

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 18th April, 2002

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

## PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No.110*

### MALTREATMENT OF KAKUMA REFUGEES

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

(a) whether he is aware that refugees in Kakuma Refugee Camp are subjected to humiliation and inhuman treatment by the Kenya police while travelling on Kenyan roads; and,

(b) what steps he is taking to correct this anomaly.

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

(a) I am not aware of any refugee from Kakuma Refugee Camp who has been subjected to any inhuman treatment by our police.

(b) Therefore, I am not aware of any anomaly.

**Mr. Munyes:** Mr. Speaker, Sir, the issue I am raising is about refugees travelling from the Kakuma Refugee Camp to Nairobi, Kitale and other places. The policy is that they should get permission from the United Nations High Commission for Refugees (UNHCR), through the Immigration Department. They are also supposed to get a second permit from the Provincial Administration through the District Officer.

When refugees come across road blocks, they are forced to pay Kshs200 each. Is this fair? The Government gives them permission to travel, yet the police cannot allow them to travel if they do not have Kshs200.

**Mr. Speaker:** Mr. Munyes, is it even legal? Forget about fairness! An illegal thing cannot be fair!

**Mr. Munyes:** Mr. Speaker, Sir, could the Assistant Minister confirm to the House that this has been happening and he will take some action to stop it?

**Mr. Samoei:** Mr. Speaker, Sir, as I said, I am not aware of any such activity. However, I will take the sentiments expressed by the hon. Member and investigate them. If I find that, that is happening, I will take the necessary action.

However, I wish to state here that this issue of refugees has been a very notorious one, indeed. We have had refugees all over the place, with all kinds of excuses against the laws of this country. In some cases, refugees have even gone ahead and committed crimes. Indeed, some of them have a criminal record right from their countries of origin. We will not spare persons who come here as refugees yet they have other things up their sleeves. We will deal with such refugees very firmly.

**Mr. Anyona:** Mr. Speaker, Sir, yesterday, hon. Members complained about police harassment, not of refugees but of Kenyans, and a Minister claimed not to be aware of it. Today, the Assistant Minister has said that he is not aware of this anomaly. He has gone ahead to incriminate refugees.

Could he explain to the House on what basis he has made this statement instead of answering the Question? Here is a case where police are harassing refugees and other Kenyans. The Assistant Minister is now blaming refugees and saying that they commit crimes. On what basis has he made that statement?

**Mr. Samoei:** Mr. Speaker, Sir, I have made that statement on the basis of the Question asked. It is on that basis that I have given the hon. Member the benefit of the background to our response.

**Mr. Keynan:** Mr. Speaker, Sir, while I appreciate the answer given by the Assistant Minister, there are only two things that the Government can do. These refugees are registered by the UNHCR. They are here legally because they have been accepted by the Kenya Government. The Government should either withdraw all the documents that it has given to the refugees and repatriate them to wherever they came from, whether it is Somalia, Sudan or Ethiopia, or

allow them to lead some dignified lives. What happens in Eastleigh Estate, and this is exactly what hon. Members complained about yesterday, is that there is a cartel. The policemen are professional extortionists. The refugees are rounded up; they are not even booked in the Occurrence Book or taken to court, and are asked to pay a certain fee so that they could be freed. These are very poor people.

We are asking the able Assistant Minister to direct police officers to deal with refugees as human beings. This is exactly what hon. Munyes is complaining about.

**Mr. Samoei:** Mr. Speaker, Sir, indeed, there is no provision in the Police Act for anybody to be dealt with inhumanly. Those who excessively exercise the authority that has been given to them know that they do so at their own risk.

The refugees' story is a very sad one in our country. We sadly have so many people who, because of problems which are not of our making, are within our borders. Unfortunately, a good number of them do not respect the hospitality that Kenyans have extended to them. Indeed, if it is not a tragedy that we can have people here, who have come as refugees and then turn out to be criminals, then I do not know where we are going.

**Mr. Speaker:** Mr. Samoei, you are missing the point! The question is: Are policemen entitled to charge refugees who are travelling, or even sitting a fee of Kshs200 or any other amount? It is not a question of refugees who have committed crimes being taken to court.

Mr. Samoei: Mr. Speaker, Sir, I have answered that question and I have said that the police know too well the bounds of their authority. Any police officer who does whatever the hon. Member is saying knows that he is doing it at his own peril. I said that I will investigate the matter and if I find that there are such activities, I will take the necessary action.

**Mr. Munyes:** Mr. Speaker, Sir, we might need an inquiry over this matter because there is suspicion that when we travel at night with refugees, we lose a lot of time and refugees are collected and put behind bars. Sometimes, they are collected and put aside, and there are a lot of crimes committed against them at night; people suspect that rape and all other forms of crime happen. The people of Turkana take many hours on our roads, because somebody has to wait for a refugee to pay Kshs200 in order to proceed with the journey. It is becoming serious, and everybody in Turkana talks about these activities and the UNHRC has also complained about this issue. Could the Assistant Minister undertake to set up an inquiry over this matter?

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

**Mr. Speaker:** This is Question Time, Mr. Keynan!

**Mr. Samoei:** Mr. Speaker, Sir, indeed, concerning this issue of refugees, we are considering the whole issue of refugees in our country in terms of numbers. We are negotiating with the countries from which these persons come so that arrangements are made for them to go back to their homes. If we negotiate and agree that they should go back to their homes, hopefully, we will reduce the kind of scenarios like the one the hon. Member has said. However, I will look into the matter.

**Mr. Speaker:** Next Question, Dr. Kulundu!

**Mr. Khamasi:** Mr. Speaker, Sir, Dr. Kulundu has requested me to ask this Question on his behalf, if you allow me.

**Mr. Speaker:** You are allowed!

#### *Question No.144*

#### ACTION AGAINST KAKAMEGA POLICE

**Mr. Khamasi**, on behalf of **Dr. Kulundu**, asked the Minister of State, Office of the President:-

(a) whether he is aware that on 12th June, 2001 a *matatu* registration number KAM 269R was involved in a fatal accident at Mwiya area along Kakamega-Webuye Road;

(b) whether he is further aware that to-date, the police have done nothing about this case and the vehicle has now been auctioned; and,

(c) what action he intends to take against the Kakamega police.

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

(a) I am aware that on the 12th June, 2001, a *matatu* registration number KAM 269R was involved in a fatal road accident along the Kakamega-Webuye Road.

(b) Investigations about the accident by police commenced immediately. A file reference No.IAR82 of 2001, was opened and a report was submitted to the Provincial State Counsel, Western Province, for advice.

(c) Mr. Speaker, Sir, arising from my reply to parts "a" and "b" above, part "c" does not, therefore, arise.

**Mr. Khamasi:** Mr. Speaker, Sir, I do not know what the Chair will rule about Questioners getting written answers to Questions when they have already been asked on the Floor of the House. I am getting a written answer from

the Assistant Minister now, when we have got specific rules pertaining to what they should do about written answers!

**Mr. Speaker:** Well, I cannot make any ruling because, probably, the written answer was given to Dr. Kulundu, who is the Questioner, and not you!

**Mr. Khamasi:** Mr. Speaker, Sir, I think this Question was prompted by the parents of the deceased boy who was killed in this accident. There is a deliberate move by the police to hide the details of the vehicle, probably because this vehicle belongs to one of the police officers in Kakamega Police Station. Why is it that the addresses shown on the details that I have--- I have got a postmortem report here, and the Kenya Police Abstract Report, both of which show different registration numbers! One report says that the vehicle's registration number is: KAM 259G, and another one says it is KAM 269R. Why this attempt to hide the identity of the vehicle which caused the accident?

**Mr. Samoei:** Mr. Speaker, Sir, I do not think there is any attempt on the part of anybody to try and hide the registered owner of the vehicle. Indeed, this House can have the benefit of knowing that the owner of the vehicle in question; KAM 269R, is Mr. Duncan Mburu, a businessman in Webuye, who is known and his vehicle is also known by both the local people and the police. So, there is absolutely no attempt to make any cover-up in this case.

**Mr. Muchiri:** Mr. Speaker, Sir, this accident occurred on 12th June, 2001, and the Assistant Minister says that investigations are being carried out. How long do the police take to investigate a case of an accident which occurred, and eye witnesses are there, a postmortem has been carried out and the vehicle had been inspected? What else is remaining other than charging that culprit before a court of law, and why has he not been charged?

**Mr. Samoei:** Mr. Speaker, Sir, I did say that investigations were carried out and are complete. I also said that the same were submitted to the Western Province State Counsel for advice. In fact, the police have received investigation reports from the State Counsel and have recommend that the driver of the vehicle, one Mr. Livingstone Njoroge Mbugua, be charged with the offence of causing death by dangerous driving. This has already been done!

**Mr. Khamasi:** Mr. Speaker, Sir, as much as the Assistant Minister wants to show that something is being done, the truth of matter is that, the postmortem examination of this case was done on 14th June, 2001, at Moi Teaching and Referral Hospital. The police abstract report said that matters are still under investigation. When a postmortem has already been done, what other matters are still under investigation?

**Mr. Samoei:** Mr. Speaker, Sir, the hon. Member did not bother to listen to me. I did say that the matter is concluded and there are no further issues outstanding. The police will charge the driver of that *matatu* vehicle with causing death by dangerous driving. Indeed, the confusion did arise as a result of the vehicle being released by a policeman from the police station before the issues concerning that particular vehicle were sorted out.

Mr. Speaker, Sir, I have already taken disciplinary action against the police officer who released that *matatu* vehicle.

*Question No.009*

DELAY IN OPENING AIRWAVES

**Mr. Obwocha** asked the Minister for Tourism and Information:-

- (a) what is delaying the opening up of the air waves (electronic media) in the country; and,
- (b) how many radio stations have been allowed to operate outside Nairobi to date.

**The Assistant Minister for Tourism and Information** (Dr. Wamukoya): Mr. Speaker, Sir, I beg to reply.

(a) Kenya was among the first countries in the East African Region to open up air waves in the 1990s. Since then, a number of private television and radio stations have been administratively licensed to broadcast in different areas.

(b) Eighteen radio stations have been allowed to operate outside Nairobi.

**Mr. Obwocha:** Mr. Speaker, Sir, I live in Kenya. The Assistant Minister says that 18 radio stations have been licensed to operate outside Nairobi. Other than Kenya Broadcasting Corporation (KBC), which other radio station do you listen to in Dol Dol?

**Mr. Speaker:** Metro!

*(Laughter)*

**Mr. Obwocha:** Mr. Speaker, in West Mugirango, where I come from, it is only KBC which has been licensed, and it is the only radio station which broadcasts there! The Assistant Minister says that these are 18 licensed radio stations! Could he table the list of the 18 radio stations that have been licensed to operate outside Nairobi?

**Mr. Speaker:** Mr. Assistant Minister, which radio stations have been licensed to operate outside Nairobi?

**Dr. Wamukoya:** Mr. Speaker, Sir, the radio stations which have been given frequencies to broadcast outside Nairobi include Kitambo Communications Limited, which is Family TV and Radio. This station broadcasts in

Mombasa and Kisumu. The IQRA Broadcasting Network broadcasts in Mombasa, Garissa and Wajir and African Broadcasting Limited or Nation broadcasts in Nairobi, while Maritime Media Services broadcasts in Mombasa. We have South Rehema RTV Network in Eldoret, Capital Group in Mombasa, Universal Entertainment in Kisumu, Regional Reach Limited also known as Kameme FM in Nairobi, Nyambene and Nyeri, Baraka FM in Mombasa and the BBC World Service also in Mombasa.

**Hon. Members:** No! No!

**Mr. Keynan:** Thank you, Mr. Speaker, Sir. I would like to consider Mr. Obwocha very lucky because even the Kenya Broadcasting Corporation (KBC) has not reached Wajir. In the light of liberalisation, we would like our children to watch television. In fact, the KBC does not broadcast beyond Garissa. Other than issuing licences to a number of companies which just broadcast in Nairobi, there should be a time frame within which, if a particular broadcaster who has been licensed to broadcast in a certain area does not reach it, the licence is withdrawn. I know that IQRA Radio Station broadcasts in Nairobi. This is because there is no need of holding other potential investors in this particular sector at ransom. So, we would like the Assistant Minister to pressurise the people who have been licensed to operate radio and television stations to broadcast in the areas they are supposed to provide this essential service.

**Hon. Members:** What is your question?

**Dr. Wamukoya:** Mr. Speaker, Sir, I think what the hon. Member has said is exactly what the rule states; that if you are issued with a licence to operate a radio or television station and you do not operate within 12 months, the licence is revoked.

**Mr. Maore:** Mr. Speaker, Sir, we are having a problem with the answer the Assistant Minister has given. The purpose of the Question is to have radio stations in Nairobi broadcast within the country, for example, Mandera, Loitokitok, Kisumu, Lokichoggio and everywhere. Could the Assistant stop being dishonest with this Question and tell us why they cannot license those people with a capacity to broadcast nationwide, like the Nation and everybody else?

**Dr. Wamukoya:** Mr. Speaker, Sir, we are allocated frequencies by the International Telecommunications Union to allow us to systematically use our airspace. This is not done randomly. They have given us 13 channels for television broadcasting and 22 channels for FM. Those are the channels we have allocated.

**Mr. Wanjala:** Thank you, Mr. Speaker, Sir. You have clearly heard the Assistant Minister mention all the radio stations that have been given frequencies to broadcast outside Nairobi but not a single radio station has been licensed to broadcast in Western Province. The Chair is aware that the people of Budalangi, who are enlightened, can only receive the KBC and Uganda TV signals. Could he consider urgently allowing the KTN to broadcast up to Budalangi Constituency?

*(Laughter)*

**Dr. Wamukoya:** Mr. Speaker, Sir, allocation of airspace is done according to application by a company or an individual. So, the people of Budalangi can apply for a licence. However, I would like to say that the airspace is limited.

**Mr. Speaker:** By the way, there can be a collision of voices in the air!

**Hon. Members:** Yes!

**Dr. Wamukoya:** Mr. Speaker, Sir, I am saying that, out of the 22 FM frequencies, 19 frequencies have been allocated because of what you have exactly said; you cannot allocate more frequencies than you have been allocated because you will get collision in the airspace.

*(Laughter)*

**Hon. Members:** No! No!

*(Loud consultations)*

**Mr. Speaker:** Order! You have heard that there is a possibility of noise collision from what you have just experienced in the House!

Proceed, Mr. Obwocha!

**Mr. Obwocha:** Mr. Speaker, Sir, I am not a scientist but that does not go down well. The Assistant Minister has talked about FM radio stations but not other radio stations. In fact, when he counted the radio stations they have licensed, they were only ten, and yet he has told the House that they have licensed 18 radio stations. Obviously, that is a lie. There are some stations with a capacity to broadcast nationwide, and this is what we are asking. For example,

we are aware that the Nation Radio Station has applied for a licence to broadcast nationwide. What are the reasons for the Assistant Minister not licensing the Nation Radio Station to broadcast nationwide?

**Dr. Wamukoya:** Mr. Speaker, Sir, the KTN and Nation are free to broadcast all over the country depending on their capability and are unwilling to do it. I do not think I am lying as the hon. Member has said, but I am giving you scientific facts.

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

**Mr. Speaker:** Order! Could you sit down? Ask the last question, Mr. Anyona!

**Mr. Anyona:** Mr. Speaker, Sir, in the first place, the word "lying" was used, which was unparliamentary. But in any case, we, as a country, make a policy that we want to liberalise the airwaves to the extent to which the scientific limitations allow us. What are the other reasons for the Government not licensing radio stations which have been established, and can cover the whole country? What is this that we are hiding? What is it that we are covering and for how long will we do this? When will we open up the country so that it can be as open as daylight?

**Dr. Wamukoya:** Mr. Speaker, Sir, I would like to repeat that the stations that can cover the whole country have been allowed to do it, but it is their capacity to do it that has limited them. For example, the KTN was given permission to broadcast in the whole country a long time ago, but it is only recently that it reached Nakuru. I would also like to point out that Nation can do it if it is capable of doing that, but does not have the capacity.

**Mr. Kathangu:** Jambo la nidhamu, Bw. Spika.

**Mr. Speaker:** Order, Mr. Kathangu! I announced to this House yesterday that Question Time will strictly take one hour and I hope all of you were present yesterday! I must manage time!

*Question No.019*

REVIVAL OF CHEPALUNGU WATER SUPPLY

**Mr. Kimeto** asked the Minister for Water Development:-

- (a) whether he is aware that Chepalungu Piped Water Supply Project stalled over 20 years ago; and,
- (b) what plans he has to revive the project so as to cater for Sotik Town and other parts of the constituency.

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

(a) Yes, I am aware that the project stalled. But, in 1995, my Ministry revived it at a cost of Kshs2.1 million.

(b) During the last financial year, 2000/2001, my Ministry allocated Kshs975,000 to Chepalungu Water Supply Project to be utilised in the construction of a well across River Nyangore, the repair and gravelling of gravity canals and pumps. However, this amount was not adequate. For the project to be fully operational, a total of Ksh17 million is required for the rehabilitation.

Mr. Speaker, Sir, Sotik town is being served by both the old Sotik Water Supply and Litein Water Supply under the management of the National Water Conservation and Pipeline Corporation (NWCP)

**Mr. Kimeto:** Mr. Speaker, Sir, the Assistant Minister says they allocated Kshs975,000 to Chepalungu Water Supply Project. However, that money was not spent on this project because my people are not getting even a drop of water from it. Pipes are all dry. Could the Assistant Minister tell us who benefited from this colossal amount of money? Sotik Town is a big town. Last financial year, the Assistant Minister says they allocated money for this project. Where was that money spent?

*[Mr. Speaker left the Chair]*

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

**Mr. Kofa:** Mr. Temporary Deputy Speaker, Sir, it is not true that there is no water in the pipeline. There could be a problem. Residents of Sotik Town are getting water from this project.

**Dr. Wekesa:** Mr. Temporary Deputy Speaker, Sir, the Assistant Minister says that for this project to be fully operational, a total of Kshs17 million is required for the rehabilitation. Could he tell us where he intends to get this Kshs17 million from so that this project can be rehabilitated?

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

*[Mr. Speaker resumed the Chair]*

**Mr. Kofa:** Mr. Speaker, Sir, at the moment, the Ministry does not have the money. But when money is available, this project will be rehabilitated.

**Mr. Kimeto:** Mr. Speaker, Sir, when will the Ministry budget for this Ksh17 million in order to rehabilitate that project? When will the Minister visit Sotik Water Project to see what is happening on the ground?

**Mr. Kofa:** Mr. Speaker, Sir, even if the Minister visits the project, the fact of the matter is that there is no money at the moment to complete the rehabilitation of that project.

*Question No.077*

DESILTATION OF DAMS IN UKAMBANI

**Mr. Katuku** asked the Minister for Water Development:-

(a) what plans he has to desilt dams in Machakos, Mwingi, Makueni and Kitui Districts; and,

(b) whether he could consider constructing at least one dam in each sublocation in the four districts in order to permanently address the problem of water in these areas.

**The Minister for Water Development** (Mr. Ng'eny): Mr. Speaker, Sir, I beg to reply.

(a) The four districts of Machakos, Mwingi, Makueni and Kitui are among the 30 districts in Kenya which are dry. My Ministry allocated funds for rehabilitation of dams and water pans during the last and current financial years.

During the last financial year, 2000/2001, my Ministry allocated a total of Kshs13.8 million for rehabilitation of dams and water pans in the four districts as follows:

|          |   |                 |
|----------|---|-----------------|
| Machakos | - | Kshs3.2 million |
| Mwingi   | - | Kshs3.7 million |
| Makueni- |   | Kshs3.2 million |
| Kitui    | - | Kshs3.7 million |

However, due to freeze of funds in February 2001 and withdrawal of donor funding, the four districts received only Kshs2.4 million, Kshs2.77 million, Kshs2.37 million and Kshs1.85 million respectively, thereby leading to rehabilitation of dams on a reduced scale.

This financial year 2001/2002, my Ministry has allocated Kshs8.5 million for rehabilitation of dams and water pans in the four districts as follows:-

|          |   |                 |
|----------|---|-----------------|
| Machakos | - | Kshs2 million   |
| Mwingi   | - | Kshs1.5 million |
| Makueni- |   | Kshs2.7 million |
| Kitui    | - | Kshs2.3 million |

(b) More than 80 per cent of Kenya is composed arid and semi-arid agro-climatic zones. This factor puts the activity of rehabilitation of water conservation structures which are mainly dams and water pans as a key strategy in our fight against poverty. Of necessity, this factor demands equitable distribution of the meagre funds available for the rehabilitation of dams. This financial year, 2001/2002, my Ministry is going to spend a total of Kshs81 million on this important exercise. Our activities are spread in 30 districts of Kenya.

The funds budgeted for my Ministry are generally in the order of Kshs2 million to Kshs4 million per district, per financial year for the rehabilitation of dams and water pans. These funds are enough to rehabilitate from one to five dams depending on the magnitude of repair works per dam. On the other hand, construction of a small dam is in the order of Kshs6 million. This in essence means that the possibility of constructing at least one dam per sub-location in the four districts will take time to be realised at the present level of funding.

**Mr. Katuku:** Mr. Speaker, Sir, the answer given by the Minister is so lengthy. But the point is that, during this financial year, the Ministry allocated Kshs13.8 million to the four districts. If you look at what went into the rehabilitation of dams in the four districts, it is about a quarter of that. For example, Machakos District got Kshs2.4 million for the rehabilitation of dams. However, I am not aware of any single dam which was rehabilitated during the last financial year. Could the Minister tell us where this money was spent because there is nothing on the ground to show that dams were rehabilitated in the four districts?

**Mr. Ng'eny:** Mr. Speaker, Sir, I am sure that dams in Machakos District have benefited from these funds. For example, Kithimani Dam was given Kshs509,000, Matuu Dam was given Kshs1,018,000 and Uvakani Dam was given Kshs873,380.

**Mr. Kitonga:** Mr. Speaker, Sir, I swear in the name of the Lord in Kamba language; *Aki ya Ngai!*

**Mr. Speaker:** Order! We have already passed Order No.1; Administration of Oath! So, we are now on Order No.6 which is Question Time!

**Mr. Kitonga:** Mr. Speaker, Sir, could the Minister name one dam in Mutitu Constituency, Machakos District, which has been rehabilitated since Independence? Ogopa Mungu!

**Mr. Ng'eny:** Mr. Speaker, Sir, I will not swear, but I cannot recall what projects have been done in Matuu Constituency of Kitui District. However, I am sure many dams have already been done, because that is the area where the Ministry has been concentrating.

**Mr. Katuku:** Mr. Speaker, Sir, the same situation applies to my constituency, where no dam has been done before, and since I became an hon. Member of Parliament, and yet the Minister says that money has been spent on the dams. I think this Government has its priorities upside down. How can the Government allocate only Kshs81 million to the whole country for provision of water? Since all the districts in Ukambani have always had drought problems every year, and the Government spends about Kshs14 billion to give relief food to the people of Ukambani, why can they not allocate more money for provision of water, instead of spending taxpayers' money to give relief food?

**Mr. Ng'eny:** Mr. Speaker, Sir, I am sure the Government would like to allocate a lot of money for water projects throughout the country, but due to limitation of funds, it is not able to do so. I am sure, in due course, that this money will be available.

**Mr. Achola:** On a point of order, Mr. Speaker, Sir. Are you satisfied that the answer that has been given by the Minister is sufficient, because the two hon. Members of Parliament have sworn that there is nothing like rehabilitated dams in their constituencies, and yet the Minister is insisting that there are dams which have been done?

**Mr. Speaker:** Well, I hope the Minister takes seriously the sentiments of the two hon. Members, and much more so, when Mr. Kitonga was dragging me back to Order No.1. It is a serious matter. So, maybe you have to look at it, and find out for yourself whether actually you have been told the truth.

Next Question!

*Question No.169*

COMPLETION OF NJIRU-RUAI WATER PROJECT

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

- (a) when the Njiru-Ruai Water Project will be completed;
- (b) who the contractor of this project is; and,
- (c) why the Council has failed to terminate this contract despite the long delay in its completion.

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

- (a) The Njiru-Ruai Water Project is scheduled to be completed in October, 2002.
- (b) The contractor is Beach Construction Company, whose directors are Joe Kaiga Wanyutu, E.A. Wanyutu and M.W. Wanyutu.

(c) The City Council has not terminated the contract because doing so would necessitate re-tendering which is considered too expensive. In order to ensure that the project is completed for the benefit of Ruai residents, the Council has decided to find means and ways of helping this contractor to ensure that the project is completed. After realizing that the contractor was not putting any funds paid to him by the Council into the project, the Council intervened and decided to procure the materials for the contractor, and the cost reduced from the amount due to him. The arrangement is working very well, and the project is due to be completed within the next six months.

This is a project that has had problems and, in fact, it has been scaled down to 8.5 kilometres from the original 27 kilometres and the money also scaled down because the Council is desirous of getting out this contractor.

**Mr. Mwenje:** Mr. Speaker, Sir, you have heard the Assistant Minister admit clearly here that the contractor was not able to do the work until the Council staff had to start doing the work, including supplying to the contractor materials. The Council has avoided discontinuing the contract simply because the contractor or the directors of this firm are first cousins of the current mayor of Nairobi.

Could the Assistant Minister tell us when the contract was awarded and why it has not been going on up to now? Why did they dig the pipe trenches with *jembes* instead of using the right machinery?

**Mr. Kiangoi:** Mr. Speaker, Sir, as I admitted, the contract has had problems. The contract was awarded on 20th February 1997. During the award of the contract, the General Manager in the Water Department gave his reservations about the award of this contract to the contractor, but the then committee concerned insisted that he be given the contract. The Council is doing all it can so as to reduce the damage. It is simply doing damage control, by reducing the contract sum to Kshs50 million. Already Kshs30 million has already been used on the work so far done. We do hope that the Kshs20 million remaining will be released within the next six months, and the remaining work be re-tendered for completion by another contractor.

**Mr. Muchiri:** Mr. Speaker, Sir, the residents of that area have suffered enough due to lack of water. Could the Council, in the meantime, consider to supply water with their lorries to the residents of Ruai who have suffered

long enough? It is the Council's mistake that they do not have water.

**Mr. Kiangoi:** Mr. Speaker, Sir, the Council will endeavour to ensure that the contract is completed so that the people of Ruai have water. Indeed, it is because of the concern by the Council and the Ministry that the steps that I have outlined have been taken. It is my hope that the people of Ruai will not continue suffering after completion of this project.

**Mr. Mwenje:** Mr. Speaker, Sir, no amount of words from the Assistant Minister will convince us that the contract will be done. We know the truth; that the contract will not be done. Could the Assistant Minister allow the people of Ruai dig those trenches and put pipes, so that they can get water! They cannot continue suffering while seeing those pipes there and nobody is supplying the water. As we speak here, the contract is not being done now. Could you allow the people of Ruai to connect those pipes, so that the water could reach them, and then terminate the contract immediately?

**Mr. Kiangoi:** Mr. Speaker, Sir, we will restrict ourselves only to the reduced distance of 8.5 kilometres. There is another 19 kilometres to be done and if the people of Ruai would like to put in some Harambee spirit, they can agree with the Nairobi City Council.

**Mr. Mwenje:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is misleading us! The contract was for 8.5 kilometres and that is what we are talking about. Could the Assistant Minister be clear on whether the people can even do the 8.5 kilometres and not the rest of the distance up to Kamulu? We are talking about 8.5 kilometres to Ruai. So, could he stop misleading the House and tell us to go ahead and do the work ourselves?

**Mr. Kiangoi:** Mr. Speaker, Sir, as I said, the 8.5 kilometres is committed. So, the people of Ruai can take up the balance. If they want, they can consult with the Nairobi City Council and take over the project immediately. Nobody can refuse free labour!

*Question No.091*

ABSENTEE LAND OWNERSHIP IN KISAUNI

**Mr. Speaker:** Order, hon. Members! My time is running out! Mr. Maitha, I will give you time for your Question next Tuesday. I have only ten minutes and I will stop at 3.30 p.m.

**Mr. Maitha:** This is a conspiracy, Mr. Speaker, Sir!

**Mr. Speaker:** Order! Mr. Maitha, what allegation is that? Could you apologise to the Chair now?

**Mr. Maitha:** Mr. Speaker, Sir, I do apologise. But let me point out that---

**Mr. Speaker:** Just give an apology and that is it!

**Mr. Maitha:** I apologise! Let me point out that there are two Questions which have been forwarded and they are not appearing on the Order Paper for the same Ministry. Could you order another Question which was scheduled to appear in the same Order Paper last week, and which has not appeared--- I am worried that it will not appear even next week!

**Mr. Speaker:** Order, Mr. Maitha! You are an hon. Member of Parliament. You are not a clerk. That is the job of clerks. The clerks will discharge their duties the best way they know. So, your Question will come on Tuesday. I am warning everybody else that I will stop at 3.30 p.m.

QUESTIONS BY PRIVATE NOTICE

ACTION AGAINST PERPETRATORS  
OF KARIOBANGI MASSACRE

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

(a) Could the Minister table the list of all persons killed and injured on the night of 3rd and 4th March, 2002 at Kariobangi in Nairobi?

(b) Could he table the list of all the recipients of food and Government grant of Kshs600,000?

(c) How many people have been arrested and charged with the killing of innocent Kenyans on the said date and time?

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

I do, hereby, table the lists of the persons killed, injured and the beneficiaries of the grant and financial relief that was given by the Government.

*(Mr. Samoei laid the lists on the Table)*



Mr. Speaker, Sir, four people have been arrested in connection with that incident. Their names are Chrisphine Oluoch Ahena, David Peter Ochieng, Martin Belly Ayineya and Thomas Okoth Ochieng. The case is pending before court under police file No.121/210/200.

**Mr. Muchiri:** Mr. Speaker, Sir, the list of the beneficiaries of food has not been tabled.

**Mr. Samoei:** It is there!

**Mr. Muchiri:** If it is there, my question is this: This is a case where the Government was aware that those people were going to be killed. I, personally, reported the matter to the police and the Director of Intelligence reported to the Commissioner of Police. Now that those people were killed and others injured, could the Government consider assisting the families of the deceased and the relatives of the people who were injured, especially the children, until they attain the age of 18 years since it was a case of pure negligence by the Government?

**Mr. Samoei:** Mr. Speaker, Sir, the Government would be willing to consider assisting the relatives and children of the persons who were killed. However, it is not within our means. The Government grant that was given went a long way towards sorting out the funeral expenses of the persons concerned. I did participate in a Harambee to try and help some of the victims; a Harambee in which Mr. Muchiri, despite being the hon. Member of the place, did not even show up!

**Mr. Achola:** Mr. Speaker, Sir, could the Assistant Minister explain to the House why members of the *Mungiki* sect, who murdered 23 Luos and other tribesmen in that area were not arrested, while only four people from one community have been arrested and nothing has been done to the other group which murdered so many people? What is the reason?

**Mr. Samoei:** Mr. Speaker, Sir, the allegations made by the hon. Member are far from the truth. If you look at the list of the persons that were killed, it does not give an indication that they were all Luos. It is a list of Kenyans who lost their lives in a very unfortunate scenario! The leader of the *Mungiki* sect and other people have been arrested in connection with that incident. We are pursuing that issue and, as I have said, there are issues which are pending before the police.

**Mr. Nyanja:** Mr. Speaker, Sir, I do not know whether you heard Mr. Muchiri say that the Government knew that killings were going to take place. He said that he personally reported the matter to the police and the Government did nothing. I think he should be asked to substantiate because that is the crux of the matter. We cannot have tribal clashes in the City and the Government does nothing! Could he substantiate because he said that the Government knew that killings were going to take place?

**Mr. Speaker:** This is Question Time! He was questioning!

**Dr. Ochuodho:** Mr. Speaker, Sir, in view of the report by Mr. Muchiri that, indeed, he alerted the police--- Surprisingly, the police did not take any action to stop the cleansing! Could the Assistant Minister confirm or deny that the killings were a result of in-fighting within the KANU hierarchy, especially with regard to the 18th March meeting? If it is not so, could he tell this House and Kenyans what was the root cause of those killings?

**Mr. Samoei:** Mr. Speaker, Sir, I deny those allegations that we ever had any in-fighting in our party. Indeed, maybe, the allegations made by the hon. Member are just a fertile imagination of his mind!

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to avoid answering my question? What was the root cause of these killings?

**Mr. Speaker:** But he has said that it was your imagination which was the root cause of these killings!

*(Laughter)*

**Dr. Ochuodho:** No! What was the root cause of these killings?

**Mr. Speaker:** Mr. Assistant Minister, do you know the root cause of these killings?

**Mr. Samoei:** Mr. Speaker, Sir, I have said that the matter is still under investigation and we are yet to get to the root cause of these killings.

**Mr. Speaker:** Very well! Time is up!

**Mr. Muchiri:** On a point of order, Mr. Speaker, Sir!

**Mr. Speaker:** Order, hon. Muchiri! All the Questions which have not been asked will be given priority on Tuesday; particularly Questions by Private Notice. I have a mind of beginning with them on Tuesday. So, they are deferred until Tuesday.

#### KILLING OF MR. LENTANTUYA BY AN ELEPHANT

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

(a) Is the Minister aware that Mr. Lekimpompoi Lentantuya was killed by a rogue elephant on 15th

February, 2002 at his home at 5.30 p.m. in Rombo Sub-Location, Loitokitok Division?

(b) What action is he taking to urgently compensate the family and protect both people and their properties from elephants roaming in the area?

*(Question deferred)*

#### CIVIC EDUCATION FOR ARMED FORCES

**(Mr. Khamasi)** to ask the Attorney-General:-

(a) Could the Attorney-General conform to the House that the current civic education which is being undertaken countrywide by the Constitution of Kenya Review Commission is also being provided to the Armed Forces and other security forces?

(b) Who are the providers of the civic education in the armed forces and other security forces?

*(Question deferred)*

#### HIGH COURT RULING ON KUPPET ELECTIONS

**(Mr. Katuku)** to ask the Attorney-General:-

(a) Is the Attorney-General aware that the High Court on 18th December, 2001 vide Case No.147/2001 ruled that the Kenya Union of Post-Primary Teachers (KUPPET) holds elections to allow for national elected office holders?

(b) Is the Attorney-General further aware that 27 out of 30 registered branches have resolved to hold the said elections on 26th April, 2002?

(c) Could he confirm that the Union will be given the necessary assistance by his office to ensure the said elections are held?

*(Question deferred)*

Next Order!

### MINISTERIAL STATEMENT

#### RELEASE OF PAYMENTS TO MAIZE FARMERS

**The Minister for Agriculture** (Dr. Godana): Thank you very much, Mr. Speaker, Sir. Hon. Dr. Wekesa, a few days ago, demanded to know what arrangements were in place to pay maize farmers who had delivered maize to the National Cereals and Produce Board (NCPB). I am happy to announce today that the Kshs1 billion which was voted by this House in the Supplementary Estimates has already been released. NCPB and farmers in the North Rift can expect to be paid with effect from Monday.

*(Applause)*

Mr. Speaker, Sir, we are also making other strenuous efforts and we are hopeful that a few weeks from there, we will clear all the debts that NCPB owes farmers and other groups anywhere. I would wish to take this opportunity to appeal to the farming community, especially in the North Rift, which is the national granary, not to be dissuaded by what has happened this time and to plant maize. This is because the outlook is that maize shortage in Southern Africa may last much longer than we thought and I think we should take advantage of the weather. I hope Members of Parliament will help us also to pass the message to farmers.

**Mr. Speaker:** Dr. Wekesa, are you happy with that answer?

**Dr. Wekesa:** Mr. Speaker, Sir, I want to thank the Minister for the effort he has shown. Did I hear Kshs1 million or Kshs1 billion?

**Mr. Speaker:** It was Kshs1 billion!

**Dr. Wekesa:** Thank you, Mr. Speaker, Sir. Actually, North Rift alone requires Kshs1.5 billion and I do not know about the other areas. So, I would urge the Minister to continue working hard for these poor farmers and also ensure that the Kshs1 billion that is going to be paid should not be paid to the large-scale farmers. The small-scale

farmer is the one that is really suffering since he has school fees to pay. I think the Minister should find a way of talking to the NCPB and tell them that the likes of hon. Ruto and hon. Wekesa should not be paid, but the small-scale farmers should be paid.

*(Laughter)*

**Mr. Speaker:** Make it short!

**Dr. Wekesa:** Mr. Speaker, Sir, I know that the World Food Programme (WFP) buys maize to be supplied to some parts of Kenya. The WFP should be persuaded by the Minister - I know that he is capable of doing that - to buy maize locally rather than buying maize from Taiwan, South Africa and the United States of America (USA).

*(Applause)*

**Mr. Speaker:** Dr. Godana, could you wait? I will give the next chance to Mr. Wamalwa and then you can respond. Mr. Sambu will be the last.

**Mr. Wamalwa:** Thank you, Mr. Speaker, Sir. First, I would like to congratulate the Minister for that very positive response and the Government also for making efforts to pay the farmers. I would like to know, following the Minister's announcement, whether the previously proposed method of paying farmers in kind, that is in form of fuel, fertiliser and so forth has, therefore, now been withdrawn.

**Mr. Speaker:** Dr. Godana, please wait! Just note hon. Wamalwa's question. Hon. Sambu, ask the last question!

**Mr. Sambu:** Mr. Speaker, Sir, my question was in line with hon. Wamalwa's. However, I want to request the Minister to instruct NCPB not to use the excuse of supplying fertiliser in order to withhold the money. We want the full Ksh1 billion paid in cash to the farmers.

**The Minister for Agriculture (Dr. Godana):** Mr. Speaker, Sir, I want to make it clear, for the avoidance of doubt, that there was no intention to pay farmers in kind. I think it was very mischievous for the media to misrepresent a matter on which the Ministry was very clear. In fact, the Managing Director of NCPB came back even to clarify the matter and the media decided to still report that farmers would be paid fertiliser for breakfast. In fact, there was a cartoon which showed farmers having fertiliser for breakfast, lunch and supper. There was never such an intention. All that the NCPB did was to work with a few players in the field and saying: "Please, farmers are owed money by us and until the Government gives us the money, could you extend to them a credit line?" That is all! That is really what they worked out for and I think it was done with good intentions. There is no intention, therefore, to pay farmers in kind. We cannot discontinue paying in kind because we have not paid in kind. It was never our policy.

Mr. Speaker, Sir, as regards the WFP procurements, yes, we have made presentations and there have been a few advertisements actually for local procurements by WFP in the local market. However, the limit is that WFP does not have its own money. WFP gets donations from willing nations and the big donors are more willing to give their own surplus food in kind which they evaluate in dollar terms. They say we are giving you US\$6 million, but they actually give the maize which has stuck in their stores for years because they have to take care of their farmers. So, this is really the limit within which we are operating.

I have really understood what hon. Dr. Wekesa said. I have already made it very clear to NCPB to be particularly mindful of the fact that the small-scale farmers are the ones who need the money most urgently and, therefore, to find the most equitable way of paying farmers. As I said, we are making strenuous efforts and I am confident that within a few weeks after this, we will be able to settle the whole debt problem, at least, for the last season's maize.

## COMMUNICATION FROM THE CHAIR

### MEMBERS' WORKSHOP IN MOMBASA

**Mr. Speaker:** Very well! Before we go to the next Order, I would like to bring to the attention of all hon. Members that the Kenya National Assembly in conjunction with the Central Bank of Kenya, Ministry of Finance and Planning and the International Monetary Fund (IMF) is organising a workshop on managing the economy for all Members of Parliament from April 26th to 27th, 2002 at Whitesands Hotel, Mombasa. The focus of the workshop will be on the management of the economy and will also serve as a pre-Budget participatory session for all Members of Parliament. I, therefore, take this opportunity to invite all of you to the workshop. Travel and logistical arrangements are available from the Office of the Clerk of the National Assembly sometime next week. We will not allow you to travel early so that we have full sessions for the whole next week. Thank you.

Next Order!

## BILLS

### *Second Reading*

#### THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

*(The Attorney-General on 3.4.2002)*

*(Resumption of Debate interrupted on 17.4.2002)*

**Mr. Speaker:** Who was on the Floor?

**Hon. Members:** It was hon. Sungu but he is not here.

**Mr. Speaker:** If hon. Sungu is not here, he is assumed to have utilised his time. Since Dr. Ochuodho is the only hon. Member standing, he will have the Floor.

**Dr. Ochuodho:** Thank you, Mr. Speaker, Sir. In contributing to this Bill, I want to begin from the point that it is important, in my view, that we redefine what we mean by human rights. I have in mind meals, shelter and free access to information. I particularly want to refer to the first two items which are meals and shelter.

Mr. Speaker, Sir, I was delighted because, about two years ago, none other than the Head of State chose to address himself to the problem of street children. I take this example because street children are those who do not have shelter since they live on the streets and they also do not have food. Whenever they are able to get food, it is either glue that they sniff or whatever they scavenge from the dustbins. I was glad to note that none other than the Head of State found it fit at one time to entertain those street children at State House. But I am saddened that at the end of day, those street children, having been taken from the streets to State House, are taken back to the streets. Those same lorries that collected them from the streets took them back to the streets. If one does not consider that an abuse of human rights of innocent Kenyans, who for no fault of their own, are on the streets - they do not have shelter and food - it does not make a lot of sense if we are going to talk about human rights. So, I am hoping that, even as the Attorney-General brings this Bill, he is considering those very lowly placed and who are abused the most, especially the street children and other similar cadres.

But I also want to refer to the aspect of information. I do not think it will be enough just to have this Bill on its own if we do not bring relevant amendments to other related legislations. I have in mind, for example, the right of assembly. As long as the Public Order Act remains as it is today, whereby the police use the vagueness that is in it to disrupt legitimately convened meetings, particularly for the Opposition, then again, this particular Bill even when it becomes law will not be useful. So, I want to appeal to the Attorney-General to identify other legislations that are relevant to the aspects of human rights and have them amended accordingly.

Mr. Speaker, Sir, I think the aspect of legal aid should be considered. In a situation where legal support or counselling is so costly and a majority of Kenyans cannot afford it, again, we cannot claim to have a level playing field. I want to share with hon. Members an experience I had while serving a jail term in Kodiaga Prison. I met a gentleman who had been convicted for having been found with a stolen chicken. This poor fellow told me that he had gone to a market place and bought chicken. He had no way of knowing that, that chicken was stolen. Therefore, he was accused of handling stolen property. The Chair may not believe it, but this man was jailed for 18 years. Initially, he had been convicted for 18 years, but when he appealed - I do not know on what basis - that term was enhanced and he was given 25 years in total. When I met this fellow in Kodiaga Prison, he had served ten years just for handling stolen property. As he explained to me, he only bought a chicken very innocently from a market place. Perhaps, if this man had got legal support, maybe, the case could have been determined differently. I want to say that many convicts are serving jail terms because they even fear to appeal. They fear that if they appeal, their terms may even be enhanced. So, they choose to suffer. If they have been convicted for six months or less, they choose to serve those six months because if they appeal, they do not know what exactly is likely to happen. I would want to believe that, in a situation where poverty is so rampant, legal assistance should be one of those basic rights that Kenyans should have access to. Of course, water and education are other forms of basic rights. There are many other new aspects that constitute what would be called human rights. I want to call upon the Attorney-General to make sure that the definition of human rights is broader than what it is normally conceived to be.

Mr. Speaker, Sir, I also want to support my colleagues who have talked about the need to decentralise the services of the Commission. I am hoping that, when this Commission is constituted, we are not just going to have the Nairobi Office. Indeed, I would not stop at calling for offices to be opened at district headquarters; I would go deep

down and say, if it is possible, we find agencies that can be used right to the village level, preferably at the locational, if not at the sub-locational level. I am involved with an organisation known as the Progressive People's Forum, which undertook to visit six districts when voter registration exercise was taking place just to find out within those districts exactly the problems that the ordinary Kenyans in the villages were facing to get voters' cards. It emerged that anything we tried to do at the district level that would require Kenyans to pay Kshs200 or Kshs300 to travel to those centres to access those services was going to be away beyond the means of many Kenyans. Most Kenyans do not have that kind of money to spend. I want to use Homa Bay as one of the districts that the group visited. There were 6,000 identity cards that were lying idle at the DC's Office. When we approached him, he did agree to distribute those IDs to the locational headquarters, which he did. But we still found out that the chiefs were frustrating the innocent Kenyans from getting their IDs, which were rightfully their own. They would normally be asked by the chiefs to pay what they were calling "pen-money" or *kitu kidogo*. If they did not pay, the chiefs would tell them: "Today, I am busy. Come back on Tuesday next week." They would come on Tuesday the following week and they would be told: "I am still busy, come again tomorrow." This could go on and on. We came across people who for about three months had been going to the chiefs camps to collect their IDs, but the chiefs kept using one excuse or the other to frustrate them.

I am trying to use that as an illustration to show that human rights violations are even more rampant in the rural areas. If there is anyone who needs protection, it is those people in the rural areas. That is why I am calling upon the Attorney-General to ensure that when the Commission is established, it should have offices in the districts and also agents within the locations and sub-locations. Possibly, some volunteers could be appointed. There are respectable opinion leaders within every location and sub-location, and I am sure some of them could assist the Commission in terms of redress for those lowly placed, who may not access legal assistance or may have nobody else to turn to. The one person they may turn to, normally, is the chief who would be the source of their frustrations.

Mr. Speaker, Sir, I also want to draw attention to the lack of provision for the Commission to prosecute. Unless and until we give the Commission the power to prosecute and maybe even to investigate, we may not achieve much. If we are going to rely on the Kenya Police and the CID as we know them today, I am not going to be convinced that they are going to be able to investigate themselves and prosecute themselves appropriately. It is in this regard that I want to remind the Attorney-General that the relevant law needs to be amended so that the Commission has the power both to investigate as well to prosecute. It has been argued before that similar power would be necessary for the Anti-Corruption Authority and the Electoral Commission of Kenya.

Mr. Speaker, Sir, another cadre of society whose rights are terribly abused are prisoners and prison wardens. It is so annoying when one happens to a visitor in any of the prisons. Normally, they are congested. You find about ten people congested in a small room measuring 10 by 10, as they are called. Normally, the way prisoners are transported to the prisons is also very inhuman. I remember when I was transferred from Homa Bay Court to Kodiaga Prison, I was bundled into a Lake Victoria Environmental--- Pick-up and driven over. It is like the way we are driven on those terrible roads. Even somebody who is transporting sacks of maize would be a bit more cautious about the vehicle not to destroy it. But in this particular case, because the vehicle is *mali ya Serikali*, they are driven badly. Even when prisoners are being transported in the big lorries, the so-called "*Mariam*" the drivers are rough. I would want to appeal to the prison wardens that they should bear in mind that even if these people are convicts; they also have some rights and they need to be treated with dignity and respect. Apart from the issue of the food that is eaten in prisons, I am glad that the Commissioner of Prisons has invited judges to visit prisons. I would like to urge the judges that when they visit prisons, they should also taste that food because it is not anything that one would call food. Those who have been through this process will agree with me that it would be very nice if the quality and quantity of food given to the prisoners was enhanced because we should also treat them as normal human beings who have rights.

Mr. Speaker, Sir, another concern in prisons is that there are some prisoners who work within prisons and they are supposed to be paid about 45 cents per hour for the work they do. Incidentally, I came across a case where a person who had been imprisoned for about 18 years who was paid a total wage of Kshs100 just when he was about to be released. He argued that if the calculations were well done he should have been given much more. The point I am trying to advance is that if the agreement is that a prisoner should be paid Kshs50 for every hour of work, that money should be given to him. To us this Kshs100 may sound too little, but let us bear in mind that when some of these prisoners are released, they are dropped in places other than their own homes of origin. Somebody who has been away from home for 18 years may not even know where to begin or how to start begging for bus fare. I do not know whether prisons make an effort to take them closer to their homes. I still think what is rightfully due to the prisoners should be given to them.

I must also add that the warders, like the prisoners, deserve better treatment. I came across cases of warders who were paid about Kshs3,000 as monthly salary. In today's world Kshs3,000 a month cannot do a lot. This is why we have problems of food even in the prisons. Some warders eat the prisoners' food because they cannot afford to buy food. I would like to request the Attorney-General to address, not only the matter of prisoners, but also the warders who look after them.

Another relevant legislation that needs to be looked at is the aspect of the *sub-judice* law which is normally abused; to deny people a chance to address certain issues openly. It has been abused in the past in violating certain people's rights. I would like to appeal to the Attorney-General that it also needs to be looked at. Perhaps more importantly, I would like to take it with the Attorney-General that I am particularly concerned that Kenya is one country among few that has refused to ratify the International Criminal Court Convention (ICCC) to date. I do not see why Kenya should drag its feet to ratify this legislation. Some of us Members of Parliament recently chanced to visit Brussels and witnessed the prosecution of Milosevic. I would want to believe that some of those trials eventually will be meted upon Kenyan leaders. I think it would only be fair that such a thing is done here.

Even as I must say that I am one person who believes in reconciliation and forgiveness, I do not see why we should be reluctant to ratify this treaty. There can be no peace and forgiveness if justice does not prevail. Why do I say this? Recently, I do know that an hon. Member of the Government was awarded Kshs20 million by a court for a libel case. The case in mind had something to do with the death of the late Dr. Robert Ouko. Many of us remember, with a lot of pain, that the Government, despite the promise that they would unearth the truth and leave no stone unturned to tell us how Dr. Ouko died, has still not done that. This is in spite of the fact that Dr. Ouko was a Government Minister. Even though some of us would want to forget the issue and heal the wounds, one of the people that was seriously mentioned in that case went to court and was awarded Kshs20 million in damages. How do you expect the people of Koru, Nyanza and Kenyans at large to forget and forgive when you resuscitate those old wounds?

Abusing the freedom of the media is also an abuse of human rights. I want to appeal to the Attorney-General to do whatever is necessary to ensure that Kenya ratifies the ICCC agreement because, if they cannot give us truth and reconciliation, the ICCC will one day give us that in this country. I also want to appeal to the Government to ensure that when this Bill is passed, it is implemented. We have enacted many legislations but the Government has dragged its feet in implementing them. The Government should remember that the fact that they are ruling today does not mean that they will rule forever. I would want to believe that, from December this year, the National Alliance for Change will be in power, and those in the current Government will be in the Opposition. This legislation might help them.

While in Kodiaga Prison I was told by a prison warder that a former Ugandan Minister in charge of prisons had been approached by the then Commissioner of Prisons asking him to provide mattresses for prisoners. The Minister said that prisons are not a holiday camp. Surprisingly, about two years later when the Government of President Obote was overthrown, this very Minister was captured and taken to that very prison as a prisoner. That Minister then asked the prison officer in charge to provide him with a mattress. This officer told him: "Sir, I am afraid I would have liked to help you, but the law does not allow me to help you". That is exactly what will happen to these fellows if they do not put in place laws that level the playing field. They should not forget that, one day, they will be on this side and we will be in charge. I would like to appeal to the Government to ensure that once this piece of legislation is put in place, it should be implemented and we should abide by it.

I would also like to draw the attention of the House to the problems of expelled university students. When we were university students, there was a fair amount of academic freedom in our universities. People often ask what happened to our university dons; the professors, lecturers and students. We do not hear of them any more because all their rights to academic freedom have been taken away to the extent that these days, there are many students in our universities who even fear being seen together with their legislators, especially if you are an Opposition legislator, because that alone can be enough ground for them to be expelled or suspended from the university. As we talk today, there are more than 500 students in all our public universities who are either expelled or suspended. What kind of recourse do these students have? Freedom of expression should also be considered as part of the human rights to be protected.

Finally, although the Commission that will be created will be given true independence I hope that it will not have the same problem that the Electoral Commission of Kenya has, where we are telling it that it is independent, but it has to rely on the Treasury for funding. It is in this regard that I would like to call upon the Attorney-General that when he replies, he should tell us why this Commission should not draw its funds directly from the Consolidated Fund so that it does not have to keep begging. If the Commission will beg for money from the very people it is supposed to watch over, then I do not see how it will be truly independent.

With those remarks, I beg to support.

**Mr. Khamasi:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this Bill. I will be very brief since most of what I would have liked to say has been covered by my colleagues who have spoken before me. One thing that disturbs me is the timing for bringing this Bill to this House. I was wondering why the Government found it necessary to bring this Bill to the House. I carried out some investigation and found that the Government is under pressure to have this Bill enacted. We are going to do this, so that the Attorney-General will be presumed to have brought here a Bill to establish the Kenya National Commission on Human Rights. The Standing Committee on Human Rights has been there, but we have never heard much about it. What we are now doing is to legalise it.

Mr. Speaker, Sir, during the single-party system, a lot of amendments were done to the Constitution, mainly

to enhance the powers of the Office of the President. There were attempts to remove the security of tenure of the office of the Attorney-General. In fact, the Attorney-General was made to draft the Bill that sought to remove the security of tenure of his office.

**An hon. Member:** Ooh! Pole!

**Mr. Khamasi:** Mr. Speaker, Sir, attempts were also made to remove the security of tenure of the office of the Controller and Auditor-General. As I speak, there is no security of tenure of office for the Commissioner of Police. Some wild powers have been illegally arrogated to the Director of Criminal Investigations Department (CID). The most notorious violators of human rights in this country are Government agents, particularly the police. If you hear stories of what people go through when they are arrested by officers from the CID, the National Security Intelligence Service (NSIS) and the General Service Unit (GSU), you will find them alarming. All the blame lies squarely on the Government. Everything was done to remove the security of tenure of office for these particular offices, so as to degrade these offices. As it were, this bordered on abuse of human rights.

I agree with the Attorney-General when he said that most of our institutions have been weakened. Indeed, most of these institutions have been weakened by a powerful Presidency. Parliament, for example, was also not spared in this effort by the Government. I would like to congratulate you, Mr. Speaker. Since the beginning of the Eighth Parliament, this House has been asserting itself. If you look a little back to the Sixth Parliament, you will recall that it was the Parliament that was elected in 1988 through the infamous *mlolongo* or queuing system. During those days, Parliament was literally used to rubber-stamp whatever laws the Executive wanted enacted. Government Ministers have never been independent in the performance of their duties. They have to get a nod from their master before doing anything. That is exactly what hinders them from performing their duties effectively.

Mr. Speaker, Sir, either yesterday or the day before, there was a debate here about our Judiciary. The independence of our Judiciary is questionable. There are strong allegations of justice being bought in this country. It is said that if you have money, you can buy justice. If a country has a judiciary which is not independent, it has a very serious problem. Criminal cases are being decided on very questionable basis. As an hon. Member said here, if you have enough money to buy justice, you can get away with any crime in this country.

The police are supposed to serve the public without favour or fear, but one wonders whether that actually happens. In fact, wherever you see police officers, you will realise that they are up to some mischief. Particularly, traffic police officers are the worst abusers of human rights. They operate along our roads the whole day. By about 3.00 p.m., you will find all of them yawning; by then they have collected enough money from motorists. By that time, they look forward to vehicles picking them up and take them back to their stations, after turning their traffic control points into toll stations and collecting enough money.

Mr. Speaker, Sir, I have come across quite a number of innocent people who have been arrested during night raids by the police. One imagines that he will be much safer in the hands of robbers than in the hands of our police officers. Robbers may ask you for a little money and let you go. On the other hand, the police will take you round throughout the night and, by daybreak, if you do not have enough money for them, they will lock you up, frame you for a crime you did not commit and have you jailed. The recent case of the man who was killed in a police cell and dumped in a street speaks volumes about what goes on in police cells.

So, you can now realise why people imagine that they are safer in the hands of robbers than in the hands of the police. Even within the police force, there are some special units whose officers are not answerable to the Commissioner of Police, but to some other authorities. What the officers of these special units do is mischief. They engage in a lot of mischief because they know that, at the end of the day, they are not answerable to the Commissioner of Police.

Mr. Speaker, Sir, I would like to bring to the attention of the Attorney-General, who comes from western Kenya, the fact that it is a human right to take traditional beer. I know that he comes from a very religious family whose members may never have taken beer, but he must be aware that it is traditionally acceptable for people in that region to take *busaa*. District Commissioners (DCs) in western Kenya have declined to constitute liquor licensing boards to issue people with licences to brew and drink *busaa*; that is a violation of the people's human rights. Why are DCs not constituting liquor licensing boards to do that? So, it is high time that the Government licensed the people to brew and take traditional liquors such as *busaa*, *muratina*, *mnazi*, among others. Dealers in these brews should be licensed, so that people can take them within the prescribed times and places, so that it does not appear to be a criminal act to take them.

Mr. Speaker, Sir, as I said, a lot that I would have wanted to say has already been covered by my friends.

With those few remarks, I beg to support this Bill.

**Mr. Mutiso:** On a point of order, Mr. Speaker, Sir. Since we have had an exhaustive discussion about this Bill, could the Attorney-General be asked to reply?

**Mr. Speaker:** Yes, indeed, I do not even see any hon. Member who is interested to contribute. So, Mr. Attorney-General, could you respond? I do not need to put the Question!

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I beg to reply. First of all, I want to sincerely thank all hon. Members who have supported this Bill overwhelmingly. It is right that we went on debating this Bill for a number of days until there was nobody to speak. This is because I was very worried that if we closed the debate when there were some hon. Members still waiting to speak, we would have in this very Bill, which is concerned with human rights, violated hon. Members' human rights.

So, I want to thank hon. Members who contributed to this Bill. We have nearly 40 hon. Members who have spoken on this Bill which I believe, in the annals of legislative debates in this House, must rank as one of the highest numbers of hon. Members who have spoken on any Bill. In fact, not on any issue - may be apart from the Budget and the Motion thanking the President for his Presidential Address - do such a big number of hon. Members contribute. Therefore, this shows a very keen interest that this House has on issues relating to human rights. It is humbling to know that the peoples' representatives take the issues of human rights very much at their heart. The richness and depth of the debates on this important Bill is a clear demonstration of the commitment of Parliament to enact laws that support hand-in-hand the rule of law and sustain, consolidate and strengthen our young democracy.

Democracy will be enhanced very much by strengthening the various institutions and organs to operate independently and in a co-ordinated matter. Democracy cannot just depend on the whims of any one individual or group of individuals. Democracy depends on the strengthening of the various institutions. The institution that will be created by the enactment of this Bill is going to be one of the most important institutions in the safeguarding of democracy. This is because it is in the protection and promotion of human rights of every individual that democracy can be enhanced.

Let me also thank all those hon. Members who paid tribute to me, particularly in my previous role as an international human rights crusader. Indeed, as you stated, I used to be the Special Rapporteur of the United Nations High Commission on Human Rights and also served in various capacities as the Special Envoy of the succeeding Secretary-Generals of the United Nations. I just want to mention one of them; while I was still the Attorney-General, and I am mentioning this because it is also an important day in that country. I was a special envoy of the Secretary-General of the United Nations to East Timor in the 1990s when I was Attorney-General. I want to take this opportunity, first of all, to congratulate the East Timorese people on the attainment of their independence, because the right to self-determination is a very important right. I wish also to take this opportunity to congratulate the newly elected President, Mr. Gusmao, whom I visited a number of times when he was in custody. That is part of human rights.

I wish to particularly thank the Shadow Attorney-General of the DP, Mr. Murungi, who agreed that this Bill is in accord with international principles relating to the status and establishment of human rights institutions which were adopted by the United Nations General Assembly under the Resolution 48/1/34 of the December, 1993; otherwise known as the Paris Principles. The Bill which we are about to enact is in accordance with those Paris Principles recognised internationally. Therefore, in as much as it is the latest Act of Parliament to constitute a National Commission on Human Rights, it is going to be the best Bill which constitutes a National Commission on human rights.

A lot has been stated about the Standing Committee on Human Rights, and I would like to take this opportunity to put on record---

### QUORUM

**Mrs. Ngilu:** On a point of order, Mr. Speaker, Sir. The Attorney-General has just said that almost 40 hon. Members did contribute to this Bill, but right now, we do not even have 30 hon. Members in this House. Could you call hon. Members to come in, in order for them to hear this response?

**Mr. Speaker:** To call hon. Members? I am not a prefect! That is not how we call them!

**Mrs. Ngilu:** Mr. Speaker, Sir, in other words, we have no quorum!

**Mr. Speaker:** Now, you are talking! Previously, you were out of order! Now, you are in order! It looks like we do not have a quorum! Ring the Division Bell!

*(The Division Bell was rung)*

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, it is good that now, we have a quorum. Plenty was stated on the Standing Committee on Human Rights and I want to take this opportunity to put on the HANSARD record, some of the achievements of the Standing Committee on Human Rights. In fact, a number of hon. Members, and in particular, Dr. Anangwe, asked me to enlighten the House on what the Standing Committee has been doing. The Standing Committee on Human Rights had since its formation, as I stated in my opening remarks, done a sterling job.



*[Mr. Speaker left the Chair]*

*[The Temporary Deputy Speaker  
(Dr. Omamo) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, when the Committee was appointed initially, it had no staff. I did second a State Counsel to operate more or less as the only person supporting the Standing Committee, but it has grown over time. The Government has enabled it over time to have reasonable support staff although they may not be adequate. As we are talking today, the Committee has five professional staff who are legal officers; it has a Public Affairs Officer, seconded from the Ministry of Tourism and Information; it has a Human Rights officer and a Programme Co-ordinator seconded from the Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports, and it has support staff of 18. It is one of the highly computerised departments in the Government. It is currently developing a website, and as we are talking now, two of its legal officers are in Geneva, observing the proceedings of the United Nations Commission on Human Rights.

Mr. Temporary Deputy Speaker, Sir, the Secretary of the Standing Committee enjoys the status of a Senior Permanent Secretary. Because of this, the Standing Committee has grown in its activities. Let me emphasise that although it was secretive in its operations initially, now, it is very open. It has a magazine called *Haki Zetu* which Members of Parliament should be aware of, and it has produced about four issues of this magazine. This magazine is widely distributed. They have carried out a number of investigative inquiries into alleged violations of human rights. I did quote the example of the King'ong'o case where the Standing Committee on Human Rights investigated and gave evidence before the court which was holding an inquest. The Standing Committee's conclusions were in fact, supported by the findings of the inquest court and I directed the Commissioner of Police to carry out investigations. I am glad that the investigations are now complete and the public will be seeing the results of those investigations shortly.

Mr. Temporary Deputy Speaker, Sir, as I talk today, the Standing Committee on Human Rights has already done three separate reports into various aspects. For example, the Committee has completed an investigative report into immigration and citizenship matters. It has also done an intensive report on torture and inhuman treatment. It has also done an intensive investigative report on juveniles in detention, as well as remandees, and delays in the hearing of their cases. All these reports will be made public very shortly.

Mr. Temporary Deputy Speaker, Sir, the Standing Committee on Human Rights can be credited with the removal of the requirements for travel clearance by public officials. It can also be credited for the removal by the Government of corporal punishment in schools. This arose out of the recommendations they make every quarter to the Head of State, who then acts on their recommendations. So, the public may have seen changes happening and heard various public officials making pronouncements on the issue of human rights on what the Government is doing. What they may not have realised is that, it is the Standing Committee on Human Rights which had moved the Government in that regard.

Mr. Temporary Deputy Speaker, Sir, although the Standing Committee on human Rights is appointed by the President, you can see that there are a number of reports which have appeared in the local Press, where the Standing Committee has not hesitated to criticise the Government. In fact, according to some of the reports that I have here, one headline says: "Clean Up Your Image - Committee Urges Government." Another headline says: "Torture On the Increase says a new report by the Standing Committee on Human Rights." Although this Committee is appointed by the President, they have not hesitated to carry out their duties without fear or favour.

Mr. Temporary Deputy Speaker, Sir, the Standing Committee on Human Rights is currently engaged in co-ordinating the National Action Plan, which will become the blueprint for improving respect for and adherence to human rights. This project has been initiated by the Standing Committee on Human Rights. Therefore, it is grossly inaccurate to say that the Standing Committee on human Rights has not had any impact since its formation about five years ago. The Government must be credited for giving it the freedom to operate, although they were appointed by the Executive arm of the Government. We should now arm this Committee with sufficient powers under an Act of Parliament. It is, therefore, my hope that since a good foundation has been laid by the Standing Committee on human Rights, which was operating under the Executive power of the Government and has done such a marvellous job, the foundation has been laid for a Commission which owes its existence to the enactment of this Bill.

Another point which was raised by a number of hon. Members is the issue of the involvement of the non-governmental organisations and the civil society in the work of this Commission; and that there is need to mention all those organisations in this Bill. Let me reiterate that in the drafting of this Bill, all non-governmental organisations, civil society organisations, including the Kenya Human Rights Commission and others were consulted and they took part in its drafting. There was very constructive dialogue. We hesitated a bit as to whether we should involve them or not. We were fearing that if we involve them, they might hamper the coming into this House of this Bill. But the Attorney-General was pleasantly surprised because those organisations were very supportive; that, we must have an

Act of this nature. They were part of the drafting Committee and they actively participated in the drafting of this Bill. So, as I was saying, the Bill enjoys the support of the non-governmental organisations (NGOs) and the civil society, particularly those organisations which are more focused on human rights issues.

Mr. Temporary Deputy Speaker, Sir, I think it was Mr. Kihoro who tabled a list of organisations which have been very active in the human rights field. Most of those organisations which were contained in the list that Mr. Kihoro tabled for having been active in the human rights field here in Kenya in exposing violations of human rights, were involved in the drafting of this Bill. In this Bill, NGOs are not again forgotten. They were involved. Clause 6(2)(b) of the Bill provides that any person, organisation or group of persons can propose the nomination of persons who will be appointed to the Commission as commissioners. So, in constituting the Commission, NGOs will be involved in as much as they can propose names for those who will be members of the Commission.

Clause 16 talks about the functions of the Commission and one of the major functions of the Commission is to encourage the efforts of other institutions working in the field of human rights and co-operate with such other institutions for the purpose of promoting and protecting human rights in Kenya. The Commission in its work will still continue to rely on the human rights activists. Human rights activists will bring to the Commission's attention any cases of violations of human rights. So, these organisations will continue to play the roles that they have been playing, except that now, instead of writing to the Attorney-General, there will be a specialised Commission which will deal with those complaints, investigate them and take steps to rectify the violation of human rights. So, this will be a genuinely independent Commission, a Commission which in its activities, will also rely on other organisations, such as civil society and NGOs, which are active in this particular area.

Mr. Temporary Deputy Speaker, Sir, I know you would want me to move a little bit faster. Let me now come to the method of nomination and appointment. I would like also, at this juncture, to thank all those hon. Members who talked about ways and means of improving the method of appointment of the commissioners. I notice also that the relevant Departmental Committee has also made suggestions along those lines. The recommendations of the relevant Departmental Committee on this matter have been made in good faith. A number of suggestions also came from the Floor of the House, and as the Attorney-General, I undertake to sit down with the Departmental Committee, sort out the various proposals and come to a consensus on the issue of appointments.

But just let me touch on one or two things about the appointment of the Commissioners because the credibility of the entire proposed Commission, as my learned friend mentioned yesterday in his contribution, would depend on the integrity, honesty and the commitment of the Commissioners in protecting human rights. At the end of the day, we can put various institutions in place, but unless they are manned by persons who are committed to the ideals of these institutions, then whatever we will have done will come to nought. So, the issue of nomination and appointment of the commissioners is very important. That is why we have chosen the most transparent way in which the best possible commissioners can be appointed.

The method and procedure of appointment must be completely above partisan politics, ideologies and religious affiliations. The issue of human rights is a very important issue. It is above partisan politics and everything else. Therefore, whatever procedure we adopt must also reflect that. If the procedure is such that it can be affected by the politics of the day, then we will not have an effective Commission which will protect human rights of people irrespective of their political ideologies and orientations. Human rights issues are above politics. It would have been very easy to say that the commission will be composed of representatives from various specified institutions, but we felt that, that would subject it to partisanship. We could also have asked the various political parties here to nominate Commissioners, whose number would be proportional to their strength in the House. We could have said that, but we did not. Let those people who want to be Commissioners, who are experts in the field, apply. We will advertise these posts and then they should apply. But we also know that there are some very good people who would not like to be subjected to applying, but would not mind organisations which are well known nominating them, because such organisations know that these people are experts. So, as I stated earlier, persons can apply and societies or anybody can also propose somebody for application.

Then we come to the issue of who will consider these applications. This is where we need to think and rethink. There were a number of proposals and one of them is that there should be a committee consisting of the Speaker, the Leader of Government Business in the House and the Leader of the Official Opposition. That idea was considered very carefully at various fora where these issues were discussed. It was felt that if the political situation is not right, that committee may be unworkable because of political considerations. The Leader of Government Business in the House is also an active member of the ruling party. He can bring to bear the considerations of that political party in the appointments. The Leader of the Official Opposition is also an active party member and can also bring political considerations to bear on the appointments, yet human rights are above that. So, that is why that Committee, which comprises the Speaker, the Leader of Government Business, the Leader of Official Opposition, were at these consorting meetings. So, it was felt that they were people who are a bit insulated from these type of considerations. For example, the Speaker, who is the Speaker of the entire Parliament, which consists of both the Government side and the

Opposition side, he also represents an important institution called Parliament. In fact, the way it was drafted is such that the Speaker would be the Chairman of this Committee. Then it was felt that we should bring in the other organs. So, we got the Chief Justice or his nominee, to be a member of this panel, and the Attorney-General, who, by virtue of his office, is non-partisan.

Mr. Temporary Deputy Speaker, Sir, in our current situation this was the best panel that could be charged with the important responsibility of reviewing the applications, to ensure that we have the best people who will perform the work of this Commission; which work should be and must be seen to be above politics. In fact, the idea of having such small committees is not unique to Kenya. For example, in our neighbouring state, the United Republic of Tanzania, and other countries which I will be coming to, one can see in this advert that--- There was an appointment Committee of this type and they received all the names and they have advertised the names of all the applicants received.

Mr. Temporary Deputy Speaker, Sir, what we intend to do, under the rules of the Act, is that, procedures of this Committee must be very transparent so that it will be published that So-and-so has applied, so that everybody knows who has applied and the criteria used for selection, and everything else. I thought I should explain this aspect of it. Clauses 4 and 6 of the Bill strike a proper balance between the National Assembly and the Executive in order to achieve the necessary guarantee for credibility and effectiveness. This is the conceptual basis underlying these two clauses.

Mr. Temporary Deputy Speaker, Sir, I know the hon. Member did raise a possible conflict between one clause and the other. It is not contradictory when you look at it in greater depths. The deeper level is, one, Parliament shall nominate the Committee, but we agree with the hon. Member that we did not make it clearer that this Committee, which is chaired by the Speaker of the National Assembly, must, through some process, table the names of whoever they have shortlisted in the House, so that it comes from the House to the President. So, I agree with the hon. Member that there may be some lacuna there and, therefore, we shall sit down and see how we can remove that lacuna.

**Mr. Muite:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Could we have the guidance of the Chair here? The Attorney-General needs to clarify this issue because it is an issue of some importance. Clause 4 specifically talks about membership of the Commission, and it states as follows:

"The Commission shall consist of a chairperson and seven other Commissioners nominated by the National Assembly and appointed by the President in accordance with Section 6."

What Mr. Murungi and myself have pointed out to the Attorney-General is that Clause 4, which I have read, on the face of it, contradicts Clause 6(3) and (4). This is because when you come to Clause 6, the applications are received by the Attorney-General. The Committee sits down and shortlists people and then the clause states as follows:-

"The Committee shall, within 30 days, consider all the applications received under subsection (2) and shall nominate therefrom 12 persons for appointment as commissioners."

Clause 6 states as follows:-

"The Attorney-General shall forthwith forward the names of the persons nominated under subsection (4) to the President, who shall by notice in the Kenya Gazette, appoint therefrom a chairperson and seven commissioners."

So, where does Parliament come in? Clearly, this is not a lacuna; it is a drafting error!

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, this is not a drafting error. What is required is to close the missing link and everything will be apparent. There is a missing link between that Committee and Parliament. But Clauses 4 and 6 can stand on their own. What is required is a link between Clauses 4 and 6, and that will be done during the Committee Stage of the Bill.

Mr. Temporary Deputy Speaker, Sir, the other issue that was raised, and has just been mentioned here, is the issue of the role of the President. The President is the Executive authority who does the appointment. This is not the only time that the President is making the appointment; this Parliament has passed or enacted a number of legislations where the President appoints because he is the Executive authority. There is no point of running away from the fact that the Constitution, as it is currently--- Parliament can only legislate and the President, as the Executive authority, appoints members of the Committee. There is no point of running away from that fact. With this procedure, we are telling the President that he should not just appoint anybody, but persons from within this group of persons who have passed through a transparent process.

**Mr. Maitha:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This is our Attorney-General in this country. Any law with a lacuna, as he puts it, gives a contradiction in any interpretation. Why is he misleading this House by putting things of his own thinking and not according to the law which he has drafted?

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, what the Attorney-General thinks is the law! I think I have dealt with that issue. I am now turning to the issue of the President because an hon. Member shouted that the President is also a Chairman of a political party and so on. The presidency is a position and the

President is the Executive authority and, therefore, he is entitled to appoint members of the Commission. This is not the first time that such legislation is coming up; this Parliament has enacted a number of legislations; from the Constitution to a number of legislations passed recently, including the Constitution of Kenya Review Commission and others, where this procedure that we are trying to envisage here has worked. Parliament is supposed to legislate, but it depends on how we look at it. In other countries, it is completely different. But the institution of the presidency should be regarded as the institution of the President as the Head of State, and as a symbol of unity of the country.

**Mr. Murungi:** And above the law!

**The Attorney-General (Mr. Wako):** Not necessarily above the law, as the hon. Member is saying, but under Section 14 of the Constitution, he cannot be prosecuted or he cannot be sued while he is still a President. That provision is to preserve that office, which is very important and which is central to the public and to the cohesion of our society. So, the President has to appoint members of the Commission.

Mr. Temporary Deputy Speaker, Sir, what we have done here is much more democratic than what has been done in other countries. My beloved shadow Attorney-General, in his contribution, said that he and the Chairman of the Standing Commission on Human Rights went to Ireland and considered all the national commissions. It is true that we had not yet formed one. I believe he said that the South African Commission was voted number one. I would like to say here that the provisions we have in this Bill are far much better than the provisions that the South African Commission has. For example, under the laws of South African, it is the President---

**Mr. Kibicho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Attorney-General seems to have concluded his comments on the clauses. If you look at Clause 19(1)(b), you will find that it gives the Commission power to commit people for perjury, and the Constitution of Kenya says that you cannot deny a person his freedom except through the due process of law and this is not a court of law. Is this not unconstitutional?

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, I will comment on that aspect. I have not yet concluded; I am still on my feet. I am going step by step. I am actually on Clause 6 and he is quoting Clause 19. He is really moving too fast for me. I am an old man who is moving *pole pole*.

**Mr. Muite:** You are a middle aged---

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, I know that my learned friend would like me to say "middle-aged" because we are of the same age. So, you have taken solace in that. We are getting old pal!

*(Mr. Muite smiled)*

Under the South African legislation, it is the President, in his absolute discretion, who determines the term of the appointed Commissioners. Under the South African Constitution, which is different from ours, first of all, it is the President who proposes the names to Parliament and gives it a go-ahead to appoint the Commissioners. But it is his discretion to say that he has appointed Mr. Muite and Mr. Murungi and then submits the names to Parliament for approval. But once that is done---

**Mr. Maitha:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am sorry to interrupt the man with the knowledge on all the laws of this land. But is it in order for the Attorney-General to mislead us by insisting that it is the President who can appoint the Commissioners? If the donor countries, which depend on the same Act to give money to poor countries, have always created precedence by being the most corrupt and they are not relied on---

**The Temporary Deputy Speaker (Dr. Omamo):** That is your opinion! That is an argument! I do not know whether it is a point of order!

Mr. Wako, please, continue!

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, I will not dignify it by commenting on it.

In South Africa, it is the President who appoints members of the Commission. He does not even advertise the positions and there is no question of short-listing. This is the legislation which is number one until, of course, ours is passed. After that, our legislation will be number one and theirs will be second. But it is the President who proposes the names of the Commissioners, Parliament approves and then he appoints them. But the initiative and everything lies with the President and not with anybody else, unlike here where the initiative really lies elsewhere. Secondly, when the President has appointed, for example, the nine Commissioners, it is him, in his absolute discretion, who says that So-and-so will serve for two years, So-and-so will serve for one year, and So-and-so will serve for five years, provided that he does not say that somebody should serve for more than seven years. But the number of years that each Commissioner has to serve in the Commission is at the absolute discretion of the President.

Mr. Temporary Deputy Speaker, Sir, it is the President, under that legislation, who determines where the Commission will sit. If you go through the Act, you will find that it is the President who does this and that. This is the legislation which I agree up to now has been said to be number one in the world today. Therefore, if we pass this Bill,

with the democratic input you have put into it, relating to the appointment and so on, I think we will be the leader as far as the legislation is concerned. So, let us not begrudge the President. So, as I said earlier on, the linkage between Clauses 4 and 6 is one which we will put our heads together and reach a consensus on. I agree with that. I also agree with the proposal about pushing it to number nine from the current number. I think that was a good proposal that came from the Parliamentary Committee, to increase the membership from seven to nine, including the Chairman and the Vice-Chairman.

The other aspect which was mentioned was the apparent conflict between what the court does and what the standing committee does. The National Commission on Human Rights, like all other commissions in the world, is specialised and is one which will delve in matters which, first of all, are not before court. We all know that matters which go before the court are weighty, and court procedures can be very cumbersome and so on. But there are certain matters which amount to violation of human rights, but the person may be poor. I was asked how the poor will benefit from the Commission. Actually, the National Commission on Human Rights is really meant for the poor. The Commission is for the poor people who want speedy resolution of their violation of human rights. That is why the Commission is bestowed with the necessary powers to deal with that. This Commission is for the poor because there are some disputes which are not amenable to the court processes; the flexibility in the system of dealing with violation of human rights and not the rigid system of the courts in dealing with violation of human rights.

We have made it very clear that if a matter is before court, it cannot be dealt with by the Standing Committee on Human Rights. I also agree with the comments made by my learned friends in this House, to look again at contempt procedure; that one can be in contempt of the Commission. I do agree that under our Constitution, it is only the Judiciary or the High Court which can do that. So, I agree with you. Therefore, I will bring amendments to ensure that, that particular aspect is dealt with because when such a situation arises, it is up to the Commission to make an appropriate application to the High Court to commit somebody for contempt of the Commission. I undertake to introduce the amendment at the Committee Stage. Also, the powers under which the Commission can order release and so on. We know what is being aimed at here, but it may cause confusion. During the Committee Stage, I will bring amendments to clarify in more finer details under what circumstances the Commission will be able to order a release of a person who has been unlawfully detained. There are many cases of unlawful detention. Under our Constitution, there are very many examples of what amounts to unlawful detention. So, what I am saying is that if it does not fall under lawful detention, it becomes unlawful, and one should not be detained. In those circumstances, the Commission should have the powers to order release immediately.

Mr. Temporary Deputy Speaker, Sir, it was stated that Clause 19(1)(c) could be incriminating. But that Clause is balanced by Clause 24. It says:-

"No statement made by any person in the course of giving evidence before the Commission shall subject such a person to any civil or criminal proceedings, except for giving false evidence by such statements---"

Mr. Temporary Deputy Speaker, Sir, it was stated that Clauses 15(3) and (4) which deal with the possibility of public servants working for the Commission will undermine the independence of the Commission in as much as it is the civil servants who will be working for it. I do not think that will be the result because nobody or institution will force a civil servant into the Commission. In fact, it is the Commission itself, where it feels it requires the services of a particular civil servant, that will request for such an officer. The Government cannot come up and say as we have done up to now, for example, in the Standing Committee on Human Rights, there are a number of officers seconded from various Ministries. That will be a thing of the past. It is the Commission itself, when it is properly constituted, that will say whether they have enough staff or ask the Government to help them in one or two areas where they will require assistance. So, the initiative is not with the Government, but it is with the Commission.

Mr. Temporary Deputy Speaker, Sir, the issues of financing of the Commission are very important. I hope that because of the support this House has given to this Bill, the Commission will be adequately financed in order that it can operate effectively in the promotion and protection of human rights in this country.

Mr. Temporary Deputy Sir, allow me to go quickly through some of the comments that were made. There was also the issue of the security of tenure of the commissioners. Somebody said they do not have security of tenure. Actually, there is security of tenure for the commissioners provided under the Bill. You will note under Clause 9 that they are appointed for a term of five years from the date of appointment and they shall be eligible for re-appointment for one further term of five years. So, a commissioner, once appointed, will be there for 10 years. The security of tenure is secured in Clause 11(3) where a commissioner cannot be removed except for misbehaviour or misconduct of the person, or if the person is convicted of an offence and sentenced to imprisonment. Where that happens, then a tribunal must be appointed by the Chief Justice to look into those allegations and make appropriate recommendations. This is the most that can be done to secure the security of tenure under an ordinary legislation. The provisions are more or less the same for Government officers who have the security of tenure under the Constitution, except that the tribunal is appointed by the President and not by the Chief Justice. I want to assure this House that there is security of

tenure for the commissioners provided for under the Bill.

Mr. Temporary Deputy Speaker, Sir, the hon. Member for Kerugoya/Kutus Constituency stated that what is important is public education. I want to agree with him and to state also that among the functions of the Commission, is the issue of promotion of human rights and education on human rights. Really, at the end of the day, the education part of it is very critical. I do hope that it will be part of the national action plan for the promotion and protection of human rights, and that the law enforcement officers, the Provincial Administration and any other public servant who in his work has dealings with members of the public will be sensitized or made knowledgeable on human rights issues. Education on human rights will be part of the national action plan. I am aware that the Standing Committee on Human Rights has gone ahead, in conjunction with my office, to draft the type of syllabus that can be used in training particularly the law enforcement officers, to respect human rights in their activities. So, the change of attitudes in our society, as a whole, and in particular in the public sector of our society, is an important issue which this Commission will regard as a matter of utmost priority. It is in the change of attitudes that an enabling environment will be created, where there will be less violation of human rights and people will focus more on enhancing the enjoyment of human rights.

Mr. Temporary Deputy Speaker, Sir, there was also a question of Kenya meeting its international obligations under the various treaties. Under the various treaties which Kenya is party to, and which deal with aspects of human rights, there is already a committee established under that which oversees how the various countries are working to comply with the requirements of the international conventions. It is not just Kenya, but most Third World countries and even the developed countries, including some European countries, have also not fully complied with this reporting mechanism. I can inform this House that Kenya has begun complying with that. We have already submitted our report under the United Nations Convention on the rights of the child. Indeed, we are in the process of compiling our report under the United Nations Convention on Torture. From this weekend, up to next week, we shall embark on drafting our report under the International Covenant on Civil and Political Rights. This requires specialised skills---

**Mr. Murathe:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Could the Attorney-General assure us that when they will be compiling the report on civil and political rights they will consider the political rights that were violated last weekend by Dr. Anangwe? This should be an issue of the past; it should not be allowed to happen again against people who are going about expressing their political opinions.

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, I am not aware of the example he is giving, but if the Commission does its work and sensitises those in public offices, politicians, and hon. Members of Parliament on issues of human rights, then whatever he is complaining of will not arise.

**Mr. Murathe:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to inform the Attorney-General that last weekend, members of a certain political party who were out to open party branch offices in Butere and Mumias areas, were harassed, stoned and intimidated under the orders of one, Dr. Anangwe. I have made him aware so that he can tell us what he intends to do about that.

**The Temporary Deputy Speaker (Dr. Omamo):** Order! I am not going to open debate on this issue. Proceed, Mr. Wako!

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, I do not know whether he is making me aware of the wrong or right information. That is something that I will have to check on. What I know is that, if the Commission is set - and I hope you vote for it quickly - and it sensitises everybody, including politicians like him, on issues of human rights, then such cases will be things of the past. We hope they can be things of the past, if indeed, they occurred.

**Dr. Anangwe:** On a point of order, Mr. Temporary Deputy Speaker, Sir. You heard Mr. Murathe mention my name in relation to an incident, and according to the Standing Orders, an hon. Member must be responsible for the accuracy of whatever situation he is trying to describe. In respect of the said incident, I have been on record stating that I was not directly involved, I was not the organizer and in any case, the reaction of the people of Butere in respect of that matter was spontaneous.

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, I was on the issue of reporting obligations of the State to the various international covenants. Kenya has already begun complying, and that Kenya is not alone; nearly all the Third World countries and even some developed countries in Europe, have not sent reports on time. So, it is an issue that I know the United Nations is going to look into, because there must be some structural error somewhere on these things. But we are complying.

Mr. Temporary Deputy Speaker, Sir, I would also like to state that the drafting of this report requires a particular skill, and that the various officers of Government from most Ministries will be attending. We have organised a training course for them, in the drafting of these reports. It has to be officers from all Ministries, because they cover the activities of each and every Ministry. If you are talking about the rights of the child, it is not just the Ministry of Home Affairs, National Heritage and Sports or the Vice-President, we are talking about the health of that child, where the Ministry of Health comes in. We are also talking about preventing that child from being molested and so on. So,

the law enforcement agencies come in. So, with every right, the various Ministries of Government are involved. I can confirm that we have organized a training seminar for the drafting of this legislation.

**Mr. Kibicho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Attorney-General says that when this Bill is enacted, the violation of human rights will be a matter of the past, while he knows that human rights have always been violated and those who have perpetrated this have gone without punishment. If he is, indeed, serious, why has he not put penal provisions for those people who breach those rights in this Bill?

**The Temporary Deputy Speaker (Dr. Omamo):** What is your point of order?

**Mr. Kibicho:** Mr. Temporary Deputy Speaker, Sir, the Attorney-General has said that when this Bill is enacted, Kenyans' human rights are going to be protected. Is he in order to say so when he has deliberately refused to put penal provisions in this Act, for those people who breach human rights?

**The Temporary Deputy Speaker (Dr. Omamo):** In other words, you have got some words which you would like to put in his mouth?

**Mr. Kibicho:** Mr. Temporary Deputy Speaker, Sir, in a layman's language, penal provision means punishment for those people who breach the law.

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, first of all, he has not quoted me correctly, to say that on enactment of this Bill, all these human rights violations will be a thing of the past. I cannot and will not say so. What I can say is that, with the enactment of this Bill, if the Commission is properly constituted and it does its work properly, then we will begin to see a noticeable change in so far as the respect for human rights is concerned in this country. But this has to take place for it to happen. It does not mean that when we enact this Bill this week, next week we shall see a change. That is why we must follow the procedures of appointment to ensure - as I had appealed to this House - that the this Commission must be adequately funded to be able to perform its duties properly.

Mr. Temporary Deputy Speaker, Sir, on the issue of the reporting mechanism, we, in the Government, have began training our officers to be able to draft the necessary reports. And not just in the drafting of the necessary reports, but this will be done in conjunction with the Commission that we are setting up and the civil society which are operating in this area. In fact, in the drafting of the report to the United Nations Convention on the Rights of the Child, we involved everybody, because, as I said earlier, when it comes to human rights, it is not just a matter for Government; it is a matter for all of us. The Government can provide the lead, but we need to involve each and every person in the drafting of that report, so that it is an honest report; we say what our strengths and weaknesses are. If we have those weaknesses, we should state why we have those weaknesses and discover what is contributing to the difficulties, so that we see how to deal with them.

Mr. Temporary Deputy Speaker, Sir, on the issue of the ICSE, Kenya is on the forefront on this issue. We are working very closely with Uganda and Tanzania and co-ordinating the drafting of the necessary legislation which will indicate our seriousness in satisfying that particular charter. What is normally forgotten is that ratifying a convention is not enough. It is better that you put your laws in place and in consistence with international conventions. Therefore, we are in the process of co-ordinating with Uganda and Tanzania to see whether we can have common laws. Under the East African Community, our laws must be more or less the same. We must re-examine what type of laws we require to be in place and which ones will give support to the International Criminal Court (ICC). I think, as I have indicated to the House before, we shall ratify. We are at the forefront in establishing that institution. I remember that in the 80s, we may have been among the first people to call for the establishment of the ICC. We may have been among the first people to begin drafting the necessary instruments to establish that court at very many fora. So, the Government is committed and, definitely, we shall, at the right time, when we have put our laws in place, ratify the convention.

Mr. Deputy Speaker, Sir, I would like to go on, but let me end up by again paying tribute---

**Mr. Muite:** On a point of order, Mr. Temporary Deputy Speaker, Sir. There is one matter that Members raised serious concern with. I see that the Attorney-General has not responded to those concerns. If you look at Clause 6 Subclause 8, we are providing that the Chairperson of that Commission will enjoy the status of a Judge of a Court of Appeal, and that the Commissioners will enjoy the status of Judges of the High Court. This House is taking care to legislate on the status of the Commissioners. Yet, when we come to Clause 10 regarding remuneration, we are saying that the Commission will be left free to negotiate their salaries and allowances with the Treasury. We are legislating about their status and not prescribing their remuneration and allowances. That is a serious loophole, in respect of which Members expressed their views in this House. For example, we established the Constitution of Kenya Review Commission (CKRC), but, as a House, we failed to prescribe the allowances and salaries of the Commissioners. You are aware of the public outcry that has been caused by the level of salaries and remuneration that the "Ghai Commission" has negotiated with the Executive.

*[The Temporary Deputy Speaker  
(Dr. Omamo) left the Chair]*

*[The Temporary Deputy Speaker  
(Dr. Anangwe) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, if this Parliament is prescribing about the status of the Chairperson; that he is equal to a Judge of the Court of Appeal, and the Commissioners are equal to the Judges of the High Court in terms of status, why can we not give them the same terms and conditions? Why are we creating a loophole that can be abused when the Commission goes to negotiate its salaries and allowances with the Treasury? What is the Attorney-General's response on the views expressed by Members on that lacuna?

**The Attorney-General** (Mr. Wako): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I thought that, that was an issue that would be dealt with, particularly when we said that we are for the increase of the number of Commissioners from seven to nine. But on that specific issue, I know that the Parliamentary Committee has said that the Commissioners will work on a full-time basis. That is an issue that we have to sort out because some may be full-time and others may be not. We have to bear the experience of the other Commissions which have been very clear in stating that what you require--- The experience we had in all those Commissions was that one must have a very strong secretariat to be able to follow up things very strongly. But one should not necessarily have very many full-time Commissioners. Maybe, the Chairman and somebody else should be on a full-time basis, but others may come in to see what the secretariat is doing. We have some Commissions having the same problem. For example, the Kenya Law Reform Commission has some Commissioners who are full-time and others part-time. So, that is an issue that has to be determined. So, if you say that they are going to earn like judges and they are part-time, then it would be unfair to be paying somebody a salary of a judge from the public coffers, when he is working part-time. So, that is an issue that we shall discuss. I would plead with the Members to take cognisance of the views of the Commissions which are already operating, and which are of the opinion that for a Commission of that nature to be fully effective, you do not require all the Commissioners to be full-time. Here, I am talking about South Africa, Uganda and the rest. What you require is a well-funded and staffed secretariat.

*[The Temporary Deputy Speaker  
(Dr. Anangwe) left the Chair]*

*[The Temporary Deputy Speaker  
(Dr. Omamo) resumed the Chair]*

**Mr. Muite:** On a point of order, Mr. Temporary Deputy Speaker, Sir. With due respect to the Attorney-General, is that not the exact difficult that we are having with the "Ghai Commission"? They are getting very high levels of allowances and salaries, when some of them continue with their jobs. They are not working full-time. But because of the failure of the law to address that issue of remuneration, some of the Commissioners are able to continue with their legal practice, while collecting all the remuneration from the Commission. Does that not, in fact, sort of add weight to the issue that I am raising; that, we cannot leave it in generalities and blank? We need to be specific. If they are going to be full-time, let the law say so and provide their remuneration. If there are some who are going to be part-time, let the law say so and provide for the allowances. But if we leave it that way, it is going to be abused. Those are the concerns of the House.

**The Attorney-General** (Mr. Wako): Those may be the concerns of the House, but the problem with the Commission is that because they are now operating on a reduced time-scale than the anticipated one of nine months initially--- Now, they are operating on a time-scale of a year or so. All of them had to become full-time and they are, indeed, full-time. But supposing we had began on time three years ago, we may not necessarily have been full-time at that stage. We may only have become full-time towards the time when they are about to produce their report. Details of issues of salaries and so on, are details which are best left for discussions; that, one can agree with. If you do not want the Commission itself to discuss with the Treasury; if you want some intermediary person to be involved, that can be provided for, if that is your objection. I sense that your objection, even with the Commissioners, is exactly that people are not very much involved in the setting of those scales, although, in their defence, I can say that the Parliamentary Select Committee, of which you are a Member,



approved the remuneration. So, really, there should be no quarrel on that one. So, really, there should be no quarrel on that one. Details on how much we earn and so on---

**Mr. Mwenje:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not know whether the Attorney-General is, indeed, in order to avoid specifying clearly what remuneration would be paid, say to a part-time Commissioner or a full-time Commissioner. For example, if he should be referred to the Parliamentary Service Commission, that is not the job of the Parliamentary Service Commission, but it is the job of this House to decide. Unless the Attorney-General is telling us that when it comes to the Committee Stage, he will come with these figures, specifying the full-time and part-time remunerations and allowances, then he is out of order. He should clarify this issue or come out clean on what is actually the position.

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, to me, the position of fixing salaries and emoluments is an executive function. Particularly at this level, we are not talking about constitutional offices; we are talking about offices created under---

**Mr. Murungi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the Attorney-General is misleading the House to say that the fixing of salaries is an executive function. For an independent body like the one we are trying to create, just like the Judiciary, we cannot leave it to the Executive to be fixing the salaries of these people because this will be compromising their independence. We have to state clearly in the law how much you are being paid if you are a full-time Commissioner, and if you are not, what are your allowances per day, and that will clarify the whole issue.

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, on the issue of these offices under legislation, at the end of the day, it is, as we have provided here, a matter which can be discussed and the terms fixed at the appropriate time when the Act is in force. We cannot, in advance, now fix the terms and emoluments of the Commissioners. We have provided here that the Commissioners, in consultation with the---

**Mr. Mwenje:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Attorney-General is totally out of order. That is not right because if this Commission is appointed---

**The Temporary Deputy Speaker (Dr. Omamo):** What is your point of order?

**Mr. Mwenje:** Mr. Temporary Deputy Speaker, Sir, the Attorney-General has to come out clearly on this issue. He is out of order unless he comes out clearly and tells us the actual remuneration for these Commissioners because it will not be referred to any other place. It is, therefore, not going to be an independent Commission. It is supposed to be answerable to this House. We are fixing the terms and we must also fix the remunerations. If not so, let the Attorney-General tell us that he will bring it at the Committee Stage. If he is not bringing it, then we may have to vote it out, as much as we needed it, because it is not clear. We cannot let people go and fix their own salaries wherever they are. If somebody else in the Executive fixes their salaries, then the Commission will be serving that person and not the people of Kenya and this House.

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, if you want to vote this section out, that is okay. It is also okay if you so wish to vote the whole section out. If it is the collective wisdom of this House to vote it out, why not? However, on the issue of terms and salaries, let us not create a storm out of a tea cup. The salaries and the terms of the Commissioners will be fixed and we are also giving them a say in what those terms should be. We know what their status is, and that can provide a good guideline on what the ultimate terms and conditions of service are going to be. The Attorney-General will not bring to this House during the Committee Stage what they are going to earn, but if you feel strongly that this is what you want, you are at liberty during the Committee Stage to put proposals that this is what their salaries are going to be, but I will not do it.

Mr. Temporary Deputy Speaker, Sir, there was, of course, a suggestion that the money should be paid out of the Consolidated Fund. As I indicated at the very beginning, the first stage to go to after creating this institution was creating the Standing Committee on Human Rights. We are at the next stage of creating an institution constituted by an Act of Parliament. I very much hope that the next stage will be to make this Commission a constitutional Commission. We are, of course, now engaged in a very comprehensive review of our Constitution. We anticipate that we shall get a new Constitution. I very much hope that in that new Constitution, the Kenya Commission on Human Rights will be one of the new institutions that will be recognised under that Constitution and, consequently, the funding of it will take priority. This is because it will be a constitutional provision that it will be funded directly from the Consolidated Fund, but as of now, we have to do just as any other Commission does, to have the provisions that we have in the current Act.

Mr. Temporary Deputy Speaker, Sir, I think I have touched on all issues. If there are any other issues that you want me to touch on, I am at liberty to answer them. Let me once again thank all the hon. Members for their contributions on this Bill.

With those few remarks, I beg to move.

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

**The Temporary Deputy Speaker (Dr. Omamo):** Mr. Mwenje, will you sit down!

*(Question put and agreed to)*

Next Order!

*Second Reading*

THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) BILL

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I must say that I was caught a bit unawares because I thought we were coming to the Domestic Violence Bill, but I can see this Bill has now come. However, I am ready to move it.

Mr. Temporary Deputy Speaker, Sir, you may recollect that one of the matters I raised when contributing to the Presidential Address was the fact that some Bills had elapsed twice at the end of 2000, and at the end of 2001. This is one of those Bills which have been pending for more than two years now. Therefore, I am not surprised that the House Business Committee decided to change the Order Paper and made this Bill the one which will be debated after the National Commission on Human Rights Bill.

Mr. Temporary Deputy Speaker, Sir, I will refer extensively to my notes in moving this Bill. This Bill, as the name indicates, is in keeping with the traditions which have evolved over the years of tabling one Bill consisting of various amendments, with the objects of updating the Statute Law of Kenya by removing anomalies and bringing the various Bills into line with the present day conditions. The Bill proposes amendments to the various Acts. So, there are close to 40 Acts being affected by this Statute Law (Miscellaneous Amendments) Bill.

Mr. Temporary Deputy Speaker, Sir, before I go on, I would like to inform the hon. Members of Parliament at the outset, that there are provisions provided for in this Bill which touch on the Parliamentary Pensions Act.

Mr. Temporary Deputy Speaker, Sir, I want to tell Members that during the Committee Stage, I will be removing the proposed amendments which are in the published Bill and substituting thereto proposed amendments which are in accordance with what the Parliamentary Committee on Pensions has agreed, I believe in consultation with all the Members of Parliament. To my understanding, the effect of this will be that Members of Parliament will not be entitled to a pension after one term, but after two terms. The effect of it also would be that the age of retirement, as I am told, will be increased from 40 years, as currently stated here, to 45 years. I am also told that mileage allowance will not be part of the computation of the pension. In other words, it will not be taken into account in computing the pension. Further, I am told that the effect of the amendment will also be that Members who serve for only one term will be entitled to a refund twice their contribution with interest at 10 per cent and many others. But I intend to work out its details and I will attach it to the future Order Paper so that Members are aware of what I will be intending to move during the Committee Stage; to remove the proposals which are contained here under the Parliamentary Pensions Act.

Mr. Temporary Deputy Speaker, Sir, one of the proposed amendments is to increase your emoluments as you sit in that Chair from K£4,860 to K£5,400 for the so-called "Members of the Chairman's Panel". It may very well be that there will be another proposal to increase the amount from K£5,400. If there is, I hope hon. Members will be understanding in that regard because as I have said, it has taken more than two years for this Bill to see the light of day in this House.

Mr. Temporary Deputy Speaker, Sir, I will not be touching on all the amendments but, maybe, just pointing out some of the key ones. The next one is the National Assembly and Presidential Elections Act. The Bill proposes to amend the National Assembly and Presidential Elections Act, Cap.7, Laws of Kenya, in order to provide for a register of electors residing abroad, and to provide for the continuous registration of electors and revision of the register of electors. This is a very key amendment. I was speaking to one who has taken part in numerous elections since Independence, and he said that the registration of voters has always been an issue at every general election. People have

alleged that many have been disenfranchised because of the period of the registration of voters. This has been complicated in a sense by the issue of the identity cards. Taken on the whole, it is the issue of the limited time within which the voters have to register.

Even in the recent registration exercise, you may recall, it was initially one month and it was extended by two weeks and then by two weeks, and still, at the end of that period, there were many who said that they had not been able to register. The continuous registration exercise is, therefore, critical to enabling people to exercise their rights, obtain the voters' card and participate in the election. Although this amendment looks simple, it is good for the process of democracy in this country. It is in the exercise of voting that one exercises his basic democratic right. If we introduce a continuous registration exercise, when one hits 18 years, he or she can go immediately and get his or her ID, and at

the same time register. So, this is an important amendment.

The next amendment that, maybe, I could touch on is the one under the Police Act, coupled with the one under the Narcotic Drugs and Psychotropic Substances Act. The Bill proposes to amend the Police Act in order to provide for the use of x-rays or other electro-magnetic ray photographs by the police in the course of investigations into drug-related offences. We have seen situations, particularly at JKIA, Nairobi, when somebody is coming, maybe, from India and is suspected to be a drug trafficker; he is fed on ugali so that he can relieve himself, so that whatever he has carried in his tummy comes out. We hope that with these modern gadgets, it will be possible to do that easily instead of using a primitive method of ugali or Irio or githeri.

It further proposes to amend the Narcotic Drugs and Psychotropic Substances Act in order to make provision for the disposal of narcotic drugs and psychotropic substances which are seized by the police in the course of their investigations, and which had to be used as evidence in any subsequent trial. In the proposed provision, the police may take samples for use at the trial and may destroy the remainder of the haul with the approval of the court. The court will examine whatever has been found and then take samples, have them examined and the rest can be destroyed. It is important that the rest be destroyed because of the temptation to steal the ill-gotten drugs and sell the same on the market. So, a quick destruction of the haul is in the interest of dealing with drug traffickers more effectively, and also in the interest of not exposing our law enforcement agencies to be tempted to steal and sell a bit in order to augment their salaries.

Mr. Temporary Deputy Speaker, Sir, the next amendment I want to touch on is the Books and Newspapers Act. It is proposed to amend the Books and Newspapers Act of the Laws of Kenya in order to enhance the security bonds in respect of printing or publications of newspapers and also to enhance the penalties under the law. It also creates a new offence which is that a person who sells or distributes any book or newspaper, the publisher of which has not complied with the requirements of Sections 6,7 or 8 shall be guilty of an offence and liable to a fine not exceeding Kshs20,000, imprisonment for a term not exceeding 6 months, or to both. The penalties are quoted there. They have been increased substantially, together with the amount of the bond. For example in the case where the amount was Kshs10,000 the amount of the bond is Kshs1 million.

This whole issue of the Books and Newspapers Act has attracted a lot of attention. You will note that in this particular Bill we have not yet published the amendment to the Films and Stage Plays Act because those amendments were *ultra vires* the Act itself. We have republished the amendments to the Books and Newspapers Act and the intention is not really to muzzle the Press. A number of articles have been written about the muzzling of the Press which are very interesting because when this Bill was first published in 2000, it never attracted any attention and yet the clauses were there. When it was published last year it generated a lot of attention.

Before I go any further, I want to pay tribute particularly to media owners and the Kenya Union of Journalists to whom it appears the publication of this Bill was like a waking up call. I have followed this issue and it has been central to everything we have done since 1991 and the onset of the multi-party era. I remember indicating to the Press sometimes in November, 1991, in Mombasa that we cannot have a vacuum in these laws. There must be a way in which journalists as professionals, must be able to discipline their own who fall short of the required professional etiquette. Although at that time calls had been made for us to enact the legislation, I was giving them an opportunity to come up with their own internal self regulating machinery. I am glad that at that time they took those comments seriously and in fact, drafted a code of professional ethics which in my view met the international standards.

They were kind enough to invite me to launch that code of ethics at Safari Park Hotel on 11th November, 1992, just before the general elections. I thought it was very good because the Fourth Estate plays a very critical role in any democracy. Our democracy can only be vibrant if the Press plays out its role, but in a manner which respects the high standards that are required of them as professionals. They can play a very positive role and in fact help this country or any country for that matter develop a democratic culture, strong institutions, and do away with social ills because the Press has exposed them and they must be dealt with. However, we also know that if they do not adhere to what is ordinarily ethical in any profession, they can equally play a very destructive role. It is because of this important role of the Press in any society that Article 19 of the International Covenant on Civil and Political Rights does not just talk about the freedom of the Press, but the absolute---

*(A mobile phone rang)*

**The Temporary Deputy Speaker** (Dr. Omamo): Whose mobile phone is that? Is it in a lady's handbag? There is no lady in the House

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, there is a lady in the House.

**The Temporary Deputy Speaker** (Dr. Omamo): I do not want to hear it again. If it belongs to an hon. Member, let it be switched off or the handbag taken out. I have great honour for ladies. They are not the only hon. Members with handbags. If that mobile phone is in a handbag could the handbag be taken out? If it is in a pocket,

could it be switched off? Please continue.

**Mr. Ochola:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Under what circumstances would a gentleman carry a bag?

**The Temporary Deputy Speaker** (Dr. Omamo): Under peculiar circumstances.

*(Laughter)*

**The Attorney-General:** Mr. Temporary Deputy Speaker, Sir, let me inform the House that I support you entirely when you said that your greatly honour ladies. I believe that it is due to you honour for ladies that Ms. Rachael Omamo was brought up in a manner which has now enabled her to be the Chairperson of the Law Society of Kenya (LSK), an institution which is concerned about human rights. Congratulations!

As I was saying, Article 19 talks about freedom of the Press in absolute terms. It is actually mentioned in subsections (2) and (3) that there are special duties and responsibilities that go with the freedom of the Press and freedom of expression, among other forms of freedom. So far, there is emphasis on the freedom of the Press, but we risk losing this freedom if the special duties and responsibilities of the Press are not mentioned. That international document recognises the fact that freedom of the Press carries with it special duties and responsibilities. Indeed, as far back as 11th November, 1992, the Press began to realise that it must discharge its special duties and responsibilities by, first of all, adopting a code of conduct. As I said earlier, I read the document; it was internationally recognised. I think because of the climate at that time, despite the fact that the document that was drawn was excellent, not all the stakeholders in the media industry accepted the it. The mainstream media accepted the document, but the alternative Press disagreed with it. Consequently, those noble efforts came to naught. Had those noble efforts succeeded, we would not be talking about what we are talking about now. When those noble efforts failed at that time, no more effort was made. I appointed the task force on Press law reforms, which came up with a draft legislation. However, because of the division among media owners, nothing could really come up. So, the matter lay dormant, and everybody thought that everything was okay except for cries from the public and politicians against the Press, which became more pronounced. Obviously, one cannot nurture a vacuum, if I may say so. So, there was a vacuum which needed to be filled, and the publication of this Bill, as I said, was a wake up call.

I am glad that since the publication of this document I have been engaged in very constructive dialogue with the Kenya Union of Journalists (KUJ), media owners and other stakeholders. At least they now appear to realise that they must be sensitive to their special duties and responsibilities. In fact, at our last meeting, we were supposed to have formed a media commission, which will enforce the code of conduct for journalists. I have the code of conduct for journalists; it is a good document. However, the commission is yet to be constituted.

Mr. Temporary Deputy Speaker, Sir, a country like Kenya has not developed very strong traditions. In other countries, particularly those countries which have unwritten constitutions, you may find that they have very strong traditions. Actually, their very strong traditions form part of their unwritten constitutions. People feel obliged to act in accordance with those traditions. So, in such countries, the code of ethics for professionals is not a matter which is legislated upon. It is a matter that is there, and which everybody adheres to. Whatever pronouncements are made by the commissions in those countries are obeyed.

I have argued that in our situation, we need to create institutions through appropriate legislations. However, that does not mean that the Government will be in control of the internal discipline machinery for the media. The LSK, for example, was established by an Act of Parliament, but nobody can rightly claim that the Government deals with issues of discipline for that body. Discipline with the membership of the LSK is a matter which the profession itself deals with. I am, therefore, in a situation where not everybody may agree with me. Where there is lack of tradition, I believe that legislation is the way out. A legislation in this regard will enable members of the media to come up with effective tools and internal disciplinary procedures.

I believe that the profession of journalism in this country should be handled that way. The professionals in this field would want to operate on a voluntary basis, with a code of conduct and their own commission, without the strong backing of the law, the way the LSK has, and I wish them success. However, I know that at the end of day, they are going to be effective if the arrangement they have put in place can be converted into a proposed legislation which this House can enact into law. I hope that they will be headed that way. But up to now, media owners and professionals are yet to set up a commission. I, therefore, thank them for the steps they have taken to date. It is a sort of wake-up call.

Mr. Temporary Deputy Speaker, Sir, the proposed amendments contained in this Bill, particularly that which is seeking to create a new offence--- As you know, there is an alternative Press which is not registered. You may not even know where they operate from, and who is who in its management. When such Press defames you, you may not know who to take to task. These publications are amorphous. So, in the event that such publications defame you, you cannot enforce your rights. How will you pursue such publications if you do not know the persons behind them? You see such publications in the streets today, and tomorrow they disappear. They operate more or less like Mr. Osama Bin

Laden's son, who gave an interview and said: "My father took his camel into the mountains and he has disappeared never to be seen again".

So, this law targets the circulation of such publications. At least, the people who circulate them can be found on the streets. All we are saying is that before one handles any publication, he should ensure that it is registered. If you sell a publication which is not registered you will be committing an offence. So, since newspaper vendors can be found, if they commit this offence, they can be arrested and prosecuted. Through this legislation, we hope that the circulation of unregistered publications will cease.

Mr. Temporary Deputy Speaker, Sir, the amounts of the bond on publications were last fixed a long time ago. As you know, our currency has depreciated with time. So, the Kshs1 million bond being sought may be slightly higher than the previous amount, but its value may be more or less the same as that of the amount payable previously. So, that is what I will have to say about the Books and Newspapers Act. At the end of the day, the objective is to have a profession which realises its duties and responsibilities and is vibrant. It should also be able to internally discipline its own members, and where any person can complain to. The Commission, or whatever it will be, should be able to hear the complaint and make a decision to rectify it. At the end of the day, that is our target, and I hope that ought to be the target of journalists in this country.

Mr. Temporary Deputy Speaker, Sir, there is an amendment touching on Moi University. The amendment is to make Moi University just like any other university, because that was a small clause that was somehow overlooked when we enacted the Moi University Act. But other public universities have the same power to establish colleges. Any university must have the power to establish a college of its own.

Another amendment touches on the Teachers Service Commission (TSC), where it is proposed to increase the number of the TSC members to not more than 24 such members. You know that the population of teachers has yearly increased, together with the population of our country and so on. Therefore, we need more Commissioners to be able to handle the work effectively.

Another amendment is under the Trade Unions Act. It may appear there small, but it is a very important amendment. Right now, if there are wrangles within the trade union movement over elections, whether they were valid, or not - and all such matters - my Registrar of Trade Unions, who is an official based in my office, makes a decision on them. Then, if one is dissatisfied with that decision--- But in most cases, these days, one goes straight to the High Court for a determination on that issue. The High Court, of course, is clogged up with work, and issues of elections must be determined expeditiously. Otherwise, you will find a body of officials whose election is being challenged staying in the office for one year or so, when the matter is still going on round the courts. This proposed amendment now is to say that from the decision of the Registrar of Trade Unions, the appeal should go to the Industrial Court, who are more versed in dealing with these type of issues, and will be able to hear these type of disputes expeditiously.

There has been talk of creating an Appeal Industrial Court, and that matter is being looked into. Most of the amendments touch on increasing penalties here and there; like the Food, Drugs and Chemical Substances Act. These penalties were fixed a long time ago, and it pays to breach, be fined and to continue. So, we are making it a little bit more difficult for people to have that attitude which, in a sense, means impunity of the law, when the fines and sentences are ridiculously low.

We are also touching on the Seeds and Plants Varieties Act. Here, the Bill proposes several amendments to the Seeds and Plants Varieties Act necessitated by Kenya assentation to the International Union for the Protection of New Plant Varieties Convention on the protection of new varieties of plants. It also proposes to enhance penalties under the Act. I believe Kenya has lost greatly by not being a member of this union. A number of these plant varieties, herbal medicines and what-not have been exploited by the developed countries who come here, take these varieties of plants, go to Europe, make medicines out of them and then sell them back to us at exorbitant prices. This happens.

*[The Temporary Deputy Speaker  
(Dr. Omamo) left the Chair]*

*[Mr. Speaker resumed the Chair]*

Mr. Speaker, Sir, in February this year, I was privileged to go to an international conference in Oman, Muscat, to consider this very issue. It was a conference called upon by the Third World countries. The Secretary-Generals of the OAU and the Commonwealth were there; the French-speaking countries were represented by Mr. Boutrus Ghali. There were also representatives from Latin America and South East Asia. It struck me that we, in the Third World, are the people who have made the developed world rich. They have become rich out of our natural resources. I will not go into minerals and other issues because we are talking about plants. But figures were given to indicate that the United States of America benefits every year by an amount of US\$27 billion arising out of the herbs and medicines they took from Southern America, which they sell now to us. That arises out of the knowledge that they

stole from the herbal medicine people of South America, not taking into account popular medicines such as quinine, which as you know, was extracted from a plant from South America. But we are now talking about just recently; what they have acquired recently; the economy of America is benefitting by US\$27 billion. We have now acceded to this convention, and we have to put our laws in order, if we are to benefit from it.

The other amendment - I will not go through all the amendments as I said - is the Kenya Airports Authority (KAA). The Bill proposes various amendments to the KAA, which are intended to enhance the operational autonomy of the KAA. Right now, in essence, it operates like a department under the Office of the President, Department of Internal Security and Provincial Administration. The proposals will also improve the management of the Authority's financial affairs, and will enable it to generate more revenues to sustain its undertakings. Although it is in a position to generate revenues and, therefore, to ensure that our airports are up-to-date with the latest equipment and so on, they are not able to do so because whatever revenues they generate now go into the general coffer and the budget that comes out is not sufficient for them to keep up with the latest standards of airport maintenance. So, by creating it to be an autonomous body, we hope that this will be achieved.

We also proposed to amend Section 5(ii) to provide for the tenure of office and procedure of meetings of the Board. It also proposes to define the powers of the Managing Director of the Authority. Right now, they are not defined. It also proposes to replace Section 7, to empower the Authority to pay remuneration to the directors out of the general fund. It also proposes to amend Section 10 to empower the Board to employ officers for the Authority and decide on their remuneration, just like any other corporation. Therefore, it will be able to employ officers and decide on their remuneration, which will be attractive in accordance with the income it can generate through its productivity. It also proposes to make provisions for the keeping of proper books and records of accounts. It also proposes to amend Section 31 to empower the Board to make regulations relating to appointment and conditions of service of their employees. I know for a fact that because of the delay in enacting this Bill, the Kenya Airports Authority has not proceeded as it would have like to. Therefore, this amendment is very important.

Mr. Speaker, Sir, we are also proposing to amend the Transport licensing Act, Cap.404 of the Laws of Kenya in order to, *inter alia*, prescribe the procedure for the issuance of summons by the Transport Licensing Board, to empower the Board to retain some of the funds collected by it, for defraying its expenses and those of the tribunal. We are further proposing to empower the Board to make rules requiring public service vehicles plying long distance routes to record details of all passengers using such vehicles. This amendment is important because in this country, unfortunately, we have very many accidents and many people die as a result of those accidents. That, of course, has prompted us to make some amendments to the Traffic Act. A Bill has been published to that effect, and that Bill is before the relevant Departmental Committee of this Parliament. In planes, when they unfortunately crash, we are able to determine who was on board and where. It has become very difficult, for example, when a bus crashes and six people die, to get the identity of those persons. It takes quite some time and sometimes, we may not be able to identify them. So, this new regulation will make it obligatory, particularly for those vehicles plying long distance routes to be able to keep a record of all their passengers. In the case of an accident, it will become easier for people to trace their relatives, friends and so on. We will be able to know the identities of those people who die in the event of an accident.

Mr. Speaker, Sir, the other amendment relates to the Constitutional Offices Remuneration Act. It may be recalled that when I last brought the Constitutional Offices Remuneration (Amendment) Bill here, at the prompting of Mr. Michuki, he pointed out that we had not done that since 1984. The Act was just ratifying what had been going on. Members of Parliament were very supportive here because they agreed that constitutional office holders should be properly remunerated. I undertook to bring to this House, proposals for that amendment. In fact, I was told to report back to the House within six months. These proposals were published in the Statute Law (Miscellaneous Amendments) Bill sometime ago, but we have taken time before debating it. The proposals here touch on constitutional office holders, and they have indicated the basic salaries that they will earn. I hope that, in accordance with the sentiments which were made in this House - if you read the HANSARD Report - by my learned friends like hon. Muite, they are still of the same mind, and will approve these proposed amendments. If they want to raise them a bit, we shall agree with them. But we proposed the bare minimums that they ought to be earning at this point in time. In fact, that falls below what some public servants of a lesser rank are earning! If there are any proposals to increase these salaries from the Floor of the House, they will be welcomed by the Mover of this Bill.

Mr. Speaker, Sir, under the Firearms Act, we are increasing penalties substantially. Firearms have become a problem in Kenya, which is an oasis of peace among troubled neighbours who have no peace, and firearms are infiltrating into the country. So, there is a hefty increase in the penalties under the Firearms Act to deal with that particular menace.

Mr. Speaker, Sir, before I conclude, I would like to comment on the Trade Descriptions Act. Our economy is losing out heavily and many industrialists will tell you that they are about to close their factories in the Industrial Area because their goods are being counterfeited and sold. They are losing their share of the market, not only within the country but also in the neighbouring countries. So, under the Trade Descriptions Act, we are proposing quite a number

of amendments which will expand the definition of trade description and criminalise the supply or possession of goods which have false trade descriptions. If applied, these will bar the importation of any such goods which will extend the definitions and so on. That is a very important amendment which will help in protecting our own industry which is being threatened by the criminal activities of many who counterfeit goods. The unsuspecting customer buys something which is way below the standards, but whose label and everything else is exactly like the one which comes from the manufacturer who is duly licensed.

Mr. Speaker, Sir, with---

**Mr. Speaker:** Do not go to anything new.

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, generally, it is increasing penalties in other areas and so on.

**Mr. Speaker:** You can continue on Tuesday, if you have not finished.

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I want to finish now. If there is anything which I have not touched on, and Members of Parliament are interested in, I can make comments on that in my reply.

With those few remarks, I beg to move, and call upon Mr. Keah to second.

**Mr. Speaker:** Mr. Keah, you will continue on Tuesday, if you wish to second.

**The Assistant Minister for Transport and Communications** (Mr. Keah): Mr. Speaker, Sir, I do not just wish to second this Bill. I want to second it by making a few contributions next week on Tuesday.

#### ADJOURNMENT

**Mr. Speaker:** Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until next week on Tuesday, 23rd April, at 2.30 p.m.

The House rose at 6.30 p.m.