another issue that I would like to raise, is that of the policing of banks in this country. The Central Bank, unlike any other institution has been given all the powers to regulate and police the activities of all the financial institutions and banks in this country. When other banks were going under receivership in 1993, three main banks were left, and which were actually being run by worse crooks than many of those banks that went under receivership. A subsidiary of one of the banks had major problems whereby some of the directors were borrowing money in hundreds of millions irregularly, and the Central Bank was just watching. This subsidiary Trust Finance belongs to Trust Bank, and Trust Bank belongs to Ajai Shah who is connected to key politicians and so he is untouchable. The Central Bank is helplessly watching, as the irregular transactions continue. Early or late last month, the Central Bank had a courageous gentleman in the name of the Governor. He authorised a circular to be written to all the banks, for the individuals to

[Mr. Maore]

explain the source of their income with which they were doing transactions. It was very strange that a very highly-placed personality went and labelled the Central Bank, the Governor and his men as anti-business and Opposition moles. We do not believe Ajai Shah has more love for this country than, Mr. Micah Cheserem.

When you talk of funny banks, you are having the temptation of money laundering. It is important that we do have a very strict Central Bank, but the problem is that even the Police Department that was supposed to be dealing with these corruption issues, does not seem to have a director. The last time we heard about the Director of Anti-Corruption Unit we were told that he was now back at the headquarters doing administration. We do not know who is heading the Anti-Corruption Unit.

The other major issue that should be mentioned is the issue of forex bureaus that the Central Bank is supposed to be monitoring and regulating. There is a likelihood that a lot of individuals who still have major shareholding in the questionable financial institutions, have mobilised themselves and their resources, to go into the forex bureau business. Given the little capitalization required in the running of a forex bureau, and because even the current banking Act, the issue of the moral and professional ability of the individuals who should be running financial institutions was deleted from the actual Act, there is genuine fear that a lot of money laundering is going to happen in this country. The difference between money laundering in Kenya and the other places is that in other countries, if you participate in money laundering, you are committing a crime and you maybe jailed. In Kenya, like other forms of corruption, it has only come to equal in passion with the drug kingpins of Columbia. In Columbia, what the kingpins or the drug traffickers do, is that they go to the villages and their home towns, and sponsor beauty pageants. In the process of sponsoring the beauty pageants in the villages and in small towns, they become extremely popular, because of the generous dishing out of money that they do.

How Kenya equals Columbia is that the people who are involved in illegal financial acquisitions, join the rest of wananchi in churches on Sundays and make a lot of contributions in Harambees. They also participate in building of other social institutions all in the name of Harambee. We need to create a culture whereby if you do acquire wealth, the Kenyan community should be able to have some moles or norms that stigmatises money acquired through crooked ways.

Mr Speaker, Sir, we need to have a monetary system policy by the Central Bank of Kenya, with an equally efficient law enforcement agency whereby "money laundering" will become a thing of the past. When we talk of "money laundering," it is not done by common men out there on the streets. A lot of men would like to blindly condemn the Asians for "money laundering" and all the other financial scandals. In many cases, these Asians are merely conduits for the men of power, whether they are trafficking or whatever it is, they come to traffic here. If you are an ordinary man, you will be arrested.

Mr Speaker, Sir, when it comes to doing foreign business, and the individual wants to transact more than US\$5,000, the Central Bank would come in and say, they want to know why you are doing this. It is important for Kenyans, who participate in business to respect the integrity of this country. If you do engage in business, it is upon the law enforcement agencies of this country to ensure that Kenyans do not engage in business of swindling foreign companies or individuals when doing business here. A lot of Kenyans are aware of some countries in West Africa, nobody in the world wants to do even credit card business there, nobody wants to do any serious transactions in those countries. Kenya is in danger of falling prey to these same tactics when we have some business crooks, who have to be protected by the Government without the real reasons why they should be so.

Mr Speaker, Sir, in the current edition of *The East African Newspapers*, a subsidiary of the *Daily Nation Group*, have a catalogue of a Mr Kiplagat, who has swindled a Japanese Company, the Jaba Company in Japan of US\$300,000(?). When the directors showed up here to negotiate about their money, it happened that they were arrested by the Kenya Police, and they were terribly scared. We need to have an environment whereby, if you meet a Kenyan, you have the dignity and the integrity to stand tall in the community of nations. We wish to ask the political establishment to safeguard the integrity of this nation by ensuring that when you go and register a company to transact whatever business, you do not get away with it. I remember in October, 1991, by then, I was residing in the United States of America, reading in the *New York Times*, about a politician who had gone and borrowed over US\$300 million, and, then, he did not want to pay, so, when the bank was trying to ask what should happen to their money, they were threatened with a court injunction. These are some of the instances that do not benefit the Government at all. It might have benefited an individual, but we should be able to distance the individual from the entire nation. We should be able to have institutions that will protect all our public interests and public good.

Mr Speaker, Sir, the Central Bank of Kenya Act, should be able to direct the economic prosperity [Mr. Maore] of this country. We should be able to get sound policies emanating from Central Bank of Kenya. In the current environment, we have to wait from the Paris Club to another Paris Club, so that we can manage our political affairs here. We should be able to have enough economists at the Central Bank of Kenya, who are to give the policies the Government should be following, and not having very important economic policies emanating from political rallies.

Mr Speaker, Sir, we do have an intelligence department from the Kenya Police, of course, they would always call them the "special branch," at the Central Bank of Kenya. But instead of writing very good briefs about instances of potential "money laundering," or money theft or cheque frauds, they sit there trying to write political briefs, and when they try to do the political briefs, they start to list who goes and sees who; they start to list on whose accounts they want to monitor if some few individuals are having large amounts of money running into their accounts. We have reduced some of our institutions to very, very low levels of what they ought to be.

Mr Speaker, Sir, in other countries where we have sound institutional arrangements, the Central Banks are very effective and everybody looks upon them to lower interest rates or to increase the interest rates. In Kenya, we wait upon when a certain politician, whether here or there, is going to open his mouth, or you hope when is the date for the next Paris Club due, then, you expect to have a lot of anxiety in the money market, you have a lot of anxiety in the banking industry. This has to stop! It is important to have long-term physical and monetary management, if we really want to run an effective society without our own selfishness and without having any political links for short-term gains, but have long-term gains for the country and for posterity.

Mr Speaker, Sir, I do not want to go into a lot of details, I want to give other hon. Members a chance to speak, and with those words, I sincerely support this Bill.

Mr. Michuki: Thank you very much, Mr. Speaker, Sir, for allowing me to contribute to this Bill which is supposed to take care of the aspects that would have been preempted by the amendments to the Exchange Control Act. In this Bill, there are three important policy decisions and administrative actions which are sought by what is provided here. The first aspect is the control of payments. The second aspect is the control of transactions and the third is the licensing aspect. It was envisaged that in the absence of the Exchange Control Act, the Central Bank will have certain residual powers to be able to regulate and control the movement of payments and transactions involving foreign currency. If it is right then that the three aspects of payments, the dealings and the performance of business and licensing. If these were the issues that were to be taken care of, then one must ask one self as to whether the way the Bill is drafted is re-instituting Exchange Control through the back door. I should have thought that what was really required was a provision which is legal to facilitate the Central Bank to obtain information relating to foreign currencies as opposed to controlling the payments and transactions. The moment you begin to control payments you are right back into the Exchange Control situation.

Therefore, if in the Act there were words that required clarification and a very clear definition, were those words; payments and transactions because it is there that the law on Exchange Control is based. The use of those words in amendments which are meant not to introduce Exchange Control, it will bring all sorts of interpretations. The Minister should have addressed himself to this issue. I can see that he has defined the word "payments" but he has not defined the word "transactions". He also talked about "payment for current transactions" and he says this means "payments for transferring capital and includes: (a) payments due in connection with trade (b) payments due as interest on a loan as net income from other investments."

Mr. Speaker, Sir, we have a variety of transactions which involve foreign currency. For example, our coffee is now being sold in foreign currency. Will that be regarded when the farmer receives the payment as a transaction as per the proposed amendment? How will it be treated in courts of law if the issue were to arise before that court of law? What type of dealings in foreign currency are transactions and payments important to the Government? Because these are the areas where it should have zeroed-in. Not from the point of view of Control, but in order to facilitate the Government to obtain statistics in order to assess our balance of payments position and also in order to assess the amount of foreign exchange that we hold either officially or even in the private sector. Therefore, I am asking, why is it that this Bill gives that impression that the Exchange Control, which, if the Bill which was before us a few minutes ago had been passed would have been reinstated through this Bill which amends the Central Bank of Kenya Act? That word, to "transact" and "transaction" appears very often in this amendment. Therefore, I do think that even if this Bill is to go through, the Minister for Finance must consider bringing amendments particularly defining what is meant on transaction. What about our tea? Will KTDA be at fault in dealing in foreign currency? If the farmers eventually will have to be paid in foreign currency will they be within the law and if they will not, why not? These are questions which must arise. That word appears in the definition, it also appears under clause 33 (a) (i), (iii), (b) and it continues. So it is a very important word which must be clarified for the sake of applying this law fairly.

The other issue which I wanted to raise concerns clause 33(K) where the Bill is talking about "permission" from the bank. The moment the word permission comes in, it means you are controlling, you may refuse, you may grant, you may be indifferent and to that extent, you are again reimposing Exchange Control by that judgement. Either we are doing away with the Exchange Control altogether or even if we have to leave certain aspects of exchange control, then we must be quite clear as to what these are and what purpose they are intended to serve. Looking at that clause very meticulously, the clause says, "Any permission granted by the bank

under this part may be:

- (a) Either general or special.
- (b) Revoked by the bank at any time. (c) Absolute or conditional.
- (d) Limited so as to expire on a specified date unless renewed.
- (e) Publish in such a manner as in the opinion of the bank appropriately.

Now, my concern is again the introduction of a law that is so vague that it introduces doubt within the trading community. It introduces doubts and fears within the business community. If we were to be licensed, if the licensing is ruled not to be exchange control, if we are to be licensed in such a way that the license you have can be taken away from you anytime, it is not possible for you to do business or plan ahead. The law must give confidence to the business community and if confidence is not intended to be there, then obviously the law must state so. Therefore, to give someone a license which you may grant in the morning and take it away in the afternoon under the law, does not give that person confidence to establish business that is worthwhile. If there are permissions to be given, let these permissions serve the purpose of which they are intended but at the same time create confidence in the business community. Clause 33 (k) does none of these things. It does not give that confidence to the business community.

Similarly, we have Clause 33 (l) which again contains the same kind of mistake which I think should be looked into and the Minister to bring some amendments to this House. The section in question ought to have contained in it some provision to grant independence to the Central Bank of Kenya. The Central Bank of Kenya is being harassed from all directions; from the Ministry of Finance, the powerful cliques and even from the top of Government in this country. If, really, this Government is anxious to run a good Central Bank, they should go to Germany or Switzerland to see how central banks are managed. The purpose of the Central Bank of Kenya, and we have stated here before, is not to trade in order to appear to be declaring huge profits at the end of the year; profits that have to be handed over in ceremonies as if that was the work of the Central Bank. The work of the Central Bank is to maintain convertibility of the Kenya Shilling and to manage the Kenyan currency first and foremost. The other business of being a banker to the Government and banker to the banks are subsidiary issues. It is management of the currency and also to ensure that in that management, the objective is to promote development of Kenya. It is not the work of the Central Bank to go and rescue dying banks through which this country has lost so much money, much more than what the central bank might have set itself to go and protect; which is the depositors money. The money that went through fictitious certificates of deposits is much more than the money that the Central Bank might be protecting in connection with depositors in certain commercial banks. Therefore, it seems to me that this Bill should be taken to the drafting table and define what you mean by transactions because it is transactions that will be controlling. There are so many varieties of transactions that those who wish to be malicious can use that Clause as it is, to harass people, farmers or business people in this country because the law would not have been clear.

Mr. Speaker, Sir, I do not know, whether to support this Bill because in the light of the throwing out of the Exchange Control (Amendment) Bill. This Bill, if passed by this House, will be a tautology and will be a course for confusion and blurring the lines of responsibility as between the Central Bank and other authorities.

Therefore, those are my comments.

The Assistant Minister for Commerce and Industry (Mr. Osogo): Mr. Speaker, Sir, thank you for giving me this opportunity maybe to add to the confusion on the debate of this Bill. What the House is doing at the moment in debating this Bill, is in fact, a futile exercise. I say so because while I had prepared myself to comment on the Bill including the typing errors and so on, I am left in a position where I cannot make the comments I had prepared apart from saying that the debate on this Bill now as it stands is very futile in view of the fact of the provisions contained in Section 33 (p). Section 33 (p) states that:-

" A person who immediately before the commencement of this part, was authorised to transact foreign exchange business by virtue of provision of the Exchange Control Act now repealed---"

This makes no sense here because the Exchange Control Act is not repealed. I think commenting or debating further on this Bill does not make sense to me even because when I look at the memorandum of objects and reasons, the first paragraph states_;

"The object of this Bill is to amend the Central Bank of Kenya Act, Chapter 491 of the laws of Kenya, in order to enable Central Bank retain residual regulatory powers over the licensing of foreign exchange dealers and in the monitoring of international payments following the repeal of the Exchange Act, Chapter 113 of the laws of Kenya."

When I look at that and also I look at Section 33 (p), I find that the debate we are now engaged in, is indeed, going to bear no fruits. It was my idea that we would invoke Standing Order No.45 (b) and adjourn the debate on this Bill.

We would adjourn this debate on this Bill and then continue with the next Order. I intend to ask the Leader of Government Business and yourself, Mr. Speaker, Sir, to invoke Standing Order No.171 so that we can have an opportunity to continue with the debate on this Bill at a later date.

For all the years that I have been in this House, this is the first time I have come across such a confusion. In reality, it does not make any sense to me to continue with this debate on the Central Bank Bill. Therefore, I plead that we invoke Standing Order No.45(b) and adjourn the debate on this Bill and continue with the next Order.

Mr. Speaker, Sir, I will see you on Tuesday and invoke Standing Order No. 171 if I will have formulated a Motion to be moved on that day.

With these remarks, I beg to serve my support.

Mr. Speaker: You beg to do what?

The Assistant Minister for Commerce and Industry (Mr. Osogo): Mr. Speaker, Sir, I am reserving my support.

Mr. Speaker: Oh, I see! As far as the Chair is concerned, Mr. Osogo has only expressed his wishes. He has not moved anything.

The Assistant Minister for Commerce and Industry (Mr. Osogo): No, Mr. Speaker, Sir, I was intending to move a Motion, but---

Mr. Speaker: But that is what I am saying. When you intend to do something and you do not do it, I do not listen to you. In any case, you have finished.

The Assistant Minister for Commerce and Industry (Mr. Osogo): Yes, Mr. Speaker, Sir.

MOTION FOR ADJOURNMENT OF DEBATE UNDER STANDING ORDER NO.45(B)

The Assistant Minister for Commerce and Industry (Mr. Osogo): Mr. Speaker, Sir, with your permission, I beg to move that the debate on this Bill be adjourned according to Standing Order No.45(b) to be debated later.

Mr. Speaker, I beg to move.

Mr. Speaker: I just want to give guidance first. Mr. Osogo, I think that Standing Order No.21(1) is much more appropriate than the tenuous Standing Order No. 45(b). What is your view? If you agree with me, then you have to amend your Motion further.

The Assistant Minister for Commerce and Industry (Mr. Osogo): Thank you for that guidance, Mr. Speaker, Sir and I do appreciate. I overlooked at the Standing Order No. 21(1) and I do amend my Motion that I move the adjournment of this debate in accordance with Standing Order, No.21(1).

Mr. Speaker, Sir, I beg to move.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, I beg to second the Motion which has been moved by the hon. Member and I do so because of what basically happened in the Bill on the Exchange Control Act.

Mr. Speaker, Sir, while seconding that Motion, I just want to express one or two points here. What I am going to say should not be taken as an affront of the Chair, the procedure or anything else. But I think it is fair to say that the Bill previously, which was discussed here, at the time when the vote was taken, one side had more hon. Members than the other side. Therefore, it is also clear that when the Division was called, there was a fact which was not realised that all the Government side stood up. That number was much larger than the number on the Opposition side.

Mr. Orenge: On a point of order, Mr. Speaker, Sir. I wonder whether the Leader of Government Business is in order to revisit an issue which has been determined and ruled on? In any case, if I recall the time when the Question was put, the hon. Member was not in the House and only three Members on the Government side stood up and---

Mr. Speaker: Order! Order, all of you! I think you all must read the Standing Orders. Once an issue has been determined by this House, it is out of order for any hon. Member to revisit it. So, can we keep off that issue?

(Applause)

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, I have no wish whatsoever to revisit the issue. I was expressing my views that in difficult

circumstance such as that one, I hope that we will be able to find some other ways so that the decision taken reflects the true majority who actually vote because we believe there was a problem. But all the same, we are willing to have this Bill postponed so that the Government side can look into it. But basically, there was a fundamental error, one side had more Members and the one which had less Members carried the day.

Mr. Speaker, Sir, I beg to second.

(Question proposed)

Mr. Orengo: Mr. Speaker, Sir, I wish to support the Motion, but wanted to point out that since under Standing Order No.21(1) we are merely seeking an adjournment and I just wanted to bring to the attention of the House Standing Order No.114 which reads as follows:

"A Bill, whose Second Reading or Third Reading of which has been rejected, may be introduced again in the next Session or after the lapse of six months".

Mr. Speaker: Mr. Orengo, what relevance has it got to this one?

Mr. Orengo: Mr. Speaker, Sir, I am trying to point out that whether or not we adjourn discussion on this Bill, it cannot come back before the House until---

Mr. Speaker: Order, Mr. Orengo! Do not mislead the House. This Bill has not been defeated, it is only the debate of it which is being sought to be adjourned to another day which could be tomorrow or Tuesday.

When you refer to a Bill which has been defeated, obviously you are getting into the trap which I have overruled over. That a matter has already been disposed of shall not be revisited by any Member. So, can you concentrate on Standing Order No.21(1) and I wish to remind you too, of Standing Order No.21(2) which reads: "The debate on any such Motion, shall be confined to the matter of the Motion"

And the matter of the Motion is that this debate be now adjourned.

Mr. Orengo: Mr. Speaker, Sir, we are not disagreeing. If you read the Memorandum of Objects and Reasons for this Bill, the one that we are discussing now, it reads as follows:

"The object of this Bill is to amend the Central Bank of Kenya Act, Chapter 491 of the Laws of Kenya, in order to enable the Central Bank retain residual regulatory powers over the licensing of Foreign Exchange dealers and the monitoring of international payments following the repeal of the Exchange Control Act Chapter 113 of the Laws of Kenya."

Mr. Speaker, Sir, the Exchange Control Act has not been repealed and I was merely pointing out that even if we adjourn discussions on this Bill, we may not be able to discuss and debate on this Bill effectively on the basis that the Exchange Control Act has not been repealed. The only way that we can come out of this quagmire is to wait for six months for the Exchange Control Act if it is re-introduced in this House for debate. Then consequent---

The Assistant Minister for Public Works (Mr. Mwamzandi): On a point of order, Mr. Speaker, Sir. The hon. Member is misleading the House. I think it is contained in the Standing Orders that we could bring a Motion to rescind that decision. So it does not need six months if we agreed on the Motion to rescind that decision which has already been taken and which killed the Bill.

Mr. Orengo: Mr. Speaker, Sir, I will disregard that, and anyway, I have quoted the Standing Order which supports---

Mr. Speaker: Mr. Orengo, as I have said, it does help us a great deal if we just go to the substance of the debate. Leave the technicalities until they arise, if they ever will arise.

Mr. Orengo: Mr. Speaker, Sir, all that I am saying is that this House should not be engaged in an exercise in futility. That is all that I am trying to point out. Probably, I made a mistake by referring to the Standing Orders. So, mere adjournment of the debate in itself is not going to regularise the difficulty position in which the House finds itself. So, I support the Motion that debate on this Bill be adjourned. But the Leader of Government should bear in mind that there is no way that this Bill can be tackled or discussed before---

Mr. Speaker: Mr. Orengo, address the Chair! The Chair should bear in mind and not the Leader of Government Business!

Mr. Orengo: Mr. Speaker, Sir, I am much obliged. It is just that the eyes on the other side are looking at me very ominously and I am just wondering what they are up to.

I would only urge the hon. Members on the opposite side that a little bit of co-operation from both sides of the House would make our debates more meaningful. This is because we all understand that if we can bear in mind the debates and the contributions of the---

Mr. Speaker: Order now! Order, Mr. Orengo! The debate has nothing to do with your co-
[**Mr. Speaker**]

operation! Concentrate on whether the debate on the Bill should be adjourned. You are now becoming irrelevant!

Mr. Orengo: But, Mr. Speaker, Sir, I should give reasons. Anyway, I do not want to waste the time of the House. But I was just pointing out that in future we should avoid such situations if we can approach issues more objectively. This is because the resultant effect of adjournment of debate on this Bill is going to be felt by the Government, investors and many other people just because the House was not working in tandem.

With those few remarks, I beg to support.

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Speaker, Sir, I do support the Motion that we adjourn debate on this Bill. In actual fact, it would reserve very little purpose if we discuss the Bill while the other main Bill has been shelved for sometime. The Bill which was defeated earlier in the House was an important one---

Mr. Speaker: Mr. Mwamzandi, I do not want any hon. Member to revisit the issue we finished. So, just concentrate on this one.

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Speaker, Sir, what I was saying was that this Bill is related to the other Bill which did not go through the House. So, discussing this one would not be of any purpose. In fact, I do sympathise with the Opposition because the Government was actually implementing the wishes of the World Bank, the International Monetary Fund and other donors that we restructure the economy of this country. I did not know the Opposition would be against this. In fact, I do not know what they are going to tell the donors who were eagerly waiting for the outcome of debate on this Bill. It is not the Government which---

Mr. Speaker: Mr. Mwamzandi, can we now discuss this Motion?

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Speaker, Sir, I am on the same Motion. I am only sympathising with them. I think they are weakening themselves too much! The first day they went to Rwanda and today they are "killing" debate on the Bill.

Mr. Maore: On a point of order, Mr. Speaker, Sir. The Chair has already given the ruling on the first issue. Now, how is Rwanda coming in?

Mr. Speaker: Can we now go to the Motion?

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Speaker, Sir, I have already shown my sympathy for the Opposition hon. Members. They are the ones who do not want the economy of this country to be restructured.

Therefore, I support the Motion.

Mr. Speaker: I think I will put the question now.

*(Question, that debate on the Bill be now adjourned,
put and agreed)*

(The Bill was deferred)

Second Reading

THE CHILDREN BILL

*(The Minister for Home Affairs and
National Heritage On 20.7.95)*

(Resumption of Debate interrupted on 12.10.95)

Mr. Speaker: Well, Mr. Shikuku was on the Floor last time. He is not here and so he forfeits his chance. Yes, Mr. Osogo.

The Assistant Minister for Commerce and Industry (Mr. Osogo): Mr. Speaker, Sir, I thank you very much for giving me this opportunity to contribute on the Children Bill.

(Loud consultations in the Chamber)

Mr. Speaker: Order! Order, hon. Members! Although we are debating the Children Bill, we are not imitating them. Proceed, Mr. Osogo.

The Assistant Minister for Commerce and Industry (Mr. Osogo): Mr. Speaker, Sir, children all over the world have been recognised as very important people in a society. Indeed, Sir, the Memorandum of Objects and Reasons of this Bill says so. It says that among the objects of this Bill set out in clause 3 thereof is to establish and promote and to assist in the promotion of services and facilities within the community designed to advance the well being of children and to co-ordinate the use of such services and facilities. That is only one of the reasons and it is stated under (e) of the Memorandum of Objects and Reasons.

But looking at the whole Bill that particular aspect, as stated in the Memorandum of Objects and Reasons, does not appear at all in the whole Bill. What appears and takes most of the space in the Bill is what the Bill calls "adoption of children". I am

told that this Bill is the result of the work of one of the task forces appointed by the Attorney-General to examine various Acts or statutes. If this is true, then the task force did not do its homework properly. This is because it would have come up with a better Bill than the one we are now debating. It would have come up with a Bill that would provide for taking care of orphaned children, who are going to increase in this country due to the illness called AIDS. This Bill does not mention anything about orphans of any kind, be they those who have

been orphaned by AIDS or those orphaned by calamities caused by human beings. It does not mention anything about this and yet this is a very important factor in this country, in view of what is happening at the moment. This Bill also does not provide for the security of children who may be forced to take arms in order to fight, like it is the case in other countries undergoing civil strifes. We cannot think that this country will not have war lords in future, who would want to utilize children in taking arms to fight. It is high time that provisions to protect children from such things were incorporated into this Bill. We cannot pretend to be a "holier than thou" country, that we will not be thrown into such turmoil as has happened to other countries. Even the Holy Book regards children as very important. In Matthew 11:25, Jesus said: "Oh father, Lord of heaven and earth, I thank you for hiding the truth from those who think themselves so wise and for revealing it to little children. Yes, father, for it pleased you to do this". So, even the Bible says that a lot has been revealed to little children and hidden from us, the full grown-ups. Even the gospel of Mark, chapter nine says that; "Anyone who welcomes a little child like this in my name is welcoming me; and anyone who welcomes me welcomes the father who sent me". This is Jesus Christ speaking, and he was also referring to children.

An hon. Member: How relevant is that to the Bill?

The Assistant Minister for Commerce and Industry (Mr. Osogo): I am trying to prove how important children are, even in the Holy Book. This is the only Bill which is repealing all other statutes that take care of children in this country. It is the only one that is bringing all these statutes together to take care of the children. Therefore, it should be comprehensive enough so that no loop-holes are left. It does not even protect children from early marriages. In today's Press, a chief stopped an 80 year old man from marrying an eight year old child.

Now, he did that, not because of any law he has, but, probably, using the Chiefs Act. However, such a child of eight years should be protected from an old man of 80 years for marriage, and that should be included in this Bill. So, if the Task Force did its homework properly, it should have come up with a very comprehensive Bill for us to pass into an Act so that all aspects of children could be considered.

Looking at that whole Bill, it contains about 159 Clauses, but it has very many sections concerning adoption of children which, I must say is alien to Africa or, at least, in my tribe. In my tribe, we take care of children in our extended families and we do not think of adopting children from anywhere.

[Mr. Speaker left the Chair]

*[The Temporary Deputy Speaker,
Mr. Wetangula, took the Chair]*

Adoption of children in this Bill has got two full sections with 47 Clauses, and this is something which I regard as alien. A Bill of 159 Clauses, devoting 47 of those clauses on how children should be adopted and leaving out how orphaned children should be taken care of by the State, is, to me, rather ridiculous, to say the least.

Mr. Temporary Deputy Speaker, Sir, the Bill does not even give the Government any responsibility over children, and the Government should have responsibility over its children; the helpless ones and those that cannot be protected. Nowhere in this Bill is the Government given the responsibility to take care of children. The Government has given this to several people or institutions, for example, those who are going to adopt children,

and also the Borstal Homes and so on. I think that falls short of the expectation of us as parents and as tax payers. This Bill leaves the Non Governmental Organisations (NGOs) to deal with children. It does not even provide for the children born out of wedlock. It does not give any protection for such children.

Mr. Temporary Deputy Speaker, Sir, some people have thought that the former Affiliation Bill which we threw out of circuit in this House some time, many years ago, should be brought back to protect such children. That would not help. What would have helped is this Bill. A provision should have been put into this Bill because the Affiliation Act, as it was then, encouraged a lot of loose women who would identify tycoons and then accuse them of having fathered their children, simply for the sake of getting some money from the tycoons. That is why this Parliament saw it fit to throw it out. However, I submit that such children born out of wedlock should be taken care of, one way or another, and this Bill should do that trick of taking care of such children. The Bill dwells heavily on the criminal aspect of children, which is a pity.

Coming now to the details of the Bill, I would like to refer to Clause 6 which says that:

"A children's court shall sit in different building or room or on different days or at different times from those in which sittings of courts other than children's courts are held".

It goes further to say that when that court is sitting: "bona fide representatives of newspapers or news agencies will be represented".

Mr. Temporary Deputy Speaker, Sir, although the newspaper representatives sit in those courts, they will not report the proceedings of that court. That is provided in Clause seven and it makes me wonder why the Press should be allowed in the court and then not report the proceedings of that court except with permission of the Presiding Magistrate of that court. To me that does not make any sense. The Press and others that might publish the proceedings of the courts are warned. In Clause 7(2) they are told that any person who publishes any proceedings contrary to subsection (1) which refuses them to publish such proceedings commits an offence and shall be liable to conviction and the conviction is that they will be imprisoned for a term not exceeding two years but if it is a corporate body, that means if it is a company I presume, rather than it being imprisoned for two years, it will be fined an amount not exceeding Kshs 50,000. How lenient! A poor man who publishes single handed a story from that court is sentenced to two years but a rich company, a newspaper magnate is only going to be fined Kshs 50,000. I think that is very lenient and the Minister concerned should think of increasing that penalty of Kshs 50,000 to say Kshs 100,000.

Clause 11 clears the court of people who will be there sitting to listen to what is happening there. It states as follows:-

"Where in any proceeding in relation to an offence against or any conduct contrary to decency or morality the person who in the opinion of the court is under 18 years of age is called as a witness the court may direct that all or any persons not being members of officers of the court or parties to the case or the advocate or persons otherwise directly concerned in the case shall be excluded from the court during the taking of the evidence of that witness".

I submit that the parents of such children should be left in court so that they can hear evidence but they are excluded here.

This Bill provides for somebody called a fit person but the Clause does not explain who the fit person is. In my lay knowledge of Law I still want clarification from the Minister to explain to me who is being referred to as a fit person in this Bill.

Mr. Temporary Deputy Speaker, Sir, there is somebody also called responsible person in Clause 12. The Clause reads as follows:-

"Where a person apparently under the age of 18 years is apprehended with or without warrant and cannot be brought forthwith before the court, the police or administrative officer to whom such person is brought shall inquire into the case, and may in any case, and unless-

(a) the charge is of one of murder or manslaughter or other grave crime, shall release such a persons on a recognizance being entered into by his parents or guardians or other responsible person,---"

Now, who is this responsible person to the child who is not a guardian and not a parent? I do not who it will be. He can be a responsible person and still torture the child he takes this position because he is not his relative. As I said as well as identifying this fit person, this responsible should also be identified with the Clause.

Clause 19 (d) speaks of this fit person. It says:-
person, whether a relative or not --- "

Now, how fit is he? Who is he? Who will he be? Under whose care will the child be committed? That bit that is missing in the definition Clause leaves a lot to be desired.

Clause 22, deals with the National Council of Children's Services. It gives their membership but it leaves

out Commissioner of Prisons. The Commissioner of Police is a member but the Commissioner of Prisons is not a member and the Permanent Secretary in the Office of the President is a member. Not always will the Permanent Secretary in the Office of the President be responsible for internal security. So, I think that the Minister should define that the permanent secretary be a permanent secretary responsible for internal security rather than just leaving it as Permanent Secretary in the Office of the President.

I will now talk on Clause 31. Clause 31 (2) reads as follows:-

"If at any time the Minister is dissatisfied with the condition of management of an approved school, or considers its continuation as an approved school unnecessary, he may give to the manager not less than six month's

notice in writing of his intention to withdraw the certificate of approval, and upon the expiration of the notice the certificate of approval shall be deemed to have been withdrawn and the school shall cease to be an approved school".

That is alright but then it does not say what is going to happen to the children when the school [**The Assistant Minister for Commerce and Industry**] ceases to be a school.

There is no provision anywhere as to where the students are going to be taken or what is going to happen to them and I hope that when the Minister comes to reply he will let us know where these children are going to be taken.

Clause 37, Mr. Temporary Deputy Speaker, Sir, on page 25 of the Bill states in (a) as follows:-

"That, the director may, in his discretion, if satisfied that a child who has been ordered to be committed to an approved school should not remain subject to the order, may further order in writing revoke the committal order".

He is doing this without referring to any court. Now, that opens that director to corruption. I think the director should be able to refer the matter to court so that the court decides rather than him on his own volition deciding on that.

Clause 37(vii) says as follows:-

"Notwithstanding anything in this Act, an order committing a child to an approved school shall not remain in force beyond the date on which the child attains the age of 20 years; nor shall any such order remain in force for longer than three years at a time except by an order of the court".

Not longer than three years. But three years can pass and the child has not reformed. So, what happens to that child, if he was kept in that school because they wanted him/her to be reformed, but the three years pass and the child has not reformed? I think provision should be there so that child, if not reformed, can continue to remain in the school.

Clause 46, Mr. Temporary Deputy Speaker, Sir, deals with local authorities with regard to expenditures. It says:-

"Any local authority, whether an appointed local authority or not, and any District Commissioner, may incur expenditure in or about the temporary care of any child in need of care, including his maintenance in a place of safety or in the return of any such child to his parents or guardian or the area of the appointed local authority, if any, notwithstanding that in the case of an appointed local authority such child has been committed to its care under the provisions of this Act".

That is very well written, but there should be checks for corruption where a local authority or District Commissioner would submit expenditures which he did not incur on the child.

Clause 51, Mr. Temporary Deputy Speaker, Sir, is very important in this Bill. However, the only thing I can say about it is the criminality that is being expressed in that clause. It says as follows:-

"For the purposes of this Act, a child is in need of protection or discipline - if, for example, is found begging or receiving alms or inducing the giving of alms, whether or not this is any pretence of singing, playing or performing".

Now, that child needs protection. That child might not need discipline and I think the Minister should expound more on that so that it does not leave that child to be disciplined simply because he is found begging.

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

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

Clause 52 is penalty for cruelty to and neglecting children. Reading through that clause, long as it is, there is nothing protecting the child from sexual abuse. As I said, there is nothing protecting a small child from being married by an old man, as it has been reported in other parts of the country. It does not even protect the child from some "harmful culture" such as female circumcision. This is a culture that shows that a child should be protected from, particularly if the child has no parents. It does not also protect the child from forced marriage, but it should. That clause should encompass Article 27 of the OAU Charter which has been stated in some parts of this Bill that it is being put into consideration all the time. But Article 27 of the Charter should have been included or referred to in clause 52.

Mr. Temporary Deputy Speaker, Sir, as I said in the beginning when I stood to debate on this Bill, I said things which are not to be admired. I also said that if it is a product of a task force, the task force did not do much work on it. I urge the Minister concerned to consider the orphans. It is a big problem. In fact, even the street children should have been considered in this Bill. There is no mention about them and it is a problem in Kenya. It is growing in all towns. It has been in major towns and it is now going to market places. There are no streets, but the children are there called "street children". This is a Bill that should have considered that. It is wrong for the Minister to stand up and tell us that this Bill is going to be reviewed and probably include what we are saying now and what other organisations have also said. I think it is high time that the Minister considered and, if possible withdraws, this Bill for further drafting so that it can include many of the loopholes that have been left out for the children. I am sure it can include vital parts of the children and not stick all the time on the criminality of the child or the adoption of the child which culture is alien to Africans.

With those remarks, Sir, I beg to support the Bill with some reservations.

Mr. Mulusya: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support the Children Bill.

Mr. Temporary Deputy, Speaker, Sir, the issue of the child, and especially the street child, is very important. This country is facing a crises through the mass increase of the number of street children in every sector in the urban areas as well as semi-urban areas. You will find virtually everywhere you go in this country, there are street children. You ask yourself: "what has caused this high increase in the number of street children? And the basic answer is, the big economic disparity between several sections of the society where there are very rich people and extremely poor people and where children are not able to get time to go to school. They are being left by their parents to go and fed for themselves and end up in the streets, sleeping outside and feeding on garbage.

Mr Temporary Deputy Speaker, Sir, it is the Government's responsibility to make sure that it addresses itself to this major problem which is going to create a society where there are illiterate people who have grown in the streets and all they can afford to do is to harass other citizens because they have no alternative but being pickpockets and prostitutes, especially small girls.

Mr. Temporary Deputy Speaker, Sir, the issue of pimping in this country is another very serious problem. You will find pimps collecting small street girls, even some from school, to go and practice prostitution. They sell themselves out. It is an organised syndicate especially in Nairobi. We do not know why the Police have not been able to go into the streets of Nairobi and crack down this issue of pimps. If you walk or drive along the streets of Nairobi any time after seven o'clock, the picture you see is that of a rotten society where the Police are either sleeping or they are part and parcel of that syndicate of prostitution which involves very small girls who should not be involved in those activities and they have been let to get to that.

Mr. Temporary Deputy Speaker, Sir, the incidences of rape in this country have increased tremendously and the Police are still not doing anything about it. You will find cases of rape being reported to the Police Station and the Police do not take any action. I had personally to write to the Police Commissioner to ask him, why some suspects who had raped a girl of four years old have not been arrested. The person who raped that girl is still enjoying and living freely; no action has been taken against him. The person is able to walk in and out of the Police Station in Kangudo without any arrest and when you ask you are told, "this is politics". It is very important that the Police do their work.

Mr. Temporary Deputy Speaker, Sir, the number of children homes in this country is also growing at a very big rate but some of these homes are being run on charitable basis by people collecting charitable donations from Kenyans and international organisations but some of them are not using that money, that they are collecting for the welfare of those children. There are children homes here which have been created as a bait by individuals to make money. This is an issue which must be investigated to be able to know before you establish a children

home what their intentions are and whether their intentions are genuine or they simply want to milk the public money on pretext that they want to feed these children?

Mr. Temporary Deputy Speaker, Sir, we have seen people raising funds from the international community, still on the pretext that they want to help street children and what they afford to do is just to collect about 20 or 30 children and the money they get they use it to acquire properties for their own selfish ends. So, the Government should be able to investigate most of these children's homes and know who are the directors, owners sponsors and whether they are using the money they are getting for the right purpose.

Mr. Temporary Deputy Speaker, Sir, the issue of school fees. High unaffordable school fees in this country is contributing also to these large number of street children. We find that most of the parents are unable to buy school books because it is their responsibility; They are unable to pay activities fees, schools fees and the headmasters are chasing children to go and look for this money and when the children go home, the parents tell them, "we cannot afford, what you do is you go and start looking for your own money". Eventually, these children end-up not going back to school. So, it is the responsible of the government to at least lessen the burden on the parents and consequently reduce the number of street children by reducing school fees.

Mr. Temporary Deputy Speaker, Sir, we do not see why this country can afford to lose billions of money through fraud and yet it cannot commit money to create genuine children's homes where these street children can go and be rehabilitated. So, it is only a question of reducing graft in the Government offices and divert that money to helping these poor children. If the Government acted more genuinely in stopping grafts. We have seen circulars by Ministers and Permanent Secretaries, issuing instructions to civil servants that they are going to be dismissed if they are caught misappropriating Government funds. But that is just a gimmick because the people who really steal Government money they never get arrested and they end up either being praised for being very hard working. One cannot be hard working just because he is sitting in the Government office and milking the public funds for his own benefit and considered as a very hard working Kenyan.

Mr. Temporary Deputy Speaker, Sir, when we look at the distribution of children homes, some areas where one would have wished those facilities to be, they are not there. For example, in the rural areas, where children have lost their parents either through diseases, death, road accidents and so on, those children are completely neglected. They do not get proper sponsorship and some of them are very bright children and because there is nobody to assist them and because of the disparity of the wealth distribution in rural verses urban areas there problems are increasing. One will find that there are very few people who would be able to understand, know or get the information that there are children who have been left without their parents and need help. It is for the Government to move to the rural areas and disseminate proper information about these children and make sure that they are helped.

Mr. Temporary Deputy Speaker, Sir, one finds that the Government want to spend money to set up remand homes. The remand homes are not being utilised for really rehabilitating the children. If a child became a criminal because he was just simply looking for something to eat and is put in these remand homes with these hard-core criminals this does not rehabilitate him. The Government will not be helping that child. So there must be a separation of homes for children and those for the hard-core criminals. There must be a system of knowing or establishing what led this child in getting into those activities. When that information has been established, then it is very fair that the Government separates the remand homes for the grow-ups and children. There are cases where you go to a police station and find that a mother has been arrested and put into a cell together with her children or children are arrested for loitering and they are put in police cells with hard-core criminals. One will find that they are urinated on, stepping on faeces and so on. They are stepping on the faeces because there is nobody who can be able to take care of them. This is very unfair and the Government must be able to know and instruct, especially the Commissioners of Prisons and the Police to separate these children from hard-core criminals. Putting them together this way does not help the country at all now does it help the children or the country in the long run.

Mr. Temporary Deputy Speaker, Sir, there have been a lot of views and cries about this Bill we are debating today. There has been expressions that many organisations which would have put much input in the preparation of this Bill were not consulted. Now, we are finding that there are so many loopholes in terms of who should be in the Board and what should have been included and so on. It is only fair that the Minister in charge finds it prudent to withdraw this Bill and let it go back to the Attorney-General for further redrafting. There is need for more consultation because we are seeing cases where a Bill is brought here and it is passed by this Parliament and only after a few months it comes back here with certain amendments because it was simply rushed in Parliament. So, it is very important that before a Bill is brought here there should be proper consultations and all parties which have got invested interest should be consulted. For example, in this Bill those bodies that have got interest in the affairs of the children should have been consulted. This country is unlike in the

old times when we did not have well educated and well-informed citizens. They need their opinions to be considered at the very initial stages of drafting a Bill.

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

Mr. Badawy: I stand here to hesitantly support the Bill. I speak as a devoted Muslim. Although I am not a Muslim leader, I represent the views and the consensus of Muslims in this Parliament and in the country.

I would request the Minister to take very seriously the amendments that were proposed through the Attorney-General's Chambers. Unless those amendments are accommodated, for any Muslim to accept this Bill as it is, that is tantamount to blasphemy.

I would like to remind the Minister of the repercussions of the Law of Succession that was passed in this Parliament and that even after its approval, the entire Muslim community in Kenya, that constitute at this time more than 25 per cent, and that is guided by the teachings of the Holy Koran and the teachings of the Holy Prophet, similar repercussions are likely to come if this Bill is going to be passed as it is. There is no compromise among Muslims as far as social and family laws are concerned. I would like also to appeal to the Attorney-General to coopt learned Muslims in his task forces. By merely coopting any Muslims in these task forces, anybody who is called the Muslim or has a Muslim name or who practices Islam but is not a learned scholar, that is definitely going to create problems that could be identified by a group of Muslim scholars, parliamentarians and Muslim lawyers who have in this case sat to study this particular Bill and have found a lot of discrepancies that are not in conformity with the teachings of Islam. If I should go through it, there are definitely some parts in section 2 where definitions have definitely to be rectified. A "parent" as far as Islam is concerned needs to be re-defined to exclusively mean the biological father and mother and the question of legitimacy definitely has to be taken into consideration.

On the issues of religion, everybody has the right to practise their religion, but if it is left as it is, without specifically mentioning the religion of a particular child, then that is definitely a discrepancy. Therefore, the definition of religion should be rectified to mean that religion that a child or his parents profess or belong to. "Guardianship" as defined in this Bill has also a discrepancy as far as the Muslim teachings are concerned, and, therefore, the Bill should be amended to distinguish guardianship from custody". Because from the Islamic point of view, "custody" refers to physical care and control. Or otherwise, maintenance, as far as Islam is concerned does not come under a guardian. A guardian is not responsible for maintenance and, therefore, the word "proper care" and "maintenance" should not go along with guardianship.

Guardianship on the other hand, refers to more than just mere physical care and control of the child. This is normally given to female children.

Mr. Temporary Deputy Speaker, Sir, when it comes to education, Muslims are always very, very much concerned about their education. Secular education should go hand in hand with religious education, and this is why right now, the Muslim community in the whole country, is showing a lot of concern to the delay in the registration of the Muslim teacher training college in Mombasa. Therefore, in the context of education in this Bill, education should also include religious education.

Mr. Temporary Deputy Speaker, the welfare of the child, wherever it appears in this Bill, must take into consideration the religious background of that particular child when anybody is trying to solve the welfare means of a particular child.

Now, comments on specific clauses. To begin with Clause 4, the phrase "in the public interest", should be deleted. Because, the question of maintenance of a child and the care of a child is not a public interest as such, it should start with the parent and the immediate community and the extended family.

Then, Clause 51 should be read along with the section of education and should be redefined to read "Islamic religious education" as well. The phrase, "as far as possible" in that Clause 51 (b), the phrase that says, "as far as possible", should be deleted, since, it is subjective.

Going to Clause 81, as far as Islam is concerned, the father is responsible for the maintenance and upkeep of a child. This takes into consideration the fact that, the mother has greater responsibility in nursing, in upbringing and so on and so forth. Therefore, the maintenance is purely a responsibility of the father and, therefore, the mother should not be obligated to take care of the child. And where actually the father is dead or the father has disappeared, the responsibility goes to the male next of kin and relatives.

Clause 86, where it refers to a case where a marriage has been dissolved, the maintenance of the child is as discussed, and the issue of children should be governed by the laws that actually saw the performing of the marriage between the parents rather than, it being governed by the context of this Bill, the future of the child, the maintenance of the child, the welfare of the child, should be a responsibility in conformity and in accordance with the laws of the marriage. If the marriage has been performed in the church or has been performed in accordance

with the Muslim law, or has been performed customarily, then, that should be taken into consideration.

Clause 87, "parental rights", should be substituted with "custodial rights", because, parental rights are exclusive. Parents has been redefined earlier in my explanation.

Clause 89, discussed at length, because the age limit of 18 years with regard to maintenance may be difficult for females who may be maintained even longer after the age of 18 years. However, no changes are recommended, but Muslims should be reminded of their obligations towards their female children. Because, whereas, the male children cease to be a responsibility of the parents and the guardians at the age of puberty, the female child at whatever age, as long as she has nobody to maintain, she has no husband to maintain, she remains a responsibility of the family. If the parents are alive, well and good, otherwise, the brothers are responsible and other males next of kin follow.

Clause 149, should be rephrased to take care of the Islamic view, such that, we can differentiate between guardianship and custody. Because, Islamic view is that, the mother can be the custodian of the child. Because, the father has no time for the child. Therefore, this particular section, should give emphasis all the rights of custody to the mother. Where the father or whoever it is, even in the case [**Mr. Badawy**]

of divorce or separation, still has to maintain. But, the physical maintenance is done by the mother and material maintenance continues to be taken care of by the father.

Clause 163 should include Islamic point of view, that is in case of legitimate unions, the father has superior rights to that of the mother, as regards to the child, but that does not mean the mother has no right at all over the child. This is because the mother can get married to somebody else, and Islam still emphasize on the fact that, the biological father still has to maintain the child even where the mother is living with another husband.

On the question of adoption, in the same spirit, that on the concept of adoption is foreign to the African community, it is equally foreign in Islam. The question of adoption does not arise and, therefore, if it has to be incorporated in this Bill, Muslims have to be definitely excluded in that context of adoption. We would request that the Bill accommodates provision of a family court, because many disputes that finally lead to divorce and which definitely contribute to the mismanagement of the child and the street children. All that definitely start at home with small misunderstandings. Therefore, before the issue goes to the juvenile courts the matter should be resolved by a family court, that should definitely be defined and should be constituted and provided for in this Bill.

Mr. Temporary Deputy Speaker, Sir, I would like to re-emphasize again that these amendments definitely have to be incorporated in the Bill. Without which no Muslim worth his name here, worth his faith, is going to support this Bill, because by doing that I maintain "that amounts to blasphemy." And to save the Government from any repercussions, from any embarrassment after this Bill is going to be passed without amendments, I would suggest that even those of us here, who do not profess Islam should give consideration to the provisions and the amendments that we have proposed here.

Mr. Temporary Deputy Speaker, Sir, I want again to request the Attorney-General, and all legal officers, in Ministries to take into consideration the Islamic laws which are governed by the Holy Koran. Once again, I say that we cannot compromise on any issues that touch on social and family laws and family affairs of the Muslims.

With these few remarks, Mr. Temporary Deputy Speaker, I beg to support the Bill with reservation.

Mr. Kibaki: Mr. Temporary Speaker, Sir, I want to support the proposal by the hon. Member for Bunyala. I think it is very reasonable proposal that the Minister in charge of this Bill, in view of what has been spoken here, and in view of what has been spoken by various NGOs and many other people who operate in the sector about regarding children, that he agrees to review the Bill, so that these aspects which are omitted, should be corrected, so that the Bill will eventually become a very good basis for a very major problem socially, in Kenya, the problem of children. That should be taken very seriously. I am sure that the Attorney-General will see the sense of it also. I met the commission which was set up to look into the problem of children, I met them when they were going round the country, and taking evidence from various people, and they had a lot of evidence.

So, in many ways, we would have expected a more complete Bill than what we have now. This is not really complete, Mr. Temporary Deputy Speaker, there are so many serious omissions. May I take one of the major serious omissions in this Bill. These children who are said to be disadvantaged, or who are said to be "fatherless" or "motherless", every child has a mother and a father and the mother definitely knows who the father is.

A subject that has been avoided and yet it is fundamental to anything to do with children is how you are going to make the parents of the child responsible for the upbringing of the child. Whether the mother is living with the father or not, the father is responsible for the maintenance of the child. Any society which refuses to recognise that fact is uncivilised and backward. In every civilised society including the fundamental African traditions, the father accepted the responsibility of his child, whether he married the mother or not and in our traditions, in every one of the many tribes of this country, all traditions the father has that responsibility but

nowadays even a Bill drafted after a very learned Committee went round the country and brought to this House by a Minister and vetted by the Attorney General avoids this one issue. Until we face that issue, we cannot begin to resolve the problem of children; the issue of the father taking responsibility of maintaining the child so that we do not have a child with no one to maintain it. That is the most important aspect of this law and we know that if it is taken care of by the law, half of the problems we are dealing with now will be taken care of but we have avoided the issue. So, I want to propose that this is an aspect that should be included in the new Bill on children, then we will have a basis for dealing with it because we shall have the means to maintain the children and educate them.

One of the biggest problems now with these children with no one to take care of, is lack of education. So, we shall have them not only being rogues in society but they will also be illiterate or semi-illiterate and that is backwardness. So, we have to start where we should have begun. That is one issue why this Bill should be amended to face the fundamental question.

The second point why the Bill should be amended to face the fundamental issue is that in the Ministry of Home Affairs and National Heritage as the matter is now, the Children's Department is pre-occupied with the matter of removing children from streets, removing children from wherever they are going to be taken and take them and hide them away in these homes and institutions. And having done so, the problem is supposed to have been solved. You and I and everybody knows that way, the problem is not solved. All you have done is that you have removed these obnoxious people from the society, put them in some institutions and society becomes happy that they are not being pestered by people who are begging. It is much better, they should live with people who are begging so that they see the problem rather than these little children should be put in an institution where there are treated as lesser human beings because they are just disciplined there at a very early age. When you meet the children in these homes where they are taken, the Government institutions I am talking about, the approved schools, these funny places, they are hardly schooled. And so called borstal institutions; these places are very terrible for little children who are growing because a little child who is less than ten and who has no one to actually play the role of mother, to play the role of somebody loving, to play the role of somebody who cares and talks to these children- There are just a few teachers who go there for a short period of time and then they go away and then the fellows are left with whoever supervises the institution and they are just really herded together as little miserable people. So what we need to do and amend in this regard is to create institutions for children which are closer to home. It has been done in other parts of the world where children will be put at a maximum of ten and they have a mother or a foster mother shall we say and they have somebody who takes care of them so that they have somebody to go to and to talk about their little problems and children have problems like everybody else and they change their attitude of mind that society cares. These little ones were running around towns, also reject society because society has rejected them because they live in the cold. If you go around Jeevanjee Street, the lane behind the street it is their headquarters. At night however cold whether it is raining or whatever is happening, they live there all of them.

They think that the society has rejected them, and they are growing under that condition. So, they will become hostile to the society. We are actually breeding people who will be anti-society. So, this Bill should create a special commission or a department to take care of the children. It should be funded by the State, and all the taxpayers in this nation. It would be a worthwhile course. The children could be brought up in what is approximate to being a home, so that they will relax, sleep enough, be cleaned and be taught, so that they can get some education and become good members of the society.

Thirdly, let me say this: The increase in the number of children who are now without anyone to take care of is only a symptom of the poverty of this nation. Everybody asks why we are getting so many destitute children who have no home, and who are just left by their mothers to go and take care of themselves. It is an indicator of how the society of Kenya over the last 20 years or so, has come from a certain level of income. Our level of income in this nation over the last 20 years has dropped by 50 per cent. It is a fact. The real standards of living has dropped. The available income to individual persons in Kenya has been on the downwards decline and has gone down by 50 per cent. So, we are infinitely poorer as a society than we were 15 or 20 years ago. This is a fact. For that reason, there are many, many mothers who are unable to take care of their own children, and the children drift away easily. But more importantly, the dropout from schools particularly in case of girls who drop out from primary and early secondary. They are producing children, who end up being on their own. These are the social problems that we have to deal with. I am not saying that all these aspects can be included in this Bill, but I am saying that there are aspects of taking care of the child, so that he is taken to a proper institution where he would want to stay. He does not have to run away because he would go and like it and stay there. That is the way we should deal with this. The Bill does not need these omissions to be plugged and be taken care of. If we pass this Bill, and just give it to the department as we have it now in the Ministry of Home

Affairs and National Heritage, we shall have no change.

I am speaking from experience. At one time, I was the Minister for Home Affairs. I know that the Children Department is the worst financed department there is in Kenya. It gets very little money, barely enough to pay the salaries of those who look after the children. Therefore, we need a much, much bigger department or institution, because they are dealing with a problem which is infinitely bigger than we now have established there.

Mr Temporary Deputy Speaker, Sir, let me also add another point which is omitted and should be included in this matter. As it is today, we do not have available any free education, all education is paid for by someone. Now, these children who are collected from the streets, *etcetera* we will have to make education available to them free, and, therefore, it requires even a bigger department, as I was just proposing because that is essential. If we do not do that, we will not be doing anything meaningful, we shall only be taking them there just to keep them away from the society.

Finally, Mr Temporary Deputy Speaker, Sir, let me say this, in regard to this Bill, to deal with children, we have all agreed. In fact, we do not want anyone to imagine that there is a dispute between the Opposition and the Government on this matter. It is all agreed, it is purely that the Bill is inadequate and it will not form the basis for the new life we want to project for these kind of children. That is why the Minister should agree to, and the Minister is not even here. Oh! the Assistant Minister is here. The Minister does not look like the Assistant Minister. The Minister is distinctive, we will have noticed him. I am just saying that we should withdrawal this Bill---

The Assistant Minister for Home Affairs and National Heritage (Dr Momanyi): On a point of order, Mr Temporary Deputy Speaker, Sir. I do not think, hon. Kibaki is right to say the Minister is not in the House. I am the Assistant Minister for Home Affairs, and I am duly here representing the Minister.

(Applause)

Mr. Kibaki: Mr Temporary Deputy Speaker, Sir, I agree entirely. I was looking down for the Minister, when I said that, and then, I quickly spotted the Assistant Minister!

Mr. Achieng' Oneko: On a point of information, Mr Temporary Deputy Speaker, Sir. The Assistant Minister is not sitting in the right place. Why is he shy of sitting in front here, so that we can see him?

(Laughter)

The Temporary Deputy Speaker (Mr Ndoto): Order! Order! I do not think whether that is a serious point of order. I do not want interruptions for the sake of it. Can you continue with your debate, hon Kibaki!

Mr. Kibaki: Thank you, Mr Temporary Deputy Speaker, Sir. So, the department is effectively represented, I agree. Therefore, I do hope that the Assistant Minister has taken note of these reasons why the Bill just needs a little revision to address those problems because if we do not address the problem where these children are coming from, and it is wrong to go on calling them "illegitimate." This word should be banned.

Mr Temporary Deputy Speaker, Sir, in the whole world now, we have children being born out of wedlock, but they are no longer anywhere else in the world being called "illegitimate," only in a primitive society of Kenya, where we are still calling human beings, children of God, and calling them "illegitimate."

The Assistant Minister for Agriculture, Livestock Development and Marketing (Dr Misoi): On a point of order, Mr Temporary Deputy Speaker, Sir. Is the hon. Mwai Kibaki, in order to call the Kenyan society, "a primitive society"? Is he really in order?

Mr. Kibaki: I do not think the hon. Member for Eldoret South was following what I was talking about. I was talking about the continuing language being used by the department, politicians, church people and all people who speak and they keep calling these children whom we see in the streets illegitimate. They are perfectly legitimate because it is not their wish to have been born the way they were born, but they were born by a woman and a man. They are perfectly legitimate---

The Temporary Deputy Speaker (Mr. Ndoto): Order, hon. Kibaki! The point of order was whether you were in order to call the Kenyan society "primitive". Did you say that?

Mr. Kibaki: I said that only in societies which have not grown up to the present times--- I said "in the rest of the world." I did not use that word. In the rest of the world, nowhere else are these children being called illegitimate except in a society which is backward like ours.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Dr. Misoi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Kibaki is evading my point of order. Indeed, I heard

him say, in a primitive society such as ours! Would I be in order to request him to withdraw that statement because it is offensive to the Kenyan society? We are not primitive. If some people call children illegitimate, it is not the entire Kenyan society! This is too much!

Mr. Kibaki: The hon. Member will get his time to contribute to this Bill; but he is trying to debate from the sidelines. I do not know why he is shy. Come to the Floor, speak on the Bill properly. Do not be afraid! I am saying that there are no illegitimate children. Half of the children being born in many societies in Western European countries today are born by people who are living together out of wedlock and it is a social fact, a reality and it is not a joke. Yet here in Kenya, when some two people have had a child out of wedlock, the child is the one who suffers. He is called illegitimate. Even a dispute is allowed to arise later as to whether the child has a right to inherit. The child should have a right to inherit because he has a father and a mother and his right should not be interfered with by the manner in which he was born because he did not choose how to be born, by whom, where and when. The child was just born, he found himself here having been given a name and even having been adopted into the clan. It is peculiar.

We must move with the world. That is what I am saying. Move with the world, accept these realities and stop being taken back to the old times.

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Kibaki, I think you are making a very useful contribution but I am only concerned about this point of order. Did you use the word primitive society like Kenyan society? Might you have used that word?

Mr. Kibaki: I was only saying that to classify these children as being illegitimate is a backward concept. I was just explaining that in the rest of the world, half of the children are being born by people who are not regularly married. They are just living together and that is a fact. Therefore, people who persist in using this language are making a mistake.

May I plead finally with the Assistant Minister that he agrees that the Bill be withdrawn or re-drafted. We shall all help if he wants us to write these things down, we shall do so although we can also give them to the task force.

The Temporary Deputy Speaker (Mr. Ndotto): Dr. Misoi, I am afraid there is no time.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Members, it is now time for the interruption of business and the House is, therefore, adjourned until tomorrow, Thursday, 9th November 1995 at 2.30 p.m.

The House adjourned at 6.00 p.m.