

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 15th November, 2000

The House met at 2.30 p.m.

*[Mr. Deputy speaker in the Chair]*

PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No.670*

EMPLOYMENT OF EXPATRIATES IN  
PUBLIC INSTITUTIONS

**Mr. Deputy Speaker:** Mr. Gatabaki is not in? We shall come back to that Question later on.  
Next Question!

*Question No.681*

DEATH OF MR. NYANGANI

**Mr. Deputy Speaker:** Mr. Sungu is not in? We shall come back to that Question later on.  
Next Question!

*Question No.349*

RECRUITMENT OF PRISON WARDERS

**Mr. Ndicho** asked the Minister for Home Affairs, Heritage and Sports:-

- (a) if he is aware that recruitment of prison warders ceased three years ago;
- (b) if he is aware that the Prisons Department has a shortage of 3,000 warders todate, in view of the above; and,
- (c) when the recruitment of prison warders will resume.

**The Assistant Minister for Home Affairs, Heritage and Sports** (Mr. Choge): Mr. Deputy Speaker, Sir, I beg to reply.

(a) It is true that the recruitment of prison warders has not been done for the last three years, because the Prison Service did not have sufficient funds for the exercise.

(b) It is true that there is a shortage of workers in the Prison Service, but the figure is lower than that given by the hon. Member. The current shortage is about 2,000 warders.

(c) We hope the recruitment will be done during this financial year, subject to availability of funds.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, I thank the Assistant Minister for his honesty, because he has admitted that there has been no recruitment of prison warders. Prison services are very essential. Right now, there is a big disparity between the ratio of prisoners vis-a-vis the warders. Prison warders fear to be overwhelmed by the prison population, and that is why at King'ong'o, the few warders who were there undertook to kill the warders who were trying to run away.

The Assistant Minister has agreed that prison services are essential, but there is a shortage. But in his answer to part "c" he says that recruitment will start this financial year, subject to availability of funds. It means that he is not certain that recruitment will even take off this year. In view of the foregoing, what immediate action is the Assistant Minister planning to take to close that gap?

**Mr. Choge:** Mr. Deputy Speaker, Sir, the reasons given by the hon. Member are true. Immediately after the Civil Service retrenchment exercise is completed, the Government will consider those departments with serious shortages of manpower. One of those is the Prisons Department.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, it is either there was bad planning or there was, indeed, a good reason why there was no recruitment. Could the Assistant Minister confirm or deny that part of the reason why there was no recruitment, was because there was over-establishment in the prisons? Why can you not accurately fix the date when you will begin recruitment?

**Mr. Choge:** Mr. Deputy Speaker, Sir, in the entire Civil Service, we have people retiring from various departments and not only in the Prisons Department. After this, we will consider recruiting some officers to the Prison Service.

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, instead of considering increasing the number of warders to close the gap, perhaps, I would urge the Minister to consider releasing some prisoners. However, in view of the fact that the warders are very poorly remunerated, the lowest earning Kshs3,000 including house allowance and in view of the fact that, unlike the regular police, the warders do not have the privilege of putting on a uniform when they do not have money to go and stop by the roadside and take money from motorists, and in view of the fact that they normally feed on prisoners' food because most of them cannot afford having food in their own houses, could the Assistant Minister tell us what the Government is intending to do to enhance their living conditions?

**Mr. Choge:** Mr. Deputy Speaker, Sir, there is an exercise which is being carried out in the entire Civil Service. I am sure we will also consider raising their salaries. But it is not true that the basic salary is Kshs3,000, but Kshs4,645.

**Mr. Kihoro:** Mr. Deputy Speaker, Sir, I must admit that I have lived in Kenya prisons for a period of three years, and I know how badly trained the warders are. Could the Assistant Minister assure this House that when they start recruiting warders again, they are going to be given a compulsory course in human rights, so that they can know how to treat prisoners, because convicted people should not be killed the way prisoners were killed at King'ong'o?

**Mr. Choge:** Mr. Deputy Speaker, Sir, we shall do that, together with the other departments.

**Mr. Ndilinge:** On a point of order, Mr. Deputy Speaker, Sir. It is only the other day when Dr. Ochuodho was in jail, and he has told this House that prison warders feed on prisoners' food. Could the Assistant Minister confirm that they feed on prisoners' food?

**Mr. Deputy Speaker:** Order! That is not a point of order.

**Dr. Kulundu:** Mr. Deputy Speaker, Sir, given the congestion in Kenyan prisons and the fact that prisoners die of tuberculosis (TB) and typhoid, could the Assistant Minister consider vaccinating would-be prisoners against TB and typhoid before they are taken to prison?

**Mr. Choge:** Mr. Deputy Speaker, Sir, due consideration will be given to the hon. Member's request.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, part (b) of the Assistant Minister's answer says the current shortage is 1,942. The Prisons Training College happens to be in my constituency. The number of recruits taken in every year is 1000. In three years, the number of prison officers would have risen to 3000. Is the Assistant Minister satisfied that while his salary is Kshs402,000, a prison warden is paid Kshs4,000? From my own experience, due to the shortage of prison warders, some prisoners are locked up in the cells for as long as six months without seeing the sun! What is the Assistant Minister going to do to correct this situation?

**Mr. Choge:** Mr. Deputy Speaker, Sir, my salary is the same as that of hon. Ndicho. I only earn Kshs8,000 extra in the form of responsibility allowance! It is not true that prisoners are locked up in for up to six months. I have been a prisoner myself. Prisoners are always taken out to bask in the sun!

**Mr. Mwiraria:** Mr. Deputy Speaker, Sir, recently we passed an Act of Parliament, authorising community service as part of imprisonment. What is the Government doing to increase the number of those who serve their jail terms under community service to reduce the number of those who go to jail?

**Mr. Choge:** If there are many people in prison in the hon. Member's constituency, we can take them out to go and work on the roads in his constituency.

**Mr. Deputy Speaker:** Order, hon. Choge! You must give factual information and not opinions. So, answer that question factually!

**Mr. Choge:** Mr. Deputy Speaker, Sir, we will give priority to these people when they are in prison according to the nature of the offenses they committed. If they are charged for committing petty offenses, we usually allow them to serve on extra mural terms. If they are criminal offenders, we keep them within the prisons.

**Mr. Anyona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister not misleading the House? It is not the prison authorities who decide who should serve under community service. It is the courts!

**Mr. Choge:** Mr. Deputy Speaker, Sir, this is a collective responsibility in the Government.

*Question No.598*

HARDSHIP ALLOWANCE FOR  
TEACHERS IN BONDO

**Dr. Oburu** asked the Minister for Education:-

(a) whether he is aware that teachers on the islands in Bondo District are not paid hardship allowance like their counterparts in the neighbouring district; and,

(b) what urgent steps he is taking to pay the affected teachers

hardship allowance in view of the extremely difficult circumstances prevailing in the islands.

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

(a) I am not aware.

(b) Bondo District is not among the designated hardship areas and the Government is, therefore, constrained in effecting hardship allowances for the teachers in some parts of that district.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, this is a very misleading answer because teachers in Mfangano Islands in Suba District are paid hardship allowances. What criteria does the Government use in determining hardship areas?

**Mr. Awori:** Mr. Deputy Speaker, Sir, areas qualify to be hardship areas when normal services like roads, water and telephones are not available. Therefore, we give hardship allowances to motivate teachers to go to those places. We do not believe that the area in question falls under the above criteria.

**Mr. Ngure:** Mr. Deputy Speaker, Sir, I have listened to the Assistant Minister talk about areas that qualify for hardship assistance. For the Assistant Minister's information, Mageta Island is a hardship area and was used by the colonialists for detaining the Mau Mau Freedom Fighters. What would make this island not to be considered as a hardship area?

**Mr. Awori:** Mr. Deputy Speaker, Sir, regrettably, at school, I was not very good in Geography. Is this Question talking about Mageta Island?

**Dr. Oburu:** Yes, it is!

**Mr. Ndicho:** On a point of order, Mr. Deputy Speaker, Sir. Earlier on, the Chair ruled that before Ministers come to answer Questions in this House, they must be satisfied that the answers they have are correct. The Assistant Minister does not seem to understand what the Question is all about!

**Mr. Awori:** Mr. Deputy Speaker, Sir, hon. Ndicho has not put a Question. So there is nothing to respond to!

**Mr. Deputy Speaker:** Just respond to hon. Oburu's Question.

**Mr. Awori:** Mr. Deputy Speaker, Sir, I stated that if Mageta Island is what Dr. Oburu is talking about, then I will go back and see what is to be done.

**Mr. Kikuyu:** Mr. Deputy Speaker, Sir, the Assistant Minister has said that, for an area to be considered a hardship area, it must lack communication and other basic necessities.

Mr. Deputy Speaker, Sir, recently, Kalama Division in my constituency became a non-hardship area after it was transferred from Makueni to Machakos. It was declared a hardship area 20 years ago. What criteria was used? Do political boundaries make a place a hardship area?

**Mr. Awori:** Mr. Deputy Speaker, Sir, I am not aware that Kalama Division was a hardship area before it "moved" to another area. I do not know how it moved! I think it is the boundaries that were changed. Kalama Division could not have moved from where it was to another place! If the hon. Member could write to the Ministry, I will look into the matter.

**Capt. Ntwiga:** Mr. Deputy Speaker, Sir, if those are the considerations that the Minister takes into account to decide whether an area is a hardship area, I would like the Assistant Minister to consider Igamba-Ng'ombe Division in my Constituency. It borders Tharaka District, which is a hardship area. It is inhabited by the Tharaka people.

**Mr. Awori:** Mr. Deputy Speaker, Sir, I invite all hon. Members who feel that their areas qualify to be hardship areas to write to the Ministry. We will send some officers to check. If those areas meet the criteria, the teachers there will be paid their hardship allowances.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, the Assistant Minister has said that he will look into the possibility of including Mageta Island in the hardship list. There are more than five other islands in Bondo District with exactly the same conditions as Mageta Island. We have Ndeda and Oyamo where MAU MAU fighters were detained just like Mageta Island. The names of teachers in those schools have been submitted to the Ministry. Could I get an assurance

from the Assistant Minister that he will investigate and take action? The Ministry was approached by the District Commissioner and requested to include those islands in the list of hardship areas. Could he assure us that he will investigate and include all the areas in Bondo District in the hardship list? Indeed, all the islands have exactly the same conditions. They lack all the facilities. They do not have telephones, electricity, housing and shopping facilities for the teachers.

**Mr. Awori:** Mr. Deputy Speaker, Sir, I can give the hon Member the assurance that, I intend to call the officer concerned to see whether the list of schools from that district was submitted for consideration of hardship allowance. If those islands meet the criteria, action will be taken. I will go even further and say that, I will check right around the country whether any communication was received and no action has been taken. Then, action will be taken.

*Question No.371*

ELECTRIFICATION OF COFFEE FACTORIES

**Mr. Obwocha** asked the Minister for Energy:-

(a) whether he could

confirm Nyabomite Coffee Farmers Co-operative Society and its subsidiaries like Nyangoko, Nyansangio and Embonga will receive electricity supply under the new scheme for coffee factories; and,

(b) why Nyansangio has not received its supply and yet, the farmers are deducted money for installation costs.

**The Assistant Minister for Energy** (Eng. Manga): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that the European Union (EU) funded STABEX programme is in place to supply electricity to coffee factories in the country. But for a coffee factory to qualify under that programme, the cost of supplying the electricity to the factory should be less than Kshs2.8 million.

(b) To supply electricity to Nyansangio Coffee Factory and the nearby Miruka Market will cost approximately Kshs7 million. Therefore, I am not aware of another new scheme whose contribution is from the farmers. I am not aware of any money being deducted from the farmers to meet installation costs for the Nyansangio Factory.

**Mr. Obwocha:** Mr. Deputy Speaker, Sir, first of all, I would like to send my condolences to the relatives of the late hon. F.P.L. Lotodo. I have an answer by the late Minister! The Assistant Minister should have given me his own answer, instead of reading the one from the late Minister! Honestly, as a matter of courtesy, it is wrong when you know that an event has happened, and give me an answer signed by the late Minister!

**Eng. Manga:** Mr. Deputy Speaker, Sir, the hon. Member is not honest! I talked to him and asked him to withdraw the answer.

**Mr. Deputy Speaker:** Order! I will defer that Question to Tuesday next week. I think hon. Obwocha has raised a very valid point. That Question cannot be answered on that basis. I will, therefore, defer it to next week so that it can be answered by somebody who can be questioned.

*(Question deferred)*

**The Assistant Minister for Education, Science and Technology** (Mr. Karauri): On a point of order, Mr. Deputy Speaker, Sir. I would like to seek your guidance. When a Minister signs a statement and then dies, will that be in question?

**Mr. Deputy Speaker:** Hon. Karauri, when one signs an answer, it should be possible for him to be questioned about it. Really, let us not frog a dead horse! I have made a ruling that, that Question will be answered on Tuesday next week.

*Question No.511*

MEASURES TO CURB POLLUTION OF RIVERS

**Mr. Kikuyu** asked the Minister for Environment:-

(a) what the current degree of water pollution is on the waters of Ikiwe, Mwanyani and Miwongo rivers; and,

(b) whether he could inform to the House how safe the water is for both human and animal consumption and, the efforts the Ministry has undertaken to ensure that the rivers are free of pollution.

**The Minister for Environment** (Mr. Nyenze): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The current degree of pollution in the three rivers is as follows: Ikiwe River is slightly polluted. That is due to effluent from Machakos Municipal Council and Sewerage Treatment Works. Mwanyani River has some high degree of pollution due to effluent discharged from Machakos Sewerage Treatment Works. Miwongo River is only slightly polluted due to agricultural activities upstream as it does not receive effluent from the sewerage works. Since most of the pollution in Ikiwe and Mwanyani rivers result from the sewerage over-flow from the Machakos Town Sewerage Treatment Works, my Ministry has, in conjunction with the District Environmental Committee, instructed the Machakos Municipal Council to effectively treat the sewerage.

**Mr. Kikuyu:** Mr. Deputy Speaker, Sir, while I appreciate the Minister's answer, he has only given us the degree of pollution of the Ikiwe and Mwanyani rivers. Could he tell us the chemicals which have been found in those two rivers, which are harmful to human beings and domestic animals? Some people and animals have died from the chemicals. However, what are the chemicals so that we can know the treatment?

**Mr. Nyenze:** Mr. Deputy Speaker, Sir, the municipal waste contains a mixture of domestic sewerage and some few industrial waste. Then, the agro-based industries situated upstream like tea and sugar factories discharge fluoride, nitrate, phosphate and other chemicals. But the water is fit for animal consumption as you go downstream. The animals can tolerate bacterial activities, but the water is not fit for human consumption around the source.

**Mr. O.K. Mwangi:** Mr. Deputy Speaker, Sir, could the Minister tell this House whether the discharge of sewerage into a flowing river was accidental or it was planned? How did it happen? It is unbelievable that sewerage water is discharged into a river!

**Mr. Nyenze:** Mr. Deputy Speaker, Sir, it is not only in Machakos Municipality where such things happen, but also in other municipalities where these hon. Members come from. Most municipalities are not investing enough money in sewerage treatment plants. As a result, they discharge the sewerage into the rivers. We have tried to talk to the Machakos Municipal Council and we have demanded that they clean the waste water and sewerage systems before they discharge it into the river.

**Mr. Kiminza:** Mr. Deputy Speaker, Sir, the Athi River which flows from Athi River Town has been polluted for many years and its water is used downstream in many parts of Kitui South. What will the Ministry do to stop this pollution?

**Mr. Nyenze:** Mr. Deputy Speaker, Sir, that is a different question, but I will answer it by saying that, as a Ministry, we have tried, starting from the slaughter house in Dagoretti. We went there and started cleaning. We have initiated some measures to clean up the abattoirs. We are coming up and we have now reached Nairobi City. We are trying to work with the City Council and the municipalities around. The Ministry is not particularly in charge of those sewerage discharges from the municipalities and the City. But, we have to keep a watch and demand for clean water. For Athi River, that is a common problem and we are already addressing it.

**Mr. Kibicho:** Mr. Deputy Speaker, Sir, could the Minister tell us whether anybody who discharges raw sewerage into a river commits an offence or not? If so, why has the Ministry not prosecuted those local authorities?

**Mr. Nyenze:** That is a good question. We will punish them. First, it is an offence to discharge raw sewerage or even some chemicals into the river. If you follow history very much, you will remember that we closed the fish well---

**Mr. Kihoro:** On a point of order, Mr. Deputy Speaker, Sir. The Minister has admitted that it is actually an offence to discharge raw waste into rivers. I thought the Minister should have specifically mentioned the Act under which he has concluded that, that is an offence.

**Mr. Nyenze:** There is an Environmental Management and Co-ordination Act, which was enacted by this Parliament some time ago. We have even tried to prosecute those people who pollute the rivers under this Act. There is also the Water Act Cap.372, Laws of Kenya, which we can use to punish those people. We have taken some punitive action against some of those offenders. But it is an offence to release any untreated waste into the river.

**Mr. Musila:** The Chair has heard my good friend the Minister say that his Ministry has instructed the local authority concerned to stop releasing untreated effluent into the river. Could the Minister tell us what action he is going to take, in the event of a local authority failing to comply with his instructions?

**Mr. Nyenze:** Mr. Deputy Speaker, Sir, we will take them to court because we have the teeth to bite now. We

will punish them under the law that was enacted by Parliament. Incidentally, it happens that most of these municipalities that are discharging untreated effluent into the rivers, like in Machakos Municipality and other places, are basically in the Opposition strongholds, so help us then.

*(Laughter)*

**Mr. Kikuyu:** Mr. Deputy Speaker, Sir, whereas the Minister would like us to laugh much by saying that the municipalities which are discharging sewerage water into rivers are from the Opposition, it also shows lack of seriousness on the part of the Government of the day, if it cannot help its people. In his answer, the Minister has agreed that Machakos Municipal Council is discharging raw sewerage into rivers surrounding the town. He has also agreed that he has powers to sue that municipal council. Why did he not do it before he came here?

**Mr. Nyenze:** Mr. Deputy Speaker, Sir, it has only been brought to our attention and we are taking action.

*Question No.636*

COMPLETION OF BUNGOMA MUNICIPAL  
SEWERAGE SYSTEMS

**Mr. Sifuna** asked the Minister for Local Government:-

(a) whether he is aware that the construction of Bungoma Municipal Sewerage system has stopped and the contractor has abandoned the site; and,

(b) why the contractor has withdrawn his services and when the construction will be completed.

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

(a) Yes, I am aware.

(b) The contractor withdrew from the site due to delays in releasing payments for certified work amounting to Kshs68,773,773.90. In addition to delays in payments, the contractor has also made other claims totalling to Kshs215,114,057.25, which allegedly accrued from idle labour and equipment as well as interest on outstanding certified payments which the Ministry and the African Development Bank (ADB) dispute. At the moment, it is not possible to state categorically when the execution of the remaining work of 20 per cent will resume because the credit agreement with the ADB expired on 31, December, 1999, and no other sources of funds have been identified.

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, arising from the Minister's reply, could he tell this House what was the share contribution by the donors; ADB and the Government? How much has the Government and ADB paid towards this particular project?

**Mr. Sirma:** Mr. Deputy Speaker, Sir, the project was financed by the ADB.

**Mr. Sifuna:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has not answered my question clearly. May be, he did not clearly understand what I asked. How much contribution was made by the Kenya Government and how much by the ADB? So far, how much has been paid? That is what I wanted to find out from him.

**Mr. Sirma:** Mr. Deputy Speaker, Sir, the project was fully funded by ADB. The original contract was costing Kshs126,472,472.00.

**Hon. Members:** How much was paid?

**Mr. Sirma:** So far, nothing has been paid.

**Mr. Kombo:** Mr. Deputy Speaker, Sir, I think that is a very strange answer as you can see. The country is littered with stalled projects. Hon. Sifuna has specifically asked: If ADB released the money for the project and then the Assistant Minister says nothing has been released so far, what is he really telling us? What did you do with the money from ADB?

**Mr. Sirma:** Mr. Deputy Speaker, Sir, the initial contract of the Bungoma Municipal Sewerage Project was awarded on 28th January, 1992 to Karuri Engineers at Kshs58 million but the contractor was not able to execute. In 1994, the contract was revised and a new contract sum of Kshs153,560 was made, and the commencement date was 30th December to 30th June, 1996. The contract was again cancelled due to poor performance by the contractor on 25th July, 1996.

**Mr. Kombo:** On a point of order, Mr. Deputy Speaker, Sir. My question was very specific that he said the ADB handled the project and obviously released the money. How much did they release and what was it spent on?

**Mr. Sirma:** Mr. Deputy Speaker, Sir, due to delays and the unsatisfactory work by the contractors, there was

no money paid to them.

**Mr. Muturi:** Mr. Deputy Speaker, Sir, I do not know whether the Assistant Minister really appreciates or understands the question by hon. Kombo. It is: What was done with the funds that were released from ADB? Let us not beat about the bush by mentioning Karuri Engineering and other quacks.

**Mr. Sirma:** Mr. Deputy Speaker, Sir, as I have said, the contractors had not done any satisfactory work, and so they could not be paid.

**Hon. Members:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Mr. Assistant Minister, you seem to be very busy answering questions which you have not been asked. We would like you to answer the questions which you have been asked. If ADB released money for that project and no money has been paid because of poor performance by the contractors, what has happened to that money?

**Mr. Sirma:** Mr. Deputy Speaker, Sir, the money has not been released by the ADB because of the same non-performance.

**Eng. Toro:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to say that money has not been released due to non-performance, when in an earlier answer he said that the contractor is claiming money on certified bills? If that is so, that means the work was done and they were certified. Is he in order to mislead the House?

**Mr. Sirma:** Mr. Deputy Speaker, Sir, I had said earlier that the contractor moved out of the site due to non-payment by the ADB because he had given certified works but it was not honoured.

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, if this contractor performed his work, he still worked whether, satisfactorily or not. It was done under the supervision of the Kenya Government and certified by the Ministry of Local Government, although hon. Kamotho is an interested party in that particular construction company. Could the Assistant Minister tell us why they deliberately removed those people? In fact, as we are talking, the contractor was partly paid and then, he was told by hon. Kamotho to move out of the site. Why did that occur?

**Mr. Ndicho:** On a point of order, Mr. Deputy Speaker, Sir. My good friend has made a very serious allegation that hon. Kamotho has got some interest in this company and that is why he is messing it up. Now, can we get documentary evidence that hon. Kamotho is involved in this, so that if he is, then we know what step to follow? Can he substantiate that hon. Kamotho has an interest in this company?

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, before I can substantiate, could the hon. Assistant Minister confirm that this contractor was awarded the tender, which he performed, and the Government which supervised it certified the payment and he was partly paid? Now, he is telling us the money was not released by ADB. Can he tell this House why, in the first place, they partly paid the contractor and told him to go away? Where did the money that they paid come from?

**The Assistant Minister for Local Government (Mr. Kiangoi):** On a point of order, Mr. Deputy Speaker, Sir. It appears to me that the hon. Member is asking this House to decide against the ruling of the Chair. The Chair has previously ruled on that, that this House will not be used to claim debts. Is he in order?

**Mr. Deputy Speaker:** Order! I do not think the hon. Member has done anything of the sort. He has not asked the Chair to get money paid to any contractor. On the contrary, he is complaining that the contractor has been paid money for work he has not done. So, proceed!

**Mr. Sirma:** Mr. Deputy Speaker, Sir, I am not aware of the involvement of Minister Kamotho in this contract. His only involvement which I know is that of being the Minister for Local Government.

**Mr. Gitonga:** Mr. Deputy Speaker, Sir, the question alleges that some money was paid to the contractor and we would like to know who certified that the certificates were correct and the work had been done. Who actually gave that authority? Is it not the officers from the Ministry of Local Government and if yes, what has the Ministry done to those officers?

**Mr. Sirma:** Mr. Deputy Speaker, Sir, the certificates were certified by the supervising engineers and at that time, the money had not been released to them. So, up to now, we have not got any money to release to those people.

**Mr. Deputy Speaker:** Next Question!

*Question No.638*

COMPLETION OF BUNGOMA URBAN  
TRANSPORT PROJECT

**Mr. Wamunyinyi** asked the Minister for Local Government why has the contractor, Messrs.

Associated Companies Limited, who has been undertaking urban transport project in Bungoma Municipal Council, abandoned the site before completion of works.

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

The contractor, Messrs. Associated Construction Company Limited, who have been undertaking urban transport project in Bungoma Municipal Council has not abandoned the site before completion of work. The company has completed its work it was contracted to undertake and will continue to maintain them until 29th June, 2001 as per the terms of the contract.

**Mr. Wamunyinyi:** Mr. Deputy Speaker, Sir, the written reply by the Assistant Minister shows that the company has completed construction work and it will continue to maintain those roads until 29th June, 2000. That is the answer. However, the Assistant Minister is reading a different answer. He is fond of misleading this House. The same roads earmarked to be done in Bungoma Municipal Council during the first phase have not been completed as he alleges.

For example, Market Street, Old Bridge Road and Mteremko - Nzoia Road. These roads have not been done. Why is he misleading this House?

**Mr. Sirma:** Mr. Deputy Speaker, Sir, I do not think I am misleading the House.

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, is the Assistant Minister serious or he is just taking this House for a ride? In fact, Mandizini Road and Market street have not been completed. Look at him, he is laughing!

Mr. Deputy Speaker, Sir, could the Assistant Minister tell us why these two roads which were earmarked to be done in the first phase have not been completed? Stop showing us your teeth.

**Mr. Sirma:** Mr. Deputy Speaker, Sir, I do not think that is the right way of asking a question, by describing how I sit in this House. I am an hon. Member and I deserve respect.

There were nine roads earmarked for rehabilitation in Bungoma Municipal Council. These are Moi Avenue, Site and Service Street No.1, KTNCC Road, Market Road, Simba Street, Saloon Street, Tourist Road, Chemist Road and Site and Service Street No.2. If there is a road which is not among those I have mentioned, then it was not part of the contract.

**Mr. Munyasia:** Mr. Deputy Speaker, Sir, the Assistant Minister is misleading the House by saying Market Street has been done. It has not been done. Could he tell us what length of road has been done in Bungoma Municipal Council under that particular programme? Why was Market Street omitted?

**Mr. Sirma:** Mr. Deputy Speaker, Sir, I cannot give the total length of road done at the moment.

**Dr. Kituyi:** Mr. Deputy Speaker, Sir, obviously, the hon. Assistant Minister does not know what he is talking about. However, since we know that the Market Street has not been done and even by his own admission, it is supposed to be part of the work, could you not give him some more time to go and verify the veracity of his statement that

Market Street has been repaired and then come back to this House with that statement?

**Mr. Sirma:** Mr. Deputy Speaker, Sir, unless you need information on the length of the roads. Otherwise, I have all the facts you want to know about those roads.

**Dr. Gatabaki:** On a point of order, Mr. Deputy Speaker, Sir. Considering the shoddy answer given by the Assistant Minister, would it be in order, through the Chair, to ask the President to fire deadwoods in the Cabinet?

*(Laughter)*

**Dr. Kituyi:** Mr. Deputy Speaker, Sir, I share the frustrations and sympathy of my colleagues in this House. But my request was very clear. The hon. Assistant Minister is playing about with this matter, whether certain roads have been done or not. Could the Chair order that he goes back to verify whether Market Street has been done or not? If it has not been done, then the Assistant Minister should order that it be done?

**Mr. Sirma:** Mr. Deputy Speaker, Sir, I would not mind visiting Bungoma Town to confirm what has been done and what has not been done.

**Mr. Deputy Speaker:** You will do that with hon. Wamunyinyi who asked this Question.

**Mr. Wamunyinyi:** Mr. Deputy Speaker, Sir, it is a fact that Market Street has not been done. This street was among the 1.5 kilometres length of what was to be done in Bungoma Municipal Council. If Bungoma Municipal Council was omitted, then what length of recarpeting was done? Could he go to the ground and confirm whether Market Street has been done or not? I could take him to Bungoma Town tomorrow.

**Mr. Deputy Speaker:** The Assistant Minister has agreed that you will go with him to see what is on the ground.

Next Question.



*Question No.621*PAYMENT OF COMPENSATION  
TO MURRAM SITES OWNERS

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

(a) why he has declined to compensate the following people for utilising their murrum sites in the construction of Abosi-Kilgoris Road in Bomet District as per valuation VAL M/P/R/KSI/33 and VAL M/P/R/KSI/32:-

(i) Mr. Kipnyole Arap Chirchir-LR.No.Kericho/Abosi/30;

(ii) Mr. Kibii A. Chirchir-LR.No.Kericho/Abosi/741;

(iii) Mr. Kipsigei Arap Soi-LR.No.Kericho/Abosi/787;

(iv) Mr. Francis Kipkorir Tonui-LR.No.Kericho/Abosi;

(b) since the project by DMK Construction Company was completed in 1997, when does he intend to pay the said complainants; and,

(c) when the murrum site on LR. Kericho/Abosi/787 will be filled as it poses grave danger to the people and livestock in the area.

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

(a) The Minister has not refused to compensate the murrum sites used in the construction of Kilgoris-Korogor Road B 14 which is in Trans Mara and partly in Bomet District. The following people were affected:-

(i) Mr. Kipnyole Arap Chirchir

(ii) Mr. Kibii A. Chirchir

(iii) Mr. Kipsigei Arap Soi

(iv) Mr. Francis Kipkorir Tonui

(b) Funds meant for paying compensation to the owners of the above murrum sites were paid to the contractor of D.M. K. Construction Company on 22nd January, 1998. The contractor has not effected the payments to date.

(c) The District Works Officer, Trans Mara has written to the contractor with instructions to pay compensations and back fill the murrum sites on LR.Kericho/Abosi/787 on 12th October, 2000.

**Mr. Kimeto:** Mr. Deputy Speaker, Sir, the Assistant Minister has said that it was the contractor who was supposed to compensate those individuals. He has also said that the District Works Officer in Kilgoris has written to the contractor to compensate those people. But so far, those people have not been compensated. How many times does the District Works Officer in Kilgoris have to write to the contractor before those people can be compensated? Why did the Government not pay the owners directly?

**Eng. Rotich:** Mr. Deputy Speaker, Sir, I do not know how many times he will have to write to the contractor. The contract was between the contractor and the owners of the murrum. It was not an issue to be sorted out between the Government and the owners of the murrum. We paid the contractor so that he could pay the owners of the sites. However, he has been instructed to release the payments immediately. I have a letter to that effect. Allow me to lay it on the Table.

*(Eng. Rotich laid the document on the Table)*

**Mr. Kimeto:** Mr. Deputy Speaker, Sir, has the contractor released the money?

**Eng. Rotich:** Mr. Deputy Speaker, Sir, I do not know whether he has released that money or not. But he was instructed to do so on 12th October, 2000.

**Mr. Kimeto:** Mr. Deputy Speaker, Sir, how much will each individual get?

**Eng. Rotich:** Mr. Deputy Speaker, Sir, I do not have the figure. There was a valuation done. So, they will be compensated as per the valuation.

**Mr. Kimeto:** Mr. Deputy Speaker, Sir, how much will they be paid?

**Mr. Deputy Speaker:** Order, Mr. Kimeto!

**Mr. Parpai:** Mr. Deputy Speaker, Sir, this is a common occurrence all over the country. The Assistant Minister says the agreement was between the contractor and the owners of the land. What safeguards has the Government put in place to avoid contractors cheating land owners?

**Eng. Rotich:** Mr. Deputy Speaker, Sir, when the contract is concluded and we are given the details, we write

two cheques; one to the owner of the plot and the other to the contractor as per the valuation. That is what we have done at the moment.

**Mr. Kimeto:** How much is the cheque of the owners, Mr. Deputy Speaker, Sir?

**Mr. Deputy Speaker:** Order! Order!

**Eng. Rotich:** Mr. Deputy Speaker, Sir, I do not have the valuation, I can get it tomorrow. I have no problem getting it and I will table it here if necessary.

**Mr. Deputy Speaker:** Hon. Gatabaki's Question for the second time.

**Mr. Gatabaki:** I wish to apologise to the House for being late to ask this Question. I was attending to the people of Githunguri who were seeing me because of the poor condition of the roads brought about by this Government.

**Mr. Deputy Speaker:** Ask your Question!

*Question No.670*

EMPLOYMENT OF EXPATRIATES  
IN PUBLIC INSTITUTIONS

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

- (a) what the Government position is on employment of expatriates in public institutions; and,
- (b) why expatriates are being employed as chief executives of the Kenya Commercial Bank (KCB) and the Housing Finance Company of Kenya (HFCK) after the two institutions had been headed by indigenous Kenyans since inception.

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

(a) The Government only employs expatriates when they have the relevant academic and professional qualifications, experience and technical skills which are not locally available.

(b) The KCB and the HFCK are not public institutions and the expatriates were employed by the Board of Directors after they had conducted interviews of local and foreign applicants.

**Mr. Gatabaki:** Mr. Deputy Speaker, Sir, you will agree with me that sometimes this Government can be completely contemptuous of the people of Kenya. This kind of answer does not deserve to be given in this House. As we are speaking now, the Head of the Public Service is a European and Europeans are coming back to take over this Government. As we are speaking, Guinness East Africa has fired all the senior Africans from their posts and replaced them with Europeans. Also, there is a brain drain in this country because our people are running away to South Africa and Botswana to get jobs. Can this Minister deny that since President Moi took over this Government, they have reversed the whole of the entire Africanisation programme put in place by the late Mzee Jomo Kenyatta? Instead, they are employing Wazungus because of their own inefficiency, corruption and poor governance.

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I deny. The Head of the Civil Service is a Kenyan.

**Mr. Keriri:** Mr. Deputy Speaker, Sir, this Question is very important, but I think the Minister is taking it too lightly. When the Government privatises public companies, I hope it does not mean that it does not take interest in protecting Kenyans who have got shares in those companies. In the HFCK, the Government has been a shareholder. Kenyans have bought shares in that company; the CDC has about 30 per cent and the Government about 4 per cent. Does the Minister know that the new Chief of the HFCK has advertised all the posts held by Africans so that they can be taken by Whites? Those jobs were advertised in September this year.

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I do not know whether the advertisement specifically stated that they wanted Europeans. If they were advertised, it means they are open to all people to apply.

**Dr. Murungaru:** The institutions that are being referred to in this Question are the cornerstones of the financial system in this country. The Kenya Commercial Bank is the largest bank in this country. It has been well managed in the past by some Members sitting in this House and it has worked very well. Why is the Government allowing our own home-grown indigenous institutions to be taken over by foreigners? How is the Government protecting us from neo-colonisation by current colonisers?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, it is true these institutions were run by indigenous Kenyans, but for the first time, since inception, the KCB posted a loss of Kshs2.24 billion. After that, the Board advertised the post of the Chief Executive. They did interview both local people and expatriates. In the end, they appointed a new Chief Executive.

**Mr. Kariuki:** Mr. Deputy Speaker, Sir, I wonder why the Minister is misleading this House by insinuating that there is a connection between debt default and management while he knows very well that the major debtors

happen to be well-connected people. Whether it was an African or a European who was managing those institutions, the end result would have been the same. Can the Minister tell us exactly why Africans are being denied a chance? Why is the Government employing Whites to take over those jobs while we have very competent Africans who can perform them? The Minister should stop beating about the bush and giving us very irrelevant answers to direct questions.

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I am not beating about the bush; I am giving facts. It is true that interviews were held and an expatriate was appointed to head that institution. It is not the Government which made that appointment, it is the Board of Directors.

**Mr. Donde:** The Minister gave a very depressing answer to the first question; that the KCB and the HFCK are private companies and, therefore, they can employ foreigners. We want to know the position of this Government on whether private companies are allowed to employ foreigners or not. In Britain, there is no way you can get a job if you are a foreigner unless you are accredited by a foreign government. To say that because those two institutions are private companies they can employ foreigners is to miss the point. Can he tell us whether all private companies in Kenya are allowed to employ foreigners?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, normally in terms of private companies, the investors are allowed to employ three of the executives and we do give work permits for those expatriates.

**Dr. Kituyi:** When the job for the Chief Executive of KCB was advertised, the highest ranked pre-qualifier was Awuondo, the Chief Executive of Commercial Bank of Africa (CBA), a native Kenyan. When that job was given to Mr. Gareth from Barclays, the Government issued a statement that the racial consideration will encourage strategic investors. It was quoted in the *Economics Magazine* that, that was the wish of the Kenya Government. Last week, Mrs. Grace Okemo, a very competent banker was forced to resign from the KCB. Today, Mr. Gareth hired a White Zimbabwean to take over her job as Credit Director at KCB, from Barclays, Zimbabwe. Could the Minister tell this House what this Government thinks about the role of a White face in marketing credibility of local institutions and more importantly of the KCB? Since there is a massive hiring of personnel from the Barclays Bank to take over the KCB, when Barclays Bank is a competitor with the KCB; how far do we know that the interests of the KCB are not going to be undermined by the competing interests of the Barclays Bank?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I would like the hon. Member to ask the question again.

**Dr. Kituyi:** Mr. Deputy Speaker, Sir, I will repeat the question more briefly. I talked about two different components. When the position of Chief Executive for the Kenya Commercial Bank (KCB) was first advertised, the highest ranking pre-qualifier was Mr. Isaac Awuondo of Commercial Bank of Africa. When Mr. Gareth was hired to head the KCB, the Government gave a statement, which was quoted in the *Economist Magazine*, to the effect that a European had to be hired to boost the interests of anticipated strategic investors in the KCB. Last week, Mrs. Grace Okemo, a very competent Director of Credit at the KCB, was forced to resign from her position. Today, Mr. Gareth announced the appointment of a White from Zimbabwe, who is working for Barclays Bank in Zimbabwe, to become the new the Credit Director of the KCB. I asked the Minister two related questions. What is the attitude of this Government about Africans as potential leaders in marketing local enterprises to the so-called "strategic investors"? More significantly, to what extent can the Government guarantee the protection of the interests of the KCB and its investors from the potential undermining by interests of Barclays Bank, which is the largest source of more persons who are taking over the management of the KCB?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, first of all, let me say that I do not know about the people who were interviewed for the position of KCB Chief Executive. If it is, indeed, true that the top candidate was a local, I will have to verify that information. The Government position is that all Kenyans should be given preference and priority in all these appointments.

**Mr. Maundu:** Mr. Deputy Speaker, Sir, now that the Minister admits that the Government position is to give Kenyans preference and priority in such appointments, and in view of the fact that Kenyans were not given priority and preference in the KCB appointments, could he---

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

**Mr. Maundu:** Mr. Deputy Speaker, Sir, the hon. Member cannot cut me short.

**Mr. Deputy Speaker:** Mr. Maundu, let me hear the hon. Member's point of order.

**Mr. Nooru:** Mr. Deputy Speaker, Sir, I am seeking guidance from the Chair whether this Question is, really, supposed to be answered by the Minister of State, Office of the President, or the Minister for Finance. The Question revolves around financial institutions and---

**Mr. Deputy Speaker:** Excuse me. In what capacity are you objecting to the Minister of State, Office of the President, answering this Question?

**Mr. Nooru:** Mr. Deputy Speaker, Sir, I am speaking as an hon. Member of this House. I am not objecting to the Minister of State, Office of the President, answering the Question, but rather---

**Mr. Deputy Speaker:** Order! First of all, what you have raised is not a point of order. Secondly, the Minister to whom questions are being directed is answering them. What is your problem?

Proceed, Mr. Maundu!

**Mr. Nooru:** I was only seeking guidance from the Chair, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Nooru, utter one more word and you will withdraw from this Chamber.

(Laughter)

**Mr. Nooru:** Mr. Deputy Speaker, Sir---

**Mr. Deputy Speaker:** Order! There shall be no argument any more about that matter.

Proceed, Mr. Maundu.

**Mr. Maundu:** My question is: Now that the Minister admits that the Government position is that Kenyans must be given priority and preference in such appointments - particularly, senior managerial positions, which should be filled in terms of gender parity - is he going to rescind the decision of the KCB Managing Director, who has acted *ultra vires* and in disregard of the position and advancement of Kenyans?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, this Question was brought to the Office of the President, because it has something to do with work permits. On the question of me rescinding the appointment of the KCB Chief Executive, it is not possible, because that was the decision of the Bank Board of Directors.

**Mr. Gatabaki:** Mr. Deputy Speaker, Sir, if you go to Muthaiga Country Club, you will wonder whether you are in Kenya or in Britain. Nearly all the Chief Executives of private companies and public institutions in this country are Whites. Considering the power of management in companies owned by the most powerful and second most powerful persons in this country---

**An hon. Member:** Who are those?

**Mr. Gatabaki:** Mr. Deputy Speaker, Sir, considering the persons who run those two individuals' businesses, - including Kobil Oil Company Limited, amongst others, is it not the attitude, or legacy, of those in authority in this country to ignore Africans and appoint Europeans to those positions because of their own unique inefficiencies?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, that is not the attitude.

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

**Mr. Deputy Speaker:** We are running short of time. So, I am afraid, we shall proceed to the next Question.

**Mr. Sungu:** Mr. Deputy Speaker, Sir, before I ask my Question, I would like to apologise for coming late.

#### Question No.681

#### DEATH OF MR. NYANGANI

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

(a) what the results of police investigations into the death of the late Cyprian Thomas Ogolla Nyangani, a former Headmaster of Migosi Primary School, on 17th February, 1999, near Lunyerere, along the Kisumu-Kakamega Road, were; and,

(b) why the police have failed to respond to queries raised by the family of the late Cyprian Ogolla despite constant enquiries at Vihiga and Kakamega Police Stations.

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

(a) Mr. Cyprian Ogolla died as a result of a fatal road accident on 17th February, 2000, along the Kakamega-Kisumu Road. The driver of the *matatu* in which the late Cyprian Ogolla was travelling was arrested and has been charged for causing death by dangerous driving.

(b) To the best of our knowledge, no member of the late Cyprian Ogolla's family has made any inquiries at the police station.

**Mr. Sungu:** Mr. Deputy Speaker, Sir, this Question was brought to the House, because of that reason, and I am shocked by the answer given by the Minister. The parents of the late Cyprian Ogolla, who was an only son of his mother and father and the only bread winner of that family, was, allegedly, murdered as stated in the Question. We have raised queries at both Vihiga and Kakamega Police Stations. As the area Member of Parliament, I have, personally, taken the family of the late Cyprian Ogolla to the two police stations to make inquiries. So, it is not correct to say that the family of the deceased has not raised queries with the police. I would like the Minister to tell us whether he is satisfied with the doctor's report, having seen the certificate of the postmortem conducted on the deceased's body?

For the Minister's information, two postmortems were conducted on the body of the deceased. The first one was conducted at Kakamega District Hospital without the representation of the family, while the second one was conducted at Nyanza Provincial Hospital, with the family's involvement. I would like the Minister to state whether, after seeing the report of the postmortem that was conducted on the body of Cyprian Ogolla, he is satisfied that the injuries inflicted on the late Cyprian Ogolla were consistent with an accident or murder, as alleged by the deceased's family?

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Order, Mr. Kiunjuri!

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I regret that I cannot quite remember the exact results of the said postmortem report; I will have to look at it again. However, what I have told this House in reply to the Question is the information that I have. The driver has been charged with causing death by dangerous driving.

**Mr. Sungu:** On a point of order, Mr. Deputy Speaker, Sir. I view of the fact that the Minister is not in a position to satisfactorily answer this Question, could the Question be deferred to another date, so that I can give him additional information, so that he can give me a satisfactory answer?

**Mr. Deputy Speaker:** What is your reaction, Mr. Minister?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I have no objection to the hon. Member's suggestion.

*(Question deferred)*

## QUESTIONS BY PRIVATE NOTICE

### RELEASE OF MURDER SUSPECTS

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

(a) Is the Minister aware that on 16th October, 2000, a body of a female adult person was retrieved from a cattle dip at Rurie Village in Ol Kalou Constituency?

(b) Is he further aware that some people who were found with blood-stained clothes of the deceased were arrested but later released, ostensibly, for lack of evidence?

(c) What is the Minister doing to bring the killers to book and defuse tension in Rurie area?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that on 16th October, 2000, a body of a female adult person was retrieved from a cattle dip at Rurie Village in Ol Kalou Constituency.

(b) I am also aware that some suspects were arrested for interrogation.

(c) Once investigations are complete, appropriate legal action will be taken.

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, the Minister's reply to part "b" of the Question is misleading to this House. When the said body was found, the people of Rurie Village informed the police whom they suspected had committed the murder. The police searched the house of the suspected murderer, where they found some blood-stained clothes. The suspect then led the police to a second suspect's house, where another piece of blood-stained clothe was found.

**Mr. Deputy Speaker:** Ask your question!

**Eng. Muriuki:** I am coming to the question, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Do so quickly then.

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, after 10 days, or so, those people who had been arrested with blood-stained clothes, were released, leading to an outcry by the people of Rurie Village. Following that outcry, the police called for a meeting with the villagers, where they told them that they had to release those suspects, because pathologists at Ol Kalou Hospital could not link the body with the blood stains found on the pieces of clothes that were found in the possession of the suspects. The villagers demanded that the suspects be re-arrested. So, what the Minister has said is not true. The question is: Since the difference is the blood stains on the clothes, which can be connected with the body, can the Minister order the Chief Government Pathologist to carry out a postmortem or a DNA test, so that those people are definitely connected with those clothes because they were retrieved from their houses? They were four of them in four different houses.

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I did accept in my written answer that those people were arrested, but I did not say that they are in custody. In my verbal reply, you must have noted that I did omit that because they

were released, and they are helping the police with the investigations. So, we will follow it up and if the pathologist has to do any private test, it will be done.

**Mr. Wamae:** Mr. Deputy Speaker, Sir, this is a very serious matter because it is for this reason that the police are releasing suspects and public lynching of suspects has been started by wananchi. What is the Minister going to do to ensure that these people are re-arrested and put in custody as the investigations are proceeding?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, we have to get sufficient evidence to continue keeping them in custody.

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, that is the case which has been badly investigated. It would have taken a police officer from Ol Kalou a number of hours to go and see the Chief Government Pathologist and come up with a conclusion. Now that we have released the suspects, can the police place them in custody and conclude their investigations within 14 days, and come up with an answer to this House?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I do not think we will adopt that course.

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, part of my question was very simple. The contention is: The people whom the villagers pointed out as being suspects had some of their clothes stained with blood. The clothes were retrieved from their homes. All we are asking is: Can the Chief Government Pathologist - because we have no faith in the staff of the district hospital there - take up the matter, so that he can do the necessary tests to determine whether the blood in those clothes belong to the body which was retrieved from the cattle dip?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, those are all part of the investigations.

**Eng. Muriuki:** On a point of order, Mr. Deputy Speaker, Sir. But I am only asking for a commitment on behalf of the people of Ol Kalou - which is something very simple. Let the police connect the blood stains and the body because that is the basis on which the OCPD told us the investigations will be. He publicly told us that the reason why they are not keeping these people in custody is that they have no evidence that the blood on the clothes of the four people, including the under clothes, belong to the dead person. We are asking: Could the Minister arrange that proper testing including the DNA tests are done, so that the blood on those clothes which were retrieved from the suspected murderers are connected with the body? Can you at least give us some commitment on that?

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I will still repeat what I said. All what he saying is part of the investigations and all that will be carried out because the clothes are still with the police and everything will be done to try to ensure that we get the suspects.

#### DISBURSEMENT OF GRANTS TO SECONDARY SCHOOLS

**Mr. P. K. Mwangi:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that money granted to Kamahuha Girls High School to assist students from poor families this year was not allocated by the School's Board of Governors?

(b) Is he further aware that the Principal was instructed from the Ministry Headquarters to remit the money using school cheque to Nunguni Secondary School?

(c) Could the Minister table the list of schools which have benefitted from the fund in the country and state how much each school has received in the last financial year, and how it will be distributed in the current financial year?

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

(a) My Ministry has not released bursary funds for public secondary schools for this year.

(b) I am aware that the guardian whose child in Kamahuha Girls High School had received a bursary of Kshs15,000 came back to the Ministry and said that he had another child at Nunguni Secondary School. So, Kamahuha was instructed to share that amount of money with Nunguni.

(c) As stated in part (a) of my answer, my Ministry has not released bursaries to secondary schools this year. Once bursary funds are ready, that is release from the Treasury, each public secondary school will receive its allocation and cheques will be disbursed directly to the accounts of those schools.

**Mr. P.K. Mwangi:** Mr. Deputy Speaker, Sir, "mysteries" of corruption will never cease from this current Government! The Assistant Minister is denying the information that I have in written form, and it is quite confusing. I have a letter with me here dated 12th August, 2000. It reads as follows:-

"The Principal, Kamahuha Secondary School, P.O. Box 37 Sabasaba.

## BURSARY AWARDS

"Enclosed, please, find a shared cheque of Kshs15,000. No. 049477 dated, 30th June, 2000 between your school and Nunguni secondary school in favour of Winnie Ndarwa Form Four, Kamahuha Secondary School, Kshs5,000, Misheck Kioko, Form Three, Gitiru secondary school, Kshs5,000, Stephen Musau, Nunguni secondary school, Kshs5,000."

Then, I have even the letters from the Principal Kamahuha Secondary School which sent that money. In the answer that the Assistant Minister has given, there is no way "Ndarwa" is connected to Kioko.

**Mr. Karauri:** Mr. Deputy Speaker, Sir, I think the hon. Member must have been asleep when I answered the Question. I admitted that the guardian, when Kamahuha Secondary School received the Kshs15,000---

**Mr. Kariuki:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to condemn an hon. Member as "being asleep" when he himself has given an answer which is totally irrelevant from what we have heard from the letter which was read out by the hon. Member?

**Mr. Karauri:** Mr. Deputy Speaker, Sir, when I answered the Question, I said I am aware of part (b) of the Question; that the guardian of the child in Kamahuha Secondary School who got Kshs15,000 as bursary came back to the Ministry and said that he had another child in Nunguni Secondary School. So, the Ministry wrote a letter so that Kamahuha Secondary School would give some of the money to the other school for the other child. That is why I am saying that maybe, the hon. Member was asleep.

**Mr. Deputy Speaker:** Order! He may have been wrapped up in thoughts. Hon. Members do not sleep.

*(Laughter)*

**Mr. P.K. Mwangi:** Mr. Deputy Speaker, Sir, it is funny when I am being told that I was asleep when this happens at Kamahuha Girls Secondary School, Naro Secondary School and Muthithi Secondary School. Our schools are being used as the conduit to be giving bursary funds to those politically-correct individuals - even people who are non-existent. It was also written in the *Daily Nation* newspaper, and he is denying it.

**Mr. Deputy Speaker:** Karauri, what are you saying?

**Mr. Karauri:** Next Question!

*(Laughter)*

**Mr. P.K. Mwangi:** Mr. Deputy Speaker, Sir, I want to ask another question!

**Mr. Deputy Speaker:** Order, Mr. P.K. Mwangi! When you stand up to ask a Question, ask it, but when you stand up to make a statement---

**Mr. P.K. Mwangi:** No! No!

**Mr. Deputy Speaker:** Order, Mr. P.K. Mwangi! Next Question, Dr. Kulundu!

**Mr. P.K. Mwangi:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Next Question!

## PROVISION OF FREE ANTI-HIV DRUGS

**Dr. Kulundu:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Medical Services the following Question by Private Notice.

Since multinational companies have reduced the cost of anti-HIV drugs by as much as 85 per cent, what plans does the Government have to avail these drugs free of charge in all our public health institutions as a demonstration of its commitment to the fight against this scourge?

**The Minister for Medical Services (Dr. Anangwe):** Mr. Deputy Speaker, Sir, I beg to reply.

It is true that five multinational companies have expressed their intentions to reduce the cost of anti-HIV drugs by as much as 85 per cent. This has, however, not taken effect, and while the Government is committed to fighting HIV/AIDS in the country, the cost of anti-HIV drugs even at a reduced price is still quite prohibitive and the Ministry's budget cannot accommodate the provision of free drugs to all public health institutions.

**Dr. Kulundu:** Mr. Deputy Speaker, Sir, when we went to Mombasa last year, one of the resolutions passed, in fact, resolution No.8, was to make anti-HIV drugs freely and cheaply available to Kenyans. These five multinationals have gone out of their way to reduce the prices of their drugs by 85 per cent. In fact, one of them Boehringer Ingelheim, has offered to give Kenya Nevirapine which is a drug used for reducing mother-to-child

transmissio

of HIV/AIDS free of charge. This is a magnanimous gesture from multinational companies. Is it asking for too much for us to ask the Government of Kenya to merely pay the remaining 15 per cent in order for the poorest of the poor of this country who are afflicted by this scourge to get these drugs free of charge? In any case, has the Ministry calculated how much extra money it will cost the Ministry to avail these drugs free of charge, whenever the multinationals make them available to the Ministry?

**Dr. Anangwe:** Mr. Deputy Speaker, Sir, the cost of these drugs after the 85 per cent reduction is still prohibitive. As an indication, the cost of a triple anti-retriviral therapy after the reduction is an excess of Kshs5,000 per month. That translates to about Kshs50,000 per year per person. When you calculate and multiply by the number of HIV/AIDS patients that we have, that would amount to about Kshs12 billion. You know what our budget is. We passed it recently in this House. It was Kshs9 billion. We do not even have enough money in respect of the ordinary diseases. If we were to accept this kind of arrangement, HIV drugs alone would cost Kshs12 billion. Secondly, in relation to the offers made by these five multinational corporations, we are pursuing that particular initiative. We would like to develop a framework within which we can negotiate. We want to understand the timeframe and the conditions. Some people are arguing that it may be a ploy meant to shut off importation of cheaper generic drugs from elsewhere. We need to explore all these possibilities and have a framework in mind. We have solicited for technical assistance from UNAID and WHO. The team is coming here from 20th of this month up to 2nd of December and we hope that we shall have developed a framework on the basis of which we can negotiate with these multinational corporations. May I assure the House that we are willing to negotiate. That notwithstanding, these drugs are available here in private pharmacies for those who can afford them.

**Mr. N. Nyagah:** It could be three million or more Kenyans who are suffering from HIV/AIDS. This Government which is legitimate has the authority to declare this a national disaster. Why is this Government allowing Kenyans to die when it can on its own say that parallel imports should be allowed into this country?

**Dr. Anangwe:** Mr. Deputy Speaker, Sir, it is not true that this Government is allowing Kenyans suffering from HIV/AIDS to die. We have put in place preventive measures and we are encouraging Kenyans to adopt them. In addition, every year we spend about US\$5 million to procure drugs to combat opportunistic infections associated with HIV/AIDS. May I assure this House that in respect of this particular initiative by the five pharmaceutical firms, we are taking the initiative seriously, but we need to develop a basis upon which we can reach an understanding on how these drugs can be supplied to the Kenya Government.

**Dr. Murungaru:** On a point of order, Mr. Deputy Speaker, Sir. The truth of the matter is that even after the 85 per cent reduction in the cost of branded products by the major multinational companies, if we were to adopt the policy of parallel importation, we would end up paying perhaps only about 3-5 per cent of the cost of the current price of this product. Why can the Kenya Government not adopt that policy?

We do not have to import experts to come and tell us that five dollars is not equivalent to five cents. Let us go directly for parallel importation from Brazil, Italy, Hungary, and the South East Asia.

**Dr. Anangwe:** Mr. Deputy Speaker, Sir, the notion of parallel importation as mentioned by hon. Nyagah and hon. Dr. Murungaru is acceptable to the Ministry, but we need an enabling legislation and there is a Bill that has been developed - not under my Ministry - which this House is awaiting to discuss. Until and unless we have that particular law in place, there is nothing we can do as a Ministry.

**Dr. Kulundu:** Mr. Deputy Speaker, Sir, the Minister has talked about parallel importation. I suppose he has TRIPS in mind. Article six of that TRIPS Agreement allows countries to have parallel imports from countries where they are sold by the patent holder or licensee at lower prices without the manufacturer's permission. That is besides the point. Is it or is it not true that the reason why the Kenya Government is dragging its feet on this very vital issue which is of concern to many Kenyans is because we do not have the means to qualitatively analyze drugs that enter into this country because the National Quality Control Laboratory is moribund?

**Dr. Anangwe:** The point that he is raising is very fundamental in relation to this particular initiative. In addition to the pharmaceuticals, there are very essential elements such as the need to develop the health infrastructure, the diagnostic kits for testing the CD, four cells count and viral nodes. There is also need to develop capacity and even to train the health personnel to manage and administer these kinds of drugs.

Mr. Deputy Speaker, Sir, there is also need to develop monitoring of the technology. To some extent, it is not just the pharmaceuticals, but a question of developing an array of infrastructure to respond positively to this initiative.

## POINTS OF ORDER

### DEATHS DUE TO DRINKING OF ILLICIT BREW



**Mr. Mwenje:** Mr. Deputy Speaker, Sir, I would like the Minister of State, Office of the President, to give a Ministerial Statement over two incidents that happened at Embakasi. In the first incident, over 30 people died and many more are dying after taking illicit brew in Mukuru slums, where I was this morning. This is because the chiefs and DOs in the area have failed to stop the drinking of this illicit brew. I would like to point out that we have complained about the drinking of this illicit brew, but the Government had turned a deaf ear. Today, over 30 people died and even as we sit here, more bodies are still being collected in Mukuru slums, and many people are being taken to hospital. I would like to inform this House that other victims are turning blind even now. The Office of the President should now tell us the action they are taking to curb the drinking of this illicit brew, which has affected many villages.

#### DEMOLITION OF HOUSES AT EMBAKASI

**Mr. Mwenje:** Mr. Deputy Speaker, Sir, the second issue is about thugs who came to Embakasi Village at 10.00 p.m. and they were provided with police protection. These people demolished over 100 houses belonging to our people and left the victims homeless.

I would like to say that the OCS, Embakasi Police Station, was there and supervised this demolition. Even if there was a court order, I wonder whether it could be implemented at night. So, the OCS and the police in Embakasi should tell us why and how they came about protecting "thugs" who destroyed other people's property, stole and beat up our people. What these people did was wrong, whether they had a court order or not.

Mr. Deputy Speaker, Sir, could the Minister of State, Office of the President, tell us why the two incidents took place and what is happening? Could he also tell us the purpose of this incident and why the Provincial Administration has failed in its work?

**The Minister of State, Office of the President (Maj. Madoka):** Mr. Deputy Speaker, Sir, on the first incident at Mukuru, it is true that we had it, and the death toll is likely to rise. I would like to inform this House that eight people have been arrested and they will be charged for brewing this illicit brew, but further investigations are going on. Maybe, I will issue a more comprehensive report when the investigations are over. On the second incident, I will have to investigate, but I do believe that they were acting on a court order, but all the same, they should have acted with greater civility.

#### DISRUPTION OF MARANI SOCIETY ELECTIONS

**Mr. Angwenyi:** Thank you, Mr. Deputy Speaker, Sir. I would like to demand a Ministerial Statement from the Minister of State, Office of the President in charge of Internal Security and Provincial Administration, regarding the rampage of the Provincial Administration against members of Marani Farmers Co-operative Society. Yesterday, the Provincial Commissioner, the Provincial Police Officer, the Provincial Criminal Investigation Officer and the Kisii District Commissioner descended on our people on the pretext that they wanted to stop a group of farmers from participating in a co-operative society election to be held tomorrow. This election had been ordered by a court of law upon application by farmers who have been denied their chance to run the society for the last three years.

I would like the Minister to give a Ministerial Statement as to whether the Provincial Administration now runs the co-operative movement and the agricultural industry in this country. I would also like him to tell this House whether the Provincial Administration has been employed to canvass votes for specific people at the instigation of political rejects like Mr. Asanyo and Mr. Mwamoima, and use security forces to harass and intimidate innocent farmers who toil against impoverishment from their agricultural activities.

Mr. Deputy Speaker, Sir, I would also like the Minister to assure the people of Kitutu Chache, particularly the people of Marani Farmers Co-operative Society, that the elections which will be held tomorrow will be free and fair and the security forces who will be sent there will be non-partisan so that the elections are conducted in accordance with the law governing the co-operative movement in this country.

**The Minister of State, Office of the President (Maj. Madoka):** Mr. Deputy Speaker, Sir, this is the first time I am hearing of the incident. I will investigate and make the appropriate statement. But I would like to say that the Provincial Administration has no business to interfere with the elections of these coffee farmers.

**Mr. Deputy Speaker:** Mr. Minister, when are you likely to make those Ministerial Statements?

**The Minister of State, Office of the President (Maj. Madoka):** Mr. Deputy Speaker, Sir, I will make them on Wednesday or Thursday next week.

**Mr. Deputy Speaker:** Next Order!

*(Order for Committee read)*

*[Mr. Deputy Speaker left the Chair]*

IN THE COMMITTEE

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

THE MASENO UNIVERSITY BILL

*Clause 2*

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 2(1) be amended by inserting the following new definitions immediately after the definition of Vice-Chancellor. "College" means a College established within the University under Section 6(1). "Head of Department" means Head of a teaching department appointed by the University under the regulations. "Dean" means the dean of a faculty elected by academic members of the faculty or Institute in accordance with the regulations. "Professor" means a professor of the University and includes an associate professor. "Staff Association" means an association recognised by the Council as being an association representative of the staff of the University.

*(Question of the amendment proposed)*

**Dr. Kituyi:** Mr. Temporary Deputy Chairman, Sir, you will notice that it is rather unusual to suggest amendments on the Floor, at the Committee Stage before hon. Members have had a chance to look at them. So, I would like to request that under those circumstances, the Chair moves a bit slowly, so that we start reacting accordingly. It is not a procedural matter, but it is a matter of commonsense that we need to have a look at the amendments. Having said that, on the proposed amendment on Clause 2, since we are talking about the academic staff union and even in the definition, it means a union of academic staff---

**The Temporary Deputy Chairman** (Mr. Musila): I would like to assure you that the Chair will not rush anything here, but on the other hand, everything we are discussing; the report and even the proposed amendments were laid on the Table. So, perhaps, you will be advised to have a look at them. That notwithstanding, I will still proceed.

**Dr. Kituyi:** Mr. Temporary Deputy Chairman, Sir, I want to contribute now on the proposed amendment. If the union being proposed to be recognised is for academic staff, I support the amendment which includes it. But why is the Minister now "growing cold feet" and striking out the word "academic" from the academic staff union? Since the definition remains a union of academic staff, why does he find it difficult to have it called "academic staff union"?

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, we discussed this matter at length at the Departmental Committee level and this is one issue over which we disagreed. Hon. Achola who is the Chairman is here and hon. Wamae know that we disagreed. The position the Ministry can take is that of a staff association and not an academic union for the simple reason that we do not have any union in any of the other five public universities. There is need to be consistent. This was the position that we took and maintain. We would like to have an association where everybody at the university level, whether he is an academic staff member or an administrative member can belong. I think this was the big improvement on the other hand. I would like hon. Dr. Kituyi to take note of that.

**Dr. Kituyi:** Mr. Temporary Deputy Chairman, Sir, having taken note of the argument, I find the following flaws: It is the business of the Minister at Committee Stage, to persuade this House to take the position of Government, not to inform the House of the position; the rigidity of the Ministry. He is supposed to convince me that his position was correct.

Now, members of staff of the universities of this country have the freedom to join any trade union relevant to the work they do. If they are under the Catering Department, they join the Kenya Commercial, Food and Allied Workers Union and if they are in other disciplines, they join relevant unions in the country. They have no problem as related to the trade union movement in the way members of the academic staff have.

Mr. Temporary Deputy Chairman, Sir, the Minister is saying something very interesting. He said: Because in the other public universities there is no academic staff union, therefore, we cannot start an academic staff union in Maseno University. And this is a university graduate and a lawyer. The fact that something has not happened in other universities is not a good enough reason that it should not start happening in another university. Nairobi University as a pioneer university in this country should be the one to set trends. If it is good for Nairobi University, eventually it might be good for the other universities. So, unless he has some more tangible argument, he cannot just tell us that this

was the position of the Ministry or there is no academic staff union in the other universities. Why is it wrong for us to have an academic staff in Nairobi University, and if the other universities find it relevant, they can also adopt or not adopt at all?

**The Temporary Deputy Chairman** (Mr. Musila): Dr. Kituyi, we are on Maseno University!

**Dr. Kituyi:** Mr. Temporary Deputy Chairman, Sir, I am sorry; I meant Maseno University. I intended to say that if Maseno University academic staff want to have an academic staff union, the fact that the Government had denied other universities to have one, is not a good enough reason.

**Mr. Wamae:** Mr. Temporary Deputy Chairman, Sir, before the Minister replies, I would like to say that we would like to become modern and allow academic staff to have unions. If we adopt it for Maseno University, it is for the Minister to bring amendments to the Acts of other universities, so that we can also amend them, rather than having to say that Maseno University whose Bill we are discussing now, should follow the other Acts.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I would also like to support the views being expressed by hon. Wamae and hon. Kituyi that we disagreed with the Minister on this particular issue. The Committee's position was that they wanted Maseno University to be given the opportunity to have an academic staff union recognised by the Council and registered under the Trade Unions Act. We had input from members of staff of Nairobi University who gave us documentation showing that in Oxford University they have an academic staff union, and there is no reason why there should not be an academic staff union in Maseno University. The argument that we do not have the union in other universities is really not a good reason. At the time of our deliberation with the Minister, he informed us that the Universities Amendment Bill was coming, and that would cater for this particular issue. Now, I have looked at the Universities Amendment Bill 2000 and this part is not included. So, I would like to request the Minister to accept to free Maseno University, so that they can have their academic staff union.

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, first of all, Dr. Kituyi should agree with me that we have spent time. We are not here to impose an opinion and, therefore, I am really trying to persuade him. I am not trying to dictate terms. We spent a lot of time discussing this matter, and we think that it is important to take everything right. The important thing now is to have the Maseno University Bill in place. I think, there is need for consistency and greater consultation. I do not believe in a piecemeal approach. I think it is important, if we are going to have academic staff unions in our public universities that we deal with them at that particular time.

We might therefore, begin with the amendment of the "mother" of the other universities and not the "baby." This is a position we have taken and we need greater consultations. I am sure hon. Members know that we are accessible and we will continue to discuss this matter.

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Clause 2 as amended agreed to)*

*(Clauses 3, 4 and 5 agreed to)*

#### Clause 6

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 6 be amended by deleting Sub-Clause 2.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Clause 6 as amended agreed to)*

*(Clauses 7 and 8 agreed to)*

#### Clause 9

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 9(c) be amended by deleting the expression "Vice-Chancellor" and substituting thereof the expression "Vice-Chancellors."

*(Question of the amendment proposed)*

*(Question that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted, put and agreed to)*

*(Clause 9 as amended agreed to)*

*(Clause 10 agreed to)*

*Clause 11*

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 11 be amended by deleting the sub-Clause 3 and substituting thereof the following new sub-clause:

(3)The Vice-Chancellor shall hold office for a period of five years but shall be eligible for re-appointment for one further term.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 11 as amended agreed to)*

*Clause 12*

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, I beg to move:- THAT, Clause 12 be amended in sub-clause (1) by deleting the words "three or more " and substituting the words "two or more from among the Professors." immediately after the word "Vice-Chancellors"

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed.)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 12 as amended agreed to)*

*(Clause 13 agreed to)*

*Clause 14*

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 14 be amended:-

- (a) in sub-clause(1)(c) by appending the letter "s" after the word "Vice-Chancellor"
- (b) in sub-clause(1)(j) by deleting the word "President" and substituting the word "Chancellor"
- (c) in sub-clause 1(k) by deleting the word "four" and substituting thereof the word "two".
- (d) in sub-clause 1(l) by inserting the word "union" immediately after the word "staff"
- (e) in sub-clause(1)(o) by deleting the word "two and substituting thereof the word "one".

*(Question of the amendment proposed)*

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, you will realise that the Minister has skipped part (d) of the proposed amendments to Clause 14. We agreed with the Minister during our discussions on this Bill that Clause 14

should also be amended in sub-clause (1)(l) by inserting the word "union" immediately after the word "staff".

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, hon. Achola is quite correct in his assertion. We agreed on all these matters except under part(d). I, therefore, propose that paragraph (d) be deleted as it appears on the Order Paper.

**Dr. Kituyi:** Mr. Temporary Deputy Chairman, Sir, in a related amendment earlier in Clause 2, the hon. Minister was opposed to the use of the word "academic." So, we called it "staff union" and not "staff association." He should propose to delete the word "academic" in sub-clause(1)(L) and insert the word "union" as proposed in this amendment. That will serve his purposes better than what he is trying to do now.

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, the plain reading of paragraph (d) will end up with the word "staff union". That is what we are objecting to.

**The Temporary Deputy Chairman** (Mr. Musila): I thought we disposed of this argument earlier when we dealt with Clause 2?

**Dr. Kituyi:** Mr. Temporary Deputy Chairman, Sir, what we disposed of is the use of the word "academic staff union." We agreed to have the word "staff union" without any reference to the "academic" aspect.

**The Minister for Education** (Mr. Musyoka): But we called it "staff association?"

**Dr. Kituyi:** Mr. Temporary Deputy Chairman, Sir, even if one went silent on this amendment, there is no "association."

**The Temporary Deputy Chairman** (Mr. Musila): In Clause 2, we removed the word "union" and changed it to "staff association." Therefore, we cannot have a union when we have already done away with it in Clause 2. I think that is the Minister's argument.

**Dr. Kituyi:** If that is the Minister's argument as understood by the Chair, it might well be. We reluctantly give in. If it is going to be "a staff association," then sub-clause 1(l) must now be amended by inserting the word "association" after the word "staff".

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I am satisfied that there is sufficient mention of the word "staff association" elsewhere in the Bill.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I really do not see where we are disagreeing with the Minister. "Unionisable" staff usually belong to "a union" and that is what we are referring to here! The word "union" should remain there.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 14 as amended agreed to)*

#### Clause 15

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move: THAT, Clause 15 be amended in sub-clause (2)(g) by deleting the comma appearing in the sub-clause.

*(Question of the amendment proposed)*

*(Question, that the comma to be left out  
be left out, put and agreed to)*

*(Clause 15 as amended agreed to)*

*(Clauses 16 and 17 agreed to)*

#### Clause 18

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 18 be amended:-

(a) in sub-clause 3(b) by deleting the full stop and substituting in place thereof the semi-colon

followed by the word "or".

*(Question of the amendment proposed)*

**Dr. Kituyi:** Mr. Temporary Deputy Chairman, Sir, the hon. Minister wants to say that since he was party to an understanding about these proposed amendments, there should be no question from this side. That is alright, but what he is not saying is that he was also party to a subsequent amendment in part (b) which he has refused to propose. Why is he not "keeping his part of the bargain?"

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I would like to "keep my part of the bargain." It is consistent with the matter that the Chairman can resolve under the definition "clause". Reference has been made to a "staff union." That is what we are very consistent about.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I think the Minister is right. My side of the argument has been defeated in the definition. Our proposal does not really stand now.

*(Question, that the word to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 18 as amended agreed to)*

*Clause 19*

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 19 be amended in sub-clause (3) by inserting the words "in consultation with the council" immediately after the word "appoint".

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 19 as amended agreed to)*

*(Clauses 20, 21, 22, 23 and 24 agreed to)*

*Clause 25*

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 25 as renumbered be amended as follows:-

In sub-clause (1)(f) by inserting the word "qualifications" immediately before the word "appointment", appearing on the second line.

*(Question of the amendment proposed)*

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, that particular amendment was agreed between the Minister and the Members. But we felt that we should have introduced the "academic staff union" at this particular stage under regulations.

Mr. Temporary Deputy Chairman, Sir, our Committee suggested that Clause 25 be renumbered as Clause 26. But since the Minister has registered that one, I think we will accept the amendment.

*(Question, that the word to be inserted be inserted, put and agreed to)*

*(Clause 25 as amended agreed to)*

*The Title*

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, the word "concerned" be deleted and replaced in place thereof with the word "connected".

The Title should read as follows: An Act of Parliament to establish the Maseno University provide for its powers and functions and matters - not concerned therewith - but connected thereto. I think the parliamentary draftsmen in the Office of the Attorney-General may have overlooked that. I think we can knit it up.

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(The Title as amended agreed to)*

*(Clause 1 agreed to)*

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Maseno University Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Deputy Speaker in the Chair]*

### REPORT, CONSIDERATION OF REPORT AND THIRD READING

#### THE MASENO UNIVERSITY BILL

**The Temporary Deputy Chairman** (Mr. Musila): Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Maseno University Bill and approved the same with amendments.

**The Minister for Education** (Mr. Musyoka): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Information, Transport and Communications** (Mr. Mudavadi) seconded.

*(Question proposed)*

**Mr. Raila:** Mr. Deputy Speaker, Sir, I would like to congratulate the Minister for successfully steering the Bill through the House. This is a very important Bill. We have recommended the establishment of constituent colleges of the university. I mentioned Bondo, Bukura, Western College of Science and Technology (WECO), Kisii and Mbita. We would like that to be done as speedily as possible. We would also like the Minister, in line with the liberalisation mood in the country now, to consider allowing an academic staff union.

With those few remarks, I beg to support.

**Mr. Sungu:** Mr. Deputy Speaker, Sir, I would like to congratulate the Minister for presenting this Bill to the House successfully. I would like also to appeal to the university authorities and particularly the Ministry, to make sure that they protect our students from those who are out to incite them to go into the streets.

*(Applause)*

Mr. Deputy Speaker, Sir, most of our students come from poor families. It is imperative that they be allowed

to undertake their studies and finish their courses in the shortest time possible without involving them in politics.

With those remarks, I beg to support.

**Mr. Achola:** Thank you, Mr. Deputy Speaker, Sir. I just want to make one comment about what we mentioned during our deliberations yesterday. Now that the Attorney-General is here, we would like to ensure that the staff of Maseno University start on a "clean slate." This culture of student riots and indiscipline should be stumped out from the start. We would like the Attorney-General to take stern action against Members of this House who incite students because that is the biggest problem we have. We would like to see those things done away with.

**Mr. Deputy Speaker:** Order! I think for House procedure, I should put the Question because we are dealing with the Report of the Committee. Then I will allow Members who will want to say something additional to do it during the Third Reading.

*(Question put and agreed to)*

**The Minister for Education** (Mr. Musyoka): Mr. Deputy Speaker, Sir, I beg to move that the Maseno University Bill be now read the Third Time.

**The Minister for Science and Technology** (Mr. Kosgey) seconded.

*(Question proposed)*

**Mr. Orengo:** Mr. Deputy Speaker, Sir, the passing of this Bill is important. In fact, it is important in the sense that we are trying to create more institutions of higher learning, particularly the public institutions. Therefore, the initiative to bring this Bill to the House and for the hon. Minister to move it successfully, is a matter that must be commended.

Having said that, I would wish to advise the Government on how public universities should be run. The Government should recognise the autonomy of universities and the academic freedom of the universities. The Government should allow them to play an important role as they should. If we are faced with a situation, like the one my hon. friend, Mr. Sungu, was referring to--- Although he had a very uneventful time at the university, I do not think anybody remembers him there. The prevailing political situation actually determines what happens---

**Mr. Sungu:** On a point of information, Mr. Speaker, Sir. May I---

**Mr. Deputy Speaker:** Order! Proceed, hon. Orengo!

**Mr. Orengo:** I told you! He does not know what he wanted to say!

*(Laughter)*

Mr. Deputy Speaker, Sir, we must watch the prevailing political situation very carefully and what is happening at our public universities. You will remember that when the whole world was against the Vietnam War, the people who initially stood up in America against the Vietnam War were the university students. If you look at the state of modern Europe at the moment, you would go back to what happened in the public universities in 1968, in the whole of Europe. I want to remind you that when people were "very shy" to talk about the introduction of multipartism--- Of course, there are people like hon. Raila here who came out openly about the establishment of multipartism. The people who dared talk were the university students and lecturers. So, let us watch carefully what is happening at the university instead of denouncing them. Try and find out what the real problem is, instead of thinking that some people are inciting university students.

I also remember that, when the Government of Kenyatta refused Jaramogi Oginga Odinga to go to the university, the university students came out and said that it was wrong because they wanted to hear "the alternative view." Unfortunately, if you have the kind of people like the ones I see on the opposite Benches, who never want to hear "the alternative view," then you will use *rungus* instead of listening to university students. Some of them are better learned and they know more about this country than the people I see across the Floor. So, give them a little time also.

*(Question put and agreed to)*

*(The Bill was accordingly read  
the Third Time and passed)*

**BILL**

*Second Reading*



## THE PARLIAMENTARY SERVICE BILL

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, it is my pleasure to move that the Parliamentary Service Bill be read a Second Time.

Mr. Deputy Speaker, Sir, the Parliamentary Service Bill, 2000 is a Bill which seeks to facilitate the effective carrying out of the provisions of the Constitution of Kenya Amendment Act No.3 of 1999, which established a Parliamentary Service and also a Parliamentary Service Commission. The Parliamentary Service was established under Section 45(a)(I) of the Constitution. The Parliamentary Service Commission was established under Section 45(b) (I) of the Constitution.

I am glad that, today, as I am moving this Bill, the Parliamentary Service Commission has already been constituted and is already operating very vigorously.

Under Section 45(5) of the Constitution, it was provided that, the Parliamentary Service Commission was to operate in such a manner as may be prescribed by or under an Act of Parliament. In fact, that sub-paragraph went on to list the type of activities that should be governed by or under an Act of Parliament. Therefore, the Parliamentary Service Commission, as it carries out its work, must be governed by an Act of Parliament, hence the bringing of the Bill.

Under the Constitution, this Bill provides the way the Commission will act on a number of issues, for example, the preparation of the estimates of expenditure, laying before the assembly, at least, once every year the audited accounts, providing proper security for the Members of the National Assembly and for the services and facilities within the precincts of the National Assembly. It will also determine the terms and conditions of service for persons holding or acting in the offices of the Parliamentary Service Commission and from time to time, to appoint an independent body which will make recommendations on the review of the terms of service *et cetera*.

Mr. Deputy Speaker, Sir, the enactment of this Bill is necessary because the Constitution says that the Parliamentary Service Commission, in carrying out its work, must be governed by an Act of Parliament.

The passage of this Bill will restore the balance or will move towards restoring the balance between the three arms of the Government; that is the Executive, Judiciary and Parliament. We already know that as far as the Executive is concerned, we have the Public Service Commission to take care of its employees. We also already know that as far as the Judiciary is concerned, we have the Judicial Service Commission to take care of its employees. Therefore, the passage of this Bill will now enable the Parliamentary Service Commission to operate and, thereby, ensure that Parliament can now play the role that was assigned to it under our Constitution.

Mr. Deputy Speaker, Sir, I do not want to speak at length on this Bill because it is a matter that has been the subject of the debate in this House a number of times. You will, of course, recall that in July, 1993, a Motion that was moved by hon. Shikuku and seconded by hon. Murungi, stated:-

"A Parliamentary Service Commission charged with the responsibility of looking after the welfare of the staff of the National Assembly as regards their appointments, confirmation and discipline with a vision, that there was need to reaffirm completely the full independence of the legislature in terms of finance and effective work by its staff that should be passed".

So, in July, 1993, that Motion moved by hon. Shikuku and seconded by hon. Murungi was passed.

Mr. Deputy Speaker, Sir, on 11th November, 1998, there was a Motion moved by hon. Oloo-Aringo and seconded by hon. Dr. Kituyi, also to the same effect which was:- "To promote and consolidate the dignity, independence and supremacy of Parliament." I believe that Motion was passed unanimously by both sides of the House as the HANSARD report will show. The Attorney-General did not participate in the first one.

Mr. Deputy Speaker, Sir, then in May, 1999, there was a Motion which permitted hon. Oloo-Aringo to bring a constitutional amendment to establish a Parliamentary Service Commission and that was passed. The House will recall that the Attorney-General of the Republic of Kenya moved that Motion and I am glad to say it was passed. It is not easy to successfully move a constitutional amendment in the House because of the requirements of the Constitution of the two-thirds majority. However, I am glad that on that occasion, both sides of the House fully supported that amendment and it went through, with more than the two-thirds majority that is required. So, this Bill is to now give effect to those constitutional provisions, to ensure that the Parliamentary Service Commission can now discharge its duties in accordance with the way this House will lay down how those duties must be performed.

Mr. Deputy Speaker, Sir, the Bill itself is self-explanatory. It has gone and has been the subject of lengthy discussions in the Parliamentary Service Commission which as I stated earlier, has already been constituted. I have had the opportunity and pleasure also, of appearing before that Parliamentary Service Commission and I expressed my only regret that the Attorney-General should have been made an *ex-officio* member of the Parliamentary Service Commission. However, I can say this: The Attorney-General's office will be available at all times to render whatever

advice or assistance that may be required to ensure the effective implementation of the Parliamentary Service Commission.

Mr. Deputy Speaker, Sir, as I said, I will not be long but just quickly going through the Parliamentary Service Bill, under Part 2, Clause 3, establishes Parliamentary Service and in doing so, it states:- "Those in the service of Parliament, the employees of the Service will not seek or receive directions from any other source external to the Service". This is in accordance with the Motions that have been passed in regard to this matter, to create greater autonomy for the functioning of the Parliamentary Service Commission. Therefore, the employees of the Parliamentary Service Commission are not supposed to seek or receive directions from any source external to the Service.

Mr. Deputy Speaker, Sir, I also note that the Parliamentary Service Commission under the Constitution, is also mandated not to be subjected to any direction from any person or authority. We have similar provisions as far as that is concerned relating to constitutional offices, in particular, the Public Service Commission, Electoral Commission, Controller and Auditor-General and the Attorney-General. Therefore, in moving this Bill, I am welcoming to the fold of constitutional offices and institutions, the Parliamentary Service Commission and reminding them that constitutional offices and institutions are charged with very heavy responsibilities, particularly in Kenya. Therefore, it behoves on us to discharge our duties in accordance with the Constitution and laws that have been laid down.

Mr. Deputy Speaker, Sir, Clause 4 relates to the values of the Service and there are many. Among those values, if I may just mention a few, is the promotion of democracy and the rule of law. Throughout not only under this Act but also under the constitutional amendments, Motions and debates in this august Assembly, one of the features running through all this is the promotion of democracy and the rule of law. In fact, it requires under this Bill, that the employees of the Service must themselves be firm believers in democracy and the rule of law. This Bill also requires that not just only the employees of the Service and if you look at the provisions which relate to the commissioners under the Parliamentary Service Commission, they must also be firm believers in democracy and the rule of law in order to be appointed. We do not want an employee in the service of Parliamentary Service Commission to be one who is not a believer and committed to the promotion of democracy and the rule of law and who is not also in Sub-paragraph "B", patriotic; that is, who is not a person who believes in peace. Peace is very important and I am glad it has been specifically mentioned in this Bill that:-

"Peace must prevail. The employees of the Parliamentary Service Commission must be people who are committed to promoting peace in the country. The commissioners must promote peace in the country. The leadership of the country be it the Opposition and the Government must promote peace in the country. University students must promote peace in the country and all Kenyans, in fact, must promote peace in the country both by their words and actions".

The Attorney-General is always on the front line in promoting peace in this country.

Mr. Deputy Speaker, Sir, the other value that is enshrined here is the one which states that employees of the Parliamentary Service Commission must be non-partisan and give impartial advice and services to the National Assembly. This non-partisanship and impartial advice, of course, is an attribute of all constitutional offices. Another value is that the employees must maintain the highest ethical standards, among other things.

Mr. Deputy Speaker, Sir, the employees must also maintain the spirit of co-operation in the work place based on consultation and communication. "Consultation and communication" are the key words which I would urge the leadership of this country to emulate. We shall not be able to achieve solutions to the many problems facing this country unless we adopt a similar spirit.

We shall not be able to move forward in an atmosphere of confrontation. But I am sure we can move forward if we maintain a spirit of co-operation, consultations and communication. Kenyans are known even in the worst times to be able to come together to consult and communicate. By so doing, they have solved many problems that have faced this country. Let us not foreclose consultation and communication as a value which should be espoused by the leaders of this country as a whole. There are many other values that have been set out clearly in Clause 4; values which the employees of this august Assembly will have to follow as they perform their duties and functions.

Mr. Deputy Speaker, Sir, the Parliamentary Service Commission is also mandated under Clause 5 to prescribe a Parliamentary Service Code of Conduct. Clause 6 does state that such a Parliamentary Service Code of Conduct which the Parliamentary Service Commission may come up with shall be in addition to, and not in derogation from any others that may be specified by or under any other written law in relation to the citizens of Kenya generally. As you all are aware and it is appearing on the Order Paper, this House soon will be debating the Public Service Code of Conduct and Ethics Bill. This section is saying that whatever Parliamentary Service Code of Conduct that this Parliamentary Service Commission comes up with, will be in addition to any other(s) in existence. Therefore, if we enact that code, there will be other additional things which may not be provided for here, but will be binding on the employees of Parliamentary Service Commission, hon. Members and members of Judiciary, among others.

Mr. Deputy Speaker, Sir, for example, under the Public Service Code of Conduct Bill, we have such

prohibitions, clear specifications or gifts and benefits prohibited which we either ask for or are given to us in the course of our work.

**An hon. Member:** What about Harambee?

(Mr. Wako): Mr. Deputy Speaker, Sir, if you read the Bill carefully, Harambee has more or less been restricted.

There are prohibitions against dealing in issues where you have an interest; in other words, conflict of interest provision. We have provisions dealing with the accountability for misuse of Government property. We have prohibition against misuse of official information. We have provisions which prohibit conduct prejudicial to the general interest of the State.

Mr. Deputy Speaker, Sir, we have provisions which prohibit sexual discrimination or harassment in the place of work. In other words, if we pass the Public Service Code of Conduct and Ethics Bill, those provisions will also equally apply to the employees of the Parliamentary Service Commission. Therefore, in the work place of the employees of Parliamentary Service Commission, sexual discrimination or harassment will be definitely prohibited.

Mr. Deputy Speaker, Sir, Part IV of the Bill deals with the Clerk and other staff of the Parliamentary Service Commission. As you know, I have published a Bill again on the recommendations of the PSC. Although the Speaker who is the Chairman is not here, I am very pleased that the Vice-Chairman of PSC is here and he is listening to this debate very carefully. As you know we are supportive of this particular legislation. As far as the Clerk is concerned, we have published a Constitutional (Amendment) Bill which will ensure that the appointment of the Clerk is ratified by this august Assembly. But there are provisions under Part IV of this Bill dealing with the Clerk and other staff of Public Service Commission. Then we have the usual financial provisions. I do not want to belabour the point. Then there is the issue of miscellaneous provisions here and there. On the whole---

#### QUORUM

**Mr. Mwakiringo:** On a point of order, Mr. Deputy Speaker, Sir. This is a very important Bill, but there is no quorum.

**Mr. Deputy Speaker:** Yes, we do not have a quorum. Ring the Division Bell.

*(The Division Bell was rung)*

**Mr. Deputy Speaker:** Order! We now have a quorum. Proceed!

**The Attorney-General** (Mr. Wako): Thank you, Mr. Deputy Speaker, Sir. Before I was interrupted, I was talking about the values in Clause 4 of the Bill. To reinforce this, we also have, under Clause 5, some of the factors that will have to be taken into account in codifying the Parliamentary Service Code of Conduct. The issues of patriotism, and being loyal to Kenya, is again emphasized. It is not just a value but it is also being emphasized that it must be reflected in the Parliamentary Service Code of Conduct under Clause 5. Honesty and integrity, acting with care and diligence, are values that must be reflected in the Parliamentary Service Code of Conduct. Combating corruption and misuse or wastage of public property must, also be reflected in the Parliamentary Service Code of Conduct. To be reflected also in the Parliamentary Service Code of Conduct, is respect for and observance of the laws of the land. In other words, the employees of the Parliamentary Service Commission, and, also later on as you would see, the Commissioners must respect the law. The Code of Conduct has to emphasize observance and respect of the law. In fact, it is we as Members of Parliament, who are making laws here, who should really be the examples to the rest of the population by observing and respecting the laws of land.

Mr. Deputy Speaker, Sir, the employees will also be prohibited, under the Parliamentary Service Code of Conduct not to provide any false or misleading information in response to a request for information that is made for those purposes. When you look at the combination of both Clauses 4 and 5, all these values should apply, not just to the employees or the Commissioners or Parliamentarians, but also to public officers generally. In fact, every Kenyan citizen should also subscribe to those values. In as much as they are here, the National Assembly is now providing the lead. It is telling Kenyans that these are the values that we espouse and we expect Kenyans to adhere to and follow. I do not want to bore hon. Members because the rest of the sections are the normal provisions that go with the setting up of a Commission of this nature.

Mr. Deputy Speaker, Sir, as I conclude, let me once again put on record the Government's appreciation for all those who have contributed for many years to enable us reach where we are today. This Parliament is today discussing the Parliamentary Service Bill. In particular, I would like to thank the Movers of the Motions who brought to the attention of this House that this is required. I am referring to the 1993 Motion. There were other Motions in 1974 and

others, but I am a man of the 1990s, so let me refer to the Motions of the 1990s. I am referring to the July 1993 Motion moved by hon. Shikuku and seconded by hon. Murungi.

I am referring to the two Motions moved by hon. Oloo-Aringo and seconded by Dr. Kituyi. I am also referring to the support these Motions have received in this House and, therefore, all hon. Members of Parliament who have contributed to the passage of those Motions across the political divide. It showed that hon. Members are united in ensuring that the National Assembly does play its independent role effectively as conferred on it by the Constitution of the land. Therefore, in moving this Bill, which is indicative of my total support, I am but a voice who happens to be here to move it for posterity. I am glad and it is my pleasure to move this Bill for the Second Reading. I had not seen hon. Oloo-Aringo at the time I had agreed that hon. Ngure seconds the **[The Attorney-General]**

Bill. I was looking for a Member from the Parliamentary Service Commission to second this Bill, to show that it is not just a Government Bill; but our Bill as Members of Parliament. So, I will ask him to second the Bill.

With those few remarks, I beg to move.

**Mr. Ngure:** Thank you, Mr. Deputy Speaker, Sir. I feel greatly honoured to second this Bill whose culmination and conception was done by a party I belong to and whose development was done by my colleague and a Member of my party, hon. Oloo-Aringo.

I stand here to recognise the fact that this Parliamentary Service Bill brought unprecedented solidarity in this House from both sides of the House. We must realise that as we move into parliamentary democracy, we have to be autonomous and run our own affairs. Particularly, the Eighth Parliament has demonstrated very clearly that we know the path to democracy; hence, we are now running our own affairs, as a Parliament, recognising the fact that there are other arms of the Government. We are supposed to nurture democracy and have our own service, namely, the Parliamentary Service, which shall be answerable to Parliament, looked after by Parliament, and which shall have the confidence of Members of Parliament. I say so, because this Bill has a few clauses that underline this.

Mr. Deputy Speaker, Sir, you will remember that when we were appointing the Members of the Parliamentary Service Commission (PSC), our detractors thought that the exercise would be a tug-of-war between political parties. This did not, however, turn out to be the case, because we realised that, at the end of the day, hon. Members would serve in the PSC in their own personal capacities. Indeed, we, Members of the PSC, are serving the Commission in our personal capacities. We have also recognised the fact that members of the Parliamentary Service will serve in their personal capacities, and that they will be answerable to Parliament.

It will be recalled that during the single-party era, Parliament was a mere appendage to the Executive; it was not performing its own duties. If we pass the Parliamentary Service Bill, we shall demonstrate that Parliament is on the path to its independence. A lot has been said to the effect that Members of Parliament are only concerned about their welfare. Let it be known to Kenyans, members of the Press and the world at large, that we are on the path to enacting the Parliamentary Service Act, which will look into the welfare of Parliamentary staff.

Mr. Deputy Speaker, Sir, we recognise the fact that mobility of Parliamentary staff up the ladder is short. At the top of the Parliamentary Service, is the Clerk of the National Assembly, who is the Chief Executive; that is the highest position an employee can aim at in the Service's pyramid. However, through this Bill, we will ensure that any member of the Service who aspires to that post, but does not attain it will, in terms of remunerations, acquire a level that will reflect his performance.

The PSC is headed by the Speaker of the National Assembly; it has a Vice-Chairman, and a Chief Executive, who is also the Clerk of the National Assembly. Be that as it may, we should adopt systems used in other countries, which will influence us to be independent of the Executive. We have examples such as the Parliaments of Tanzania, Uganda, among others in the Commonwealth countries, which have adopted the PSC system. Therefore, in order for Parliament to be autonomous, this Bill must be passed, so that Members of Parliament can, at least, belong to a particular institution. Before, as others would say, Parliament was used as a dumping ground of people who were sidelined from the main "executive service commission" - the Public Service Commission (PSC) - to give room for others to move up the ladder.

Mr. Deputy Speaker, Sir, I must also take this opportunity to say that the Constitution of Kenya (Amendment) Act also gives us authority to establish the Parliamentary Service Commission. This indicates that this country would like to be one among the democratic countries. I am only surprised that hon. Members are not giving the right backing to this Bill. I hope that this will not be interpreted to mean that we are not interested in the welfare of the Parliamentary staff; we are.

I must take this opportunity to thank Members of the PSC, and particularly the Vice-Chairman, who has devoted a lot of his time, writing letters and sending fax messages to Members of Parliament in countries which have adopted the PSC system. As was said, he worked very hard on the Bill. He, indeed, said that the only changes that appear on this Bill are the date and the signature; otherwise, the rest of it remains his original good work. We must not

fail to thank him for work well-done.

However, while doing that, we must also not lose sight of what Clause 8 of this Bill says. Clause 8 says the following:-

"In nominating or appointing any person as a Member of the Commission, the Parliamentary party, or parties, concerned and the National Assembly, respectively, shall have regard to the person's experience or interest in consolidating and advancing the ideals and objectives of Parliamentary democracy".

Mr. Deputy Speaker, Sir, we must realise that we must advance Parliamentary democracy. I will always repeat that Parliamentary democracy is practised in the Chamber. It does not matter where one goes; everything will, ultimately, end up being decided here. So, let us support Parliamentary democracy always, and not only when that democracy favours us. Let us support and nurture Parliamentary democracy in this House. Let us also recognise the fact that we are now in the era of multiparty politics; that is why this Bill makes reference to "nominating parties". As Members of the PSC, whereas we act in our individual capacities whenever we sit in the Commission, we recognise the fact that we have nominating parties; which are referred to in this Bill. The particular Clause says that a Member who does not attend three consecutive meetings of the Commission shall be referred to the nominating party for replacement. So, it means that in the multiparty democracy that we are nurturing, we recognise the diversity of parties, but we still can have an agreement in diversity. That is why these issues are referred to in the Parliamentary Service Bill.

Mr. Deputy Speaker, Sir, we do realise that the Clerk, mentioned by the Attorney-General, will be the Chief Executive, but we recognise that Parliament, being the supreme body, Members of the Commission cannot just dismiss the Clerk without reference to Parliament. So, the Parliamentary Service Bill is a thoroughly thought out document. I must now reiterate here that we, as Commissioners, do recognise and, indeed, have a lot of respect for our Vice-Chairman, who has taken it upon himself to steer ahead matters in Parliament - that will give it full autonomy. I know that, recently, we passed, of course by a Division, the amendment of Sections 58 and 59 of the Constitution. We said that once that is done, the PSC will fully realise the autonomy of its functions and will be in a position to guard its own calendar and protect the hon. Members from the Executive in case it wants to usurp the powers of Parliament. Of course, it is not my intention here to go through the Parliamentary Service Bill, clause by clause because, that has been ably done by the Attorney-General when moving the Bill. Mine would have been very simple---

**Mr. Orenge:** Take a lot of time!

**Mr. Nguire:** Mr. Deputy Speaker, Sir, I was saying that mine would have been simple, as Jim would like me not to say, to stand up and nod, but that would not have been fair to our the Parliamentary revolution. We remember members of great revolutions like, Fidel Castro, who would take five hours, talking through a storm, even when the audiences ran off. He would still address the same rally. Here, we will continue even when hon. Members do not think that it is appropriate to sit here and witness the passing of the Parliamentary Service Bill. So, we now have before us a situation that, maybe, at the beginning was opposed by people, but who now see sense in moving it. We thank the Attorney-General and would like to advise him that all good things are good, whichever side they come from, and nobody on this earth will want to associate with a failure. So, that is a success and we thank the Government for being associated with it because to do otherwise would have been disastrous.

I will go back to what has been said; that hon. Members only look after themselves and they are interested in backing Motions and Bills which benefit them directly. That is not the case. All we are saying is that we, as hon. Members, are looking after our affairs, and we are reviewing the whole package provided in the Parliamentary Service Bill. This is because we will not shy from looking into our security system, since we have rejects who are questionable - in terms of the police force and where they are serving.

Mr. Deputy Speaker, Sir, I know that for some reason, some hon. Members would want to walk off so that they create lack of quorum, but we will always go on and state our views on the Bill. I will now go to Clause 5 (ii) - (a) to (l). It states very clearly about the conduct of members of staff of the PSC and there is nothing vindictive in it. There is nothing that indicates that members of staff will not be given a hearing. Members of staff will now work under conditions that are laid down and they will have to respect them. I must say that when a Circular was written by the PSC to the members of staff asking them to either opt for the PSC or remain in the Public Service, 99 per cent of them opted to serve under the PSC, which means that there is a lot of confidence in the Eighth Parliament and the PSC, despite the fact that we had not stated the terms and conditions under which they were going to serve or even indicated the level of emoluments. That is an indicator that previously they were not serving under a system that gave them a hearing, or a system that was serving them well. It also means that over the years, that system may have forgotten them when they were posted to Parliament.

I do not think that I should go on, as may be the wish of others, but I think that we want to pass this Bill as fast as possible because we have got the other Bill which is to amend Sections 58 and 59 of the Constitution. It is

coming to the House fairly soon, and we want to move with that speed.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to second the Bill.

*(Question proposed)*

**Mr. Angwenyi:** Thank you, Mr. Deputy Speaker, Sir. This Bill is long overdue. It should have been brought here earlier in the year. All hon. Members have been looking forward to this Bill, so that we can regularise matters pertaining to the funding of the PSC. Since we have been waiting for it all this time, I move that you put the Question so that we can pass this Bill.

**Mr. Achola:** Mr. Deputy Speaker, Sir, I want to contribute! Have you acceded to hon. Angwenyi's request?

**Mr. Deputy Speaker:** Order! I think that is doing injustice both to the Bill and the House! Let us allow hon. Members to express themselves on this very important Bill. Hon. Angwenyi, it is important that they are allowed to contribute to the Bill, even if they are saying what you know! But let us give them a fair chance to say something. So, I will overrule hon. Angwenyi.

Proceed, hon. Achola!

**Mr. Achola:** Thank you, Mr. Deputy Speaker, Sir. I just wanted to mention one or two things on this Bill. Recently, the salary increments that we were awarded created a lot of controversy among the wananchi. I would like the Commission, when it is properly set up, to ensure that we have a department of public relations so that matters arising from Parliament are actually handled by people who are trained and able to present correct facts to the public.

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

**Mr. Deputy Speaker:** Order! Proceed, hon. Achola!

**Hon. Member:** He has accepted the point of information!

**Mr. Deputy Speaker:** He can stand and contribute that information!

**Mr. Achola:** Let him inform me if he wants to.

**Mr. Deputy Speaker:** Order, hon. Achola! if he wants to give us the information he can stand and contribute. Proceed!

**Mr. Achola:** Mr. Deputy Speaker, Sir, the second issue that I wanted to mention is the fact that when this Bill was being considered, we should have remembered to change Sections 58 and 59 of the Constitution so that the Parliamentary Service Bill would have been in its proper place such that Parliament would be in a position to set its own calendar. At the moment, we are still not completely free because the President will actually control the calendar of this House. I think that is an issue---

**Mr. Deputy Speaker:** Order, hon. Achola! Hon. Oloo-Aringo has already given notice of a Motion to do precisely that. So you are anticipating debate.

**Mr. Achola:** Thank you, Mr. Deputy Speaker, Sir. You are absolutely right. It is very vital because, at the moment, the Parliamentary Service Commission will do things which they cannot control. If the President were to decide to dissolve this House tomorrow, the Parliamentary Service Commission would be useless to us. The other issue which has given us problems is the fact that when the budget for Parliament was being negotiated earlier on this year, Members of the Parliamentary Service Commission were not consulted under the pretext that this Bill had not been passed. I was under the impression that when the Constitution was changed in November last year this should have been taken into consideration and funds should have been made available for the Continental House and other offices to be available for Members of Parliament so that we can perform our duties effectively.

There are several things that are still missing in this House, for example, the public address system. Some of us who have visited other Parliaments outside, like in the House of Commons in Canada, have seen that those people have a beautiful system where people can actually address the House while sitting on their desks. I would appeal to the Parliamentary Service Commission that when they actually get into position where they can go into the Consolidated Fund and get money, they should start a complete review of all the facilities that are meant to facilitate the performance of Members of Parliament. In 1998, when we visited Canada we saw how Members of Parliament are facilitated to make their work effective particularly with regard to their accommodation in the constituencies. At the moment, many hon. Members here do not have constituency offices or even staff that could assist them in gathering information so that when they come here, they actually talk on issues which have actually arisen from their constituencies.

In many cases, what we talk here is not quite representative of what the people want. One of the best ways of making sure that, that actually happens is to have properly manned offices in the constituencies so that people can actually gather information from the constituencies. This will ensure that when they go back to the constituencies over the weekend they can come back on Tuesdays properly armed with issues that they can raise in Parliament.

Finally, talking about computers and telecommunication, I was under the impression that we should provide internet services in the House, at least in the library. At the moment, the hon. Members have no idea how to even operate computers and this is one thing that is so important that anybody who is looking for information---

**Hon. Member:** Even the Deputy Speaker does not know!

**Mr. Achola:** I would not be surprised if I was told that Mr. Deputy Speaker is not conversant with how to access information from the internet.

**Mr. Deputy Speaker:** You use one in my office everyday!

*(Laughter)*

**Mr. Achola:** Mr. Deputy Speaker, Sir, I am suggesting that every Member of Parliament should actually be made a little bit computer literate so that he can communicate with the world. We are going to reach a stage where, if you want information on anything, you will not be able to access it unless or until you have a personal computer on your desk or a laptop so that you can access the internet and get information. That would make our contributions in this House effective. Most of the contributions we have here are completely unresearched and many people come here and just talk, on top of their heads, without any specific information. That makes their debate really substandard. I am appealing to those Commissioners, we elected at the beginning of the year, that when this Bill becomes law, they should make these facilities available so that we can run a Parliament that is professional and efficient.

With those few remarks, let me leave it at that point hoping that this Bill will pass without hitches.

**The Assistant Minister for Education, Science and Technology** (Mr. Karauri): Thank you, Mr. Deputy Speaker, Sir. I will only make one point because I was not here when the Bill was moved. I do not know what has been said and I do not wish to repeat what has been said by other Members. The Parliamentary Service Commission must look at the welfare of Members healthwise. This Parliament has no facilities for any activity. We do not have any place where we can play ping pong, darts or do any activity like massage. They must look at the welfare of Members healthwise so that we can have games and other things that we can do. Without games, hon. Members may lapse into drinking only because there is nothing else to do. When we talk about HIV/AIDS in the constituencies and most Members will be chairmen of the AIDS committees in their constituencies, we should encourage activities especially among the youth. They should have something else to do so that they can forget the thing which is easier to do and which can give them HIV/AIDS. They must seriously think about giving us sporting facilities in Parliament.

Thank you.

**Mr. Orenge:** Thank you, Mr. Deputy Speaker, Sir. I want to thank the Attorney-General for moving this very important Bill, but more particularly, hon. Oloo-Aringo, who has been very persistent in his mission and crusade to make Parliament the type of institution it should be. If one goes a little bit into history, right from the establishment of this Eighth Parliament, I think hon. Oloo-Aringo has made it as part of his crusade, particularly in this Parliament, to ensure that we have an autonomous and independent Parliament not only in terms of this Bill, but in terms of bringing the constitutional amendment which was moved by the Attorney-General, but a lot of ground work was done by hon. Oloo-Aringo. Without anticipating debate, there is a pending Motion which relates to Sections 58 and 59 of the Constitution.

Let it be said that what we are trying to achieve through the enactment of this Bill should have been done a long time ago. Indeed, what we are doing now, through the process of debate, has also raised controversy in other parliaments. In the House of Commons, the fight for its independence was not an easy task. In fact, if one looks at the historical origin of the name "Speaker" it was that the Speaker of the House of Commons stood his ground to speak for the House and to seek the autonomy of the House. Some of them suffered imprisonment and torment from the Kings and Queens of England. It was never an easy task. Therefore, it is a great challenge to us, that we have a Bill of this nature in our Parliament at this stage when we are fighting for greater democratic space. I am going through it peacefully because people have seen sense. The Attorney-General did not address us as to why we need this Parliamentary Service Commission. Why is it necessary?

Mr. Deputy Speaker, Sir, what is the philosophical foundation even in terms of jurisprudence? What are we trying to do by bringing a Bill of this nature? I think we need to go back to our Constitution; that in our Constitution the theoretical framework is that we have a system of checks and balances. At least, those who conceived our Constitution had in their mind a system of checks and balances; that we should have a judicial arm which is autonomous and clear of its responsibilities.

As we pass this Bill, which has come out because of the great sense of mission from hon. Oloo-Aringo, I would like to inform the Attorney-General that, now that we know that the legislative authority by law and Constitution in this country rests in Parliament, and we also know that the Executive authority of the Republic of Kenya rests on the President, he has one more goal to achieve. This is because in our Constitution, the judicial authority of the land is not conferred on the Judiciary. I think they need to be specifically mentioned; that the judicial authority of the Republic of Kenya is in our courts of justice, so that system of checks and balances is recognised in that

Constitution. This is because those people who sat down to negotiate for this Constitution in Lancaster, including Thugud Marshal who was an advisor, were looking at the whole philosophical framework of our Constitution.

Mr. Deputy Speaker, Sir, the other thing that I would like to inform the Attorney-General about is that as we go through the process, we should try to make sure that our institutions are effective and independent, because the Judiciary, in essence, consists of the Judges of the High Court and the Judges of Appeal and, of course, their subordinate courts. You, as an hon. Member of Parliament, cannot be a member of the Judiciary. The Attorney-General is not part of the Judiciary. Equally, none of us, unless you are appointed a Minister, can be part of the Executive and, yet, Section 30 of our Constitution states that the legislative authority of this land lies in Parliament, which consists of the President and the National Assembly.

Mr. Deputy Speaker, Sir, the first component of this Parliament is not the National Assembly, but it is the President of the country. If we think in terms of checks and balances, that is an issue that we need to address from the point of view of jurisprudence, that you cannot say that you have a system of checks and balances and an authority from another arm of the Government, who then becomes the principal organ of a different arm of the Government. The President should never be a component of Parliament, as defined in the Constitution.

*(Applause)*

That is why in the part of the Constitution that deals with the Legislature, you will find that the President has some powers which need to be addressed, if this Bill has to have effect. I do not want to contemplate Sections 58 and 59, but there are things like, in order that the President can excuse you, the Speaker, the Minister or me from not attending sessions of this Parliament --- I think he should not play those roles; and that he can come and address us at any one time, except like in Tanzania. I would rather have a situation where the President only has authority to address us at the opening sessions of Parliament and thereafter he should be a stranger. That does not mean that he has any less power, but in order to give effect to the philosophical framework of our Constitution, he has to do that. But if you wanted to build a different system where you want an emperor or a monarchy, that would be understandable. The reason why this philosophical and jurisprudential considerations are important is that, for example, the immunity of monarchs in England is based on a very old principle, that the King can do no wrong. His right to rule came from the divine rights of Kings. That is the basis upon which monarchs in England enjoy immunity, but it has changed over time. But if you go to the American system, the basis of immunity is not because the President of the USA can do no wrong, but in the functional approach. At the time when they were framing their Constitution, and thereafter, people like Jefferson said that if you are a President of the USA, if you are sued and you have to run all over the courts in the 50 States, you will have no time to attend to matters that relate to Government, because of the situation that existed or prevailed at that time. But that functional approach has been changed. Despite the fact that the President in the USA enjoys immunity, the courts have had a functional interpretation in the USA and the Presidents in the USA have been sued. This is because they have been told, "whereas in the year 1776 it was difficult for you to run a round in the country, with modernity you can now give evidence. Even if you are under trial, you can give evidence from the White House."

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

**Mr. Orengo:** What is this?

**Mr. Deputy Speaker:** There is nothing like a point of information in our Standing Orders.

**Mr. Orengo:** Yes, this is what I am wondering. I cannot understand what the hon. Member is saying. But if he said he wanted to give me information, I would have understood him. I am sorry!

The reason why I am giving these points is because unless we have this framework in mind, this Bill may become difficult to implement. What we are trying to say, in effect, is that Parliament, by the establishment of a Commission, becomes an independent and autonomous institution. Those values that are enumerated, which at one time when hon. Oloo-Aringo was going through them and I had the privilege of discussing with him, he was asking: "How can we enhance Parliamentary democracy?" Which values are important for us to ensure that we can exercise Parliamentary democracy in our land?

Mr. Deputy Speaker, Sir, looking at the history of the past, which hon. Oloo-Aringo is very conversant with, how do you protect and safeguard the dignity of hon. Members of Parliament? It is a mistake for the country to perceive that when we move this Bill in this House, we are trying to create better conditions for ourselves. I do not think that, that is the point that hon. Oloo-Aringo is trying to make. He is trying to make sure that we have an institution which will be effective enough to carry out its mandate as a Legislature; and as an institution which will check the Executive in a responsible manner and, therefore, these values, so that in this day and time, once we have a Parliamentary Service Commission (PSC), there can never be an incident where the Executive can invade Parliament, pick and seize hon. Members of Parliament the way hon. Seroney and hon. Shikuku were seized and arrested for things



which were said in Parliament. In fact, the record is straight; that the Deputy Speaker at one time when matters arose, because of what one of our hon. Members had said in the House - and he was being punished in Bungoma or thereabout---

He said:-

"No hon. Member can be punished or be intimidated for what we have said in the House or in the country because we have a responsibility outside there."

So, the message should be clear, not to us but to the Executive, that once the PSC is in existence then even deploying National Security Intelligence Service people in Parliament becomes a matter which you must check with the Speaker, as the Chairman of the PSC. If you have a police station in Parliament, you must make it accountable to the PSC, so that decisions are made in order to maintain peace and authority in the House with the consultations or the advice of the Speaker. But never should a Commissioner of Police give orders for something that will take place within the precincts of this House without consultation with the Speaker or the Vice-Chairman of the Commission.

Mr. Deputy Speaker, Sir, at one time, I was accosted by National Security Intelligence Service (NSIS) people right at the door of this Parliament! The *Daily Nation* took a photograph of those who accosted me on the corridor, where even members of staff of Parliament are not allowed to pass. I made a report to the Speaker but nothing has been done. The Speaker did not know anything about it. It means that the Executive can manipulate and intimidate even the Speaker in the House if, for example, there is a debate in which it has an interest! They can decide to arrest the Speaker that day. What do you do about it? It is an experience that we have gone through. If a Deputy Speaker can be seized from the House, why not the Speaker? He was arrested because of a stand that he took at that time. He said "KANU is dead!" I know hon. Kamotho may not believe it, but 20 years ago, somebody said that KANU was dead and, for that, he went to detention.

Mr. Deputy Speaker, Sir, this Bill is also important in the sense that if you want to maintain the dignity of the House, both from within and the surroundings of the House, if it is read together with the Powers and Privileges Act, some decorum and honour could be maintained within and outside the precincts of this Parliament. Having goons coming to attack people in Parliament, or within the precincts of Parliament, is taking away the dignity and respect of the House, which we should all defend. If the law of the land can state that a Member of Parliament cannot be arrested on his way to Parliament because of a civil debt, it is to maintain the dignity of the House. If we can have that in our law, and the police and the Attorney-General can allow people to be attacked within the precincts of the House, what are we talking about? We are not trying to protect the decorum and dignity of the House!

That also means that, once we have a Parliamentary Service Commission, we should be open to the public as much as possible. That is because we have independence. Our Commission should tell the Press what goes on in the House, and the privileges that we have. It should not be a matter of secret. If somebody is not getting his salary, we should be told. Somebody has said that all his salary goes to I do not know where! He should tell us whether that is true or not. Let us open up to the Press and the public, so that everything that we do is a matter of record. That will enhance the dignity of the House.

I am sure that, if this Bill goes through, and the Constitutional Offices Remuneration Bill goes through, unwittingly or by his conduct, the Attorney-General may go down in history as having been part of a process that removed the shackles of oppressive authority from the arms of the Government. I think if he pursues that more vigorously, history will remember him. But if he does it and he is scared--- Under Section 26, I heard the Attorney-General really gloating over the fact that, all the constitutional offices have something in common. They make decisions and carry out their duties independently. They are not under the direction or authority of any one. But you know, when I am, sometimes, arrested for offences which are flimsy all over the country---

**The Attorney-General (Mr. Wako):** Which case?

**Mr. Orengo:** No, I am not talking about any particular case. You should know your law properly! The Attorney-General does not know and yet he says that, he is required to undertake prosecution without the direction or authority of any person. I see that happening every day. The powers of prosecution are compromised!

Mr. Deputy Speaker, Sir, so, if the Commission will be effective, it should never allow itself to be used by any authority. I think it is not by coincidence that all the Commissioners, unlike in many other Commissions or constitutional institutions, are Members of Parliament, including the Speaker.

Mr. Deputy Speaker, Sir, that means that we have entrusted ourselves with this very enormous responsibility of carrying out and effecting the responsibilities of Parliament, which required us to amend the Constitution and come up with this legislation. So, I hope that through the work that this Commission is already undertaking they are showing that, on matters of principle, they can take a stand, in subsequent commissions, and that nobody should feel threatened by any authority. I am glad that hon. Oloo-Aringo, at least, is the Vice-Chairman. I know that he cannot be intimidated and, from what hon. Ngure was saying here, I have all the confidence.

The other thing that I want to point out, which happens in a lot of these public institutions or bodies, like a

commission, committee or a board; is that the Chairman may assume that he is the commission. The Speaker of the National Assembly should not at any time assume that he is the Commission. The Commission is the many Members of that Commission, as appointed under the Constitution. It was not left to an ordinary statute like this, but it was set out in the Constitution that the Commission should consist of so many Members of Parliament and the Speaker is the Chairman.

In carrying out the decisions of the Commission, it is the responsibility of the Commission to act together, without any one of the Commissioners assuming that he can make a decision on behalf of the Commission. I am saying this because, in a lot of Government bodies where you have a board, like the Public Service Commission, you find that the Chairman assumes the authority and powers of that Commission. I think hon. Owino Achola did make reference that, even as late as the last few months, when the Commission was already in existence, consultations were not being made effectively with the Commission as already established by the law.

I am saying this because the Speaker is partly a creature of our vote in the House and he owes certain loyalties, according to the mandate he received, depending on which particular political party sponsored the election of the Speaker. In that regard, he may be sensitive to those loyalties. So, in order to defend his position, he should always make sure that when they make a decision, it should be a decision that, if I meet hon. Ngure on the corridors here, he can defend it. But if that decision is made without his participation, then that would create a lot of difficulties, as far as I am concerned.

Now, when one looks at the values of the Parliamentary Service Commission which the Attorney-General went through one by one, and I want to say that sometimes people forget when we are asked questions in this House, that Ministers can answer them in any way they want because they are not really accountable--- A Question or a Motion is not a resolution of the House. The fact that a Motion is passed by this Parliament, can be of no consequence because there is nothing statutory which can force the Government to carry out the wishes of Parliament. It is from that consideration that we sometimes pass a lot of Motions here, but the Government does not feel compelled to act upon them because the business of this House, which does not necessarily include Motions, is normally passed through a Bill of Parliament. We speak basically through Bills and enactments of Parliament. When we go to the province of Motions and Questions, then our Executive is still not very much sensitive to the supervisory role of Parliament. That is, when Parliament asks a Question or passes a Motion, it is an expression of the wish of those they represent and, therefore, it should be taken seriously.

Mr. Deputy Speaker, Sir, if Clause 4 talks about the promotion of democracy and the rule of law, and Parliament is such an institution which is established by law, it is incumbent upon the Executive that when Parliament speaks in a certain way, those Bills should be taken seriously in order to promote democracy and the rule of law. If we consider Parliament just like a talking shop, where we come and talk everyday but if we do pass a law, then the Government has got a leeway---

Mr. Deputy Speaker, Sir, I think we will not be promoting democracy and the rule of law. I want to encourage the Attorney-General, as the chief legal adviser to the Government, that he promote democracy and the rule of law if the Government listens to Parliament. Like yesterday, there was a very important Question here relating to tendering and SWIPCO, worth about Kshs10 billion and the wishes of Parliament could be seen. However, I think the Executive sometimes does not listen to Parliament and the way that Question was dealt with, the Government really did not care whether the "dishing" went either way.

Mr. Deputy Speaker, Sir, what I am trying to say is this: We should not be like we were in yesteryears when we did not have pluralism; that, Parliament can pass a resolution and there is no Bill before the House and the Government just sits back and does nothing. I think if Parliament has made its wishes known and has expressed a position in any matter, the Attorney-General and his staff, if it is a matter which requires a Bill to be brought before Parliament, they should act with expedition. If he cannot bring a Bill before the House, he has many avenues and mechanisms of coming before the House and say: "During this period, Parliament expressed a certain wish but the Government is unable to carry out those wishes for particular reasons which can be then enumerated."

Mr. Deputy Speaker, Sir, the other thing that I also wanted to advise the Attorney-General about is that a Bill which has involved, in its preparation both sides of the House, ends up to be a good document. I do not think this is a perfect document but when in the original preparation you involve as many people as possible, you do consultations in the manner in which hon. Oloo-Aringo did by calling seminars and workshops, you end up with a document that makes sense. This is because, historically, we have had some Bills like when we were amending the Constitution in 1991 when words were used in the Act which were different from the Constitution and it had to go to the courts because there was no participation of a lot of people.

I also remember after the Inter-Parties Parliamentary Group (IPPG), Parliament expressed its wish that there should be six nominated Members of Parliament who are men and six who are women but when the Attorney-General came with a Bill, he changed the formulation and in the debate he assured the House that---

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead this House that I altered what the IPPG had recommended and passed in this House, when he knows very well that the technical Committee of the IPPG met and agreed with my draft Act on each and every amendment? Those amendments came to this House and were passed by a resolution. Is he in order to allege that I altered recommendations of the IPPG?

**Mr. Orengo:** Mr. Deputy Speaker, Sir, I have even the draft of the IPPG Committee. We talked about six men and six women which is very different from the Attorney-General's Bill. The Attorney-General explained to the House that using the word "equivalent" or "gender equality" would not cause any problem in the debate. I stand to be corrected. But it is something which I have with me up to now.

Finally, Mr. Deputy Speaker, Sir, Parliament must have some teeth. I am giving this challenge again to the Attorney-General. There are these rules of *sub judice* which we apply in this House in a manner that I do not think reflects the correct position in law. But that notwithstanding, we need to have a situation, like in some Parliaments, that even if the Executive is investigating a crime and prosecuting, if Parliament is dissatisfied that the Executive is not carrying out its responsibilities effectively, then Parliament, on its own, should be in a position to follow it up through the creation of an office that can give effect to the report of the Controller and Auditor-General, the PIC and the PAC. Probably, in future, we would need legislation either through a Constitutional or statutory amendment to ensure that this Parliament can give effect to its decision in pursuance of these values. This is because expressing values in a way like this, without giving them effect, does not have any meaning.

Therefore, if we find the office of the Attorney-General is not prosecuting cases, then Parliament should be able to appoint an independent prosecutor to give effect to the recommendations of the Controller and Auditor-General, so that we can maintain these values. For example, in Clause 4, one of the values is to fight corruption. However, there is nothing you can do about it because we pass a law whose implementation falls upon the Executive. We should have a parallel mechanism through which Parliament can give effect to its wishes.

I believe that if the Attorney-General slows down in that process, hon. Oloo-Aringo is here and I am sure he will obviously take that challenge. I am saying this because the present controversy in the United States of America, about who is the President, may end up in court or Congress. There are certain situations where Parliament should show some authority. The Attorney-General here is very happy about his powers under Section 26. He should give us similar powers because if the Attorney-General cannot effectively carry out---

**Mr. Angwenyi:** On a point of order, Mr. Deputy Speaker, Sir. I feel it is time for the Mover to be called upon to reply.

**Mr. Deputy Speaker:** Order! First of all, you cannot do that twice in the same sitting, hon. Angwenyi! If there was time, I would have sent you out. As it is now, you have been saved by the Bell.

**An hon. Member:** Send him out for one minute!

#### ADJOURNMENT

**Mr. Deputy Speaker:** Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 16th November, 2000, at 2.30 p.m.

The House rose at 6.30 p.m.