

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 21st April, 2005

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

NOTICES OF MOTIONS

Mr. Karaba: Mr. Speaker, Sir, I beg to give notice of the following Motions.

RE-INTRODUCTION OF 7-4-2-3 SYSTEM OF EDUCATION

THAT, considering that this country spends over Kshs400 million in foreign currency when parents take their sons or daughters to other countries for "A" Level education; considering further that students from Kenya are at times required to undergo "A" Level studies before proceeding to universities abroad; this House urges the Government to abolish the 8-4-4 System of Education and re-introduce the 7-4-2-3 System of Education.

MAKING ICT A COMPULSORY SUBJECT IN SCHOOLS

THAT, in view of the ever increasing importance of computers, this House urges the Government to introduce computer studies as a compulsory subject in all schools and provide all public secondary schools with computers for teaching purposes.

TRANSFER OF ADULT EDUCATION TO MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY

THAT, in view of the rising interest from adults to join primary schools following the introduction of free primary education; bearing in mind that the Adult Education Programme falls under the Ministry of Gender, Sports, Culture and Social Services, a Ministry with limited staff capacity to meet the rising demand for education; this House urges the Government to transfer the Department of Adult Education to the Ministry of Education, Science and Technology so as to utilize the curriculum, staff and teaching facilities provided by the Ministry.

ORAL ANSWERS TO QUESTIONS

Mr. Speaker: Hon. Members, I have to accommodate hon. Dr. Galgallo who has an urgent appointment outside the House. Therefore, let us proceed with Question No.210. I hope the Minister for Energy is here.

Question No.210

MEASURES TO CURB POWER SURGES
IN GARISSA HOSPITAL

Dr. Galgallo asked the Minister for Energy:-

- (a) whether he is aware that frequent power surges and cut-offs in Garissa have destroyed many medical equipment in Garissa Provincial General Hospital;
- (b) what measures is the Minister taking to solve this problem and avoid further damage to equipment; and,
- (c) whether he could also compensate the hospital for the loss of the already damaged equipment?

Mr. Speaker: Is the Minister for Energy here? Dr. Galgallo, it is not the Minister's fault, so may I defer this Question to Tuesday next week?

Dr. Galgallo: That is fine, Mr. Speaker, Sir.

(Question deferred)

Next Question, Mr. C. Kilonzo!

Question No.205

SUPPLY OF FUEL TO KITHIMANI
AND MATUU POLICE STATIONS

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

- (a) how much fuel is allocated to Kithimani and Matuu Police Stations in Yatta Constituency;
- (b) whether he is aware that due to limited fuel supply, cases of thuggery are very high in Yatta; and,
- (c) what action he is taking to ensure adequate supply of fuel to these stations?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Speaker, Sir, I wish to seek the indulgence of the House for ten minutes. I have just arrived from Nakuru where I was appearing before the Electoral Commission of Kenya, and I thought that my staff would be here to give me copies of the answers.

Mr. Speaker: That sounds reasonable to me, Mr. M. Kariuki. I am sure the hon. Member will agree with me. We will take it as the last ordinary Question. So, in the meantime, Mr. M. Kariuki, could you ensure that you get all your briefing. Mr. C. Kilonzo, I hope you have no objection.

Mr. C. Kilonzo: No objection, Mr. Speaker, Sir.

Mr. Speaker: Very well. Next Question, Mr. Gachagua!

Mr. Gachagua: Mr. Speaker, Sir, I think my Question falls under the same circumstances, because it is directed to the Office of the President.

Mr. Speaker: Well, until you ask it, I do not know anything about it.

Mr. Gachagua: The Assistant Minister had already talked to me earlier.

Mr. Speaker: Will you ask your Question!

Question No.245

VEHICLE ALLOCATION TO POLICE STATIONS

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

(a) how many police stations are there in the country and how many vehicles are attached to each of these stations?

(b) whether he is aware that the vehicle allocation has been inadequate for patrol and has made maintenance of security virtually non-existent?; and,

(c) what steps is the Minister taking to rectify the problem?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Speaker, Sir, I will make a similar request like the first one.

Mr. Speaker: Granted; this will be the second-last ordinary Question.

Next Question, Ms. Mwau!

Question No.207

REGULAR REVIEW OF PENSION

Ms. Mwau asked the Minister for Finance:-

(a) whether he is aware that the amount paid to retirees as pension is not reviewed to reflect inflationary considerations; and,

(b) whether he could consider reviewing the sums payable to pensioners regularly to take into account prevailing social-economic conditions?

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

(a) The Government policy is that whenever there is a general salary review of serving civil servants, there should be a corresponding review of the benefits paid to the retired civil servants. In addition, the increase to salaries and pensions would normally take into account the Government's ability to pay at the date of the salary increase.

(b) In the long-term, the current reviews of the pension laws and administrative arrangements being undertaken by the Government would include a proposal for an automatic pension increase in line with inflation with a curve at a grid percentage, for example, 3 to 5 per cent. The necessary amendments will then be made to the Pensions Act, Cap. 190.

Thank you, Mr. Speaker, Sir.

Ms. Mwau: Thank you, Mr. Speaker, Sir. I want to thank the Assistant Minister although his answer is not satisfactory. There is a Government policy of reviewing salaries of civil servants and pensioners. When was the last review done? It has also been put to my attention that teachers have actually not been paid their pension benefits for a very long time. So, when was the last review and how many reviews have been done in the last ten years?

Mr. Katuku: Mr. Speaker, Sir, the last review was done in July, 2004, while the latest pension increment was paid in 1996. We have had several reviews, for example, in 1991, 1992 and 1993. But we have not had any review since 1996 and we are now in the process of bringing amendments to the Act so that we can review the Pensions Act. So, the last increment was done in 1996. The process of reviewing pension has to begin with actual studies. We are now through with drawing the terms of service for the actuary, so that he can advise, then we bring the necessary

amendments.

Maj-Gen. Nkaiserry: Mr. Speaker, Sir, the Assistant Minister is misleading the House. I am a retiree. I think the Government does not have a policy as regards pension increment when they review salary increments of their workers. It is very important for the Government to come up with a policy to make it uniform for all retirees when they are reviewing salaries increment so that pensioners can also benefit. When the armed forces reviewed salaries, for example, they left out retirees like myself. I am supposed to have benefited. So, what does the Assistant Minister have to say about this?

Mr. Katuku: Mr. Speaker, Sir, it is unfortunate the hon. Member was left out when other retired officers benefited. However, as I said, we are now currently looking at the position because the then Government did not do anything with regard to this issue. But since we went into office, we have now come up with a policy which will soon be reviewed. We will ensure we put into consideration the aspect of automatic increase, which will be pegged between 3 per cent and 5 per cent. However, that has to be done by this House and we are moving towards that direction.

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

Mr. Speaker: Hon. Members, I can see there is a lot of interest in this Question, but I have to finish. Maybe I will give a chance to one hon. Member. Is there any retiree from the Government side? Well I cannot see any.

Ms. Mbarire: Mr. Speaker, Sir, the Assistant Minister needs to understand that the plight of pensioners is not properly taken care of by this Government. During the last Session, we even passed a Bill. Mr. Katuku, you may be very young right now, but one day you will be a pensioner. So, I would like you to go down in the history of this country as having initiated a proper pensions scheme for pensioners. When do you foresee this review?

Mr. Speaker: Ms. Mbarire, you must address the Chair!

Ms. Mbarire: Mr. Speaker, Sir, does the Assistant Minister realise that the 3 to 5 per cent review is almost negligible, and it will have no impact at all?

Mr. Katuku: Mr. Speaker, Sir, I would like to assure the hon. Member that this Government will ensure we put in place a proper policy as regards pensioners, which has never been done. As I said, there are steps to be followed. One of them is to appoint an actuary to conduct a study. As I said in the previous response, we have now finalised the terms of reference for this officer, so that he or she can conduct research and so on. However, the 3 to 5 per cent is not the increment, but it is the margin through which, maybe, when there is a salary increment, it can be pegged to. So, I would like to assure this House that we are moving towards the right direction. I will bring amendments to this Act and we will give pensioners their dues.

Mr. Speaker: Very well! Last question, Ms. Mwau!

Ms. Mwau: Mr. Speaker, Sir, when will the Assistant Minister bring before this House those amendments he is talking about? Could he also consider amending the Act to provide for medical allowance for pensioners because they actually live like paupers?

Mr. Katuku: Mr. Speaker, Sir, I have said the time frame for this will be determined by the speed at which the actuary will move at. However, I hope it will be as soon as possible. We anticipate to appoint this officer before June this year. The request the hon. Member is making about considering to put in place a medical scheme, that will be the work of the actuary. Currently, the minimum received by a pensioner is about Kshs500. We hope this will be increased to a reasonable amount. The Kshs500 is unreasonable and we hope to raise it to a reasonable amount as is with the terms and conditions of service of other civil servants.

Mr. Speaker: Next Question, Mr. Kagwima!

Question No.265

AMOUNT OF MONEY RAISED FROM
FUEL LEVY, 2002-2004

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

(a) how much money was raised from fuel levy in the financial years 20002/2002 and 2003/2004; and,

(b) how the same was distributed among the districts countrywide.

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

(a) The money raised from fuel levy in the financial years 20002/2003 and 2003/2004 was Kshs7,739,100,178 and Kshs9,044,843,790 respectively.

(b) The same was distributed among districts countrywide as per the attached schedule.

Mr. Speaker: Eng. Toro, could you table that document?

The Assistant Minister for Roads and Public Works (Eng. Toro): Mr. Speaker, Sir, I hereby table the document.

(Eng. Toro laid the document on the Table)

Mr. Kagwima: Mr. Speaker, Sir, I thank the Assistant Minister for making the schedule available. Looking at it, some districts, for example, Nairobi, received Kshs1 billion in the financial year 2003/2004. Some districts also received over Kshs100 million, whereas Tharaka District in the same financial year received only Kshs10 million. Part of that money was actually received this year. According to the schedule, this financial year, Tharaka District received only Kshs11 million. Is the Assistant Minister satisfied that Kshs11 million is able to do anything in a district, or is he being unfair or discriminative to that district? Could he, in this financial year, promise to correct the anomaly that occurred in the last few years by allocating about Kshs1 billion to Tharaka District?

Eng. Toro: Mr. Speaker, Sir, the amount of the money that Tharaka District received is according to the constituencies in the district. Each constituency, in the financial year 2002/2003, received Kshs4 million. There was a balance of Kshs1.5 million per constituency which was given in the financial year 2003/2004. So, during the financial year 2003/2004, every constituency received Kshs7 million. That is reflected in the list that I have already tabled. In addition to that, the list shows that in the financial year 2002/2003, the 24 per cent component of the fuel levy was never sent to the districts on equitable basis. However, this has since been rectified. In financial year 2003/2004, constituencies, through the district, received the equitable distribution of 24 per cent. The issue of Nairobi Province as a district was considered in the financial year 2002/2003, and funded directly from the Kenya Roads Board (KRB). That is why it reflects a figure of about Kshs1 billion.

(Mr. K. Kilonzo stood up in his place)

Mr. Speaker: Just a moment! I want to see whether I can recognise you! Mr. K. Kilonzo, please, proceed!

Mr. K. Kilonzo: Mr. Speaker, Sir, thank you for recognising me. Could the Assistant

Minister confirm whether there is money under the Roads 2000 Project and which districts will benefit?

Eng. Toro: Mr. Speaker, Sir, the funding for the Roads 2000 Project depend on the donors. There are roads which are funded by the European Union (EU), World Bank and AFD. That depend on various districts. For example, the EU funding for roads in Eastern Province has come to an end. The AFD funding for other districts will be initiated very soon. I cannot give the details of the Roads 2000 Project at the moment, unless it is asked as a separate Question. There are so many donors who are funding roads under the 2000 Project. Some projects have come to an end and others are yet to commence.

Mr. Speaker: Mr. O.K. Mwangi, you represent which constituency?

Mr. O.K. Mwangi: Mr. Speaker, Sir, I represent Kigumo Constituency!

Mr. Speaker: Order, hon. Members! You may have noticed that I am trying to identify hon. Members by their constituencies. I want to encourage you to do the same, so that we can de-personalise matters of the House. I will put all my effort in referring to Dr. Godana as the hon. Member for North Horr, instead of Dr. Godana. That is impersonal. It is better.

(Applause)

So, the hon. Member for Kigumo Constituency, please, proceed!

Mr. O.K. Mwangi: Mr. Speaker, Sir, the Assistant Minister is definitely aware that, before the NARC Government took over power, 24 per cent of Fuel Levy was distributed to some districts. There are some districts which did not receive their share. Could the Assistant Minister tell this House how the districts, which did not receive their share before 2003, will be compensated? He has said that he will distribute the 24 per cent Fuel Levy to all the constituencies equally from last year.

Eng. Toro: Mr. Speaker, Sir, it is unfortunate that the 24 per cent Fuel Levy was used to fund on-going projects in some parts of the country. In the last financial year, when we started to distribute the money to all the districts equitably, we have found it absolutely impossible to compensate the districts that never received their 24 per cent component. For example, there are some districts which received as much as Kshs100 million of the 24 per cent component. If we stop giving money to such districts, it means they will not receive any money for the next 20 years. So, it might not be possible to stop the distribution of the 24 per cent Fuel Levy to the districts that benefited before the NARC Government took over power.

Mr. Speaker: Last question! The hon. Member for Tharaka!

Mr. Kagwima: Mr. Speaker, Sir, as you gave me the---

(Mr. Maore stood up in his place)

Mr. Speaker: Order, hon. Members! Mr. Maore, you have attracted my attention through unlawful means, but I think it is legitimate. I think I must recognise your position as a Shadow Minister. But you must do that through lawful channels. The Shadow Minister for Roads and Public Works, please, proceed!

Mr. Maore: Mr. Speaker, Sir, could the Assistant Minister confirm whether what he is saying is true as per the documents? If you look at the entire Eastern Province--- I can give an example of four districts. Meru North District has Kshs36 million. Tharaka District has Kshs13 million and Meru South District has Kshs40 million. The total is Kshs89 million. But if you go to where the powerhouse of roads comes from; that is, Meru Central District, it has Kshs296 million. Is the Assistant Minister on a revenge or equitable mission?

(Applause)

Hon. Members: Where is the change!

Eng. Toro: Mr. Speaker, Sir, if the Shadow Minister for Roads and Public Works is fair, he should get the total amount of money given to all the Meru Districts and compare it with districts like Maragwa or Murang'a.

Mr. Speaker: Order, Mr. Assistant Minister! Who told you that the hon. Member here is the Shadow Minister for roads in Meru? He is the Shadow Minister for roads in Kenya. So, will you answer the question legitimately put?

(Laughter)

Eng. Toro: Mr. Speaker, Sir, it is because the hon. Member mentioned some districts in Meru. He should have known the amount of money that went to all the districts in Meru. Otherwise, to answer his question, there is no revenge mission in Meru District.

Mr. Speaker: Last question! The hon. Member for Tharaka Constituency!

Mr. Kagwima: Mr. Speaker, Sir, in the first place, the Assistant Minister did not answer the first question that I raised. I want him to answer that and the one I am going to ask him now.

Mr. Speaker, Sir, I requested the Assistant Minister to correct the anomaly by promising that he will allocate a substantial amount of money to Tharaka District to compensate for the loss made.

Mr. Speaker, Sir, I want you to get this. You may have heard the Assistant Minister say that the Roads 2000 Project in Eastern Province has come to an end. In that programme, Tharaka District did not get a single cent. For the Fuel Levy, Tharaka District got only Kshs10 million. The first question was: Could the Assistant Minister correct the anomaly by availing a minimum of Kshs500,000,000 to Tharaka District?

The second question is; Could the Assistant Minister---

Mr. Speaker: Order! The hon. Member for Tharaka Constituency, you should ask one question at a time! Mr. Assistant Minister, can you respond?

Eng. Toro: Mr. Speaker, Sir, I did not answer the first question because I thought the hon. Member was not serious. He asked the Ministry to allocate Kshs1 billion to Tharaka District. I, therefore, ignored it. On the other one, the money received by Tharaka District is in accordance with the 16 per cent. That is the equitable distribution of the 24 per cent Fuel Levy. There is nothing the Ministry can do about that figure. However, the Ministry can look into the issue of funding specific roads.

On the issue of Tharaka District not benefiting from the Roads 2000 Programme, I am not able to say why the previous Government omitted the district. We found the programme for Eastern Province on-going. There was nothing we could do about the money that was already allocated to other districts.

Mr. Speaker: Very well. Next Question! The hon. Member for Kanduyi Constituency!

(Mr. Kagwima stood up in his place)

Mr. Speaker: Order, the hon. Member for Tharaka Constituency! I think we have many other Questions as important as that of Tharaka Constituency. Kanduyi is one of those constituencies that are as important.

Mr. Kagwima: On a point of order, Mr. Speaker, Sir. This is a very serious matter and things should be put in order.

Mr. Speaker: Order, hon. Member! What is your point of order?

Mr. Kagwima: Mr. Speaker, Sir, is the Assistant Minister in order, to allow his senior officers in the Ministry headquarters to swallow even the little money that goes to Tharaka; to collect and put it in their pockets?

Mr. Speaker: That is not a point of order. It is a very serious allegation which you are not able to prove to my satisfaction. This is disallowed.

Question No.262

PAYMENT OF BENEFITS FOR
MR. NICHOLAS MAKALI

Mr. Wamunyinyi asked the Minister for Education, Science and Technology:-

(a) Whether he is aware that Mr. Nicholas Makali, TSC No.92550, retired in December, 2000, and has not been paid his terminal benefits to date; and,

(b) what action he is taking to ensure that Mr. Makali is paid his dues without further delay.

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

(a) I am aware that Mr. Makali who retired on 1st January, 2001, has been paid his terminal benefits. Mr. Makali's pension claims were forwarded to the Treasury on 19th December, 2002, and he was paid on 16th June, 2003. The amount paid was Kshs365,600, and a monthly pension of Kshs4,570.

(b) There is, therefore, no need for further action since the pension has been paid.

Mr. Wamunyinyi: Mr. Speaker, Sir, I appreciate the fact that Mr. Makali was paid. However, it took three years after he had retired. He was retired in the year 2000 and paid in 2003. This is not the only case that we have. There are many retirees, including Maj-Gen. Nkaissery, who have stayed for long without being paid. Could the Assistant Minister confirm to the House that the Government will ensure that retirees are paid on time, and that there will be no delay like the one which happened in the case of Makali, which took three years? Could he also assure us that those who have been retired will remain on the payroll until their dues are settled?

Mr. Speaker: You have to be brief!

Mr. Wamunyinyi: Mr. Speaker, Sir, I have finished.

Dr. Mwiria: Mr. Speaker, Sir, it is in our interest to be more efficient with such payments. I pledge that we will do everything possible to quicken the process so that beneficiaries are not kept waiting for too long. However, I would also like to take issue with the hon. Member. The person we are talking about was paid last year, in 2003. I wonder when the hon. Member asked this Question. The Question was whether I was aware that the former TSC employee had not been paid. It is more than a year since this person was paid.

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

Mr. Speaker: Order, order, hon. Members! Mr. Assistant Minister, it does not matter. I authorised the Question; it is relevant and you must answer it. You do not have to worry about it.

Mr. Gitau: Thank you, Mr. Speaker, Sir. You will agree with me that the issue of non-payment of retirement benefits to TSC retirees is a common issue in this House. It appears as if this Ministry is turning this House into one of its departments, which has to force it to pay retirees. When will the Ministry take charge of its own duties and pay retirees promptly as opposed to coming to this House and being pushed to do so?

(Loud consultations)

Mr. Speaker: Order, hon. Members! There is an issue being raised by the hon. Member for Juja. It is very pertinent and also applies to the Ministry of Labour as far as the National Social Security Fund (NSSF) is concerned. This House has raised concern about that. The Chair was firm in saying that the Ministry should take the recommendations of the House. The Ministry has since improved. I hope the Ministry of Education, Science and Technology and other Ministries will not take the time of this House with the same issue. We should not have issues to do with regular payments. What is your reaction?

Dr. Mwiria: Mr. Speaker, Sir, my reaction is only to agree with you.

Mr. Wamunyinyi: Mr. Speaker, Sir, I sought to know if the retirees will remain on the payroll until a certain time when their dues are settled. The Assistant Minister has not responded to that. Could he confirm that retirees will remain on the payroll and receive salaries until their dues are paid as per the law?

Dr. Mwiria: Mr. Speaker, Sir, then what is the point of retiring?

(Laughter)

Mr. Abdalla: On a point of order, Mr. Speaker, Sir. Is it in order, for this Assistant Minister to mislead this House? He was in the House when we passed the Bill brought by hon. Musila!

Mr. Speaker: Mr. Assistant Minister, what do you do with a law, you yourself, have passed?

Dr. Mwiria: Mr. Speaker, Sir, we will pay the retiree, plus interest.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Order. This is a law that you passed: "That retirees remain on the payroll until the day they are paid."

Dr. Mwiria: Mr. Speaker, Sir, what choice do I have but to obey the law? We shall obey the law.

(Laughter)

Mr. Bifwoli: Mr. Speaker, Sir, the TSC has never obeyed that law. The Assistant Minister is not aware of that, yet he is an hon. Member of this House. What action will he take so as to make TSC pay teachers who have retired?

Mr. Speaker: I should also ask: "What should I do with an hon. Member who breaches the rules of the House like you?"

Mr. Kombe: Mr. Speaker, Sir, before I ask my Question, I would like to point out that most of the time, the media---

Hon. Members: Ask the Question!

Mr. Kombe: Mr. Speaker, Sir, I seek your indulgence to point out that, the media normally-

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Mr. Speaker: Order, Mr. Kombe! What number of Question is the media?

Mr. Kombe: Mr. Speaker, Sir, I seek your indulgence before I ask my Question to make a point. Most of the time, my statements are referred to the former hon. Member for Magarini, Eng. David Noti Kombe. I am Mwalimu Harry Kombe.

Mr. Speaker: Order, hon. Members! I think this afternoon, I have been trying to rectify the problem of being impersonal. You are the hon. Member for Magarini, and the media should refer to

you that way. There can only be one hon. Member for Magarini at one time. There cannot be two. So, there cannot be a mistake in that.

So, hon. Member for Magarini, Proceed!

Question No.217

CRITERIA FOR EMPLOYMENT AT KPA

Mr. Kombe asked the Minister for Transport:-

- (a) Whether he could lay on the Table a list of all permanent, contracted and temporary employees of Kenya Ports Authority;
- (b) what criteria is used to employ workers at Kenya Ports Authority; and,
- (c) what qualifications are required for one to be appointed as a Managing Director of the Kenya Ports Authority.

Mr. Speaker: Where is the Minister for Transport? He is not here. Mr. Michuki, where is the Minister for Transport?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, my colleague is just around the corner but I could fill that docket if need be. **Mr. Speaker:** Would you like to answer that Question?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, on a serious note, I do not have the details of the prepared answer; otherwise, I would have helped out.

Mr. Speaker: The Minister for Transport and his assistant are not here. Mr. Kombe, I am afraid I will have to defer your Question.

Mr. Kombe: Until when, Mr. Speaker?

Mr. Speaker: Until Tuesday. Is that all right?

Mr. Kombe: Yes, Mr. Speaker, Sir. Thank you.

(Question deferred)

Mr. Speaker: Next Question by Mr. Angwenyi!

Question No.107

NON-SUBMISSION OF ACCOUNTS
OF SIMBAUT FARM

Mr. Angwenyi asked the Minister for Co-operative Development and Marketing:-

- (a) whether he was aware that Simbaut Farm belonging to Kisii Farmers Union has never presented its balance sheet and profit and loss accounts to the Union since its purchase in the 1960s;
- (b) whether he could inform the House how much profit or loss this farm has made in the last five years; and,
- (c) whether he could further inform the House how much of the farm's land had been sold in the years 1998, 2000, 2001, 2002, 2003 and 2004.

The Assistant Minister for Co-operative Development and Marketing (Mr. Kenneth): Mr. Speaker, Sir, I beg to reply.

(a) Simbaut Farm is one of the activities of Kisii Farmers Co-operative Union Limited and could, therefore, not have a separate balance sheet as that is reflected in the overall trading of the

Union. The latest balance sheet is as at 2003/2004.

(b) Simbaut Farm activity made a cumulative profit of Kshs5,165,190 in the last five years.

(c) Delegates of the meeting held a meeting on 7th August, 1997 and passed a resolution under Min. No.D21/96/97 to sell 330 acres for the purposes of settling a debt of Kshs33 million owed to the Co-operative Bank.

Mr. Angwenyi: Mr. Speaker, Sir, I am really shocked that a Ministry of the Government cannot do its adequate research to find out that this farm has been divided into parcels and sold to individuals without the consent of the members of that co-operative society. The 330 acres that was sold fetched Kshs68 million but the Assistant Minister is only accounting for Kshs33 million. Could the Assistant Minister tell us where the balance of the amount of that profit is?

Mr. Kenneth: Mr. Speaker, Sir, to start with, the members did indeed first of all pass a resolution to sell 330 acres. The Ministry got information that a lot more properties had been sold and we instituted an inquiry. Arising from the inquiry, we found out what the hon. Member is saying but the matter could not have proceeded because every time we try to take action, a lot of court cases are being filed with many court injunctions. However, also arising from that report, the General Manager of the society was sacked.

Mr. Angwenyi: Mr. Speaker, Sir, I believe that the answers being given by the Assistant Minister are not adequate. As we sit here today, an additional 330 acres has been sold and the entire land has been settled on by those private developers who were sold the land. Could the Assistant Minister table that probe report and undertake a probe to confirm or deny what I have said here?

Mr. Kenneth: Mr. Speaker, Sir, I have no problem. I will table the inquiry report of 1999 and I do hereby table it.

(Mr. Kenneth laid the document on the Table)

I can also assure the hon. Member that after the elections which are scheduled before 30th April, we shall institute another probe to look at what is going on in that society.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. You wanted me to ask one final question but hon. Mwanicha stood up and you looked at him. I thought that you were going to ask him to ask a question. This is a very important matter for the Assistant Minister.

Mr. Speaker: Order, hon. Members! I truly would love to accommodate as many hon. Members as possible on the Questions on the one hand, but on the other hand, the time does not wait for me. We have very few minutes left. I have three Ordinary Questions and about four or five Questions by Private Notice. As I said, we will stick to one hour and that will be it. So, please understand. Mr. Angwenyi, also give your colleagues an opportunity to air their views.

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

Mr. Speaker: You are out of order! Next Question by Mr. Munya!

Mr. Angwenyi: Mr. Speaker, Sir, there is a probe report which came out in February.

Mr. Speaker: Mr. Angwenyi, do not disrupt the proceedings of the House. Could you now relax? Next Question by Mr. Munya!

Question No.236

FUNDS FOR KUNATI IRRIGATION SCHEME

Mr. Munya asked the Minister for Regional Development Authorities why Tana and Athi Rivers Development Authority (TARDA) had not spent the Kshs4 million set aside for Kunati Irrigation Scheme in the 2003/2004 and 2004/2005 financial years to provide water to Kunati farmers.

The Assistant Minister for Regional Development Authorities (Mr. Odoyo): Mr. Speaker, Sir, I beg to reply.

The Kunati Irrigation Scheme is part of a larger Thanatu Valley Irrigation Project. The funds that we allocated were for the larger scheme and not for the smaller Kunati Irrigation Scheme. So far, we had Ksh4 million. We have already spent Kshs500,000 reviewing the design component of the irrigation and I wish to assure the hon. Member that we intend to undertake a comprehensive review once we receive the balance of the Kshs24 million from the Government.

Mr. Munya: Mr. Speaker, Sir, we visited this project with the Managing Director of TARDA and he promised the farmers that this particular money will be spent on starting the Kunati Irrigation Scheme which is part of the larger scheme. Is the Assistant Minister now saying that TARDA is backtracking on its promises that it made to farmers directly? The same promise was also made on the Floor of this House in the last Session.

Mr. Odoyo: Mr. Speaker, Sir, Kunati Irrigation Project was last studied in 1979. This is over 25 years ago. During that period, there have been several changes in this particular project and when the Managing Director of TARDA went and made a promise that we shall use the money for Kunati, further re-examination of the figures showed that the Kshs4 million was totally inadequate and that we required Kshs24 million. That is why we have not yet embarked on the project as earlier promised.

Mr. Abdirahman: Mr. Speaker, Sir, I personally attribute the backtracking of the Ministry from what it had earlier pledged to the people due to lack of sustained funding. They have already raised expectations in many communities in this country. What initiatives are they putting in place in terms of getting sufficient money from the Consolidated Fund and reliable donor funding because much of the proposals that were made two years ago have not yet yielded any results?

Mr. Odoyo: Mr. Speaker, Sir, this is one of the projects that suffered during the ten-year aid freeze by donors. We are doing our best to reactivate many of these projects, including the Bura Irrigation Scheme. We believe we will get reliable donors within the next 12 months.

Mr. Speaker: Last question by the Member of Parliament for Tigania East Constituency!

Mr. Munya: Mr. Speaker, Sir, since the Assistant Minister says that the problem is not having adequate funds and whether we are prepared to spend the balance from CDF money, could he promise now on the Floor of this House that he will disburse the Kshs3.5 million to Kunati Irrigation Scheme, so that it can start operating?

Mr. Odoyo: Mr. Speaker, Sir, yes, indeed, we are encouraging all hon. Members to use the regional authorities to implement their projects. I wish to assure the hon. Member that we have a shortfall of Kshs3.8 million for the project as we discussed with the Tana and Athi Rivers Development Authority (TARDA). Therefore, if the hon. Member is prepared to spend some money from the CDF funds, which I am told is nearly Kshs30 million, he could go ahead and write a cheque to TARDA, and I assure him implementation will start immediately.

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

Mr. Speaker: Order! That is not a point of order. If you are not on a point of order, please, sit down!

Mr. Wanjala: Mr. Speaker, Sir, I had a question because I am also affected by this.

Mr. Speaker: Order! Will you, please, sit down now?

Mr. C. Kilonzo, although the Minister is ready to answer your Question, the time for Ordinary Questions is up. Could I defer your Question to Tuesday, please?

Mr. C. Kilonzo: Mr. Speaker, Sir, we still have five minutes.

Mr. Speaker: It is because we still have Questions by Private Notice.

Mr. C. Kilonzo: Mr. Speaker, Sir, I have no objection.

Mr. Speaker: Thank you very much. I will defer your Question to Tuesday.

*Question No.205*SUPPLY OF FUEL TO KITHIMANI
AND MATUU POLICE STATIONS*(Question deferred)*

Mr. Speaker: Mr. Gachagua, can I seek your indulgence to have your Question answered on Tuesday?

Mr. Gachagua: Mr. Speaker, Sir, I do not think I have a choice.

Mr. Speaker: No, I am seeking your indulgence.

Mr. Gachagua: Mr. Speaker, Sir, it is okay.

Mr. Speaker: Very well. Thank you very much. The Question is also deferred to Tuesday.

Question No.245

VEHICLE ALLOCATION TO POLICE STATIONS

(Question deferred)

Mr. Speaker: We will now move [**Mr. Speaker**] on to Questions by Private Notice. Question by the Member of Parliament for Marakwet West Constituency!

QUESTIONS BY PRIVATE NOTICE

ASSISTANCE TO CHESINGEI PRIMARY SCHOOL

Mr. Sudi: Mr. Speaker, Sir, I beg to ask the Minister for Education, Science and Technology the following Question by Private Notice.

(a) Is the Minister aware that the roofs of five classrooms at Chesingei Primary School, in Chebiemit Division of Marakwet District, were blown off by strong winds during a heavy downpour on 1st April, 2005?

(b) If the answer to "a" is in the affirmative, what is the Ministry doing to assist the affected school whose pupils are currently learning under trees?

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

(a) I am aware that on Friday 1st April, 2005 a strong wind blew off the roof of five classrooms, two toilets and one office of Chesingei Primary School in Marakwet District. It is, however, not true that the pupils are currently learning under trees because they are on vacation.

(b) The Ministry expects the local community, leaders and other stakeholders to meet and deliberate on ways to repair the damaged facilities. At the moment, the Ministry has not put in place any mechanism to meet the cost of rehabilitating damaged school facilities caused by such natural calamities. However, we are in the process of looking for ways and means of addressing this problem as a matter of national concern.

Mr. Sudi: Mr. Speaker, Sir, the answer given by the Assistant Minister is not true. As we all know, 1st April is fools' day. It rained heavily that day and the roofs of five classrooms were blown

off by the wind. The Assistant Minister is lying by saying that---

Mr. Speaker: Order, Mr. Sudi! Could you withdraw that word?

Mr. Sudi: Mr. Speaker, Sir, the Assistant Minister is misleading this House.

Mr. Speaker: Order!

Mr. Sudi: Mr. Speaker, Sir, I withdraw the word "lying."

The Assistant Minister is misleading this House that there are no pupils who are studying there at the moment because we have two streams of Standard Eight pupils undergoing tuition in the school. How will they be catered for now that the roofs of those classrooms have been blown off?

Dr. Mwiria: Mr. Speaker, Sir, most pupils are on holiday and only two streams are on tuition, which is not necessarily an official arrangement. But the point is that they can use the other classrooms. Meanwhile, the hon. Member and the community should look for ways of addressing the issue as the Ministry deals with the problem on a long-term basis.

Mr. Gachagua: Mr. Speaker, Sir, the Question by Mr. Sudi is important in the sense that it affects almost every part of this country. Could the Assistant Minister assure this House that his Ministry has arrangements to respond to crises like this one? It is not enough for him to tell the House that the community should arrange to take care of the situation, because this is an emergency. He should, therefore, assure the House that the Government is capable of responding to situations like these.

Dr. Mwiria: Mr. Speaker, Sir, as you know, the Ministry of Education, Science and Technology is not like God who said: "Let there be light," and there was light. There is a limitation in terms of how much is available by way of resources.

Mr. Gachagua: On a point of order, Mr. Speaker, Sir. That remark by the Assistant Minister is actually offensive. I did not equate the Ministry with God. All I am saying is that, as a Ministry, they should do their work by simply putting in the necessary measures to respond to emergencies. That is all!

Mr. Speaker: Order, hon. Members! Can we put it in its correct perspective? I do not think this House believes any Ministry is anywhere near being God. I think what the House is demanding out of the Assistant Minister is that, in the event of an emergency, there ought to be and should be systems in place to respond to them. These are unforeseen natural calamities. I think that is what the hon. Member is asking. So, could you respond to that naturally?

Dr. Mwiria: Mr. Speaker, Sir, actually the point I was making was that resources are limited. As I answered in part "b" of the Question, we are trying to come up with a long-term solution to deal with these kinds of crises because it is a national problem. So, we are trying our best, but until we do that, communities have to deal with emergencies immediately.

Mr. Wanjala: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House that there is no Ministry that is in charge of emergency, when he knows that the Office of the President deals with other natural disasters apart from famine? The same Ministry has responded sometimes when we have floods in Budalangi Constituency. Could the Assistant Minister liaise with the same Ministry to rehabilitate those kinds of schools instead of misleading the House?

Dr. Mwiria: Mr. Speaker, Sir, I think that is an important point. We should sit together with the Minister in charge of the relevant Ministry in charge of Special Programmes to see where we can collaborate.

Prof. Oniang'o: Mr. Speaker, Sir, the Assistant Minister is answering questions with a lot of cynicism today; belittling his colleagues. If you refer to the HANSARD over the past two years, similar Questions have been asked so many times. Could he tell us when he is going to put in place an emergency fund to go along with free primary education, to make sure that these kinds of calamities are taken care of.

(Applause)

Dr. Mwiria: Mr. Speaker, Sir, I am sorry if I appeared to belittle other hon. Members. We have other resources that are available through the Constituency Development Fund (CDF). Let us use that money as we try our best. I appreciate that we have to do much better than we have done. But it is going to be a question of whether or not we will have the resources voted in the Budget by hon. Members to cater for those emergency situations.

Mr. Billow: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order--- In the Budget, there is over Kshs2 billion voted for civil emergencies and contingencies, which could be used for that kind of thing.

Mr. Speaker: As a matter of interest, how much money have hon. Members put aside for emergencies in the CDF? So, can you all get together and think about that. Mr. Assistant Minister, on what do you use your money for civil contingencies? Do you have a Vote like that in your Ministry?

Dr. Mwiria: No! It is in the Treasury.

Mr. Speaker: If it is in the Treasury, that is okay. Very well! Next Question by the hon. Member for Subukia. Sorry! I have made a mistake again! It is the hon. Member for Mumias.

PRODUCTION OF ELECTRICITY
FROM BAGASSE

Mr. Osundwa: Mr. Speaker, Sir, I beg to ask the Minister for Energy the following Question by Private Notice.

In view of the imminent electric power shortage in the country, what

[Mr. Osundwa]

contingency plans does the Minister have to encourage the seven local sugar factories to produce electricity from waste material such as bagasse?

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

Whereas all sugar companies are being encouraged to generate electric power for their own use and to supply the surplus thereof to the national grid, only Mumias Sugar Company has been able to supply two megawatts surplus for export to the national grid, due to the weak financial status of the other companies. In that regard, Mumias Sugar Company negotiated a power purchase agreement that year, and the same was approved by the Electricity Regulatory Board. However, I am yet to receive a draft licence from the Board for approval and gazette in accordance with the Electric Power Act of 1997. Prior to granting Mumias a generator's licence, it is my hope that with the on-going restructuring of the sugar companies, they will be in a position to generate adequate electricity for their own consumption, and have some surplus for export to the national grid.

Mr. Osundwa: Mr. Speaker, Sir, in his reply, the Assistant Minister says that the Government is encouraging sugar factories to generate electricity for sale. But I want to draw his attention to the purchase price. The Government purchases power from Mumias Sugar Company at Kshs3 per kilowatt hour. It pays Kshs13 to other independent power producers. The difference is Kshs10! Is that encouraging or discouraging?

Mr. Kiunjuri: Mr. Speaker, Sir, we also buy from KenGen at Kshs2.80. It depends on the bargaining power because it is a matter of willing buyer, willing seller. It can be negotiated accordingly.

Mr. Keter: Mr. Speaker, Sir, what plans does the Ministry have to make sure that private

companies that produce power like Mumias, Brooke Bond and James Finlay extend the same to employees and people in the neighbourhood?

Mr. Kiunjuri: Mr. Speaker, Sir, our Ministry cannot enforce that to independent power companies. For example, Mumias Sugar Company falls under the Ministry of Agriculture. We do not know the arrangement that they have. If it was within our domain, we could instruct that.

Mr. Speaker: Last question! The hon. Member for Mumias!

Mr. Osundwa: Mr. Speaker, Sir, I would like the Assistant Minister to inform this House why it has taken more than five months to grant Mumias Sugar Company a licence to generate electricity, noting that the agreement was signed last year.

Mr. Kiunjuri: Mr. Speaker, Sir, let the hon. Member bring the draft today and we shall sign it!

Mr. Speaker: Very well. Could the hon. Member for Subukia ask his Question. There is a correction to the Question. It should read: Waziri wa Utalii na Wanyama wa Pori na siyo "Waziri wa Utalii na Wanyama!"

HAVOC CAUSED BY A WILD
ANIMAL IN NAKURU

Mr. Wamwere: Bw. Spika, naomba kumuuliza Waziri wa Utalii na Wanyama wa Pori Swali Maalum lifuatalo.

(a) Je, Waziri ana habari kwamba kuna mnyama asiyeleweka ambaye amekuwa akiwaua kondoo wa watu katika eneo la Ngacura huko Subukia katika muda wa wiki mbili zilizopita?

(b) Mnyama huyo ni yupi na Serikali inachukua hatua gani kuhakikisha kwamba imemnasa au kumuua ili asiendelee kuangamiza mifugo katika sehemu hiyo?

The Assistant Minister for Tourism and Wildlife (Mr. Khaniri): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware of the incidences where the residents of Ngacura in Subukia have lost about 17 goats and sheep to a predator not known to them. The report was given to the Kenya Wildlife Service (KWS) warden in Nakuru. He sent rangers to investigate and attend to the problem.

(b) It has since been established that the animal terrorizing the community is a leopard. KWS rangers have been sent to trap the animal and translocate it to Lake Nakuru National Park. So far, it has not been seen.

Mr. Wamwere: Bw. Spika, Waziri Msaidizi amekiri kwamba kiumbe hicho hakijaonekana. Watu pia hawajaona nyayo zake. Kiumbe hicho kinaua mifugo mbali sana na msitu. Kinafanya hivyo katikati ya kijiji. Kilipowekewa mtego, kilihepa. Je, Waziri Msaidizi aliamuaje kwamba kiumbe hicho ni chui, na wala siyo binadamu au kiumbe kingine kutoka sayari nyingine?

Mr. Khaniri: Mr. Speaker, Sir, I do not know whether the hon. Member is insinuating that there is a devil or a ghost in his constituency. But I would like to assure the hon. Member that we have, indeed, established that it is a leopard after doing a head count at the Lake Nakuru National Park.

Mr. Cheboi: On a point of order, Mr. Speaker, Sir. Could the Assistant Minister appeal for help to trap the leopard?

Mr. Speaker: Order!

(Laughter)

Mr. Mwandawiro: Bw. Spika, Maswali kuhusu wanyama wa pori kuvamia maeneo ya watu, kufanya madhara na hata kusababisha vifo, yameulizwa kwa muda mrefu sana. Hivi

ninavyozungumza, ndovu wamesababisha hasara kubwa na njaa katika sehemu yangu ya Wundanyi. Hata simba wanaua watu. Je, kwa vile Wizara imeshindwa kusuluhisha tatizo hilo, tuwaruhusu wananchi wafanye hivyo kwa kuwaua wanyama wa pori?

Mr. Khaniri: Mr. Speaker, Sir, I really sympathise with the situation that the hon. Member is raising. But what he is suggesting is against the law. It is illegal, and if he attempts to do that, he will face the full wrath of the law.

Mr. Wamwere: Bw. Spika, nilishangaa, wakati nilisema kwamba kiumbe hiki kinaweza kuwa binadamu au kiumbe kingine kutoka sayari nyingine, Waziri Msaidizi aliuliza kama nilikuwa ninataka kusema kwamba huyu ni shetani au pepo. Sijui kama anaelewa Kiswahili vizuri. Kwa vile Waziri Msaidizi amekiri kwamba chui huyo ni wao, je, Wizara itamlipa ridhaa mkulima ambaye mifugo wake 17 waliuliwa na chui huyo?

Mr. Khaniri: Mr. Speaker, Sir, unfortunately, the answer is no. The hon. Member knows very well that in 1989, the Wildlife (Conservation and Management) Act, Cap. 376, was amended through Bill No.16, which, among other things officially outlawed compensation for crops, livestock and related man-made farm infrastructure. So, we cannot compensate that farmer.

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

COMMUNICATION FROM THE CHAIR

DEFERMENT OF QUESTIONS

Mr. Speaker: I am sorry, time is up! I have gone 10 minutes past Question Time. I will defer Questions by Private Notice by the hon. Member for Makadara and the hon. Member for Aldai to Tuesday next week. Until further notice, we will begin with Questions by Private Notice because they are supposed to be urgent by nature. So, every hon. Member should take note of that. Ministers as well as Back-benchers, the procedure is now reversed to make it sensible. We will begin with the urgent Questions and end with non-urgent Questions. So, from Tuesday next week, we shall begin with Questions by Private Notice. The two remaining Questions by Private Notice are deferred to Tuesday next week!

DEMOLITION OF HOUSES IN BALOZI ESTATE, NAIROBI

(Mr. Ndolo) to ask the Minister for Labour and Human Resource Development:-

- (a) Could the Minister inform the House the criteria of evicting and demolishing houses in Balози Estate, South B, Nairobi, on 1st March, 2005?
- (b) Is the Minister aware that the affected households were not given notice to vacate the area?
- (c) Who owns the disputed 52-acre piece of land?
- (d) Could the Minister consider compensating the people whose houses were demolished?

(Question deferred)

CAUSE OF STRIKE BY MAGISTRATES

(Mr. Choge) to ask the Minister for Justice and Constitutional Affairs:-

- (a) What was the cause of the recent strike by magistrates?
- (b) How many magistrates were suspended/interdicted or sacked?
- (c) What measures have been taken to remedy the situation which is adversely affecting the administration of justice in the country?

(Question deferred)

Mr. Speaker: I have several hon. Members who want to raise some issues. I will begin with Mr. Musyoka and then go to Mr. Angwenyi. After that I will go to Dr. Machage, and lastly, the Minister of State, Office of the President in charge of Internal Security.

Yes, Mr. Musyoka!

POINTS OF ORDER

MISREPORTING OF HOUSE BUSINESS COMMITTEE PROCEEDINGS BY THE PRESS

The Minister for Environment and Natural Resources (Mr. Musyoka): On a point of order, Mr. Speaker, Sir. I have always held a view, in accordance with our Standing Orders, that the House Business Committee is a Committee of this House. Therefore, I was surprised to read from the media proceedings regarding the last meeting of the House Business Committee where, Mr. Speaker, you were misquoted and, in fact, distorted. Your comments have absolutely no bearing with what you said in that Committee. I am just wondering whether this trend should be allowed to continue. I am alleged to have been replaced by Mr. Kajwang. Any careful study of the list will clearly make it apparent that Mr. Kajwang and I were Members of the Committee. Therefore, there is no way Mr. Kajwang would have replaced me. In any event, that is still business pending before the House. Therefore, I thought that I should bring this matter to the attention of the Chair and the House.

(Applause)

Mr. Speaker: Mr. Angwenyi, is your point of order related to what Mr. Musyoka has said?

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. In the last few months, the media, especially *The East African Standard* and the KTN have increasingly made reportage on false and malicious grounds. I will give some examples.

First, on 2nd October, 2004, *The East African Standard* reported that 40 hon. Members were too sick to be accepted for a medical cover. They never substantiated that report although it was malicious against the hon. Members of Parliament and the Parliamentary Service Commission (PSC).

Secondly, on 15th April, 2005, *The East African Standard* reported again that the Parliamentary Select Committee investigating the death of the late Ndilinge, in which I serve, had written a report recommending for a former Minister and a senior police officer to be investigated further with regard to the murder of the late Ndilinge. We have not yet compiled our report as I stand here today. So, that reportage was false and properly malicious against that Committee.

On 20th of this month, which was yesterday evening, at the 9.00 p.m. news bulletin, the

KTN reported a matter which has been referred to by an hon. Minister. They showed Mr. Nyachae limping on a stick the day he was going abroad when he was sick. They were rejoicing on the illness of a Member of Parliament and a citizen of this country. They said that he had been elected the Chairman of the Parliamentary Select Committee on the Constitutional Review. As I know, this House has not approved such a chairmanship. I have also been told that the House Business Committee has not appointed the Chairman of that Select Committee. In fact, the Committee is not yet in place.

To make matters worse, *The East African Standard* reported today that the Speaker cajoled hon. Members of the House Business Committee to select the Chairman, which I understand is false and malicious. I wonder whether the time has not come for this House to demand that the Media Council deposits their professional code of conduct with this House so that if the reporters contravene it, we know the sanctions we will take against them. This House should also demand responsible and professional journalism from the members of the Press to promote freedom of speech and information in this country.

I will not urge this House to levy any restriction on our Press, but we must demand professional and responsible journalism.

(Applause)

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs
(Prof. Kibwana): On a point of order, Mr. Speaker, Sir. I also have an additional issue to raise---

COMMUNICATION FROM THE CHAIR

WARNING TO PRESS OVER MISREPORTING OF HOUSE MATTERS

Mr. Speaker: Order, Prof. Kibwana! You should not freelance!

(Laughter)

Order, hon. Members.

In fact, the matter which has been raised by the Minister for Environment and Natural Resources and the hon. Member for Kitutu Chache is grave. This matter has been raised in the past and I have had the opportunity to address the Press on it. Unfortunately, when I make a statement from this Chair in respect to inaccurate reporting by the Press, they exercise their power of monopoly of the Press not to report a reprimand by this House or by the Chair.

That notwithstanding, let me say that the Press, and particularly, *The East African Standard*, must understand that it is at liberty to cruise at full speed to the gutter. However, it has absolutely no right to drag the House along that course. It must go it alone and leave this House. This is a serious warning from the Chair to all the Press, and particularly to *The East African Standard*, to stop misreporting matters of this House. Standing Order No.161 is absolutely clear. It says: "A matter before the House cannot be raised to any other person or organisation except to a Member of the House." The Press has been using unorthodox means to misinform the public in the hope of raising their sales. May I state from the Chair that this House will not be used as an instrument of increasing sales of any newspaper.

(Applause)

That must sink in! Time has come for this House to deal with that particular Media House. For the time being, they should be warned! If it does not listen, we will have to make it listen.

Yes, Mr. Musyoka!

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Speaker, Sir, while appreciating that ruling, what would you say with regard to hon. Members who should know the Standing Orders, and particularly the orders that govern conduct of business between the House Committees? Although we may be pouring vitriol on one particular newspaper, I am sure it got this information from hon. Members of the House Business Committee. I am not, in any way, trying to defend The *East African Standard* Newspaper, but it is also important for hon. Members to get a similar warning from the Chair.

Mr. Speaker: In fact, a bigger warning! To those hon. Members who misinform, because that is what they do; shame unto you! Shame unto those hon. Members who misinform the media because they do not tell the truth. I do not know what they get, whether they seek a little payment or favours to be reported favourably. Whatever they go out to do in that regard, it is cheap. It is below the dignity of an hon. Member. Should this House find out who that is, I would encourage the House, very gladly, not only to name the hon. Member but to strip him of the title of honourable.

The Minister for Energy (Mr. Nyachae): Thank you very much, Mr. Speaker, Sir, for giving me this opportunity to make two points. First, there is need for clarification. The Press is given an opportunity when we are seated here. It should stop hunting for what goes on in Committees. We go into Committees because we do not want any accessibility by the public or anybody else. However, we bring everything we do in the Committees here and the Press should wait for it here.

Secondly, since you have given me this privilege, I just want to tell the Press, especially the people who aired that clip of me limping when I was going for my operation, that I wish them the very best of luck to also limp one day until they see what it means.

(Laughter)

Mr. Speaker: Order, hon. Members! We will leave it at that! We have had enough of that. Once I have made the communication on behalf of the House, it is enough. That is over now! Let us wait for a further incident, if it ever occurs. For the time being, that chapter is closed.

Dr. Machage, you had a Ministerial Statement to make. How long is it?

The Assistant Minister, Office of the President (Dr. Machage): It is very short, Mr. Speaker, Sir.

Mr. Speaker: All right then!

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, the word "short" is relative.

(Laughter)

Mr. Speaker: Order, Dr. Machage! An hon. Member shall always be truthful to the Chair. How long or short is your Ministerial Statement?

The Assistant Minister, Office of the President (Dr. Machage): About four pages, Mr. Speaker, Sir.

Mr. Speaker: I will give you a chance on Tuesday next week. I will finish with the Minister of State, Office of the President in charge of internal security.

(Loud consultations)

Order, hon. Members! Shall we hear the Minister?

MINISTERIAL STATEMENT

NATIONAL DISARMAMENT OF ILLEGAL FIREARMS

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, this is a Ministerial Statement on the national disarmament exercise relating to illegal firearms.

With your permission and the indulgence of the House, I wish to beg leave to issue a Ministerial Statement on a critical national security exercise about which this House, and the country as a whole, need to be informed.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Just last week, the Deputy Speaker had to give this House authority to adjourn its business because of insecurity. I am now giving the Minister in charge of internal security an opportunity at his request to brief you about security or insecurity and the steps he wishes to take. It is only fair and logical that you listen to him.

Proceed, Mr. Minister!

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, since the beginning of the Fourth Session of the Ninth Parliament, several hon. Members and, indeed, many citizens, have expressed anxiety over the level of insecurity and, particularly, on the use of illegal firearms in many criminal activities. Subsequent to this concern, the Government intends to embark on a nationwide disarmament exercise to mop up illicit firearms across the country.

This exercise will start with the immediate disarmament of the Pokot community who have repeatedly used these illegal arms against their neighbours; the Turkana, the Marakwet and residents of Samburu and Trans Nzoia districts.

(Mr. Wanjala stood up in his place)

Mr. Speaker: Order! Sit down and listen!

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, I am on a point of order.

Mr. Speaker: Yes, proceed!

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, the Pokots have demonstrated reluctance to co-exist peacefully with their neighbours, and their propensity to use firearms has compromised the safety and security of the residents of the affected areas.

The Government will also simultaneously disarm all other communities in Samburu, Marakwet, Turkana and Trans Nzoia districts. There will also be an exercise in the Rift Valley, North Eastern and Eastern provinces and any other parts of the country where individuals own illicit arms. The exercise will be equally undertaken in all urban centres with Nairobi as the main focus.

Indeed, the Nairobi exercise started last night and many hon. Members would have noticed that there was news regarding the Commissioner of Police meeting all police chiefs in the whole of Nairobi. So far, in the last ten days, we have recovered 12 guns, including the big ones.

As we embark on this exercise, I wish to count on the support of this House and Kenyans in general, if we are to restore security in our homes, streets, villages and towns. I wish to appeal to all leaders in this country, irrespective of their status, not to incite *wananchi* into violence. I also want to add that, when it is proved to be the case, no one will be spared irrespective of his status in life. We will put him inside the cells.

Mr. Speaker, Sir, I wish to assure the House and the country at large that any such action will be met with the full force of the law. In my recent meeting with the Provincial Administration officials, I specifically instructed them to be vigilant on security and that this would be a benchmark in assessing their performance. At the same time, as soon as this can be put in place, all Provincial Commissioners, District Commissioners, District Officers, Chiefs and Assistant Chiefs will be expected to hold two *barazas* every month. That will mean that they will hold slightly over 19,000 *barazas* in a year.

In the last week of March, 2005, my Assistant Minister issued a Ministerial Statement on the Floor of the House, on the state of insecurity in the country. He was categorical that the Government will not relent in its fight against criminals by all means. When he clarified that I did not issue an order to shoot to kill, the Press reported that I had withdrawn the resolve to fight criminals in this country. The electronic script of my speech at the Nairobi Country Bus Station function is available, and anyone who wants to see it can get it. I did not use the words: "Shoot to kill". Those words were created and they were an interpretation of other people. So, I never withdrew anything that I said. It is the Press which withdrew what they thought I had said.

Mr. Speaker, Sir, as I have stated before, the Government will not relent in its vicious fight against criminals. I wish to re-state this position. Criminals in possession of illegal firearms must surrender them or the Government will use all its machinery with equal and ruthless force as far as it is permitted by the law to restore law and order in the country. As I go to Uganda tomorrow, I will meet my counterpart in order to co-ordinate the disarmament within the Pokot and Turkana areas, and all those people who border our country.

In conclusion, I wish to state as follows: It is a mammoth task that has been entrusted on me. I cannot do it alone. I need the support of every hon. Member. I will come here to seek your authority and legislation to empower those who live in the grassroots to be able to prevent crime because it is ruining the economy of this country. The reputation of Kenya is at stake and it is you and those who follow you that will restore that credibility.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well. Where is the Shadow Minister for Security? Because I want to finish this, I will then go to Mr. Kamama and Mr. Haji.

(Loud consultations)

Sorry. We will not make it a debate.

Maj-Gen. Nkaijerry: Mr. Speaker, Sir, national security is a non-partisan issue. I stand here to support the Minister fully. I would like the Minister to note that citizens should not be criminalised. A community should not be criminalised. When we disarm people who have got arms in the whole country, we should start with urban crime. Before the Government disarms the communities around the international border, its first cardinal responsibility should be to secure its citizens.

Before you disarm the Pokot, the Ugandan Government must disarm the Karamajong. It will be a futile exercise if our people are exposed to attack from their enemies. Once the Karamajong know that the Pokot have been disarmed, they will come for their animals. Similarly, if the Turkana know that the Pokot have been disarmed, then they will attack the Pokot. So, this should be a simultaneous exercise if we are to succeed. The best way to do this is to get the Ugandans to put their plan in place and also put our plan in place. We should then move swiftly to disarm all the communities at once, including the Merile of Ethiopia. You cannot disarm the Turkana if you do not disarm the Merile. You cannot disarm the Turkana if you cannot disarm the Toposa. We have to look at this issue critically so that we do not expose our people to insecurity. So, it is very important that we plan together. We do not have to go and help them.

Mr. Speaker, Sir, finally, the Minister should get the intelligence information with regard to how many arms are in Kenya. If you disarm the Pokot tomorrow, how many arms do the Samburu, Marakwet, Turkana and the people of Trans Nzoia have?

With those few remarks, I support the Minister.

Mr. Kamama: Thank you, Mr. Speaker, Sir, for giving me this chance. First, I am not against disarmament. I am saddened by the fact that the Pokot community has been singled out as the most notorious in this country by my good friend, Mr. Michuki.

Yesterday, I had a two-hour talk with *Kiss FM* radio station on this same subject and I praised the Minister. There are four salient issues that must be addressed. First is the source of these arms. If you disarm without addressing the source, these people will buy them again, whether you like it or not. That brings us to the idea that Kenyans, especially the Turkana and the Pokot, border very dangerous communities. These are the Tepes in Uganda, the Dodot, the Karamajong, the Jie, the Toposa and Dong'iro's on the northern side. If you cannot address those issues then you will be doing nothing. I would like the Minister to have a meeting with hon. Members from the North Rift, so that they can advise him.

Lastly, the operation must start simultaneously. All the tribes and leaders must be involved. This should not just involve the Pokots, because we are going to demonstrate and cause problems.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order! Order, Mr. Kamama! I do not require an army to disarm you. I will begin by disarming your mouth.

(Laughter)

I will not allow you to use the Floor of this House to issue threats. Could you withdraw that threat immediately?

Mr. Kamama: Mr. Speaker, Sir, I withdraw and apologise because I believe in peace.

Thank you very much.

Mr. Speaker: Hon. Members, I will have Mr. M.Y. Haji and Capt. Nakitare to comment on the matter and then the Minister will respond.

Mr. M.Y. Haji: Thank you very much, Mr. Speaker, Sir. I wholeheartedly support the Minister in his efforts. However, I would like to say that this is a bitter pill, which the current Government should be willing to swallow, because it is them who have been campaigning all through to humiliate administrators, both District Commissioners and Provincial Commissioners, to a point that they are not able to do their job today. Even the media, including the Kenya Broadcasting Corporation (KBC), covers the wrangles in the NARC Government instead of covering the DCs and PCs, who are development conscious and who are very effective in fighting insecurity in this country.

Secondly, it will be ironically wrong to disarm one community, because you are going to open a Pandora's box. The Kenyan Pokot who the Government intends to disarm, are very close to Uganda. The Pokot on the Ugandan side are also armed. They are going to use the same firearms against their neighbours. So, I would suggest that the Minister calls these people together, discusses with them and finds the best modality of disarming the people.

Thirdly, the Minister should make a clarification, because there are people who hold firearms legally and others who hold firearms illegally. Which of them is he going to disarm?

Mr. Speaker: Capt. Nakitare is the last one and then I will ask the Minister to respond.

Hon. Members: No! Let us get some more views!

Mr. Speaker: Order! Order, hon. Members! We are not in debate. The Minister issued a Ministerial Statement. You are seeking clarifications and I am doing the best I can to let you give suggestions. However, you must understand that I am bound to follow the law. The law does not allow me to make this a debate. So, I will try to be as tolerant as I can. I understand the gravity of the matter. The country must understand the gravity of this matter. This House must also appreciate the gravity of this matter. Also, I very well understand the dilemma in which the Minister is in. So, can we approach this matter in a very sober mood?

Any hon. Member speaking is ordered by the Chair to approach this matter with absolute moderation. I will not allow any hon. Member to use the Floor of this House to make the situation worse than it has been.

So, proceed, Capt. Nakitare!

Capt. Nakitare: Thank you, Mr. Speaker, Sir. This is a national issue and we are going to approach it with humility as leaders of this country.

I stand to support the Minister for disarming the nationals of this country who possess illegal firearms. I listened to Maj-Gen. Nkaissery with intent to understand the principles of the defence of a country. We have an internal security Minister. We do not have a Minister for defence. That is why we have the critical point of guarding our borders.

Mr. Speaker, Sir, let me come back to what happened. We do not have and we do not intend to have warlords as hon. Members of Parliament. I speak with a lot of humility when I hear hon. Members of Parliament heckling each other when we are talking about the lives of people in Kenya. I lost lives last night, immediately the President of this country stepped into Trans Nzoia. I feel humbled to have this issue discussed. The Sebei who occupy a forest in Mt. Elgon are an issue. The Ugandan authorities are disarming their people. They have been asking: "Why should Kenya also not reciprocate?" Now Kenya is now doing it, and Kenyans want Uganda to do it. I know that Mr. Museveni is doing it.

The question here is, we are all craving for peace and we are not mincing our words. When we say we want to disarm the people, let the people surrender their firearms themselves. There should be a grace period to be given, so that they can voluntarily surrender their firearms. If they refuse, the law should then take its course.

Mr. Speaker: Good suggestion, now!

Capt. Nakitare: Mr. Speaker, Sir, I feel it is important for me to raise the issue of the lives that have been lost in Trans Nzoia District. The people of Trans Nzoia District are not cattle rustlers. We have lost all our livestock and lives of people.

Mr. Speaker: Order! Order! I think I have been generous enough. I hope the Minister has heard. I now give him the opportunity to respond.

(Loud consultations)

Order! Order! I do not think we are going to do all this. What I will also encourage from the Chair, because I notice there are many hon. Members who are concerned about this operation because their constituents are going to be affected, it is better the Minister holds a meeting with all likely to be affected hon. Members, so that they can give you their suggestions on the best way forward.

Mr. Michuki, would you like to respond?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, I would like to thank the hon. Members who have expressed their opinion on this matter. Indeed, I expected that they would, because it is a very serious matter. It is a national problem. I mentioned the need to co-ordinate this matter mainly with Uganda because of where we want to start from. Therefore, I welcome the words of encouragement for me to move forward in that direction from one of the hon. Members who spoke here.

Yesterday, I was in touch with the Minister for Defence in Uganda and I think it is erroneous to say that defence matters are not being attended to. When there is need to do so, I deal with defence also. The question of disarmament is going to be co-ordinated. I welcome a remark made here. It would be the saddest day that we shall have leaders turn themselves into warlords, to speak on behalf of their people irrespective of the transgression they may have committed. That is not leadership.

Mr. Speaker, Sir, I think that in certain areas, there may be no chiefs or assistant chiefs. We may have to remove all of them if they are there, because we know that no cattle rustling will take place in any location without them knowing. Some people in the Civil Service have not been loyal to what they promised to do. Maybe, they have been prevailed upon by some leaders. We are not discriminating against the Pokot. But as of now, there are three tribes which the Pokot have attacked. They have done so in Baringo, Kapsara and in another area.

An hon. Member: In Kwanza!

The Minister of State, Office of the President (Mr. Michuki): The leaders from those areas know where they have attacked. So, we are not discriminating against anyone. If the Pokot do not want the Government to direct its attention to them, let them restrain themselves from attracting the attention of the Government.

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

Mr. Speaker: Order! Will you sit down, Mr. Mwandawiro?

The Minister of State, Office of the President (Mr. Michuki): I am on a point of order.

Mr. Speaker, Sir, I am saying that we shall go into this exercise without discrimination or favouritism. We will do it professionally with the police who will be covered by our armed forces. The armed forces will not take part, but they will be there to ensure that the police, as a civil authority, are carrying out their duty. Please, support this exercise.

(Applause)

Mr. Speaker, Sir, I want to plead with Members. I think this is the time for Members to show their leadership qualities, given that most of other economic and social activities depend on the state of security in the country.

Mr. Speaker: Very well. That is the end of the story.

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

Mr. Speaker: Order! Hon. Members, I understand this is a sensitive issue. We have already told the Minister what the Chair thinks about it. I will ask hon. Members--- In the event of the implementation of what the Minister said, you will be required to meet with him; I will be in a

position to arrange for a *Kamukunji* on your behalf to have him

[**Mr. Speaker**]

before you to explain how the process is going on and for you to explain to him any problems that you have encountered along the way.

The Minister of State, Office of the President (Mr. Michuki): Thank you, Mr. Speaker, Sir. I had somehow inadvertently forgotten that point. I welcome your suggestion. I am ready to meet the Members at any time. I have said to the Members that as long as they make an appointment, because I do not want them to parade outside my office, I am willing to meet them any time.

(Applause)

MOTION

ADOPTION OF REPORT ON APPOINTMENT OF DR. J.K ROTICH AS KACC DEPUTY DIRECTOR

THAT, this House adopts the Report of the Departmental Committee on Administration of Justice and Legal Affairs on the appointment of Dr. J.K Rotich as Deputy Director of Kenya Anti-Corruption Commission laid on the Table of the House on 22nd March, 2005.

(Mr. Muite on 20.4.2005)

*(Resumption of Debate
interrupted on 20.4.2005)*

Mr. Speaker: Prof. Kibwana, you have 25 minutes of your time left.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Thank you, Mr. Speaker, Sir. First of all, I wanted to draw the Chair's attention to the fact that I have also been removed from the Parliamentary Select Committee on the Constitutional Review, but I am not complaining.

However, just to continue on my contribution, I had indicated in the opening minutes of my contribution that as far the President's action is concerned, when he rejected Dr. Rotich's name, the relevant law is very clear. That law says after the advisory board has sent names forward to Parliament and the Parliamentary Committee has vetted those names, and the full House has voted on them, it is very clear that the relevant law says the President "shall" appoint. We know that in law, that language is mandatory and does not allow any discretion. So, I am in agreement with hon. Muite and hon. Muturi, who had spoken before me. I am happy because both of them are lawyers and they tried to lead this House in an appropriate manner.

Mr. Speaker, Sir, I had also indicated that I had some information which had revealed that Dr. Rotich could have engaged in matters that made him unsuitable. But even if that were so, and even if the President acted on that information, he may be morally right, but he is not legally right.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

There is a distinction that the law must be followed by all citizens of this country, even if the moral road is different.

Mr. Deputy Speaker, Sir, the President's legal option was to appoint Dr. Rotich and then, if he felt that Dr. Rotich was not deserving because of moral reasons, then the President would appoint a tribunal to examine Dr. Rotich after appointment. Of course, if that route is followed, the question would arise. Did Dr. Rotich do what is supposed to be negative after he was appointed? How come Parliament did not find out about the matters that are said to be offending in terms of Dr. Rotich's credentials? Could Dr. Rotich be removed on his own, or was the entire Commission to be targeted? I think those are important questions that a tribunal could deal with in this matter so that there is no blame in as far as the President is concerned.

Mr. Deputy Speaker, Sir, one must credit President Kibaki this far because in the two years and three months of his Presidency, there has not been another lapse where the President did not follow the law of the land. We know that on the African Continent, and indeed, in the entire Third World, Presidents break the law with relish. This is why I think the Departmental Committee on Administration of Justice and Legal Affairs wants to protect the President so that he does not depart from the rule of law in this one instance. This matter might appear to be a small one in terms of our legal history; the matter of something that cannot be done within the law being ostensibly done by the President.

But I think what Parliament is saying is that if there has been a record of following the law in these two years and three months of NARC administration, that record should be kept unbroken. I believe that the legal advice that was given to the President on this matter, as has been stated before, is faulty. Therefore, it is necessary to correct it so that the President returns to the legal way of dealing with this matter to avoid an unnecessary conflict with Parliament.

Mr. Deputy Speaker, Sir, what comes out clearly in NARC's manifesto, is the fact that the NARC Government intends to follow the rule of law. The reason why this fact was emphasised is that the Moi regime, which we took so many years to challenge and fight, abused the law. That regime infringed on the rule of law and Kenyans decided that they did not want to be led in that particular manner any more.

If the NARC Government has really committed itself to the rule of law, it is important then that we do not get ourselves on a slippery slope and begin again to abuse the law by doing things outside its ambit. In the transition from personal authoritarianism to a democracy, the rule of law is a major plank of that exercise. Therefore, if we de-emphasise the rule of law in this instance, then we shall also be compromising the transition itself. For those who have studied jurisprudence; that is, the science of law, there is one school of law called legal positivism. It states that when a law is passed by Parliament or any other body with authority, that law governs the country and it has to be obeyed simply because it is the law. That is why most people, and particularly hon. Members of Parliament, think that it is safer for us to follow the law. We are blessed to have many hon. Members who are lawyers. Parliament needs to insist that the laws we pass in this House must be obeyed. If those laws are not obeyed, then the integrity of Parliament will be called to question.

Mr. Deputy Speaker, Sir, when this Government said that Ministers who were accused of being corrupt in the Anglo Leasing and Finance Company Ltd scandal and related issues could not be taken to court, we could not proceed against those Ministers in any way. The Government argued that there was no adequate information to take them to court. If that is the case, then we must also ask ourselves this question: Before Dr. Rotich was denied a job which Parliament had legally given to him, and thereby showing its commitment, was there any legal process that was followed to bring to the fore information which was relied upon in denying him the job? It has to be clear that there is

no witch-hunting. Dr. Rotich has a right to be treated the same way as others.

Mr. Deputy Speaker, Sir, the doctrine of natural justice is very important in democratic States which subscribe to the rule of law. We cannot find somebody guilty before we offer them a chance to defend themselves. For me, the issue is not whether Dr. Rotich was corrupt or whether he did all those things he was accused of having done, rather he must get an opportunity to defend himself so that a decision can be made later following the law. It should be lawfully determined whether he is guilty or not. In law, we are actually very careful in subjecting people to due process so that even if many guilty people escape justice, it is better than one innocent person being found guilty.

Mr. Deputy Speaker, Sir, in terms of jurisprudence or the process of vetting, Parliament or any other lawful body is supposed to vet nominees before it appoints them. There are normally two tiers in the vetting process; that is, the level at which names are proposed and that at which appointment is done. For example, if you examine the Bomas Draft Constitution, you will find provisions where the President is allowed to propose names and Parliament will be required to subject the names to a voting process. Jurisprudence demands that nobody should appoint senior people on his own. So, the Draft Constitution provides for two tiers of vetting; that is, the President and Parliament.

With regard to the Kenya Anti-Corruption Commission, we have an Advisory Board which takes matters to Parliament which then, through the relevant Departmental Committee and the voting process in the House, supplies the name. Therefore, the President merely appoints a person after the two tiers have done their part. In that regard, the President is not a third tier. It is important, therefore, to note that, all over the world, there are two tiers in the vetting process. There is no way we can have a third tier. That is why our law does not provide for a third tier in terms of presidential discretion.

We know that the Kenya Anti-Corruption Commission (KACC) will one day target the Executive. It could be the President or even the Prime Minister - if we shall have one in the future. By targeting the Executive, the Commission will be in a position to know whether accusations of corruption against the Executive are true or not. That is why I believe that the law in question did not want the Executive to be part of the appointing authority. That way, the Commission can exercise its proper discretion. We know that if KACC becomes a creature of the Executive, then it will be scared to offend members of the Executive. We know the history of the Kenya Anti-Corruption Authority (KACA). It was initially appointed without the basis of any law. In fact, it was appointed only administratively. We know how it was impotent in dealing with corruption in the country.

The reason why we must make the vetting procedure correct in its infancy stages is because it is only now that we are beginning to experiment with it. We have to get it right because it is going to be a very important component of the Draft Constitution which has provision for a lot of vetting. If we make elementary mistakes right away, we shall compromise the entire system of vetting. We need to be careful now so that we can get the procedure right at the initial stages.

Mr. Deputy Speaker, Sir, we need to consider several matters, so that we can strengthen the vetting procedure under the law that we are discussing. What is the source of information of any vetting committee? It should not act in ignorance and without relevant information. It is possible that relevant information about Dr. Rotich did not filter to the Advisory Committee as well as to Parliament. Therefore, it will be important that in the procedures that we are establishing, we make sure that any vetting committee has relevant information, so that when it acts, it is not easy for it to eschew important information and, therefore, make decisions which are found to be morally incorrect, even if they are legally correct. Secondly, in terms of the law, if the law will have to be

changed, it is important to make sure that there is a public inquiry, so that people who are being vetted appear before a Parliamentary Committee whereby the media and the members of the public are involved, so that anybody who has information which pinpoints that somebody is not suitable, that information comes to the public realm and it is used to disqualify such persons. We should not get into a situation where subsequently some information comes later after the process.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, as we know, corruption is an important issue in this country. Recently, we have seen donors shrinking from offering appropriate support to our country because of the argument that we have not looked into this issue as well as we should. I do not believe that any corruption that exists now is more than the corruption that existed under the KANU regime. We must make sure that corruption is not an issue that stops our development partners from working with us and bleeds our country, so that our economy becomes weak. If, therefore, the issue of corruption is that central, whatever we do in response to it must be done in the context of the law, including our treatment of this instant case of Dr. Rotich. Corruption is best handled within a legal framework, so that nobody can say that there has been witch-hunting.

It is also a fact that when you examine the incoming Constitution, namely, the Bomas Draft, when it will be finalised, the Anti-Corruption Commission is very fortified. In actual fact, it will be very robust, independent and it will be able even to prosecute people. It will not have to refer cases to the Attorney-General. However, because that is where the country wants to go, it is important that even in the present context of the Anti-Corruption Commission, we should begin to do matters as the new Commission which we anticipate is supposed to operate. So, we should strengthen the existing one before we get the more robust one vis-as-vis the new Constitution where it is clearly an independent entity.

Mr. Temporary Deputy Speaker, Sir, I was very disappointed when hon. Githae yesterday spoke as if to shut me up or to intimidate me in my contribution. Hon. Muite, hon. Muturi, myself and other hon. Members, who are in this Government who pinpoint problems that we should avoid are not enemies of the Government.

Mr. Keter: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Prof. Kibwana to read a speech to us? He is reading from a text.

The Temporary Deputy Speaker (Mr. Khamasi): Prof. Kibwana, if you are reading a speech, that is against our rules. If you are referring to your notes, that is allowed.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Temporary Deputy Speaker, Sir, I would like to show the hon. Member my notes later, if he would like to have a look at them.

The point that I was making is that hon. Members like hon. Muite, myself and others who pinpoint the problems which we must avoid, so that this Government is more robust are not enemies of the Government. They are the people who want to protect this Government and our society. Those who advise the President, so that he does not make decisions consonant with the existing law are the people that we must focus on to convince them that it is important to secure the Presidency and the President by advising him, so that what is done is done within the law. This is why I precluded my remarks by saying that if this is the one occasion in two-and-a-half years that the President has not done something according to the law because he was not properly told, we must

correct it. This means that this is an exceptional President in Africa who for two-and-a-half years has not broken the law as many Presidents do in Africa and the Third World.

Mr. Temporary Deputy Speaker, Sir, contrary to newspaper reports, it was not hon. Ngilu who was removed from the Parliamentary Select Committee on Constitution Review, but it was myself. I am making this point to say that if we do not appear to be supporting a position that is popular within the Government, we need not be victimised for that. What we are really doing is to make sure that the Government follows the law and it is stronger. I have no hard feelings about being removed from the Parliamentary Select Committee on Constitution Review. I have worked on the Constitution for a long time and I will not plead to be returned to the Parliamentary Select Committee on the Constitution, as some colleagues may plead. If I participate in the Third Progressive Force or I say no to corruption and some people are uncomfortable, then I am just unfortunate because that is my complexion. I have taught law for 25 years and studied law for nine-and-a-half years. Therefore, I am a servant and a slave of the law. If my President does not follow the law, I have no option, but to say so, because that is the best defence that I must offer to the President and the Government.

Some people have said that because hon. Ngilu and myself do not appear to be supporting the Government, people from our area will not be appointed to various Government positions. I do not believe that, that is so. I believe that, that is cheap politics. Appointments must reflect the face of Kenyan merit and those who are saying so are not correct. The right thing for our President to do is to appoint Dr. Rotich and after appointing him, if there is evidence that he has done wrong, that should be corrected. Our Constitution should come soon. I am so disappointed that we are being told to go back to the Chiefs Act and make chiefs very strong. I do not think that, that will help us in terms of the rule of law and governance. However, that is something that we shall discuss another day.

Capt. Nakitare: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to raise matters which are outside the Question on the Floor, regarding the appointment of Dr. Rotich? He is raising information that is not required and is, therefore, irrelevant!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): My time is up because of interruption from my friend, Capt. Nakitare. But I was saying that---

The Temporary Deputy Speaker (Mr. Khamasi): Your time is up, Prof. Kibwana!
Proceed, Mr. Kimeto!

Mr. Kimeto: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute on this Motion regarding Dr. Rotich's appointment. You heard very well the Mover of the Motion, skinning the Government and those people who should be the advisors of the President and also showing them how they had made a very big blunder in broad daylight. This would make it appear to the rural folk that the President was working against Dr. Rotich for nothing.

You have also heard the Seconder of the Motion roasting the Government and those people who are closer to the President with a slow-burning fire for the mistake they made of misleading the President to refuse to give his assent to this appointment. You have also heard every hon. Member who has been contributing here saying that the appointment of Dr. Rotich should have been done the day before yesterday and that it should not even be discussed today. Dr. Rotich's appointment should have been confirmed after this House passed that Motion in the last Session.

Mr. Temporary Deputy Speaker, Sir, what do we do now? We cannot use all the adjectives that qualify Dr. Rotich to be appointed, but we should just let the Mover of the Motion come back to the Floor and immediately reply, so that we can vote for Dr. Rotich to be appointed. We do not want

to continue talking alot about the appointment of Dr. Rotich. If we had any negative information about Dr. Rotich, then we could easily have brought in another person to replace him. Then Dr. Rotich should face the law so that, sooner or later, this could serve as a lesson and if he had made a mistake, that should be proved in a court of law. Dr. Rotich's appointment should have been confirmed a long time ago. We do not want to continue contributing here when the Minister for Justice and Constitutional Affairs is here. This appointment should not appear as if it is tribalistic, because it was done in this House by the hon. Members, who then made the recommendation to the President.

Mr. Temporary Deputy Speaker, Sir, I do not want to speak more about this issue. I want to support the Mover and Secunder of this Motion and other things will come later. If there is any other information which will come up later, let it be taken to a court of law. Could the Minister go and advise the President on this issue? We do not want the President to appear as if he is very selective.

With these few words, I beg to support this Motion.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Kembi-Gitura: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to contribute to this Motion. I must say from the outset that hon. Muite has written a very attractive Paper in the form of the report that he has brought to the House and which he now wishes to be adopted.

I have a lot of respect for Hon. Muite because he is my senior colleague, but I find it very unfortunate because I must disagree with him on this particular occasion. I do not believe that this Motion should be adopted. We must disagree with him and reject this Motion. I am saying this in good faith because if we consider issues like these, we must, first and foremost, take into account the welfare of this nation. We must put the centre-piece of this nation as the first thing to think about generally in almost all things. The report that has been laid on the Table of this House by hon. Muite or his Committee had two terms of reference that were given to it by the Speaker of this House. Those terms of reference are very, very clear indeed:

"The Committee should, first of all, find out if--"

(Loud consultations)

Mr. Temporary Deputy Speaker, Sir, if these hon. Members on the Front Bench could stop making so much noise---

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order! Hon. Members on the Front Bench, you are disrupting the contribution of the hon. Member on the Floor!

Mr. Kembi-Gitura: Thank you, Mr. Temporary Deputy Speaker, Sir. The terms of reference are clear, and they say:

"The Committee should, first of all, find out what ways the House would be satisfied that a person is fit for appointment to an office before we give our stamp of approval".

That was the first term of reference. The second one was:

"Secondly, if we make a mistake which is likely to be made either by the House or by any other person or authority, what is the avenue for redress and how will you go about it?"

The following are words of the Speaker:

"On this basis, I want the Committee to proceed. Let us have answers for the future avenues."

In short, first and foremost, this Committee was not told to go and find out how Dr. Rotich could be reinstated or put back in the Commission. What they were asked to do was to find out how we are going to deal with such kinds of situations in the future. But, that is not even my issue, and from the outset, I must start by saying that I do not even know who Dr. Rotich is; I have never seen him, I do not know where he works or how he looks like. But these are not personal issues, and just like what one hon. Member has said earlier, these are not issues that need to be tribalized or trivialized either. Hon. Prof. Kibwana has talked about positivism in law when referring to the topic of jurisprudence. He told us that the law must be what it is, and by that, he meant that what is written as law must be followed to the letter. What he did not say, however, is that there are several schools of thought in this area, and one such other school of thought says that, the law, when taking into account the interests of a nation, can also decide what the law ought to be. It is not necessarily what is, but what ought to be. In this case, what should the law be in guiding us about the appointment of such an important person or officer in the attempt to eradicate corruption in our country? That is why we cannot take the law for granted. I wanted to say what some people may consider to be simplistic; and this is to state that, in a country like Kenya, while we are trying to forge unity and move towards zero-tolerance to corruption, we must be able to say bravely that man was not made for law, but it is the law that was made for man. And law must be a tool that serves humankind in the best way possible.

Mr. Temporary Deputy Speaker, Sir, one of the biggest pains of this country at the moment is corruption. We have tried to fight corruption and all of us must agree that we must fight corruption, if we are going to progress at all in this country. Therefore, the Kenya Anti-Corruption Commission must not only have people who are not corrupt, but who do not also appear to be corrupt and who must be above suspicion. I find it very contradictory for us to say that it is alright to appoint somebody even if he is known to be corrupt because that is what the law says and that is what the law is, like Prof. Kibwana said. That, even if we know very well that the person being appointed to a position is very, very corrupt; just because Parliament has made a mistake or just because an advisory body has made a mistake, then everybody must go along with it by appointing him to that position. In my view, that borders on being ridiculous. It shows that the law comes before everything else and it must, therefore, be a tool even to oppress and do other things that bring discontent in a country like this one.

Mr. Temporary Deputy Speaker, Sir, Section 8(4) of the Act that we are talking about says clearly that the President shall appoint. Lawyers will argue on the word "shall" for lengths of time because it is a word that has been argued on for many years. So, it is clear that the President shall appoint. It then begs the question: If that is the position, is the President just a mere rubber stamp? If he must do what Parliament has told him to do, then what is the point of referring this matter to him? Why did we not finalise the issues here in the House? After all, Section 23(2) of the Constitution says very clearly that this House can make those kinds of decisions. It says:

"Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President."

So, we could have said that, that body be it Parliament, the advisory body or any other body, is the one which will make the appointments. Why then do we go to the President? Why do we put ourselves in those kind of circumstances? Are we saying that the President's duty is only to assent and say yes? He must assent because Parliament has said so. Then we could have as well finished that business here. I believe that, as long as the President has acted in good faith and to the best interest of this country in doing what he did, we have a duty to support him. We cannot keep on hiding behind the law. If, indeed, this law says "shall", and means that the President must, is it not time that we thought whether that law is inconsistent with the Constitution? If it is inconsistent, then

the Constitution takes precedent. Those are questions that must be asked. Once we answer them then we shall find that the President may have acted in the best interest of this country.

I understand that this report says: "Let Dr. Rotich be appointed because that is what the law says. Let him stay in office and a tribunal be formed to investigate him." Why should this happen? His seat has not been taken by anybody. The President has not filled it. The law must continue to take its force. If, for instance, Dr. Rotich was charged in a court of law today before a tribunal was formed and he was found guilty of several things, would they still insist that he must, first of all, be appointed because that is what the law says? Would they say that: "Now, at least, he has been convicted in a court of law, therefore---" However, conviction by a court of law may not in this regard derail the provisions of the KACC Act. So, I find that this argument cannot possibly stand the scrutiny of this House. If, we, as a House, made a mistake because of the polarisation that we have had in this House for many months now, that things must be thought of tribally and regionally. We did not even have an opportunity, if I recall, to discuss or properly vet these individuals, or their names. What happened was that some individual names were rushed through the House and everything else was forgotten and nothing appears to have happened. If as a consequence of that we made a mistake in this House---

*(Mr. Sambu and Mr. Keter
consulted loudly)*

Mr. Temporary Deputy Speaker, Sir, I will be very happy if Mr. Sambu and his counterpart stopped talking across the Floor when I am contributing.

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Keter and Mr. Sambu. Let us listen to Mr. Kembi-Gitura!

Mr. Kembi-Gitura: Mr. Temporary Deputy Speaker, Sir, the point I am making is that this House is not infallible and neither is the President or any individual or committee is bigger or greater than this country. Nobody can possibly be above this country. I am not saying that the President is above the law because he is not. Even the Constitution makes it very clear. Indeed, the committee's report by Mr. Muite makes it very clear and very admirably, so that the President is not above the law. Yes, indeed, he is not. However, that does not mean that two wrongs make a right. It does not mean that because we made a mistake here by allowing a name to go through without proper vetting, or because a law states this and that, that the mistake must, therefore, be carried forward until the end of time to the detriment of our country.

Mr. Temporary Deputy Speaker, Sir, in my own opinion, I think that we cannot possibly support this Motion. The question is: Did the President act maliciously, or did he act in the best interest of the nation? Did he have some unique knowledge that we do not have as a House, or a nation, of why he found it impossible to accept the name? Does he have anything against Dr. Rotich as a person, or does he not? If not, why then do we think that section of the law of one word "shall" should override the interest of a nation? How will we fight corruption? The biggest problem in this country today is that if we cannot accept that we have made mistake, we should not follow through with that mistake. So, if the President had some unique knowledge of something that we do not know about, I think we should respect that. We should only question this if we suspect that he acted other than in the best interest of the nation.

The fact that the advisory board overlooked this does not mean that we also overlook certain things in the House because of partisan interests, that the President, therefore, is also bound by our mistakes. That cannot be acceptable.

Mr. Temporary Deputy Speaker, Sir, I listened to Prof. Kibwana, a professor of law at the

University of Nairobi. He said that according to him, it does not matter whether or not Dr. Rotich is known to have been corrupt or otherwise. He said that it does not matter that he must be confirmed by the President. What are we talking about here? I consider that a ridiculous argument. It matters that somebody is known to have been of a particular form and, therefore, is being rejected. I believe that this nation is what comes first. Whether or not we want to stick to the letter of the law, we must remember one thing, that nobody should bring this country to a halt because of partisan interests. This nation is greater than any individual, groups or individuals put together.

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

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, I have listened very carefully to contributions by hon. Members. They contributed according to their opinions. However, we are looking at integrity in this case. Yesterday, an hon. Member said that we need to borrow a leaf from the United States Senate and how they vet candidates.

From the outset, with experience and without prejudice to the law of this country, we cannot hire a person and then interview him later. What will we be doing? So, the question of vetting is now creating three blind mice; a blind mouse from the Attorney-General, a blind mouse from the Advisory Committee that advised the President and a blind mouse in the speech of the Mover of this Motion. We are looking at efficiency and integrity. We are looking at the cleaning of this House and not cleansing this House or the nation.

Mr. Temporary Deputy Speaker, Sir, the Kenya Police Anti-Corruption Unit is supposed to be as white as snow. When we taint it, we are tainting the country's image. I have gone through the notes of the Mover and the Seconder. I have listened carefully. I have compared their reasoning with the international laws that I am exposed to. I have been among the people who have vetted the efficient performance of various civil service in other countries. I have been in America for many years and I know how vetting is done. Therefore, you cannot make a mistake and say: "Let me go back and correct it!"

If hon. Muite, a learned lawyer, could come up with this blue-print, where was he when Dr. Rotich was being proposed? Was he a member of the vetting committee? Was he on the Advisory Committee? Was he on the Back Bench waiting for others to contribute, so that he could come later and criticise? We should not put our country at stake by unreasonable application of laws. We are looking at Section 73 of an Act of Parliament. We are arguing: What is the reason for that? We are looking for a way forward to the future of this country.

Mr. Temporary Deputy Speaker, Sir, as many people have said, it is not just a question of a candidate presenting himself for an interview, and he is interviewed. Thereafter, there is a scrutiny after the interview and a choice is made. So, the applicant in the name of Dr. Rotich presented his application to be interviewed. He should have been interviewed there and then. The mistakes he made at the National Cereals and Produce Board (NCPB) - he caused a food shortage in this country - should have been discussed then. If there were mistakes he made and was not a member of the Accountant's Association, it should have been mentioned then. So, why bring it up after you have hired somebody? My argument is: Is there no choice? Where is the rule of law here? In the absence of the rule of law, was there any ignorance? The law says very clearly that it does not support ignorance. Therefore, the ignorance that this House was plunged into is very demoralising. It demoralised scholars in this House. It is ambiguous! We have put ourselves to test and we are on a see-saw. We are looking like we are in a kindergarten because the mistake was made--- I am not blaming the Head of State. Instead of applying the instruments of criticisms to the people who advised the President, we are pointing a finger at a person who was not even in this House. He was not even in the Select Committee. He was on the receiving end of the recommendation that was made by Parliament. When he said "no", we are now rushing to make appeals.

If I were Dr. Rotich, to maintain my integrity as a role model to my family, I would not accept this job. I have been discussed. I have been an interested party. It is annoying to offer me food after hitting me with a blow in my mouth. I would not enjoy that food. So, I believe that Dr. Rotich will not perform his duties well because he has been sarcastically discussed here. He might not be a good judge. He might decide to say no way. But, that should have been done during the vetting stage. If those mistakes were done, they should have been corrected at that time.

Mr. Temporary Deputy Speaker, Sir, we would say it is "water under the bridge". It was hard, even for this House, to dissolve the whole Committee. If there were a clause stipulating that disqualifying one person would be equal to disqualifying the whole Committee, this issue would not have come up. We would have had a new team altogether. Therefore, we are looking at one player and going back to the history that does not apply at this moment. The country is looking for proper governance. The country is clearing and sweeping its house. An English man said: "A new broom sweeps the best but leaves corners". So, you left corners when you left Dr. Rotich in a corner. He was not swept well.

I think there is a problem here. We have a problem of inheriting people with bad history. We have intelligent people who can also lead. I suggest that the discussion of that applicant should not have been stood over generally. It should have been disqualified to give way to discussions of other issues. He is not the only employee. There are so many people who are unemployed. This country is faced with demoralising images of corruption. Sometimes, I wonder! Corruption is between two people. The giver is more corrupt than the receiver. That is because the receiver is the one who is being persuaded. He is engaged and seduced. So, when it comes to corruption, we need to have a person with a high moral integrity and who can make judgements independently. We are looking at devolution of power. We are looking at giving the Judiciary its image of proper judgment. If we are going to bring back that linen and heap it on our history, where are we heading to?

Mr. Temporary Deputy Speaker, Sir, I do not favour anybody who defames our own country here or overseas. I do not accept or agree with the Non-Governmental Organisations (NGOs) which come here to criticise our country. Let us be given time to choose people with integrity. If I was a candidate, I would have disqualified myself after being discussed in an un-favourable manner. We are breaching a law. We are actually breaking the law. We are discussing a person who cannot represent himself in this House. He is not even a Member of Parliament. So, why are we discussing a person who cannot stand and defend himself here? It is a one-sided discussion. So, as much as many people have said, I do not support this Motion. I feel that the Mover should have disqualified himself if he was a member of the Select Committee.

Our country is craving for intelligent people; people of good character. We are not here for sale but we are looking for a way forward.

Mr. Muite: On a point of information, Mr. Temporary Deputy Speaker, Sir!

The Temporary Deputy Speaker (Mr. Khamasi): Capt. Nakitare, do you want to be informed by Mr. Muite?

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, I do not need his information.

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Muite, Capt. Nakitare has declined.

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, as much as I want to save time, I must tell Mr. Muite that he had his own time to talk and I now have my time to talk. I am talking as the hon. Member for Saboti Constituency with my own interests. I am also an hon. Member from the Rift Valley Province, where Dr. Rotich comes from. Hon. Members of this Committee are behaving like the proverbial three blind mice which led each other to nowhere. The hon. Members should blame themselves. They should not have brought this issue here. They had adequate time to vet Dr. Rotich. They have brought here all kind of articles and---

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, is it in order for Capt. Nakitare to continue misleading this House that I was a Member of the Select Committee? Is he really in order to fail to appreciate that Dr. Rotich was interviewed by the Advisory Board and not by the Departmental Committee on the Administration of Justice and Legal Affairs? Dr. Rotich's name was proposed here and was approved by the entire House, including by hon. Member.

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, I am not misleading this House. I am putting the record right. Hon. Muite has been in this House for a long time. He knew very well where we were headed to. We are now being guided to go on dual carriageway. We have to take one lane. The lane is---

Ms. Abdalla: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Capt. Nakitare to impute improper motives on hon. Muite by saying that he knew about the candidature of Dr. Rotich when we were approving this matter? If he has any information regarding this, then he should share it with the rest of us.

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, as an hon. Member, I think Mr. Muite was here. The discussion went on and I was here too. So, we cannot blame each other for not having taken position in this matter. We should have acted on this matter earlier. We have both failed. I do not support the candidature of Dr. Rotich because he cannot be re-interviewed now, after he has already been hired. If he was hired, then he should continue with his work. However, I am against that because it is already on record that he made mistakes and he was disqualified during vetting time. How did he get himself to the group of the other members who were appointed? Why are we not talking about the other four members? Why are we talking particularly about this person? This is because there was a mistake which was done. My argument is that vetting was not done. If it was done, it was not done well. Therefore, the whole exercise should be disqualified. I will not continue for 30 minutes because I will be repeating what hon. Members have said; mine is to oppose this Motion.

Ms. Abdalla: Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to support this Motion by the Departmental Committee on Administration of Justice and Legal Affairs, of which I am a Member. The report is self-explanatory; that, the President disrespected the rule of law by not appointing Dr. Rotich to the position of Assistant Director of KACC. Before I cast aspersions on the President's action, I will begin with the problems in this House that led us to this problem. The procedures used in appointing all persons in the entire list were wrong. I voted against it because the House did not take due consideration on the responsibility of vetting those members. We used a "kangaroo court" of the entire House to vet those individuals, instead of seconding all the names in the list.

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

The Temporary Deputy Speaker (Mr. Khamasi): Order, hon. Members! The rules are clear. When you are not contributing, you should be seated. Everybody is going against our own rules. I would like hon. Members to observe that.

The Assistant Minister, Office of the President (Mr. M. Kariuki): On a point of order, Mr. Temporary Deputy Speaker, Sir. I wonder if you heard the last statement from the hon. Member; that, this House sat as a "kangaroo court." Is that parliamentary language?

The Temporary Deputy Speaker (Mr. Khamasi): Ms. Abdalla, did you say that?

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, I did not say exactly that.

The Temporary Deputy Speaker (Mr. Khamasi): What did you say?

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, I said that the entire House was

requested to vet the names instead of forwarding them to the relevant departmental committee.

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, we can get an accurate record of the HANSARD. The words "kangaroo court" were clearly used here.

The Temporary Deputy Speaker (Mr. Khamasi): Order, hon. Members! We are all hon. Members here. She made a mistake and she should own up. This takes us back to a point where the Chair has to refer to the HANSARD. You know the effects of that. So, Ms. Abdalla, once again, if you said that, I would like you to own up, apologise and proceed. If you do not do that, we will refer to the HANSARD.

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, I own up that I said it. I would like to withdraw those words.

I was talking about the procedures which were used to vet the names. As I said, the whole House was not in a position to vet those names. The process of vetting names required looking at the transparency of the procedures used by the advisory board in appointing those individuals. It also required that we look at the *curriculum vitae* of the four deputy directors and see if they met the minimum requirements that were put in the advertisement.

Equally, if anybody had information that they wanted to share with the Committee, then that would have been the right procedure to use for vetting. The procedure used was erroneous. We totally relied on the Minister for Justice and Constitutional Affairs to convince us that the four directors were persons of high integrity. I wish to note, as a Member of the Committee, that the Minister held on to the names of the appointees for eight months; a period he could have used to investigate and present the right picture to the House before letting it discuss the merits and demerits of not appointing one director or the other.

Mr. Temporary Deputy Speaker, Sir, the problem began with procedures and worse still, the Minister we entrusted in giving us that information is the man who is on record for having misled the President of this country. So, who are we as hon. Members not to expect him to mislead us as well? The problem began with the procedure that was used in this House. I believe that, as the report says, the Committee will be working to institutionalise the missing link in the vetting process within this House.

Mr. Temporary Deputy Speaker, Sir, hon. Prof. Kibwana stood here and was on record as saying that in the two years that President Kibaki has been our Head of State, this is the first instance in which he has not respected the rule of law. That is erroneous. We as the Official Opposition would have it on record that he poached hon. Members from our side against the Constitution. Secondly, we will also be on record---

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member has said that the President committed an illegality by putting hon. Members of KANU into the Government. This matter is in court and it is *sub judice*. Is it in order for the hon. Member to start speaking of issues which are already in court?

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, the matter in court is not the same as what I am talking about because members of your party are suing your party for bringing KANU members into your Government. The matter I am raising is a fact that our President has poached Members from the Opposition against the Constitution. So, those are two different matters.

(Applause)

Mr. Temporary Deputy Speaker, Sir, I was explaining instances when the President has

disrespected the Constitution but the list is so long that I might not be able to finish it within the time allocated for my contribution. With respect to the rule of law regarding this matter, the problem lies with us having trusted or believed what was presented by the Minister for Justice and Constitutional Affairs. This is a matter that I have already raised that, that Ministry is on record as being in the habit of misleading the President and in this case ourselves.

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

[Mr. Deputy Speaker resumed the Chair]

Mr. Deputy Speaker, Sir, something very interesting did happen in that we were of the impression that the President only listened to the legal advice of the Attorney-General and the Minister for Justice and Constitutional Affairs. These are two hon. Members who I have already mentioned. One of them is in the habit of giving you advice that you would like to hear with a smile and the other one as on record as having been a man who can mislead and be happy about it.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Hon. Member to continue discussing the personal conduct of the President, Attorney-General and Ministers without bringing a substantive Motion, which is against Standing Order No.73?

Ms. Abdalla: Mr. Deputy Speaker, Sir, the content of the report is already raising those matters and so I do not see why hon. Githae is jittery, because the facts are there in the report. I was speaking in respect to this matter of the President not having received proper legal advice on this matter.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I am just seeking your advice. You realise that the Assistant Minister for Justice and Constitutional Affairs has persistently interrupted the hon. Member on the basis of what would be considered frivolous points of order. What is your advice on that?

Mr. Deputy Speaker: Well, the only thing I would like to advise the hon. Assistant Minister is that we are not discussing the conduct of the President but we are on a Motion where inevitably the President has to be mentioned.

(Applause)

Standing Order No.73 bars hon. Members from discussing others without bringing a Substantive Motion and we have a Motion. I want to caution hon. Members that they must stick to the substance of the Motion.

Proceed, Ms. Abdalla!

Ms. Abdalla: Mr. Deputy Speaker, Sir, thank you for protecting me from my colleague who is known to have very interesting dietary habits.

(Laughter)

As I was saying, most of the contents of this report alludes to the fact that the President did not get proper legal advice. However, the second issue that I would like to appeal to the President about is on this matter of "selective hearing". The President was able to hear hon. Kimunya's issues relating to the candidature of Dr. Rotich. Why was the President not able to hear the rest of

Kenyans' complaints that we were not able to be told whether the recruitment of the KACA Director in itself was transparent? As a Member of the Opposition, I would like to urge the President to avoid having "selective hearing" because in the process of listening to those near him he might be hearing only the wrong things and in this case it appears he got to hear only the wrong things and those that they did not want him to hear did not get to him. My only hope is that there is television and radio reception in that address.

Mr. Deputy Speaker, Sir, the other problem is the trickle down effects of this action by the President; of not appointing Dr. Rotich. This clearly influences the action of the other directors of KACA and has a major trickle down effect to the rest of the Executive. It is strongly suggested that even Members of the Front Bench have a habit of writing letters to influence the KACA Director on what to do because the President has led the way by not appointing somebody that had already been listed and approved by this House. In that regard, I was here and I voted against that Motion not because I did not like the names of the members who were there but because the procedures that were used were wrong. Nobody was told how many people applied for those jobs, how they were shortlisted, interviewed and how they fared in the interviews. So, basically, we as a Parliament began this process by rubber-stamping what hon. Murungi told us which in a way we were rubber-stamping the word of a person who is already on record as having said that he is in the habit of misleading the President.

(Applause)

So, all of us rubber-stamped his suggestions in which case those of us who had the misfortune of having voted for the entire list are to share some of the blame with hon. Murungi.

Mr. Deputy Speaker, Sir, the other matter that I want to put on record is the fact that the Government and the entire Executive had the names of all these appointees for eight good months. So, in my opinion, it means that the Government knew of the issues raised against Dr. Rotich and did not act on them knowing very well that the list looked very attractive and "palatable" given the tribal mixture that was presented here. Let us not deceive ourselves, I know of six hon. Members who voted just because their constituents were in that list and it is my submission that the Minister for Justice and Constitutional Affairs knew what was wrong or right with Dr. Rotich when presenting those names but used him to have that list passed by this House.

Mr. Deputy Speaker, Sir, it is not good to just criticize the Government for its inadequacies and ineffectiveness without giving it a way forward. The report is very clear that the only option the President has is to appoint Dr. Rotich and then set up a tribunal to investigate matters that have been raised by the dark forces that are against appointment. The way forward is very clear. But, nonetheless, I do not believe that the way forward will come that easy because this Government is in the habit of not implementing things passed by this House. I do not even believe that this Motion will be passed because the Government would easily muscle its voting machines against it. Let it not just be a matter that we will get partisan interests on, while letting the President get away with not respecting the rule of law. Today, these people are in the Government, but for sure, tomorrow, they will definitely not be in the Government, given their performance. So, I suggest that they set up systems that will not punish them.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): You are a prophet!

Ms. Abdalla: Mr. Deputy Speaker, Sir, I would like to inform Mr. Murungi that I am not a prophet, but the reality is there to be seen. He is worse than the rest because he is on record as having admitted that he is always in the habit of misleading the President. So, he is more dangerous than a prophet or prophetess.

Mr. Deputy Speaker, Sir, with those few remarks, I wish to support this Motion and hope that the President, even if the Government muscled its voting machines, will not get selective by listening to people who want to mislead him further.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Deputy Speaker, Sir, I am not replying to this Motion. A different Minister will be doing so. However, I wish to thank you for giving me this opportunity to oppose this Motion. It is my humble submission that this House should reject this Motion because it is misconceived.

When the House referred this matter to the Committee, the Committee had very specific instructions from it. The recommendations of the Committee that the President appoints Dr. Julius Rotich as required by the Kenya Anti-Corruption and Economic Crimes Act, is *ultra vires* and outside its terms of reference.

The terms of reference of the Committee are set out on pages 4 and 5 of the Report. Let me quickly take the House through them. It says:

"The Speaker then directed the Committee on Administration of Justice and Legal Affairs to get to the bottom of the issue. It should, first of all, find out what ways the House will be satisfied that a person is fit for appointment to an office before we give out stamp of approval. Secondly, if we make a mistake as is likely to be made either by the House, or by any other person or authority, what is the avenue for redress and how will we go about it? On the basis, I will ask the Committee to proceed. Let us have answers to future avenues."

To me, Mr. Deputy Speaker, Sir, those words are the key terms of reference for this Committee. So, it is quite clear that it was not the business of the Committee to recommend the appointment or re-appointment of Dr. Julius Rotich. Therefore, any recommendations regarding the appointment are themselves irregular as *ultra vires*.

Mr. Deputy Speaker, Sir, the President, indeed, took legal advice from the Chief Legal Advisor of the Government, before he took that action. The Chief Legal Advisor did advise and he even said it in a Press conference, that the President's action in not appointing Dr. Rotich was constitutional, legal, ethical and proper. That is what the Attorney-General said in a Press conference; in a statement which was released.

Dr. Oburu: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to claim that the Attorney-General, being the Chief Legal Advisor of the Government and this Parliament, advises the President and again waits until this House passes a Bill or Motion, then advises him against a resolution of this House?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Deputy Speaker, Sir, it is quite clear that you need to organise some seminar for Members of Parliament to know what is a point of order and what is not.

Mr. Deputy Speaker: I quite agree with the Minister. Maybe Dr. Oburu did not like what the Minister said, but he should wait and get a forum to rebut it.

Proceed, Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Deputy Speaker, Sir, the President's action should be seen in its broad policy context. The NARC Government has declared total war against corruption. The President himself has declared that in this war there are no sacred cows. We, as a Government, have time and again, reiterated our policy of zero-tolerance to corruption.

Ms. Abdalla: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to insinuate that the Attorney-General is always right in his advice, when he is on record as having given two different pieces of advice to two different Presidents on the same matter?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Deputy Speaker, Sir, I think the HANSARD will prove me right. I gave the House the substance of the advice of the Attorney-General to His Excellency the President. I did not talk of two opinions. Indeed, there is no requirement that the Attorney-General publishes his advice to His Excellency the President. So, I do not know where the hon. Member got the idea that I said the Attorney-General was right or wrong. I gave the House the information.

Mr. Deputy Speaker, Sir, the President's rejection of Dr. Rotich's appointment was in implementation of our policy of zero-tolerance to corruption. The rejection of this appointment was to ensure and protect the integrity of anti-corruption institutions in this country. I think the principal question which is being raised by the Committee is largely a question of interpretation of statutes.

The First Schedule, Paragraphs 1 and 2 of the Anti-Corruption and Economic Crimes Act clearly state that: "In making the nomination, the Board has to ensure that the person appointed, is a person of outstanding honesty and integrity." I think this whole debate hangs around those words; "outstanding honesty and integrity." I think the question that we have to put to ourselves is: After all this process and given information which was available to the President, could it be said that the appointment of Dr. Rotich satisfied this minimum criteria of outstanding honesty and integrity?

Mr. Deputy Speaker, Sir, in April 2004, the Inspector-General (Corporations) prepared a detailed investigation report of the goings-on at the National Cereals and Produce Board (NCPB) where Dr. Rotich was then the Chief Executive. In that report, Dr. Rotich was deeply implicated and inducted by the Inspector-General for serious financial irregularities which occasioned a loss of Kshs3,315,241,101 to the NCPB through irregular exports and exaggerated transport costs of maize.

Mr. Deputy Speaker, Sir, that report was available to the Board and the President. The Minister was not involved in the nomination. The Minister was not involved at the vetting level. I am not a member of the Committee.

Ms. Abdallah: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: No! No!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Deputy Speaker, Sir, that report was available to the President. The appointment of Dr. Rotich would have seriously compromised the credibility of the Kenya Anti-Corruption Commission (KACC), if he was appointed despite the information that was available to His Excellency the President.

Mr. Muturi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to continue misleading this House that the information he is now referring to, which was available to him as the Mover of the Motion that brought the names of the Directors to be approved by this House, was not available to him when, indeed, he was the one who tabled those names? In fact, he had delayed the presentation of those names until he got all the information from all the relevant bodies. If he had that information, what has KACC done regarding that information? Dr. Rotich should be in court now!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Deputy Speaker, Sir, that is a point of information. I tabled the list and the recommendations to the Board. The materials that were presented only came to light after questions were raised. That is because the President had asked about that report. It is at that time that it became clear that the report was before the Board. So, let us not pretend to be holy than thou. Mistakes have been made at the level of the Advisory Board, the Muite Committee and this House. We are only trying to correct those mistakes.

Mr. Deputy Speaker, Sir, it is true that, that information was not available to the Committee. I believe that, if the information was available before the Muite Committee, then this House would not have approved the nomination of Dr. Rotich.

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. These are very important and fundamental issues. Is it in order for the Minister to mislead this august House that the information and report of the National Cereals and Produce Board (NCPB) saga was not available to the Committee when, the report which is before the House acknowledges the discussions that the Committee held with the then Chairman of the Advisory Board? He said that the allegations about the NCPB were tabled before the Advisory Board and investigated. It was concluded that there was no substance as far as the allegations against Dr. Rotich were concerned.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Deputy Speaker, Sir, I sincerely believed that, that report was not available to the Committee. If, indeed, the report was available to the Board and it ignored it, then that, in itself, would have been a serious breach of the law. It was not the role of the Board to investigate. That Board was an advisory board. It had no investigation powers. It would have been a mistake for the Board to recommend Dr. Rotich with that information available to it. It was the duty of the Chief Executive Officer of this country to make sure that, that mistake could not be perpetuated.

Mr. Deputy Speaker, Sir, the powers of the President to make appointments to public office have certain fundamental responsibilities. The President is not just a rubber stamp. He has to scrutinise the persons he has to appoint. It is his duty to reject any appointment if it is found to be erroneous, or if there are certain facts which have come to light, which will make that appointment improper. For instance, supposing Parliament recommended the appointment of a certain person, and in between the appointment something serious happens, like he is involved in some crime, will the President be bound by the word "shall" to appoint him? So, this is a question of the interpretation of these statutes.

It is quite clear that Section 84 of the Anti-Corruption and Economic Crimes Act provides that upon approval by the National Assembly, the President shall appoint the person concerned to the office in respect of which the approval was given. So, the question is: "How shall is this shall?"

Mr. Deputy Speaker, Sir, the argument by the Committee on Administration of Justice and Legal Affairs lead by Mr. Muite, is that because of the word "shall", this section must be applied mechanically irrespective of the consequences, however, ridiculous they are. This is not a new school of thought.

In the interpretation of statutes as Mr. Kembi-Getura said, there are several schools of thought. There are many theories on the interpretation of statutes. The mechanical theory comes from the positivist school and it is just one. I think the applicable theory here is what we call "the mischief rule" or "the purposive interpretation" which seeks to find out what mischief this law tried to correct. It is quite clear that the purposive interpretation or the mischief rule wants us to go beyond the black letter of the law. One has also got to be guided by the spirit in which the law was enacted. In this particular case, we have to ask ourselves what was the purpose of stating that the person to be nominated has to be a person of honesty and integrity. If the President, in appointment, finds that this law is likely to be breached by the appointment of a person who is not honest and of high integrity, then it is his constitutional duty to reject that appointment.

Mr. Deputy Speaker, Sir, we have to look also at the whole question of the doctrine of separation of powers. This country hosted a conference the other day on what we call the Ratima House Guidelines; that is the relationship between Parliament, the Executive and the Judiciary. The latest Commonwealth position is that we need a strong Parliament, Judiciary and Executive. These three institutions should operate as balances against each other. It is this theory of checks and balances that we should use to interpret the laws which are before the House and which were considered by this Committee. So, we can see that there is a whole chain of advertisement and nomination by the Board, vetting by Parliament and appointment by the President. These three

organs must be seen as a chain for ensuring that we have persons of high integrity heading our anti-corruption institutions. Moreover, none of the institutions is a rubber stamp of the other one. Therefore, if one of them finds that a mistake has been done by another institution, it is the duty of that institution to correct that particular mistake.

Mr. Deputy Speaker, Sir, it was the duty of the President to correct the mistake that would have occurred and which would have highly dented the integrity of the Kenya Anti-Corruption Commission (KACC) by appointing a person who has been subject of very detailed investigations by the Inspector-General of the State Corporations for his conduct at the National Cereals and Produce Board (NCPB).

We should look at the broad implications of what this Committee is purporting to do. We have said that we do not want a Parliament which is a rubber stamp of the Executive. However, the Committee is trying to create a President who is also a rubber stamp of this Committee. The need for respect of institutions and separation of functions needs to be recognised. I know that we have had this big debate about having a ceremonial President but that is not here yet. Under the current Constitution, which creates the Presidency today, we do not have a ceremonial President. We have a President who is charged by the current Constitution with the duty of exercising Executive authority. Both the Constitution and the law requires him to exercise functions in public interest of this country. As we interpret this law, we should also expect the President to act in public interest. We should expect the President to not mechanically be bound by the interpretation of this law but also to be bound to act in public interest. Public interest in this particular case demanded that the appointment of Dr. Rotich be put on hold while the others were being appointed.

I would like to clarify that nobody has been appointed yet to fill in the position of Dr. Rotich because there is a process to be followed. The way out, and this is what the Attorney-General had recommended, is that this matter should go back to the Board. It should then start the whole process again. It should re-advertise the post and make fresh recommendation to Parliament. Parliament would then approve and take another name to the President for appointment. There is no shortcut to that process! Indeed, that is the proper way to go.

Mr. Deputy Speaker, Sir, we think that we should remove partisan interest from this debate because it has grave consequences for the future. Parliament is taking up a new role of vetting and approving appointments to public offices. This is a good innovation that the Ninth Parliament and the NARC Government has brought to this country.

(Mr. Muturi shook his head)

Mr. Muturi does not seem to recognise that there is a NARC Government in power. KANU was there for many years and there was not a single person who was brought to this Parliament for vetting. This is an innovation that has been brought by this Government.

Mr. Owino: On a point of order, Mr. Deputy Speaker, Sir. I think it is wrong for this Minister to continue misleading this House. He knows so well as we do, that there is no NARC Government. We have an amorphous Government called the Government of National Unity.

Mr. Deputy Speaker: Order, Mr. Owino! Is that a point of order or a point of information? You should have declared it a point of information then the Minister would have decided whether or not he would take that information.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Deputy Speaker, Sir, I do not want to respond to that confusion.

What I was saying is that Parliament has acquired a new role and we should exercise it with responsibility. We should be more professional in our approach to vetting of candidates. The lesson

we have learnt from this exercise is that whatever Committee is given the role of vetting, it should take its mandate more seriously. It should do more research to make sure that mistakes like the one which happened in this particular case are not repeated in future.

Mr. Deputy Speaker, Sir, secondly, in his instructions to the Committee, the Speaker was very clear. He requested the Committee to consider ways of correcting mistakes when they occur and he said, indeed, mistakes are bound to occur. I have not seen anything in this Report which responds to that issue. What are we going to do when a mistake like this occurs in future? The Report is incomplete, in that, it did not address the second request from the House.

Since the Committee seems to have been obsessed with the re-appointment of Dr. Rotich and it forgot the terms of reference which were given by this House, this Report should be rejected and the Committee should be reprimanded for not addressing the two terms of reference given to it by the House.

With those few remarks, I beg to oppose.

Mr. Billow: Mr. Deputy Speaker, Sir, I rise to support the Motion before the House. In my view no mistake was made which required the President to intervene. The reason why there was no mistake is because the Report was availed to the Advisory Board before it submitted its recommendations to this House. The information that can confirm that the Advisory Board had access to the Report is available. It examined the Report and did not find any wrongdoing on the part of Dr. Rotich. That is why I do not believe there was a mistake which required the President to intervene. The President was misled on that point.

Mr. Deputy Speaker, Sir, there is also no doubt that investigations were carried out even by the Ministry of Agriculture which is the parent Ministry of the National Cereals and Produce Board. The Controller and Auditor-General, the National Security Intelligence Service and the Kenya Anti-Corruption Commission also did similar work. All those reports were given, but none of them found Dr. Rotich guilty of these allegations.

It is my understanding that this whole saga of allegations of corruption against Dr. Rotich was nothing more than politics. It is only after the recommendations for his appointment had been done, that one hon. Member of the Cabinet who is not even the Minister responsible for this docket opposed the appointment of Dr. Rotich, and that is Mr. Kimunya. The reasons are well known to many of us. Dr. Rotich was in the previous Kenya Anti-Corruption Commission (KACA) with Mr. Kimunya.

Mr. Deputy Speaker, Sir, it is wrong for people to bring in a bad blood relationship into the appointment of a very important institution like this one. We have institutions which are all important. There were the Controller and Auditor-General's office, the Kenya Anti-Corruption Commission, the Government Ministry that investigated him, the National Security Intelligence Service and Parliament that sat here to vet those names. All of us returned a verdict of not guilty, but the opinion of one single hon. Member of the Cabinet was considered more important than the rest of the country. That is what the Ministry calls "public interest". There was no public interest in this.

Mr. Deputy Speaker, Sir, if the President was going to act in the public interest, he should have acted on the tainted Ministers over the Anglo Leasing scandal. There is no single issue that has captured the attention of Kenyans that you would say should have been done in public interest, than action that we have waited for a long time to be taken against the President against the Ministers who have been implicated in the Anglo Leasing scandal. That call for public interest was neglected, yet we are being told that Dr. Rotich was not appointed on grounds of public interest.

Capt. Nakitare: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to tell this House that there was no issue? We had a national issue. Does he not know that Kenya experienced a maize deficit during the time Dr. Rotich was the Chief Executive Officer at the

National Cereals and Produce Board?

An hon. Member: Sit down!

Mr. Deputy Speaker: Capt. Nakitare, that is not a point of order. It is an argument and you had your time to argue.

Mr. Billow: Thank you, Mr. Deputy Speaker, Sir. I do not know whether there was any mistake made by the Advisory Board or by this august House. I do not think that the action that the President took was, indeed, in the public interest.

The Minister also said that the Attorney-General gave advice. No one knows more than the hon. Members of this House, that on many occasions, the advice of this same Attorney-General has been rejected by this Government, the President and the Minister. The Minister rejected the Attorney-General's advice on the Consensus Bill---

The Minister for Justice and Constitutional Affairs (Mr. Murungi): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to impute improper motives on the high Office of the Attorney-General, who is highly respected by this Government?

An hon. Member: Aah! You know that you do not believe what you are saying!

Mr. Billow: Mr. Deputy Speaker, Sir, I respect the Attorney-General and I have no intention whatsoever to impute any ill motive on the Office of the Attorney-General. Indeed, we hold him with such high respect that we are shocked when Government Ministers reject his advice in broad daylight. They did so over the Bomas Draft Constitution, the Consensus Bill, and in so many other occasions.

So, we think it is right - I agree with the Minister - that the President must be seen to uphold the Constitution. All of us, as leaders, must uphold the Constitution. So, I agree with him that in appointing persons to such offices, the President must uphold the Constitution and appoint people who are not tainted and, of integrity. However, that must be done in accordance with the law. The law requires the Advisory Board to investigate, interview, advise and recommend persons of outstanding integrity for appointment to that Board. That is what happened.

Mr. Deputy Speaker, Sir, the law did not require the President to actually do that work. It required the Advisory Board to undertake that responsibility. The Advisory Board discharged that responsibility and brought its recommendations here. I need not repeat that, indeed, the responsibility of upholding the Constitution, in not appointing tainted people to high offices, should have been done with regard to the appointment of Cabinet Ministers and many constitutional office holders, who we know are tainted beyond belief.

Mr. Deputy Speaker, Sir, the law of this country stipulates that a person is innocent until he is proved guilty. Dr. Rotich has not been charged in any court of law with regard to the "irregular" transactions relating to the National Cereals and Produce Board. He was not charged before his appointment and even to date, after his appointment was rejected by the President.

Is the Government accepting that you can commit a crime and get away with it? That, it is in order for him to be responsible for the loss of Kshs3 billion and for the food deficit and suffering of Kenyans, and he is not going to be charged in a court of law for that crime? The only reason why the Government has not taken any action is because there is no evidence whatsoever. This is a civil servant who was given instruction in writing by Cabinet; the same kind of Cabinet that they are now sitting in, to dispose the maize because it had overstayed and there was fresh maize coming in. As a dutiful civil servant, he went ahead and did that.

Mr. Deputy Speaker, Sir, it is interesting that in the last two years, we have learnt from this Government that it is only civil servants who take responsibility for what they do. Ministers have been exonerated from responsibility here. The same Kenya Anti-Corruption Commission (KACC) boss is on record as saying that he cannot charge Ministers because they are not Executive; it is only

civil servants.

Mr. Muite: On a point of information, Mr. Deputy Speaker, Sir. I would like to inform the hon. Member on this issue of Dr. Rotich having sold maize irregularly.

The Committee on Administration of Justice and Legal Affairs received very detailed information about that particular issue. What happened is that when the maize farmers had not been paid for nearly three years, Dr. Rotich received a letter from the then Secretary to the Cabinet, Dr. Sally Kosgei, directing him to sell the strategic maize reserves and pay the farmers. Dr. Rotich wrote back and said, "Given the high prices at which the Board bought this maize from the farmers and the current world market prices which are depressed, if we sell at the depressed price, the Board would incur a loss of Kshs2 billion". Dr. Rotich received another letter from Dr. Kosgei telling him that it was a Cabinet decision and directive. He was told to sell the maize and that any loss would be compensated to the Board through the Treasury. There is no suggestion that Dr. Rotich put even a shilling in his pocket!

(Applause)

The Minister for Justice and Constitutional Affairs (Mr. Murungi): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Billow: Mr. Deputy Speaker, Sir, I decline.

(Laughter)

Mr. Deputy Speaker, Sir, you can see the position in which Dr. Rotich is. This is a dutiful civil servant carrying out his responsibilities diligently and raising the issues but he is overruled by Cabinet. You can imagine. I would also want the Minister to imagine if he were in that position. Would it be right for him to be denied appointment because of that action?

Mr. Deputy Speaker, Sir, I had also mentioned that the Advisory Board had the responsibility to recommend somebody of outstanding integrity as per the Act. In my view, that is what the Board did. The Board had hunted, interviewed and recommended to this House and the we debated it. In fact, among the issues that we debated was the current Executive Director of KACC, in which we had to vote several times. I think it is wrong, therefore, to suggest that there was anything wrong with regard to the way that work was done, or that the Board over-stepped its responsibility or that the Board did not carry out its responsibility well, or that they forwarded the name of a tainted person to this House.

Mr. Deputy Speaker, Sir, this is a matter of politics. It is about bad blood between two individuals. It is matter of taking action against the person. I think it is also an attempt to get rid of people who come from certain areas of this country from their posts. It is actually one of the reasons why Dr. Rotich's name was rejected.

There was an attempt earlier on to block Dr. Rotich from getting the job. You will remember that hon. Kimunya, a former chairman of the Institute of Certified Public Accountants of Kenya (ICPAK), influenced the Chief Executive of ICPAK and other members of the body to reject the appointment of Dr. Rotich on grounds that he had not renewed his ICPAK membership on time. It is said that by the time the Board interviewed Dr. Rotich, his membership of ICPAK had lapsed. The Board considered this matter irrelevant because once one has been certified as a public accountant by virtue of registering with the Accountants Board one is declared a member of ICPAK. The fact that he did not pay a few shillings to the treasurer to renew his membership for that year should not deny him the opportunity to become a director. That issue was raised in the

media and in many other fora. All attempts were made to put logs in the process of appointing Dr. Rotich, but they did not succeed.

Even today as I speak, we have information that there are attempts to investigate Dr. Rotich's past. They are investigating his activities when he was the Director of the Kenya College of Communications and Technology - at the time it was within the Kenya Posts and Telecommunications. It is said that when he was there, he was housed and at the same time continued drawing house allowance. They are trying to malign his name so that if this House passes this Motion, they would still find a reason to block his appointment. Indeed, that is what is going on. So, I believe, it is a calculated attempt to deny Dr. Rotich the job. It is not a question of mistakes he made in the past or whether he is tainted. It is a deliberate attempt to block Dr. Rotich from getting his job. We know him, for sure, as a man of integrity and one who cannot entertain some of the corrupt things it has been alleged that he was involved in. If people who are involved in corruption in this country; be they Ministers or other senior officers in the Government, appeared before Dr. Rotich, we know the kind of decision he would make. That is why they want him out; there is no other reason.

Mr. Deputy Speaker, Sir, it is my view that, perhaps, sometime in the future, we might need to amend this Act. The Act requires the Advisory Board to submit its recommendations to the House which then has the capacity to vet the recommendations. The House then forwards whichever names it has approved to the President who is given powers to reject those names. In this case, the House is ridiculed. The august House becomes--- I do not want to use bad words, but the implication is that hon. Members of Parliament are ridiculed and reduced to people who have no integrity and do not know what they are doing. After the Board makes its recommendation, it should forward the same to the President who should then nominate the persons. Afterwards, the House must have the final say in the affair just as is the case with other appointments passed in this House. In my view, unless we do that--- We have instances where some hon. Members of this Government deliberately want to portray a bad name for Parliament and that is why we have every other law that is passed in this House being thrown back. Such a thing has never happened in the last 40 years of our Independence - I am told that it happened only once. However, in the last six months, close to four Bills, passed by this august House, have been returned to us. We are told, "*Huo Mswada si mzuri*" for various reasons.

The Bills and other laws are prepared by the Attorney-General's office. We pay salaries to the officers who work in this office. The Attorney-General's office has competent lawyers who do their work well and present it to the Cabinet. The Cabinet goes through such work and forwards it to this House for debate. Why is it that the same Cabinet members go back quietly - we are told it is the kitchen Cabinet - to tell the President *kataa huu Mswada?* So, we hon. Members of Parliament are being ridiculed. We are being ridiculed here. Parliament, to Kenyans, has become almost "used" because our Bills are all being returned. They are considered to be defective and bad laws. So, we need to review that Act. In my view, the Advisory Board needs to do its recommendations on how the President should nominate Ministers. The House should be able to reject the President's nomination. The House should have the final say and not the President.

Mr. Deputy Speaker, Sir, as I had mentioned earlier, if the transaction by Dr. Rotich at the National Cereals and Produce Board was, indeed, irregular, he should be in court. They should not have any mercy on him. The Minister should go at full speed, arrest him and charge him in a court of law because Kshs3 billion is not a small amount of money. However, if there is no evidence against Dr. Rotich, we should not destroy his future. We should allow him to continue to serve this country. He has served the country and he wants to continue doing so. It is the view of those of us who passed his appointment that he should be allowed to continue serving this country.

We have seen in this country a selective application of justice. This is an example of it where if you do not like something for whatever reasons, may they be political or ethnic, you take action. If you like something because of all those reasons, you do not take action. This Government came to power on a platform to uphold the rule of law. We expect the Government not to apply selective justice and to act according to the law. When you are in power, it is easy for power to corrupt. The rejection of Dr. Rotich's appointment and the manoeuvres that took place have nothing more than political corruption. The Minister himself is one of the people who wanted Dr. Rotich to be appointed. We know that it is the Minister's colleague who went behind his back to fight the appointment of Dr. Rotich at State House.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): On a point of order, Mr. Deputy Speaker, Sir. You have heard the hon. Member say that I supported the appointment of Dr. Rotich, but it was my colleague who did not want him to be appointed. Is the hon. Member in order to impute improper motive about this other Cabinet Minister being more powerful than myself?

Mr. Billow: Mr. Deputy Speaker, Sir, I have no idea who is the most powerful Cabinet Minister. The Minister is a good friend of mine and I know that he was not opposed to the appointment: never mind what he has now written.

Mr. Deputy Speaker, Sir, lastly, in my view, collectively, our conscience is on trial. This poor brother of ours has done no crime. If he has done any crime, he should have been in the gallows. He should be allowed to continue serving Kenyans. I wish to rest my case there.

With those few remarks, I support the Motion.

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 26th April, 2005, at 2.30 p.m.

The House rose at 6.30 p.m.