

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 8th May, 1996

The House met at 2.30 p.m.

[*Mr. Speaker in the Chair*]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No. 232

SUB-DIVISION OF DIVISION

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

(a) whether he is aware that Ol-Joro-Orok Division has two locations which require sub-division; and,

(b) If the answer to "a" above is in the affirmative, what plans he has to sub-divide it, at least into two extra locations, for easier administration.

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

(a) Yes, I am aware.

(b) My office has already created two more locations, Weru and Gatimu from Ol-Joro-Orok and Gathanje respectively, and the posts of chiefs have been advertised accordingly.

Mr. Gichuki: Mr. Speaker, Sir, in view of the favourable reply from the hon. Assistant Minister, could he avail funds for constructing offices and other facilities for the chiefs and sub-chiefs in the said new locations? The Assistant Minister has said that he has created locations and sub-locations. In view of that, can he avail funds to have facilities for use by those sub-chiefs and chiefs ready, so that they are able to operate? That is the work of the Government. Wananchi do not pay taxes to us but to the Government.

Mr. Awori: Mr. Speaker, Sir, where some of us come from, when we want to get services from our chiefs and assistant chiefs, we build offices for them. Do the same.

Question No. 237

INDISCRIMINATE BEATING BY POLICE

Mr. Shikuku asked the Minister of State, Office of the President, how many people died and how many were injured on 8th January, 1993, when the Kenya Police indiscriminately beat up anyone on sight along Kirinyaga and River Road areas in Nairobi.

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

I am not really aware of any incident that took place on 8th January, 1993, in which the Kenya Police beat up people along Kirinyaga and River Roads. It is quit possible that the hon. Member is mixing up dates and if so, I will probably help him.

On the 15th January, 1993, and not 8th January, 1993, at about 9.30 p.m. two police constables, namely Alfred Kahindu and Erastus Mwema were on patrol within Nyamakima area in Nairobi. The two policemen approached a vehicle suspected to belong to robbers when suddenly some gangsters opened fire killing---

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. I have a written reply from the same Assistant Minister. What he is reading to this House is completely different from what I have. Is he in order to do that? In the reply that I have, he has said that he is not aware of any incident which took place on 8th January, 1993, in which the police indiscriminately beat up people along the Kirinyaga and River Roads. What he is reading is very different from what I have here.

Mr. Speaker: I thought he began by that.

Mr. Shikuku: In his reply he goes further to say, "However, I am aware that the police mounted a security operation in Nyamakima area...". This is very different. Can I be furnished with the reply he is now reading so that I can frame my supplementary question?

Mr. Awori: Mr. Speaker, Sir, I wanted to save my good friend from going into a supplementary question by using further information that I have. I could have simply stood up and said that I am not aware of any incident that happened on 8th January, 1993, and that is the answer. Nothing happened on 8th January, 1993.

Mr. Maore: On a point of order, Mr. Speaker, Sir. The Question is a little bit clear now that the Minister has brought up additional information.

Using that new date of 15th January, 1993, how many people died and how many were injured when the police did the trigger-happy thing?

Mr. Speaker: Hon. Maore, that is not a point of order. By the way, I determine what is and what is not a point of order.

Mr. Shikuku: Mr. Speaker, Sir, arising from the Assistant Minister's arrogance in his reply, and knowing the fact that the wananchi of this country have never forgotten what took place on that date, is he aware that he is misleading this House? My Question is very direct. I asked how many people died and how many were injured and this is what he should reply to. He more or less admits here in his reply that 13 people alleged that they were injured by the police. The police beat up people, and people know that this took place. Is he going to deny this?

Mr. Awori: Mr. Speaker, Sir, following that incident that I alluded to, the police mounted an operation in the area with a view to apprehending the criminals. In the operation, about 600 people were arrested and taken to Kamukunji Police Station for interrogation after which all of them were released for lack of incriminating evidence; Kamukunji 112/121/935 refers. After the police operation, one person, namely, Mwangi Kabuya was found by a good samaritan with multiple injuries outside Ambassador Hotel. He was rushed to Kenyatta National Hospital where he died shortly after that.

His family reported that he was assaulted by the police in January, 1993. Investigations in this respect were carried out, vide Kamukunji Police inquest No. 2/93. The matter went to court and the last date of hearing was 18.3.96. The date of the ruling has yet to be set.

Prof. Mzee: Mr. Speaker, Sir, the police in this country have become the biggest enemy of the people. I hope the Assistant Minister is aware of that. They are the most corrupt people! They had no business arresting 600 people around Kirinyaga Road. Innocent people are being arrested indiscriminately, not only on Kirinyaga Road but also in Mombasa as well. In Mombasa, we have declared war against the police. I am saying this here: We have declared war on them. The police indiscriminately ask for money! When will the Assistant Minister tame the policemen, so that they get to know that they are employees of the people? They should arrest people only when they have committed a crime. It is wrong to arrest 600 people on Kirinyaga Road!

Mr. Awori: Mr. Speaker, Sir, I do not know why the hon. Member wants us to tame our policemen. I do not think he will want us to do that. The police are there to protect innocent citizens and do not go about arresting people indiscriminately.

Mr. Speaker: I will give a chance for the last question to Mr. Wamae.

Mr. Wamae: Mr. Speaker, Sir, will the hon. Assistant Minister agree with me that the Government instituted this police action so as to intimidate Nairobi people because they had voted for the Opposition? I think the intention was to terrorise the people for having voted against KANU!

Mr. Awori: Mr. Speaker, Sir, as far as I know, even at that time we had a KANU Member of Parliament (MP) in Westlands. We will continue to move into Nairobi. As an example of this, now we have got Mr. Gerishom Kirima, who was recently elected an MP. We intend to take---

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister really replying to the question? Hon. Kirima has nothing to do with the question!

Mr. Speaker: Order! I think I share the sentiments of hon. Shikuku, that the Assistant Minister should not have digressed. But he was forced to digress by hon. Wamae, who brought a rider to the Question which was totally irrelevant. What I would urge hon. Members to do in the transaction of the business of the House is to stick to relevant issues. Very well; I think we will now go to the next Question.

(Mr. Shikuku stoop up in his place)

Fine, I will give Mr. Shikuku the last shot.

Mr. Shikuku: Thank you, Mr. Speaker, Sir. In the beginning, the Assistant Minister was not willing to tell the House a bit of truth. At least, he has given a bit of it. He has admitted that one mwananchi lost his life as a result of this indiscriminate beating. Imagine the police arresting 600 people when there was no shred of evidence against any of them! Is this not the clearest manifestation of the fact that this was total harassment in which people were injured? The Assistant Minister has refused to answer the question as to how many people were injured. He is talking of only one person who died. How many people were injured?

Mr. Awori: Mr. Speaker, Sir, nobody was injured as far as our records are concerned. I would just like to give a piece of advice to my colleagues on the other side of the House: Please, never declare war on the police, otherwise, you will get into very serious trouble.

Mr. Speaker: Mr. Ruhui's Question.

Question No. 247

EVICTON OF DANDORA TENANTS

Mr. Speaker: Mr. Ruhui is not here? Mr. Ndicho's Question.

Question No. 170

BUILDING OF THIKA COUNTY COUNCIL OFFICES

Mr. Ndicho asked the Minister for Local Government when Thika County Council Offices will be built.

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

Thika County Council offices are scheduled to be built within this financial year, 1995/96, as soon as the Commissioner of Lands approves the plot the council has applied for.

Mr. Ndicho: Mr. Speaker, Sir, I am very happy to hear this answer from hon. Wameyo. It is the first time he has answered a Question very well. However---

Mr. Speaker: Order, Mr. Ndicho! No hon. Member sits in judgement over other hon. Members. It is the House as a whole, and not an individual hon. Member, that judges the performance of Ministers. So, will you, please, stick to the facts of your Question?

Mr. Ndicho: I am much obliged, Mr. Speaker. I am saying that I am very happy about the way the Assistant Minister has answered this particular Question. Currently, Thika County Council uses as offices sheds of Thika Municipal Council, which were being used by sportsmen and sportswomen to undress and dress for sports.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. Is it in order for hon. Ndicho to make a statement which can be interpreted to suggest that in Thika sportsmen and sportswomen undress before they go to the pitches?

Mr. Speaker: Dr. Kituyi, I am sorry I cannot help you because I have never been to Thika sports grounds.

Mr. Ndicho: The Assistant Minister has said that these offices will be built as soon as the Commissioner of Lands approves the allocation of the plot the council has applied for.

One thing is that no more plots remain in Thika Town. So, I want the Assistant Minister to tell the House where this plot is, and how much money his Ministry has set aside to construct these offices.

Dr. Wameyo: Mr. Speaker, Sir, the council has provided in its estimates Kshs2 million in this financial year for the first phase of the offices. May I assure the hon. Member that the council has applied for the plot. Where the plot is, it is only the Commissioner of Lands who knows. As soon as the plot is approved, the offices will be built.

Mr. Icharia: Mr. Speaker, Sir, we had a similar Question here yesterday about the creation of new local councils before offices for them are built. Can the Assistant Minister tell this House where the council will operate from while awaiting construction of new offices? When will construction of these offices be completed?

Dr. Wameyo: Mr. Speaker, Sir, the Question I have answered is about construction of Thika County Council offices. These offices will be built during this financial year, 1995/96.

Mr. Nyagah: Mr. Speaker, Sir, can the Assistant Minister tell this House what is the Government policy with regard to the construction of offices for the new county councils that have been created as a result of

creation of new districts?

Dr. Wameyo: Mr. Speaker, Sir, offices of the councils are built by the councils themselves.

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

Mr. Speaker: Order, hon. Gitau!

Mr. Ndicho: Thank you very much, Mr. Speaker, Sir, for giving me the last chance. Kiambu and Murang'a County Councils are the councils where Thika District was curved from.

The new Thika County council is now operating under very, very difficult conditions. This is because the two mother councils have refused to hand over assets which fall under the current Thika County Council. Can the Assistant Minister, please, order Kiambu and Murang'a County Councils to hand over the assets to the new county council, because what they gave is only liabilities?

They gave us the liability files and they refused with the asset files. Can the Assistant Minister force them to give us all the assets that pertain to Thika County Council so that they can get money to build their offices?

Dr. Wameyo: Thank you very much, hon, Ndicho. I will look into the matter.

Question No. 314

FUNDS FOR IJARA WATER PROJECT

Mr. Arte asked the Minister for Land Reclamation, Regional and Water Development:-

(a) how much money was earmarked for the Ijara Water Project and what is the amount that has been actually spent on the project; and,

(b) what has caused the delay in commissioning this project.

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

(a) The Government has allocated a total of Kshs3.6 million to Ijara Water Project, and presently, Kshs3.2 million has been spent mainly on rehabilitation on the Dam Construction Unit's plant and purchase of fuel and lubricants.

(b) The delay in commissioning this project was caused by late commencement of the implementation work due to non-availability of spare parts for rehabilitation of the dam construction unit machinery in the local market.

Mr. Speaker, Sir, the project is expected to be completed in June, 1996, as the Dam Construction Unit machinery has been repaired and it is on the site constructing the dam.

Mr. Arte: Mr. Speaker, Sir, a study carried out by the Ministry showed that the water dam that was supposed to be constructed was costing Kshs3.6 million, to meet the needs of the people of Ijara, which is the headquarters of the sub-district. Now, out of Kshs3.6 which has been allocated for the dam, Kshs3.2 million has been spent on the rehabilitation of machineries. Only Kshs400,000 is remaining for the whole project. Can the Assistant Minister tell us what is the capacity of the dam that they want to construct? What type of dam are they constructing with Kshs400,000?

Mr. Ligale: Mr. Speaker, Sir, the Kshs400,000 is mainly for buying fuel and lubricants. In fact, there is only one dam that is going to be constructed. We do not need to do more than scooping the earth so that we can create a dam.

Mr. Shidie: Mr. Speaker, Sir, the Assistant Minister is giving us a different story. We know what his Ministry does. We have Garissa Water Supply where the Ministry pumped Kshs260 million to supply water to Garissa Town. Today, it is a sad story. There are buildings there but there is no waster for the residents. He is now telling us the same story about Ijara, where Kshs3.2 million has been spent and nothing has been done so far.

Can the Assistant Minister send a team to investigate how that money was spent in the first place? This is because if nothing has been done, we can not believe him that Kshs400,000 will be enough to build the dam.

Mr. Ligale: Mr. Speaker, Sir, I do not need to send the officers to investigate. In fact, I have discussed with the hon. Member for the area, and he has confirmed that work is going on to construct the tank, and that water will be available shortly.

Mr. Salat: Mr. Speaker, Sir, I think the Assistant Minister either does not know what this project entails, or he is just avoiding the questions. This is because Ijara Water Project entails construction of a very, very big water tank and putting piping to pipe that water to the town. Is the Assistant Minister satisfied that

Kshs400,000 will be enough to construct that dam and pipe this water out of that dam and supply it to all the people of Ijara? Is he satisfied?

Mr. Ligale: Mr. Speaker, Sir, that is money which has been approved in the current financial year. In the next Financial Year, more funds will be required to complete the project, and they will be made available.

Mr. Farah: Mr. Speaker, Sir, if I got the Assistant Minister's answer right at the beginning, he said that over Kshs2 million was used on fuel and lubricants. What was the purpose of using the money on fuel and lubricants? Can the Assistant Minister also confirm that actually, the Dam Construction Unit is a unit that can be used to de-silt and rehabilitate many other dams? If it is going to do one dam now and stop there, you will have a problem all over again, because this is what happened years ago. Can he tell us what plans he has for the Dam Construction Unit to be used to construct other dams in all the districts?

Mr. Ligale: Mr. Speaker, Sir, had the hon. Member listened carefully, I said that Kshs3.2 million had been utilised principally for the rehabilitation of dams by the Dam Construction Unit, and a certain amount was used on lubricants and fuel. So, that was the total figure. I have also said that currently, the Unit is in the area to complete that project at Ijara and if it completes it and is required in other areas, it will be made available.

Mr. Arte: Mr. Speaker, Sir, if the Assistant Minister is giving the wrong answer, I do not know what he is going to do to those people whom he is giving the wrong answer. Is he aware that one of the two tractors that went to Ijara has mechanical defects? It is only one which is used currently, and the money available is only Kshs400,000. How is he expecting Kshs400,000 to repair the tractor and to dig the dam? Let him tell us what he is going to do.

Mr. Ligale: Mr. Speaker, Sir, I wish the hon. Members would listen. I have said clearly that if at the end of the day they find that funds are not adequate, more funds will be made available. If one of the tractors has broken down, we have mechanics on the ground who can have it repaired.

Mr. Farah: On a point of order, Mr. Speaker, Sir. We have seen time and again, money allocated by Treasury for projects in the North Eastern Province ending up in other places and people's pockets. Can the Assistant Minister give us a breakdown of how the Kshs3.2 million was used on spare parts and fuel for this dam? The way we see it, it is very fishy. Can he give us a break-down of how funds were used now, instead of giving us a whole figure. He should give us the break-down of how that money was used, because what he is giving us is misleading.

Mr. Ligale: Mr. Speaker, Sir, if the hon. Member wants a break-down, I can supply it on Tuesday, next week.

Mr. Speaker: Very well.

Question No. 312

DEMOLITION OF BUMPS AT KIBARANI

Mr. Kiliku asked the Minister for Public Works and Housing:-

- (a) whether he is aware that bumps in Kibarani along the Makupa Cause-way were demolished during the recent commissioning of Moi International Airport, Mombasa; and,
- (b) whether he will order for the re-building of these bumps.

The Assistant Minister for Public Works and Housing (Col. Kiluta): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the bumps at Kibarani along Makupa Cause-way were demolished during the recent commissioning of Moi International Airport, Mombasa, because they were causing traffic jams, and contributing to the pavement damage around the areas they were installed.

(b) The Ministry will not order the re-building of these bumps due to the following reasons:

- (1) There have been increased tourist vehicles attacked and damaged around Kibarani due to slowing of traffic flow when going over the bumps.
- (2) There have been heavy pavement damages on the approaches to the bumps due to breaking effect from heavy trucks and trailers.

Mr. Kiliku: Mr. Speaker, Sir, it is the Ministry which built those bumps there. But because of the high powered politicians of this country, they directed that the bumps be demolished because they wanted to go to Mombasa. We record at least three fatal road accidents daily in that area. Why can the Assistant Minister not direct the OCS in Chagamwe Police Station for the police to patrol the area throughout the night rather than leave the people to die daily because of the few tourists going to Mombasa?

Col. Kiluta: Mr. Speaker, Sir, I am not aware of the influential politicians. What I am aware of is that

we received letters from the tour operators and I have a number of them here, which I can give to the hon. Member, complaining of thefts along that area. These letters came from your people in Mombasa asking us to remove the bumps. I have got evidence here which I can give to the hon. Member of Parliament. We did just as we were requested. However, we are considering putting rumble strips to slow vehicles down because we are also aware that a few lives have been lost there. We will put rumble strips, but not bumps.

Prof. Ouma: Mr. Speaker, Sir, I believe that Kenya is one and the highway codes are supposed to be one unified whole. Could the Assistant Minister tell us briefly, what is the policy of these bump installation on the roads? For example, in Nyanza Province, a directive came that they all be wiped out and Nyanza now leads in road deaths. Can he tell what the policy is on rumbles strips and bumps in this country?

Mr. Kiluta: Mr. Speaker, Sir, I think the problem with us here is that we do not attend Parliament Sessions regularly. I answered the same question on bumps yesterday.

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. Is the hon. Assistant Minister in order to evade a very good question from the hon. Member? The question he answered yesterday was on 105 bumps in Meru Town, and he said he would increase those ones. In Nyanza they have been wiped out. Now, in Coast Province, they are also being wiped out. In Eastern Province, even in his own constituency, they are increasing them. Is he in order to avoid to giving the answer on Government policy on bumps, rumble strips and the rest? If such answer does not exist, why can he not say so?

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

Col. Kiluta: Mr. Speaker, Sir, I think I will try to explain briefly to the hon. Member. Yesterday, I said clearly that the Highway Code does not say anything on bumps. It talks about road signs and the international rules do not cover bumps. We erect bumps at the request of the local community. If you want bumps at your place, we will put them for you, and if you want them removed, we will remove them.

Mr. Nthenge: Mr. Speaker, Sir, motoring and having highways is international. What is the international method of keeping roads and preventing people from being overrun by vehicles? Why does Kenya not adopt them?

Col. Kiluta: I take note of your experience in this Chamber, but what I am giving you is the international rule. The Geneva Convention of 1968 clearly gives you the road signs, but does not say anything about bumps.

Mr. Nthenge: On a point of order, Mr. Speaker, Sir. Why does the Assistant Minister give the answer half way? Why does he not complete the answer? I asked him why we cannot use the international methods of controlling speed and the like, and became shy and he down.

An hon. Member: He is shy!

Col. Kiluta: Mr. Speaker, Sir, I did not know that I was shy, but the international method of slowing the vehicles down is the police. But these roads we are talking about are highways and we do not use the police on highways.

Mr. Kiliku: Mr. Speaker, Sir, could the Assistant Minister substantiate the claims he has made that there have been some tourist vehicles attacked along the Makupa causeway? road?

Mr. Kiluta: Mr. Speaker, Sir, I said we have got complaints from different firms which I can give here. I have three letters from different firms who have complained that their clients have been attacked at that point. I can either give them to you or lay them on the Table here, whichever you prefer. But I would rather give them to you so that you may see which firms have complained so that you can take the matter up with them.

Question No. 182

REPAIRS TO GATUNDU ROADS

Mr. Gitau asked the Minister for Public Works and Housing what steps he has taken to repaid Gathage-Kiganjo and Kimunyu-Gatundu roads.

The Assistant Minister for Public Works and Housing (Col. Kiluta): Mr. Speaker Sir, I beg to reply. The Ministry has provided the necessary funds and has been repairing both Gathage-Kiganjo and Kimunyu-Gatundu roads.

Mr. Gitau: Mr. Speaker, Sir, arising from that answer, I would like the Assistant Minister to tell this House how much money has been set aside for each road and the contractor. These two roads, the other day, were patched with murrum just to impress the President because he was visiting Gatundu. I would like to know how much money has been set aside for each of these roads and the contractor.

Col. Kiluta: Mr. Speaker, Sir, these are earth roads and---

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. This is blatant ignorance of the Assistant Minister about this Question. There is no way Kimunyu-Gatundu road can be an earth road. This is the road that the former President used to pass on and it is tarmacked. Is he in order to mislead the House that it is an earth road?

An hon. Member: The tarmac has gone away so fast that now it is an earth road!

Col. Kiluta: My apologies. In the financial year 1995/96, we had officially allocated Kshs800,000 to Gathage-Kiganjo road which is D398. For Kimunyu-Gatundu road, which is 17.5 kilometres, we had allocated Kshs366,000. I checked this afternoon and I was told that work was in progress.

Mr. Ndicho: Mr. Speaker, Sir, first and foremost, the Assistant Minister has said that some funds have been given out to repair Kimunyu-Gatundu road, and yet here it is indicated that it is an earth road. Was that money given to repair an earth road or a tarmac road? If it was for a tarmac road, then it was very little. What was the money for, a tarmac road or earth road?

Col. Kiluta: Mr. Speaker, Sir, the potholes on this road---

(A number of hon. Members stood in their places)

Mr. Speaker: Order, for a while, hon. Gatabaki. I would request hon. Members, when called to order, to obey and to be orderly. Proceed, hon. Gatabaki.

Mr. Gatabaki: Thank you, Mr. Speaker, Sir. We have a Ministry called the Ministry of Public Works and Housing. Every day this Parliament is sitting, there is a Question about this or that road, from Mombasa to Kisumu, and from Baringo to Githunguri. Has this Government, or has this Ministry, got funds for roads? Is this Government serious about the road infrastructure? If not, why can this Government not retire or resign on principle of incapacity of maintaining our infrastructure?

(Applause)

Col. Kiluta: Mr. Speaker, Sir, I did not hear a question there. That is a lot of rubbish!

Mr. Speaker: Order! Order! I sympathize with the Assistant Minister. I myself hardly understood what the hon. Member for Githunguri said!

Mr. Gatabaki: Thank you, Mr. Speaker, for allowing me to repeat the question and I differ that I cannot be heard when I am there.

My question is: Everyday we sit here, there is a Question about roads, from Mombasa to Kisumu, and from Baringo to Githunguri. It is a question about roads. The question is: Has this hon. Government of KANU got a programme for roads? What happened to the funds that this Parliament passed? What happened to the budget about roads? If the money is stolen, can this Government resign because it is incapable of maintaining infrastructure as important as roads. Has this Government got a programme or a policy on roads?

Col. Kiluta: Mr. Speaker, Sir, this Government has enough money to look after roads.

Mr. Speaker: Very well, next Question.

Mr. Mutahi: Mr. Speaker, Sir, before I ask this Question I would require your guidance. I have two answers here, the answer that was given in 1994 and the answer to be given today. If you can see these papers, it is a clear photocopy of what was answered in 1994. What they have done is that they have put the white-out to write the new number and they have put the white-out to put the new date. It is here and I can table it.

Mr. Speaker: My guidance on that issue, hon. Muhika Mutahi, is that I cannot see that far to see whether it is a photocopy or it is an original copy! Now, I suppose the best thing you would have done is to bring it to my attention, but, nevertheless, you may wish to table that document and then we hear what the Attorney-General has to say; maybe, you can ask the Question.

Mr. Mutahi: Before I ask my Question, I beg to table these two answers.

(Mr. Mutahi laid the papers on the Table)

Question No.242

PAYMENT OF MR. KAREITHI'S BANK SAVINGS

Mr. Mutahi asked the Attorney-General:-

- (a) when would Homeloans Company Limited, Othaya Branch, pay Mr. Murage Kareithi his savings on Account No.465401457; and,
 (b) what the accumulated interest in this account is.

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

In fact, the answer to this Question is exactly the same answer as that which was given on 4th October, 1995 as reflected in the HANSARD. It is exactly the same Question and, therefore, it has exactly the same answer which is:

(a) Homeloans Building Society is currently under liquidation and has not realised any assets to be able to pay Mr. Murage Kareithi the money he invested under Saving Account No.465401457 with the Othaya Branch of the institution.

(b) At the time of the closure of the institution, Mr. Kareithi's account had a balance of Kshs17,500.00 made up of Kshs15,629.85 principal sum and Kshs1,870.15 interest earned.

When the company was put in liquidation under these circumstances, interest does not accrue from that date, and therefore, no further interest has been earned.

Mr. Mutahi: Mr. Speaker, this is a very sad case because where other companies go under receivership, a certain amount is given, and especially to the low income earners, and this is a peasant farmer who earns less than Kshs100,000. This is only Kshs15,000. Can the Attorney-General consider doing something because the children of this peasant farmer do not even now attend secondary school? They have been sent home because of lack of school fees. Can he do something special about this thing?

Mr. Wako: Mr. Speaker, Sir, unfortunately, very much as I sympathise with the predicament of this particular depositor, I cannot do very much to assist in getting him paid because there are no funds from which he can be paid.

Prof. Mzee: Mr. Speaker, Sir, I am wondering, and I would like to ask the Attorney-General, how can a financial institution be allowed to be operating without any assets whatsoever. They just take people's money and they do not have any assets and there is no way of paying them back at the end. What is happening?

Mr. Wako: Mr. Speaker, Sir, since that time, we have, of course, the Deposit Protection Fund for those financial institutions which contribute to it. But, unfortunately, this happened at the time when the Fund was not there and when the financial institutions involved were not contributing anything, even if there was a Fund.

Homeloans Co. Ltd. is a sister company of Continental Credit Finance and Continental Bank and its funds are tied up with those three financial institutions.

Mr. Speaker: Next Question, hon. Ruhiu, for the second time.

Question No.247

EVICTON OF DANDORA TENANTS

Mr. Ruhiu asked the Minister for Local Government:-

- (a) if he is aware that tenants of Dandora Estate are undergoing untold suffering caused by monthly eviction for rent arrears incurred by landlords; and,
 (b) if he could instruct the Nairobi City Council to devise a method of compelling tenants to pay rents direct to the Council in the event of landlords falling in arrears.

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

- (a) I am not aware.
 (b) Does not arise.

Mr. Ruhiu: He is saying that he is not aware but the Question is: Is he saying that the defaulters are being evicted in order for the landlords to retain their plots? I was not talking about tenants or landlords. I had a specific Question as to why landlords do not pay their rents to the council and consequently tenants are punished by being evicted because the landlords do not live in those houses. Having put the question, may I say that in the case of those defaulters, the council should devise a method whereby they can collect directly the rates from the tenants because they are the ones who suffer through eviction and they live in the cold for days because of non-payment of rents by the landlords.

Dr. Wameyo: I said that I am not aware. But if there is a specific tenant who has had a problem and has been evicted, if it is brought to my attention, I will look into the matter.

Mr. Mwaura: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to come to the House and say he is not aware instead of telling the House the investigation he has done to arrive at that answer?

Dr. Wameyo: If I am informed about a particular tenant, say a Mr. Kamau or a Mr. Makhokha, then I will know that there is a particular person and I will investigate, but with regard to a generalised statement, where does one start and where does one end?

Mr. Muite: Now that it has been drawn to the attention of the Assistant Minister that there are some Kenyans who are suffering as a result of being exploited by some wealthy people who collect rent and they do not pay to the City Council, will the Assistant Minister give an undertaking that he will launch investigations because he has got the personnel and money from the taxpayers? It is not for the hon. Member for Embakasi to carry out these investigations. Will the Assistant Minister give an undertaking in this House that he will cause the necessary investigations to be undertaken, and thereafter, to take corrective action. That is what should be done and that is why he is being paid as an Assistant Minister.

Dr. Wameyo: Yes, I work but I would like to advise the hon. Member that you cannot treat malaria that does not exist. If you give me specific names of people who have been---

Mr. Muite: On a point of order, Mr. Speaker, Sir. Is it in order for a renowned gynaecologist to delve into other disciplines? He should talk about gynaecology and not malaria so that we can listen to him.

Dr. Wameyo: Malaria is a disease which attacks everybody. Whether you are pregnant or not, you can suffer from it. I sympathise with hon. Ruhiu, but if he gives me specific cases of tenants who have been subjected to this kind of suffering, I will deal with the matter accordingly.

Mr. Kamuyu: I am one of those Members who represent Nairobi Province in Parliament and this matter is current and is a very serious one.

The Assistant Minister has a habit of joking around with serious matters. I know of cases in Madaraka Estate where there are not only sub-tenants, but also sub-tenants to other sub-tenants. Can he tell us his Ministry's policy of dealing with sub-tenant tenants, so that they can be able to collect their monthly rents? Why should those sub-tenants suffer? They should have the addresses of the actual owners and not the current sub-tenants. What is the policy?

Dr. Wameyo: I have said that if I am given specific cases, I will deal with it accordingly.

Hon. Members: On point of order---

Mr. Speaker: Order!

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. The issue raised by the hon. Member for Dagoretti is a very specific one. He has asked for the Ministry's policy. Why should the hon. Assistant Minister evade answering the question. Can he answer the question?

Mr. Speaker: Order! The Assistant Minister is perfectly in order. Question Time is not the time of pronouncement of Government policies. Those are done in various debates on Bills and Motions. If you look at your Standing Orders, you are barred from asking a question on Government Policy. Next Question!

QUESTIONS BY PRIVATE NOTICE

CLOSURE OF SIAYA MEDICAL CENTRE

Mr. Mak'Onyango: Mr. Speaker, Sir, I beg to ask the Minister for Health the following Question by Private Notice.

(a) Is the Minister aware that Siaya Medical Centre has been closed down, thereby denying the people of Siaya District in general, but Alego/Usonga in particular, a vital health care facility?

(b) What led to the closure and what immediate steps is the Government taking to have the hospital re-opened?

(c) How many such hospitals have been closed in Nyanza and Western Provinces?

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

(a) I am not aware that Siaya Medical Centre has been closed down. It is a licensed medical facility under Chapter 253 of the Laws of Kenya. However, I am aware that the medical facility has been de-gazetted under Section 29 of the NHIF, Cap. 255.

(b) As stated above, the Government has not closed the facility.

(c) There have been no hospitals closed in Nyanza and Western Provinces by our Ministry. However, the de-gazetted hospitals under Section 29 of the NHIF Act Chapter 255 are as follows:

Nyanza Province 23 and Western Province 9. They are 32 hospitals in total which have been degazetted in both provinces.

Mr. Mak'Onyango: Mr. Speaker, Sir, does the Assistant Minister wants to call this thing

de-gazettement or closure as I have, the bottom-line is the same.

People in certain parts of the country have been denied, through some kind of action, the very vital services. Can he deny or confirm that by so acting they are discriminating against some parts of this country by creating circumstances for people in those areas to die like dogs?

Mr. Criticos: Mr. Speaker, Sir, I do not.

Mr. Anyona: Mr. Speaker, Sir, in the case of those hospitals that were closed, there was supposed to be some action taken against people who were either operating professionally or were defrauding the Government. Can the Assistant Minister tell us what became of that action? Was it just another hoax?

Mr. Criticos: I cannot say anything because it will amount to *sub-judice*. The hearing of those cases will be on 29th and 30th of this month.

Dr. Oburu: Mr. Speaker, Sir. When the exercise of closing hospitals under the NHIF in Western Kenya started, it was understood that it was going to be a nationwide exercise. When it ended, the exercise had only taken place in Nyanza and Western Provinces. Can the Assistant Minister tell us whether this was not actually a discriminative action against the people of Western Province and particularly Nyanza for their stand in politics?

Mr. Criticos: The law is very clear and whoever breaks the law will have his business closed. Therefore, this applies nationally to all the health facilities which have contravened this Act.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. The Assistant Minister has not replied to that supplementary question by hon. Dr. Oburu. We were told that this had started and it was going to cover the whole country. How come that there was no action taken in any other part of the country other than Western and Nyanza Provinces? Why has it is not been carried out throughout the whole country?

Mr. Criticos: Mr. Speaker, Sir, the exercise is being carried on throughout the country and it is being investigated.

Mr. Mak'Onyango: Mr. Speaker, Sir, under our legal system one is presumed innocent until proved guilty. In this case, the hospitals have been taken to court, while they have never been proved guilty. How comes that they are already being punished?

Mr. Criticos: Mr. Speaker, Sir, I appreciate the hon. Member's Question. The fact is that the law stipulates that whoever contravenes the section, the immediate action is to be closed. This is what has transpired until the case is heard.

Mr. Speaker: Mr. Anyona's Question. I am sorry we are now out of that time.

SHOOTING OF RWANDESE MINISTER

Mr. Anyona: Mr. Speaker, Sir, I beg to ask the Attorney-General the following Question by Private Notice.

Will the Attorney-General tell the House:-

(a) The circumstances in which Mr. Seth Sendashonga, a former Rwandese Interior Minister and his nephew, Mr. Simeon Nsengiyumva, were shot and wounded in Nairobi on 26th February, 1996?

(b) Who was/were responsible for the shooting and what steps have been taken to bring them to justice?

(c) What measures are in place to protect political and other refugees in Kenya from similar attacks?

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

(a) Briefly the salient facts are that on 26th February, 1996, at about 8.30 p.m. Mr. Send Shonga Seth, a former Rwandese Interior Minister and his nephew, Mr. Simon Nsengiyumva had gone to Nairobi West to meet another Rwandese national named a Mr. Alfred. They parked their vehicle registration Number UNEP 205K make BMW 318I a white saloon car along Gandhi Avenue in Nairobi West, and had a brief discussion with Mr. Alfred while outside the car. After the discussion, Mr. Alfred walked away and the complainants made for their vehicle. At this stage some two young men who were standing near the vehicle asked for a lift to Town and introduced themselves to the complainants as Rwandese nationals staying in Kilimani Area. As the two complainants got into the vehicle, they heard a gunshot and the first complainant collapsed in his seat in the vehicle.

The second complainant tried to escape, but was also hit and collapsed. Quickly, members of the public gathered and they pointed out to the police who were in the vicinity and arrived immediately, the person who had attacked the complainants. He tried to escape, but was arrested at the nearby petrol station. I must say he was searched and found to be in possession of one Jericho Make pistol with 13 rounds of nine millimetres live ammunition.

(b) The arrested man was later found to be Mr. Francis Mugabo, a diplomat in the Rwandese Embassy in Nairobi, working as an Administrative Attache. Further investigations revealed that he enjoyed diplomatic immunity. Consequently, through the Ministry of Foreign Affairs, the Government of Rwanda was asked to waive the diplomatic immunity. But the Rwandese Government declined and a further note went that the Government was contemplating closing down the Rwandese Embassy if the diplomatic immunity was not waived. Currently as of now, there are high level diplomatic negotiations going on.

(c) Political and other refugees in Kenya enjoy the protection of the Government of Kenya under the existing laws of the land.

Mr. Anyona: Mr. Speaker, Sir, I notice that the Attorney-General has been supplementing his answer with some information that is not in the official written answer that he gave me; the reason being that he has the advantage of having refused me a document which has nothing to hide from me. You can notice that he has evaded to answer part of (b) of the Question. I would like the Attorney-General to confirm or deny the following information which is contained in a document from Amnesty International, a copy of which I have given him.

Mr. Speaker, Sir, with your indulgence I would just mention a few of these things. It says: "Amnesty International has learned that the Administrative Attache at the Rwandese Embassy in Nairobi was arrested by the Kenyan Authorities soon after the attack on the Mr. Seth Shonga and his nephew. The Kenya Authorities have said that he was found to have been in possession of a nine millimetre pistols fitted with a silencer and 13 rounds of ammunition. The Kenyan Attorney-General, Mr. Amos Wako has asked the Rwandese Authorities to waive the arrested man's diplomatic immunity to enable the Kenyan Authorities to prosecute him. The Rwandese Government is not known to have responded to this request, but Kenyan Authorities have reportedly stated that they intend to charge the Administrative Attache with attempted murder, wounding and unlawful possession of firearms".

Mr. Speaker, Sir, the document goes further to say that this man was lured to Nairobi West by someone who claimed to be a friend. If he lured him, obviously was an accomplice to this act. Has he also been arrested? Can he confirm or deny those facts and tell what exactly the position is?

Mr. Wako: Mr. Speaker, Sir, the man who is alleged to have lured these people is a Mr. Alfred, and that comes from the statement of the complainants themselves. Somehow that man has not been arrested up to now, but the police are looking for him.

Dr. Kituyi: Mr. Speaker, Sir, it is always altruism that we judge a man's character by the kind of company he keeps. Whenever there have been pro-democracy force struggling against dictatorship in this region, we have not heard any of those persons given asylum or any foothold of security in this country. It was the same in Uganda, Ethiopia and Mozambique. Why does this Government find it convenient and on a national interest, that when persons have presided over genocide against the people of Rwanda, the perpetrators of that genocide are the people who are given political asylum and not victims of the genocide?

Mr. Wako: Mr. Speaker, Sir, the perpetrators of genocide have not been given asylum in Kenya. There is no evidence that the people who were injured here, were guilty of genocide at all. Secondly, on this particular issue, there is a United Nations Tribunal, which has been set up to try those guilty of genocide. I can say it now that as of today and I do get the list of those people, the particular names of those who were involved in the genocide, the complainant is not one of them. In other words, they have not issued a warrant of arrest for this particular individual.

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

Mr. Maore: Mr. Speaker, Sir, could the hon. Attorney-General give us the figures and the places where these Rwandese refugees because a refugee is not supposed to cause economic displacement and other social problems around? Why are they and how many?

Mr. Wako: Mr. Speaker, Sir, I am afraid I cannot give that particular figure.

Hon. Members: Where are they staying?

Mr. Wako: Neither can I say where they are staying.

Mr. Raila: Mr. Speaker, Sir, the Somali refugees in this country are kept in concentration camps in deserts in Mombasa and some in North Eastern Province. Can the Attorney-General tell this House why the Rwandese refugees are being given preferential treatment as opposed to the Somali refugees?

Mr. Wako: Mr. Speaker Sir, as far as I am aware Rwandese refugees are not being given any preferential treatment.

Mr. Speaker: Next Order! Question Time out. Mr. Criticos.

POINT OF ORDER

APOLOGY FOR INSULTING MR. CRITICOS

The Assistant Minister for Health (Mr. Criticos): On a point of order Mr. Speaker Sir, I would like to bring to the attention of this House an insult which was directed towards me when I was absent from the House by the Member for Kikuyu. This occurred on Tuesday the 30th of April this year and two hon. members stood up to my defence and they are hon. Ndicho and hon. Mutahi but they were not given the opportunity by the Chair to be heard. I appreciate their efforts and thank them for coming to my defence.

I would also like to thank hon. Shikuku who defused a potential volatile situation in the House on Thursday afternoon last week. When I demanded an apology from the Member of Kikuyu he replied to me sarcastically "Are you not?" I am demanding an apology from the Member for Kikuyu who as a leader having high ambitions in the political arena to act as an hon. Member and desist from encouraging Kenyans to commit adultery. Statements to that effect are in the HANSARD whereby Mr. Muite said that it is very important because there is an effective cure of the disease and many married men in Kenya who are now zero-grazing could perhaps get a little bit more of liberty. In the course of his contribution he used abusive words against me which I do not want to repeat them but the HANSARD says it all.

Thank you for this opportunity.

Mr. Speaker: Very well. Order! It is in deed true that on the material date, the hon. Member is complaining of, the hon. Ndicho, I remember, asked the Chair whether he heard what the hon. Member for Kikuyu had called the hon. Assistant Minister who was then absent and truly the Chair replied that the Chair did not hear which was true. Subsequently however, it has been brought to my attention that the hon. Member for Kikuyu, and I have confirmed this from the HANSARD, did refer to the hon. Member for Taveta in words that were obscene, insulting and unparliamentary. There are two courses of action which I will take.

The first one is to order, which I hereby do, that all those obscene, obnoxious and insulting words used by the hon. Member for Kikuyu against the Member for Taveta be expunged from all official records of this House forthwith. The second course of action which I will take is to order the hon. Member for Kikuyu to unreservedly withdraw and apologise, not to the Member for Taveta, but to the whole House, for the use of obscene and insulting words against another Member on the Floor of the House in total disregard of the Standing Orders and in total disregard also of ordinary standards of morality.

Mr. Muite: Mr. Speaker, Sir, I have not had the advantage of checking the HANSARD personally but it is true that the hon. Assistant Minister came and confided what he had read in the HANSARD but he did not show the HANSARD to me. I noticed that even today he has not confirmed to the House what it is that he is complaining about me. But the point is that---

Mr. Speaker: May I just say this to answer you Mr. Muite. Can you please just sit down. May I say this; I will not even allow Mr. Criticos to use those words which you used because they are obscene and they are unparliamentary and they are obnoxious.

Mr. Muite: Mr. Speaker, I agree entirely with the Chair if in deed what he confided to me is what I said because --- What I want to say is that these Greek names and words are sometimes very difficult and for me the position is even compounded by the difficulties we have; the ethnic community I come from in distinguishing between L and R.

Mr. Speaker: Order, Mr. Muite. I do not think this House will allow, and I do not think even common decency and morality will allow, any Member or person to go on a voyage of experimental indecency. I know for sure the hon. Member for Kikuyu knows deep down in his heart that he said what he said and he knows what he said and I have made a note and there is no point really in being evasive about this issue. I think what is the most honourable thing for him to do is to unconditionally and unreservedly withdraw those words and apologise to the House.

And may I also take this opportunity, hon. Members, before I order the hon. Member to comply, to bring to the attention of the House what has been developing in the last few weeks in reference to how Members conduct their debate amongst themselves in this House. I have said previously that this House as an august and dignified House requires of each Member to be civil in the usage of language and to use only the words that a civil society demands and can tolerate. That is conducive to good debate, conducive to the dignity of this House and it is conducive to the integrity of each individual Member of this House. So, Mr. Muite I will not want any explanation. I am satisfied that the records bear out what the complainant lodged and I will not also tell you what you said because I will be as guilty as you are. So can you just withdraw and apologise.

Mr. Muite: Mr. Speaker, Sir, I am saying that if I had a slip of the tongue and I in deed did refer to the hon. Member in the manner in which he said that I referred to him, let me explain to him that it was a slip of the tongue. There was no intentional motive on my part to do so because there is no way in which I would refer to him in the manner I did. If there was that slip of the tongue I unreservedly withdraw and apologise. I had no intention whatsoever of referring to the hon. Member to that delicate part of the female anatomy.

Mr. Ndicho: Mr. Speaker Sir, may I bring to the attention of this House that the hon. Criticos is my constituent. I represent him in this Parliament and I will not stand to see anybody insulting or using insulting words to my constituents outside or inside Parliament.

Mr. Speaker: Order! I thank you hon. Ndicho and every other Member who comes to the assistance of the Chair in maintaining order and integrity in this House. Everything that ends well ends well.

MINISTERIAL STATEMENT

PROCUREMENT OF DRUGS

The Minister for Health (Mr. Angatia): On a point of order, Mr. Speaker, Sir, hon. Anyona Tabled a very big document here in which he raise issues about---

Mr. Nthenge: Can he get closer to the microphone so that we can hear him!

Mr. Speaker: Just raise your voice a little!

The Minister for Health (Mr. Angatia): Mr. Speaker, Sir, for people to hear me, I do not have to shout, they hear me because they are listening.

Mr. Speaker, Sir, hon. Anyona tabled a very fat document here making certain allegations against the Ministry of Health and I would like to reply to him. But as you can see this document is very fat and I am answering it with an equally fat document. If I were to start reading this, it would take us very many days. I would just like to Table this as the answer to hon. Anyona's statement and just give him two points as follows:-

First of all, the situation in the Ministry of Health is improving by the day. We will never reach a perfect situation but we are making every effort and I would like to invite Members of Parliament to realize that health is no longer a matter of doctors injecting people or giving people tablets. Health is now a matter of the way people live in their own homes. All Members of Parliament have a responsibility to advise people in this country on how we shall live to avoid unnecessary diseases. More than 70 per cent of the diseases we suffer from are diseases of poor people, poor nations and diseases that can be prevented 100 per cent. We would not use medicine to prevent those diseases except of course for immunization and using vaccines. Therefore, I want to invite colleagues, whenever they go to their constituencies, to advise members of their constituencies to take care of their health. It is very simple and it is very cheap. Mr. Speaker, Sir, we have been maintaining a very steady supply of drugs. In fact, in the last 18 months we have done very well. Any Member who wishes to know what drugs have gone to their constituencies, can look at this document. It comes out every week and if Members wish I can supply a copy every week for everybody to see what drugs are going to their own areas.

Mr. Speaker, Sir, the supply of drugs from Central Medical Stores to the depots in Nyeri, Nakuru, Kisumu, Eldoret, Mombasa, Embu, Machakos and Nairobi and then the supply from those depots to the Provincial Hospitals and to the District Hospitals and to the health centres has improved considerably and is working very well. Drugs get lost at the health centres, at the dispensaries and at the hospitals and I would like Members of Parliament to assist. We have set up boards of local people who should go to the health centres and ask, "when did you last receive your supply? Can we see where these medicines are? I am now giving a licence to everybody to go to the health centres and the hospitals, ask for this computer sheet and then check in the pharmacy. One Member did it recently in Kajiado and I was very impressed. The information he brought was very useful to us and we have used it to improve things in Kajiado. I would like to invite everybody else to do the same. Instead of waiting for answers from Afya House, answers will be found at your own institution.

Secondly, Mr. Speaker, Sir, there is somebody in this country called Shailesh Patel. That person has been known to have abetted and encouraged malpractices in the Ministry of Health for many, many years beyond the days of Shimechero. This person whenever he does not win a tender, he will write to World Bank, he will write to hon. Anyona, he will write to me and everybody else, making noise that he has not been given a tender. When I come across that particular application from Shailesh Patel, as the Minister for Health, I remove it because he is a person who cannot be trusted with the handling of drugs in our Ministry and the Pharmacy and Poisons Board has deregistered him as a pharmacist and we do not want to have any dealings with him.

Mr. Speaker, Sir, the World Bank officials after listening to Shailesh Patel, have come to the Ministry

and have even flown all the way from Washington to the Ministry last year to do an audit and to check on our procurement system. They have gone away and they have not responded, they have given us a letter of "no objection" to issue the tenders to the people who applied and who were interviewed. As far as we are concerned, when World Bank raises any question, we come up and answer it. It would not be fair for the World Bank on one hand to insist that the Government should put ceilings; should not spend money beyond certain levels. There is something in the Treasury called ceilings. When those ceilings are given it means we cannot spend beyond that. Even World Bank money, we are sitting on it. The money is there but we cannot spend it because the same World Bank and IMF insist that certain ceilings should not be exceeded. We will not buy drugs when we are going to exceed the ceilings that cause World Bank and IMF to accuse us of mismanaging the economy. So the money is there. In fact, at the end of this Financial Year, we stand the risk of losing some of the money. But it is because of ceilings which have been accepted between this Government, the IMF and the World Bank and we will continue to observe them if that is what it will take to improve the management of our economy.

Finally, Mr. Speaker, Sir, I have got various documents here. I hope that hon. Anyona will get one copy and read it and I hope that he will also study this and out of those, I would not mind answering any more questions.

Mr. Speaker, Sir, I beg to Table the documents. Thank you, very much.

(Mr. Angatia laid the documents on the Table)

Mr. Speaker: Very well, Next order!

Mr. Anyona: Mr. Speaker, Sir---

Mr. Speaker: What is it, Mr. Anyona!

Mr. Anyona: I raised this issue and I thought that---

Mr. Speaker: Did you raise this issue as a Question or what?

Mr. Anyona: Mr. Speaker, Sir, in the course of my contribution in the House, I laid this document on the Table of the House and asked the Minister to make a formal statement which he has today. But I thought I am entitled to some---

Mr. Speaker: I do not think I was there!

Mr. Anyona: Well, you were not there, Sir.

Mr. Speaker: I think I can allow you to seek some clarification, do not debate. You know that can not be a basis of a debate.

Mr. Anyona: Yes, that is correct, Sir.

Mr. Speaker: Very well!

Mr. Anyona: Mr. Speaker, Sir, I have a copy of the statement that I laid on the Table of this House. Now, the Minister has apparently made a reply and I do not have the advantage of knowing what he has said there. I heard him say in his brief reply that those were allegations. I would like him to clarify. I have raised four issues. The first issue is the tender by the World Bank involving a lot of items including Hepatitis B vaccine. That tender was invariably given to the highest rather than the lowest bidder. Can he explain in each case? And there are about 20 cases. Can he explain how that came about? Or if he has explained in that document, then obviously we will get information.

Secondly, Mr. Speaker, Sir, can he also explain what happened to Hepatitis B, vaccine, because for a start, it appears from the records that there was no requirement from the Ministry of 1,000,000 vials. The requirement in this country is hardly 5,000 vials but they ordered for 1,000,000 vials. Now, when they arrived at the Airport, half the quantity was destroyed because of poor packaging. The other half is lying in Industrial Area having expired. Can he make a statement about that and why was that given also to the highest bidder?

The third one, Mr. Speaker, was the question of anti-malaria control. In 1994, a lot of our people died from malaria and His Excellency the President ordered for Anti-Malarial Control Programme. Some Kshs3.6 million was set aside for it. That exercise was transferred from the Ministry of Health to the Ministry of Public Works which has no business handling matters of health. Can he explain how that happened, and what became of that programme in the end?

Finally, Mr. Speaker, Sir, there is the question of Crown Agents. All the budget that is voted by this Parliament has been put into the coffers of one organization, called Crown Agents. I know there is the Swiss one also. Now, can the Minister tell us exactly how much money he gave them, why they were paid before delivery and when there was no international competitive bidding as required by circular No.5 of the Treasury? How much? There was Kshs90 million in interest. Where is that money? In whose pocket has it gone?

Mr. Speaker: Very well. Mr. Angatia, if you want to respond to that, do so at another time, but not now. We have already taken too much time on this.

Next Order!

BILL

THE PHYSICAL PLANNING BILL

*[The Assistant Minister for Lands
and Settlement (Mr. Kaino) on 30.4.96]*

(Resumption of Debate interrupted on 7.5.96)

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Speaker, Sir, I believe I was contributing to this Bill.

At the point of the rise of the House last night, I was addressing myself to the question of the control of development. I was stressing the need for us to empower local authorities. By doing so, we will ensure that the local authorities, whose jurisdiction it is to control development, are given the necessary resources and manpower to ensure that they control development. One aspect that comes out in the Bill is the question of dealing with people who flout the regulations. If an applicant is found to have flouted the regulations and, in fact, carried out development without permission, the local authority has the right to order that such development to stop immediately. It even has the right to move in to remove the material, sell it to recover its cost and refund the balance of the money. That provision is in Clause 39 (iii). I draw the attention of the House to this because I know that, in the past, local authorities have been hampered. They were the ones to enforce the law but, rather than doing the right thing, they have, in fact, either closed their eyes to the illegal developments or abetted them. We know what is happening in our towns as a result of that. We see the amount of illegal developments that are taking place in our towns; buildings that are coming up without approval and quite easily leading to a lot of problems. In some cases, we have had buildings collapse because the local authority has not enforced the law. They have not carried out what they are supposed to do under the by-law.

Mr. Speaker, Sir, when this Bill becomes law, we will need the political good will of the Local Authorities to ensure that all the Councillors have the muscle to be able to say; "yes, we are going to demolish buildings which have been constructed without permission. We are going to ensure that buildings are put up in accordance with the by-laws". If the individuals who are constructing those buildings or roads do it in contravention of the by-laws, then the local authority will move in and enforce the law, and say; "you shall not carry on. We are going to demolish your building". It shall be incumbent upon the person putting up the illegal construction to compensate for any work that the local authority may have to undertake. It does call for a lot of political good will. We must emphasize to the local authorities that they will not get away with a lot of these illegal developments. The alternative to this will be to end up in situations where you hear of big buildings collapsing in places like Cairo, Abidjan and Bangkok because the Local Authorities have failed to enforce the law.

If our councillors were to enforce the by-laws to the letter, half of the shanty developments we have in this town would not be there. Half of the illegal developments that we have in this town would not be there. At the moment, such illegal developments exist because of lack of this commitment to ensure that development does take place in accordance with the law. Therefore, we must make it quite clear to the local authorities that they are not going to shy away from their responsibility. They must realise that these towns have been entrusted to them to safeguard the interests of Kenyans, particularly, the residents who live in those towns. Therefore, we must ensure that they enforce this particular part of the law, strictly, in accordance with the by-laws. For the Councils to do this, they obviously need a strong enforcement unit within their establishments; an enforcement unit that will be impartial and free from corruption and, which will carry out the orders and wishes of the council, regardless of who is involved. This way, we will make it clear to all and sundry that our towns have to grow properly in accordance with the by-laws.

Mr. Speaker, Sir, under Clause 46, the Bill provides for a right of way for planners to be able to enter one's land to carry out certain surveys so that they can establish whatever it is they want to establish in the course of their work of planning for a particular area. It is only reasonable that if planners want to enter your private land in order to establish whatever they want to establish, they must seek your permission and give you notice so that they can enter with your permission. That notice should be reasonable. Under Clause 46 (2), the Bill says:-

"A person shall not have the right to enter upon any land or premises until after the expiration of

twenty four hours after a notice of entry has been served on the owner or occupier of the land or premises".

Clearly, 24 hours is too short a notice. I think that to give a land owner 24 hours' notice that you intend to enter his premises to carry out certain specified surveys or whatever it is that you want to do, and then you enter at the expiry of 24 hours without any further recourse to the land owner is unfair. We really need to protect the rights of individuals because this kind of proviso can be abused by people who have ulterior motives. If you have a title to your own land, it is your land and, even if they are trying to set up a public purpose like a road of access and so forth, we must agree that in the course of providing such infrastructure, a land owner should be given reasonable notice, and not 24 hours. I would have thought that a notice of about seven days would be sufficient, unless there is an emergency. If there is an emergency, then they can go to a court of law---

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. While listening to my friend, I thought he has misread this particular provision. A notice is given of a certain period, be it 14 days or a month. It is 24 hours after the expiration of that notice that the authorities can come in.

Mr. Speaker: Order, Dr. Lwali-Oyondi! Sit down! Next time you want to make such an interesting intervention, may be, you can ask the hon. Member on the Floor to give way. That is the correct procedure to give such information. It was certainly not a point of order.

Dr. Lwali-Oyondi: I was trying to help him understand the correct---

Mr. Speaker: Order! First of all, you are out of order to address the Chair while you are seated! Anyway, you take my warning seriously. Proceed!

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Thank you, Mr. Speaker, Sir. That was not a point of order and certainly the interpretation the hon. Member is giving is not what is said here. I believe I am correct.

I am saying that, once you have a title to your land it is reasonable that you be given proper notice before people can enter your land to be able to carry out survey work.

Under Clause 47, we have a very important proviso and this is the question of preservation of buildings of special architectural value and historical interest. In some of our major towns like Mombasa, particularly at the coastal areas, we have historical sites of architectural value which we will want preserved for posterity. Even in this town, we have important buildings like the law courts, Kipande House and others which are of significance to the history this country. It is important that we must begin to develop a sense of history and value in our people and we must ensure that when we have such sites, buildings and monuments they are properly preserved because they are going to be landmarks of our future history of this country. There must be a proviso for this in our by-laws. Too often some of the unscrupulous businessmen who want to buy property, and because people have a willing buyer, willing seller mentalities, and they are entitled to it, you will find that in a number of cases some of these plots will be bought and people raze down buildings of historical value because they want to put up glass houses in the name of modernity. We want them to preserve elements of historical importance to us. There is a cost to all this. It is no good telling somebody that he cannot develop a plot because it is of historical value if in the process they are going to lose the current market value of that particular property. In other countries, what has happened is that they set up a trust that would then buy those properties. They give the owners the rightful value of the plot as it is at the moment and that trust preserves it, renovates it and keeps it for posterity. In that trust, you would have people who have money like, for example, businessmen who can volunteer to put in money because they are interested in the history and the architectural value of the country. We need to go beyond just providing for this particular clause. There should be a clause that will enable us to declare certain buildings and sites of historical or architectural importance. We want to go beyond this by providing the necessary organizational structure as well as the necessary funding which will enable any persons who feel that they cannot do it on their own to cede the buildings so that they can be preserved for our posterity who will be able to know how Nairobi, Mombasa, Lamu or any of those towns developed in the past.

I just want to make one last comment before I sit down. In the process of planning sometimes we make decisions which have such significance on the value of adjoining land. For instance, if land that was previously made agricultural is there and one gets permission as a land owner to convert part of that land into an important development and brings in infrastructure, the value of that land is enhanced. The value of the land in the adjoining area is also enhanced and those people who own land in that environs eventually benefit because of the initial investment. There is a concept of enhanced value that is discussed and my colleagues on the other side, the planners know about it. When the value of land has been enhanced as a result of action by a developer, those people in the vicinity who eventually benefit from that initial investment must be made to cede part of the enhanced value to the owner of the land because without the initial investment, the value of the adjoining land

would

not have been enhanced to the same extent that it has been enhanced.

I will give an example. We have an important club called Windsor. I am not a member but I know that it was developed recently. That area initially was a coffee estate and the value of land in that place was agricultural. Because of that decision to put up that Windsor Country Club and because of the infrastructure that was brought in by those initial investors, the value of the land in the vicinity has been enhanced maybe ten or 20 times. This has happened because of the initial investor. The adjoining land owners are going to reap Windsor's profit which they did not anticipate from the initial investment of one person. I know that in planning for land there is such a proviso that when land owners either sell or develop and get changes of user to their property which initially would not have had the same value, there should be a method of creaming off some of that profit to the initial investor. That is provided for. So, I suggest that that provision should be provided in this Bill because it is important that those who invest first and bring about very much enhanced value to a piece of property have the chance to reap of from the neighbours.

With those comments, I would like to support.

[Mr. Speaker left the Chair]

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

Mr. Raila: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute on this very important Bill. The Memorandum of Objects and Reasons for this Bill state:-

"The object of this Bill is to provide for the preparation and implementation of regional and local physical development plans. The purpose of the Bill, therefore, is to ensure co-ordinate and orderly physical development and proper land use and especially to arrest the present situation of increasing the number of unplanned shanties, illegal subdivisions of land, traffic congestion, mushrooming of shops along major roads, shortage of public amenities."

Mr. Temporary Deputy Speaker, Sir, the Objects and Reasons are very noble, indeed, but when one goes through the Bill itself you find that, in fact, if this Bill is passed the way it is drafted, we will achieve exactly the opposite. I do agree with the previous speaker that there is a conflict between the preparation and implementation of the physical planning.

Mr. Temporary Deputy Speaker, Sir, I want to begin my comments with clause 4 of the Bill, which states:-

"There shall be appointed by the Minister a Director of Physical Planning and such other officers, who shall be public officers, as may be deemed necessary for the purposes of this Act."

A Director of Physical Planning is a civil servant and, therefore, he should be appointed by the Public Service Commission and not the Minister. If this Bill is passed the way it is, it is going to be the final nail on the coffin of the Ministry of Local Government. Section 4(2) says:-

"The Director shall be the chief Government advisor on all matters relating to physical planning."

Why should the Director not be the authority instead of being the advisor? If this clause is read in conjunction with clause 5(1)(d) which provides that one of the responsibilities of the Director shall be to "advise the Commissioner of Lands on matters concerning alienation of land under the Government Lands Act and the Trust Land Act respectively", then you will see that the Commissioner of Lands does not have to accept the advice of the Director. For the Director to be effective he should be the final authority in as far as planning is concerned.

Clause 5(1) of the Bill says:-

(a) "The Director shall be responsible for the preparation of all regional and local physical development plans."

I agree with what was said by the previous speaker, that the Director should not be responsible for preparation of regional and local physical development plans, because that is the domain of local authorities. What are the local authorities for? If the central Government will go into the details of doing regional and physical planning, then why do we have regional, provincial and municipal physical planning officers? If we are to retain the unique features of our various towns and so on, then their planning must be local and the local people must be involved in the preparation of those plans. The Director should only be concerned with policy guidelines

like, for example, setting out guidelines for environmental requirements for urban development, density zoning, plot sizes, infrastructural requirements and community facilities. Those are the areas which should be the domain of the Director. He should give guidelines in those particular areas, but he should not be involved in detailed physical planning, particularly for the local authorities.

This Bill does not mention the powers of the Minister for Local Government to create a local planning authority. But Section 166 of the Local Government Act states that the Minister for Local Government has the powers to create a local planning authority. So, that situation needs to be harmonised or provided for in this particular Bill, if there is not going to be a conflict of authority. If we give the local authorities power to do the physical planning, then we will be able to do away with the current chaos that exist. What has been happening is that, because of too much centralisation of authority, letters come from above. Once those letters have come from above, fencing off of plots begins without consideration of existing local plans.

Mr. Temporary Deputy Speaker, Sir, I now move on to clause 6 of the Bill which states:-

"The Director or any officer appointed under section 4(1) shall not be personally liable to any action or other proceeding for or in respect of any act done or omitted to be done without negligence and in good faith in the exercise or purported exercise of any of the functions conferred by or under this Act."

The clause does not say what other action will be taken against the Director if he willingly or knowingly or intentionally commits any mistakes. In this era of transparency and accountability public officers must be made accountable for their acts. I think that this particular clause can be abused by the Director of Physical Planning.

Part III of the Bill talks about the establishment of liaison committees. Under clause 8 the officers who shall sit in the liaison committees are listed. Missing from this list are local councillors, Town Clerks and local Members of Parliament, all of whom are not represented in that committee. In this era when we are talking about participatory planning it is very important that the voters' representatives be represented in a committee that is doing planning. How else is this committee going to get any feedback from the people, if the people's representatives are not on that particular committee?

The planning in Nairobi has been very haphazard. The first comprehensive plan for Nairobi City Council was prepared way back in 1948. That was the plan that was meant to make Nairobi a colonial headquarters. The second plan for Nairobi was done after Independence. That plan was actually drawn up in 1973 and was called: "The Metropolitan Growth Strategy of 1973". That particular plan was meant to see the growth and development of Nairobi up to the year 2000. However, the effectiveness of that plan was short lived. It seems that its implementation was hampered by political developments, whereby Government pressures favouring individual interests took precedence over the public good. As a result, that plan was never fully implemented. Right now we do have a problem in Nairobi, where you have haphazard planning that has taken place since the 70s, throughout the 80s and up to now. We are saying that planning in the City of Nairobi should serve the following objectives:

- (i) It should serve the provision of services to the people.
- (ii) It should serve for the co-ordination and integration of development activities within given areas.
- (iii) It should serve mobilisation and involvement of the Committee in the planning and development process, to create viable living environment.

Mr. Temporary Deputy Speaker, Sir, what is required in Nairobi is to give effect to the several documents that have been prepared over the years. In 1993, we convened a convention called, "The Nairobi We Want". That convention came up with very comprehensive recommendations as to how Nairobi should be developed for the betterment of the residents of the city. Unfortunately, that particular report has not been tabled before this House by the Minister for Local Government. But it is a very, very comprehensive report that identify the problems that exist in the city, the causes of those problems and the solutions to those problems.

Still on Clause 8 (2), you have the District Liaison Committee. If you look at its composition, you will see that it shall be chaired by the district commissioner. Why should that be so? What has the district commissioner to do with local planning? The district commissioner is the representative of the central Government and the Office of the President in the districts. But we do have in the districts, elected local leaders. Why is this Committee not being chaired by the chairman of the local authority, if it is really to be a local planning committee?

Mr. Temporary Deputy Speaker, Sir, again lacking in that list is the representative of the people. It does not have the local Member of Parliament or a representative of the group of Members of Parliament, nor do we have a councillor sitting on that committee. During this era of multi-party politics, when the management of the local

authorities has changed, we need to give effect to that change in this kind of legislation. We need to recognise in this Bill, the fact that, a number of our local authorities now are manned by representatives from different political parties. This multi-party character needs to be reflected in this kind of legislation. I am saying this because I know that we have not yet fully accepted in spirit the existence of multi-party in this country. I am saying that if we did that, then we would also move further and abolish the system of nominating councillors in our local authorities.

In a place like the United Kingdom, you will find that a local authority is fully managed by a party that is not in Government. They do have autonomy to plan and manage the affairs of that particular local authority. It is only that if you do that, that you can be able to blame successive administrations for certain failures. For example, we in FORD(K) do have very clear policies on how we want to manage our local authorities, which are different from KANU's policies on local Government. We want to have powers to be able to implement those policies so that eventually, we are judged by the voters on our successes or failures. **An hon. Member:** Which FORD(K)?

Mr. Raila: That has not been reflected in our laws. You find that sometimes last year, there were local authority elections in South Africa. In those elections, the African National Congress (ANC) won with a very convincing majority. They won with an increased majority than what they got during the general elections two years earlier. Why did that happen? It happened because they had been able to put in effect, the reconstructional development programmes. This had, in fact, earned them more support.

On the contrary, last week, there were local Government authority elections in the United Kingdom. The Conservative Party lost very disastrously in some of the towns that have been traditionally Tory's for very many years. Why was that the case? It is because the revised Labour Party policies on local Government are now more appealing to the British electorate than before. So, the local authorities in this country needs to have more autonomy, so that they can be managed without undue influence or interference from the Central Government.

Clause 9 of the Bill reads as follows:

Notwithstanding the provisions of Section 8, a Liaison Committee may co-opt such other persons as it deems fit to assist the committee in its deliberations.

It does not state what qualifications these people should have, how many they should be and from which fraternity.

If you are just giving the Committee power to co-opt, you must specify the number of people that they can co-opt, and their quality and calibre.

For example, we do know that the provisions for nominating councillors made in the Local Government Act to allow the Minister to cater for certain special interests, maybe religious interests, minority interests or professional interests. But that power has been abused by the Minister since the multi-party elections in this country, to basically try to confer majority to KANU where the electorate had decided otherwise. The Minister is not supposed to nominate KANU councillors who were defeated. In doing what the Minister is doing, he is actually abusing the power to nominate. He is denying those councils certain talents which the Act intended to have, by nominating defeated councillors who are not even qualified or rejected councillors.

Clause 14 of the Bill, talks about the protection of the members of the Liaison Committee. What I said with regard to the director, should also apply to these people. That this is contrary to the principles of accountability.

Clause 15(1) which appeals to the Minister and to High Court says as follows:

"That any person aggrieved by decision of a liaison committee may, within 30 days of receipt by him of the notice of such a decision, appeal to the Minister in writing against the decision in the manner prescribed".

If the Committee which consists of experts has already declined an application, why should the appeal go to a Minister who is a layman? All experts sit in the liaison committee and if they have already rejected this application, why should an appeal be sent to the Minister who is a layman? This particular provision can be abused and, in fact, I am almost certain that this provision would be abused very badly by the Minister by making just political decisions to favour certain people. So, I am suggesting that there should be a provision for a public hearing, where somebody who is aggrieved by the decision of the Committee, can appeal to and that he can be heard publicly, so that the Committee can be made to account for its decision in an open and transparent manner.

Mr. Temporary Deputy Speaker, Sir, Clause 15(2) says as follows:

"The Minister may reverse, confirm or vary the decision appealed against."

On what basis is the Minister being given the power to reverse or vary the decision if this decision had been fairly taken by a Committee of experts? I am saying that after the public hearing, if a provision is made for it, then another aggrieved person should go direct to the court, because this provision of appeal to the Minister may delay an application of

somebody who is in a hurry to develop a property or to carry out any kind of development. I knew of a Minister for Lands and Settlement, the hon. "King of Meru", who used to insist that he must personally listen to these appeals. Sometimes he would take one year before he listened to any of those appeals. So, I am saying that the aggrieved person should have an option whether to go for a public hearing, if that is provided for, or to go direct to court to speed up the matters because there is also no time limitation for the Minister in this particular Bill. There is no provision made here, to state how long the Minister should take before he listens to any appeal.

Clause 15(4) talks about the physical development plan generally---In these days, in the developed countries, there is what is called participatory planning, under the modern philosophy. Participatory planning means that the people themselves who are going to benefit from the plan are involved in the plan preparation. That is missing here in this particular Clause.

Clause 17, which talks of contents of regional physical development plan, goes on to say as follows:-
"A regional physical development plan in any one area shall consist of...."
He goes on to list all those technical reports conditions, resources and facilities in the area and so on. But this particular Clause is not clear in terms of mandate and the relationship that exists between Ministries that deal with regional planning, for example, like Ministries of Agriculture, Livestock Development and Marketing and Local Government. There is no clear relationship to mandate which Act, because there are several Acts which deal with planning. Which Act is superior, particularly when there is a conflict?

Clause 18(c) says as follows:-
"Without prejudice to Section 17, special provisions shall be included in a regional physical development plan.
(a) by defining the scope of the plan; (b) defining the area to which the plan relate; and (c) defining the authority to be responsible for enforcing the observance of different aspects of the plan."

This particular Clause conflicts with the Local Authorities' Act which gives the Local Authority the power to be responsible for enforcing and observance of the plan.

Clause 19(1) says:-
"The Director shall not, later than 30 days after the preparation of a regional physical development plan, publish a notice in the Gazette and in such other manner as he deems expedient to the effect that the plan is open for inspection at the place or places and the time specified on the notice".

How many people in our rural areas read the Kenya Gazette? Very few people. So, for the people to be informed and to know that the plan is ready, it should be specified where this plan is going to be and a provision should be made here that it must be announced in the sub-chief's baraza that the plan is ready and is available at such and such a place so that people can go and look at it.

Then Clause 19(3) says:-
"The Director may, at his discretion, accommodate or decline to accommodate such representations or objections to the plan and in either case, shall, within 30 days of his decision, notify the petitioner in writing accordingly."

This is giving too much discretion to the Director and this is what I was saying initially that the philosophy of participatory planning is missing here. It should be the discretion of the Director to accommodate or to decline. The people themselves should be involved in the planning itself and their views should be heard before a plan is drawn. The way this Bill is drafted is too commandist. It is too colonial in character in that the colonial planner goes to a place and the natives do not know what he wants. He goes there and decides arbitrarily to draw up a plan for the natives and then take it back to them to either take it or leave it. In an independent country like ours, the people themselves should be involved in evolution of a plan. The plan should not just be drawn by the so-called experts without reference to the people.

Mr. Mulusya: They must be informed even before it is properly prepared.

Mr. Raila: Yes, from the very beginning.

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Mulusya! You are doing the wrong thing, are you not?

Mr. Raila: Under Clause 19(5):

"A person who is aggrieved by a decision of the Minister may appeal against such decision to the High Court in accordance with the rules of procedure for the time being applicable in the High Court."

I have already stated that the appeal should go directly to the High Court.

Under Clause 20(1):

"If after the expiration of 60 days, no representations against, or objections to, the plan have been made by the Director, the Director shall certify the plan in triplicate and submit the certified plans to the Minister for his approval."

I am saying that this plan should be submitted to the local authorities and not to the Minister.

Under Clause 21:

"The Minister shall within 14 days after he has approved the regional physical development plan, cause to be published in Gazette, by an officer authorised by him, a notice to the effect that the plan has been approved with or without modifications---"

I am asking here which authorised officer? There must be a particular officer who shall do the Gazettement, and I am echoing sentiments expressed by the previous speakers that this should be the Accounting Officer in the Ministry.

Under Clause 22(1): Amendments of approved regional and physical development plan. I am saying that the plan should not be rigid, but flexible to take count of changing circumstances. That our plans should be revised every three years like the economic development plan.

Under Clause 22(2):

"The Director shall publish in Gazette a notice of the proposed revocation or modification of the approved plan---"

Here, I am saying again this should be the Baraza and not just the Gazette.

Clause 23(1):

"The Director may, by notice in Gazette, declare an area with unique development problems as a special planning area for the purpose of preparation of a physical development plan irrespective of whether such an area lies within or outside the area of a local authority."

I have yet to be told which area in the Republic of Kenya lies outside a local authority. I think that all areas of Kenya lie within one local authority or the other, even if they are game parks, but they are within a specific local authority, even if it is Mt. Kenya, it falls under a county council. So, there is no area in the Republic of Kenya which does lie outside a local authority. I am saying that this one here also needs to be harmonised with the other Acts like the Local Government Act and the Minerals Act.

Under Clause 23(2):

"Subject to subsection (3), the Director may, by notice in Gazette, suspend for a period of not less than two years, any development he deems necessary in a special planning area until the physical development plan in respect of such area has been approved by the Minister."

I think that "not less than two years" is too ambiguous. There should be a time limit and I am saying that we should change the word "not less" and substitute with the word "not more than two years." Even if it is an area with special unique development problems, I do not think that it should take a Government department more than two years to develop physical plans, and if we leave it "not less than", it could be ten years or 20 years. Meanwhile, somebody who is preparing to carry out some development is waiting. So, it should be "not less than" instead of "not more than."

Under Clause 24(1):

"The Director may prepare with reference to any Government land, trust land or private land within the area of authority of a city, municipal, town or urban council or with reference to any trading or marketing centre, a local physical development plan."

I am saying and I have said before that that is and should be the responsibility of the local authority.

Under Clause 24(3) which says:

"The Director may prepare a local physical development plan for the general purposes of guiding and co-ordinating development of infrastructure facilities and services for an area referred to in subsection (1), and for the specific control the use and development of land or for the provision of any land in such area for public purposes."

Again, I am saying that this contradicts the Local Government Act and my suggestion is that the Director should delegate his powers to the local authority just like the Ministry of Health has delegated powers under the Public Health Act to the local authority. Those powers are enforced by the local authority that we do have the City Medical Officer of Health. He implements the Public Health Act in a local authority. What I am saying is that there should be provision here for delegation of powers by the Director of Physical Planning to the local authorities and analogous to what is happening in the Ministry of Health.

Under Clause 29: Control of development. This is the most important Clause as far as I am concerned.

"Subject to the provisions of this Act, each local authority shall have power-

- (a) to prohibit or control the use and development of land and buildings in the interest of proper and orderly development of its area;
- (b) to control or prohibit the sub-division of land or existing plots into smaller areas.
- (c) to consider and approve all development applications and grant all development permissions.

Now, these powers are supposed to be given to the local authority under Clause 29 and yet when you look at Clause 30(1):

"No person shall carry out development within the area of a local authority without a development permission granted by the local authority under section 33."

Read that in conjunction with Clause 30(7):

"No local authority shall grant a development permission for any of the purposes mentioned in subsection (5) without a certificate of compliance issued to the applicant by the Director or an officer authorised by him in that behalf." Now, which is which?

Under Clause 31:

"The issuing authority is the local authority."

Then under Clause 37, it says,

"The authority is not the local authority, the authority is the Director himself."

Which is which? And we do not go on to specify what happens if this procedure is not followed. What conditions will be considered when granting this permission that is not stated in this Bill. Because of lack of specification of the conditions which must be satisfied by an application, this can be completely abused as it has been abused in the past. This is what has happened and has made a mockery of our planning in Nairobi and in other local authorities.

An example of this is a football field in Woodley, behind Joseph Kang'ethe Road. This used to be football field where children used to play. Sometime in 1993, a decision was made to subdivide that field. It was a plot of 0.556 hectares which was sub-divided into eight sub-plots. The reasons for the application are not given, but then the City Council decided at a meeting on 11th June, 1993 to approve the sub-division of that plot into eight sub-plots. The conditions for approval only state that applications for water supply to each sub-plot was made to the General Manager, Water and Sewerage Department for such supply to be made. A comprehensive order of legislation was to be provided. Plans and specifications were to be approved by the City Council. Drainage and depression designs to be done to the satisfaction of the Medical Officer of Health. The proposed Caul de Sac road(?), serving the development was to be constructed to adoptive standards, including water service drainage and street lightings. Plans and specifications were to be submitted for approval by the City Engineer.

They have not specified whether a change of user has been obtained. This is a recreation area and here it is being sub-divided into eight sub-plots to be given out and that land has already been given out and one of the beneficiaries went ahead and dug a huge trench which, during the last rainy season, became a dam. Some hon. Members in this House might have probably read in the papers that a twelve-year child died in that pool just some few months ago. That used to be a children's playing ground and a decision has been taken very unilaterally by the City Council to divide it into plots which have been taken by private individuals. That is what happens if it did not specify the conditions under which approval will be given.

During the same meeting of the City Council on 11th June, 1993 there were resolutions of change of user with regard to certain plots. The result was that subject to all outstanding rates, inclusive of 1993 on each plot having been paid, the undermentioned eight number of applications for change of user were to be recommended to the Government for approval, subject to the conditions attached to each being complied with.

With regard to plot No. 1 there was a change of user from residential to religious use for a church building with a pastors house on LR No. 36/3/1438, 18th street under freehold lease. This used to be a residential area. That is how it was planned. The City Council at a sitting resolved to change the user in respect of one particular plot without reference being made to the residents from a residential area to a religious use. This is what I said is causing havoc to our planning.

There was a change of user from residential to a health club on LR No. 209/84/02/2 Gamelane Kileleshwa; leasehold. Kileleshwa is known to be a residential area. The City Council decided to convert a house in Kileleshwa from a residential plot to a health club. A health club will attract a lot of people without reference being made to owners of plots in the neighbourhood. They have completely ignored the plans by converting just one piece of land by changing the use from residential to a health club.

The third one is change of user from residential to a workshop, showroom and offices and this is on LR No. 93/1244. When you change just one plot in a residential area into a workshop, a showroom and offices, then, why do we have global planning if the City Council Committee at a sitting can convert one plot from the planned use to another use without reference being made to the plan itself? It is not only that. We have also other conversions like the plots at Kasarani Sports Complex.

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Raila, you cannot talk about that one because it is under the Public Accounts Committee investigation and, therefore, you cannot discuss it.

Mr. Raila: If it is under the investigation of the Public Accounts Committee, I will not discuss it. I will

move to Clause 33 (i) which states as follows:

"Subject to such comments as the Director may make on a development application referred to him, under Section 32, a local authority may, in respect of such development application grant the applicant a development permission in the form prescribed in the Fifth Schedule without conditions."

This particular Clause contradicts Section 141 of the Local Government Act.

Mr. Temporary Deputy Speaker, Sir, Clause 33 (2) says:

"The local authority shall notify the applicant in writing, of its decision within 14 days of the decisions being made by it and shall specify the conditions, if any, attached to the development permission granted, or in the case of refusal to grant the permission, the grounds for the refusal."

Here the local authority is merely being converted into a messenger of the Director of Physical Planning.

Clause 33(4) also says that:

"Any person who is aggrieved by the decision of the liaison committee, may appeal against such decision to the Minister under Section 15.

Mr. Temporary Deputy Speaker, Sir, I have already talked about that and I do not want to repeat it.

Mr. Temporary Deputy Speaker, Sir, Clause 35(3) says that:

"A person aggrieved by the decision of the liaison committee, may, not later than 14 days after he has been notified of the committee's decision, appeal against such decision in writing to the Minister whose decision shall be final."

Mr. Temporary Deputy Speaker, Sir, if the Minister is going to be a final authority, we are likely to end up with some very subjective decisions undertaken on political grounds and which cannot be appealed against. I say this because I have a specific case of Kibera land issue, which has come before this House several times. First, as a Motion, way back in 1973, which was approved that Kibera was going to be surveyed and the residents issued with title deeds. The matter came up again before this House in 1978 and again, an assurance was given that a survey would be carried in Kibera and title deeds would be issued. I did again raise this issue here in 1993, and the Minister assured me that in spite of the delay which he claimed on certain technicalities, the Government had now made arrangements to carry out the survey and issue title deeds for the Kibera residents.

Mr. Temporary Deputy Speaker, Sir, the Kibera residents cannot construct permanent houses because they do not have title deeds. That is the main reason for the mushrooming of slums in Kibera. Some of the residents of Kibera are third or fourth generation because they have lived there for nearly 100 years, like the Nubian community. They have then been joined by other communities from the other parts of the country. Kibera is, therefore, fairly cosmopolitan, and we have appealed to the Government to carry out the survey and issue title deeds to the residents. After the Minister gave an undertaking in this House that the Government was ready to carry out the survey, I went to him with a delegation of leaders from Kibera. We had a meeting with him, together with his Permanent Secretary, the Director of Physical Planning, the Director of Survey and the Commissioner of Lands. We had a comprehensive discussion and we were assured that the matter had now reached implementation stage and we were told to convene a meeting of the elders to agree on the modalities of how the exercise was going to be carried out so that it could easily move without any kind of hitches. I was directed to go and see the local District Commissioner (DC). When I went to him, he told me that he needed the instructions from the Provincial Commissioner (PC), and the PC in turn told me that he needed instructions from the Permanent Secretary. I wrote to the Permanent Secretary asking him that in the light of what we had discussed, he should write a letter to the PC giving instructions so that the survey work could begin. Two weeks passed without any kind of response and I followed it with another letter. Another week passed, I eventually phoned the Permanent Secretary and asked him what had happened. He told me that politics had now entered into this matter and, therefore, the survey could not proceed. I asked him to state the nature of politics, but he could not be specific.

Mr. Temporary Deputy Speaker, Sir, I then went and asked the Minister again what had happened, and he told me "Well, there were some hitches here and there, but the work would proceed". The work has not proceeded up to date. As I am talking, the residents of Kibera do not have title deeds, but what is known is that the plots are being issued and surveying is being carried quietly under the table. This is what would happen if the matters are just left at the discretion of the Minister.

Mr. Temporary Deputy Speaker, Sir, various speakers have talked generally about the grabbing of land in this country and this has become a cancer. It is important that for any kind of plan to succeed, the Government must act decisively to curb incidents of corruption.

The Government must act decisively in this particular issue of land grabbing. I have a case here because I was dealing with the Permanent Secretary, Ministry of Lands and Settlement. I have a case here regarding a plot in Upper Hill, which was grabbed which is LR. No 209/Upper Hill/AG/121. This is a letter written to my advocate by Mr. Richard Kimetto.

"The dispute is between Mr. J.K. Sang and myself over a residence of LR. No 209/Upper Hill/AG/121."

Mr. Temporary Deputy Speaker, Sir, this particular complainant was a tenant of a house in Upper Hill. He was living in a servant quarter of a Mr. Paul Muya. Then later on when those houses were going, he approached Mr. J.K. Sang to liaise with Mr. Muya to acquire that house. Mr. Sang promised to help him acquire the house. He went and saw the then Minister for Public Works, hon. Mibei, who promised to assist them to acquire this particular property and it was supposed to be acquired jointly between Mr. Kimetto and Mr. J.K. Sang.

However, Mr. Muya had agreed, through an arrangement, to move out of the house so that Mr. Sang could move in, and by arrangement acquire as an owner-occupier residence. Mr. Sang then made his way through and managed to get the house transferred into his name alone. After that, he asked Mr. Kimetto to find a buyer for the land because he did not need that particular land. Mr. Kimetto looked for a buyer who offered to pay Kshs25 million. Mr. Sang insisted that the property was worth Kshs30 million, but as Mr. Kimetto could not get a buyer who could offer Kshs30 million, the deal could not go through. Somehow, Mr. Sang managed to get a buyer who offered to pay him Kshs30 million and this money was paid to him alone. The property was bought by an Asian, but Mr. Kimetto did not know that house had already changed hands until the Asian turned up one day

The Temporary Deputy Speaker (Mr. Ndotto): Order, Mr. Raila! What are you implying by that?

Mr. Raila: I am talking about how land grabbing is interfering with physical planning in this City. So, Mr. Kimetto only learnt slightly that the property had changed hands when the new owner, that is the Asian, turned up to claim his property and the Asian then served him with an order to vacate the property saying that he was now the happy owner of this land and house. Mr. Kimetto has been living in this house with his family; wife and three children and he is insisting that he will not leave this house unless he is paid his cut and that the Asian will only move into this house over his dead body.

Mr. Salat: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Chairman of a FORD(K) faction in order to treat us to stories of how somebody bought a house or sold it instead of contributing to the Bill?

The Temporary Deputy Speaker (Mr. Ndotto): Order, Hon. Raila! I think what you are saying may be said on another occasion on a case which you stated very well that the location of land is interfering with physical planning, but you have gone to the details of other transactions which, in my own opinion as the Chair, is not relevant to the Bill.

(Mr. Matiba entered the Chamber)

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, another Chairman has just arrived and I want to welcome him. I just want to remind the Member that I am not the Chairman of a FORD(K) faction, but I am the Chairman of FORD(K).

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. Do you notice that an hon. Member from the DP Party is cheering the FORD(A) Chairman when hon. Ndicho is, in fact, not doing so?

(Laughter)

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, you can see how cheeky hon. Sunkuli can be. My point of order is that whether he likes it or not, hon. Matiba is my chairman and by thumping here does not prove. He is my Chairman and he is the Chairman of FORD(A). So what? Do not be cheeky.

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Ndicho! I am not sure whether the word "cheeky" is acceptable in this House. Hon. Raila, continue.

Mr. Raila: Thank you, Mr. Temporary Deputy Speaker. I was saying, before I was rudely interrupted, that ownership of property has got direct relevance to physical planning. You cannot separate ownership from planning, and as I was saying that land grabbing is interfering with planning in our urban centres because, for example, the grabbers have even grabbed land which is meant for children's playgrounds. They have grabbed land which is meant for construction of health centres and schools. So, land ownership is very relevant to planning and, as I was saying and in conclusion here, this Mr. Sang is none other than the Permanent Secretary whom I have petitioned about the surveying of Kibera and if these are the kind of people who are going to handle applications of aggrieved people, then God help Kenyans. I am saying that there should be an independent

authority that will not be subjected to the whims of politicians.

Mr. Temporary Deputy speaker, Sir, Clause 36 on Environmental Impact Assessments says:-

"If in connection with a development application, a local authority is of the opinion that proposals for industrial location, dumping sites, sewerage treatment or any other development activity will have injurious impact on the environment, the applicants shall be required to submit together with the application an environmental impact assessment report."

Now who is going to do this environmental impact assessment? What are supposed to be his qualifications and what is the criteria that are supposed to be used to do this assessment? Left the way it is, this Clause can easily be used to discriminate against people who are not favoured. This Clause needs to be more detailed by giving us the criteria that is going to be used to assess the environmental impact so that we do not leave it to the bureaucrats to go and say whatever they like.

Mr. Temporary Deputy Speaker, Sir, Clause 38 says:-

"When it comes to the notice of a local authority that development of land has been or is being carried out under the commencement of this Act without the required development permission having been obtained and that one of the conditions of a development commission granted under this Act has not been complied with, the local authority may serve an enforcement notice on the owner-occupier or developer of the land."

Now why is this being made retroactive? Why do we want to penalise developers only after the enactment of this Act? There should be no reason why this Act should be made retroactive to penalise people from carrying out development before it was enacted.

Mr. Temporary Deputy Speaker, Sir, I had other things to say about this Act, but I am being considerate to some other Members who want to make contributions and I would really like to appeal to all Members to be considerate also. There are some Members who usually speak on all the Bills, but they usually take all the time of other Members. I think we should really agree to be considerate to other Members so that we can all make contributions to the Bills.

Thank you very much, Mr. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Members! I wish you can take note of what hon. Raila has said because it is important.

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, thank you for giving me an opportunity for contributing to this Bill. Like my colleagues who have spoken before me, this Bill is the sort of law that should have been enacted at the dawn of Independence. This Bill sets out very important legal provisions for the management of both urban and rural land in this country.

The Bill is so important that Clause 52 sets out that upon passing it, the Town Planning Act and the Land Planning Act shall be repealed. Before I look at specific clauses of the Bill, however, I wish to draw the attention of the Minister concerned that, important as the Bill is, there is a glaring omission in the Bill, in that, the Bill says nothing about the recognition of group and clan land rights in this country.

We have large chunks of land in this country, especially in areas occupied by the Maasai people and the Somali people which has not been demarcated, which has not been registered in anybody's name. If the Bill is left as it is, there is a danger of this land being alienated from these groups in the very, very near future. I hope that when the Minister comes to reply, he will consider that point.

Mr. Temporary Deputy Speaker, Sir, another glaring omission in the Bill is a point that hon. Shikuku mentioned, the failure by the draftsman---

Mr. Raila: On a point of order, Mr. Temporary Deputy Speaker, Sir. I said I was going to table this letter.

The Temporary Deputy Speaker (Mr. Ndotto): No, hon. Raila, you have to---

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I made reference to this letter and I think it is only fair that it should go on record. I had mentioned when I was contributing that I was going to Table it.

The Temporary Deputy Speaker (Mr. Ndotto): Just a minute, I will give you my opinion. Continue, hon. Wetangula!

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, I was pointing out that another omission in this Bill is its failure to mention anything about the minimum land holding that we should have in this country, especially in terms of agricultural land. Because, agricultural land is being eaten away every other day by reckless and irresponsible sub-divisions which very soon will affect our agricultural production.

Mr. Temporary Deputy Speaker, Sir, the Bill also fails to mention anything about the contravention of land currently occupied by game parks and game reserves. We do know that it is a very systematic encroachment

of land occupied by game reserves and game parks. Much sooner than later, we might have too little land for this important Ministry of Tourism and Wildlife where we have tourists coming in to pay money to the country.

Mr. Temporary Deputy Speaker, Sir, the Bill also says nothing about the protection of wetlands in this country. We have noticed another systematic destruction of wetlands in the country. A clear example being the destruction of the Yala Swamp in the name of irrigation development. I think we need specific legal provisions to protect the few wetlands we have in this country. For instance, in Western Province, and particularly in areas occupied by the Maragoli Sub-tribe, all wetlands in terms of swamps have been destroyed by the planting of gum trees. This has also been done in parts of Kisii and we need specific legal provisions to protect wetlands in the country. This Bill says nothing about that.

Mr. Temporary Deputy Speaker, Sir, the Bill does not say anything about the relationship between the Ministry of Lands and Settlement which is going to administer the Act once passed, and the Ministry of Agriculture which is responsible for the management of agricultural land. I think, this is an important fact that the Bill needs to take into account because much sooner than later, with the reckless planning we have been having in this country, the entire agricultural land will be consumed by an erection of slum like towns in the name of urban centres and this has to be checked.

Mr. Temporary Deputy Speaker, Sir, I would like to look at a few clauses in the Bill and suggest to the Minister my views on what I think he should do to make it good law. Clause 4, stipulates that:-

"There shall be appointed by the Minister, a Director of Physical Planning and such other officers who shall be public officers as may be deemed necessary for the purpose of this Act."

My humble view is that, the Bill should set out the qualifications of these officers. We have had situations where Ministers go out of their way to appoint persons who are not qualified to occupy certain positions and, in the process, standards are compromised and at the end of the day the country suffers. I would suggest that we set minimum qualifications expected of officers who shall be appointed as Director of Physical Planning. If it is academic standards, we must specify the academic qualifications and the level of experience that such a person has to ensure that whoever is appointed is a person who is so qualified as not to be manipulated, as not to compromise standards and not to mess up the physical planning of this country that has already been so much messed up.

Mr. Temporary Deputy Speaker, Sir, clause 4 (3), reads as follows:-

"The principal office of the Director shall be at Nairobi, but there may be established such other offices at such places as the Director may from time to time determine."

My view on this is that, it should not be left to the whim of the director to determine in which other area of the country, apart from Nairobi, shall have offices of the Director of Physical Planning. It should be expressly stated that every Provincial Headquarters in this country shall have an extension of the office of the Director of Physical Planning so that wananchi can be served better and they can have access to the services of the Director and his expertise.

Clause 8, reads:-

"The Nairobi Liaison Committee shall consist of the following members:-

The Permanent Secretary of the Ministry for the time being responsible for the physical planning who shall be the Chairman."

In my opinion, the Permanent Secretary has no business chairing this liaison committee. It is my humble view that we should specify a properly qualified, competent person who shall hold office on a full-time basis for a specific period so that cases where work is not done because either the Permanent Secretary is too busy or is involved in other official work do not arise. We want a liaison committee that is operating full-time with a full-time chairman and a full-time secretary.

Clause 8 (1) (b) says that the Director or his representative shall act as Secretary to the Committee. My view is that we should have a full time secretary appointed to serve this Liaison Committee instead of leaving it to the Director whose duties may conflict with his official duties, or who may be too busy, given that there will only be one Director for the whole country who will again serve as a Secretary to such an important committee that is charged with the responsibility of overseeing physical planning.

Mr. Temporary Deputy Speaker, Sir, Clause 8 (1) sets out all the people who are supposed to sit on this liaison committee. I propose that an addition be made to include a person with legal expertise, either a representative of the Law Society of Kenya (LSK) or a representative of the Attorney-General. This is because from time to time, matters will be arising that require legal advice and which have legal implication. It is only fair that we have a properly qualified person in law sitting on the Committee to give *ad hoc* advice on legal matters as and when they arise in the operations of the committee. Those views of the inclusion of a member or an appointee of the LSK or a representative of the Attorney-General apply also to Clause 8 (2), where there is an

omission of any legal expert on the committee at the district and the municipal level. I think, if that was done, we shall minimize unnecessary litigation that may arise from decisions that may be made by members of the committee, either in total disregard of the law because they do not know it or in ignorance of the law, for the same reason. I think it is important to look into that.

Clause 9 says: "Notwithstanding the provisions of section 8, a liaison committee may co-opt such other persons as it deems fit to assist the committee in its deliberations". To avoid and check the possibility of abuse, the qualifications of a person to be co-opted in this liaison committees has to be set out. If we leave it as it is, the committee will simply pick on persons who are unlikely to contribute anything. It might only pick those who will probably be assisting in the voting or in circumventing decisions that otherwise should not be passed. I think we need to have properly qualified people being co-opted--

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to say that, probably, some of these co-opted members will be assisting in voting, while we know that co-opted members are not supposed to vote?

Mr. Wetangula: Thank you, Dr. Lwali-Oyondi, for pointing that out. Be that as it may, if a person is to be co-opted to a committee that is discharging responsibilities that are technical and professional in nature, the qualifications of such a member must be taken into account. The person must be technically qualified, technically sound and of high integrity so that the standards of the committee cannot be compromised. This is what I am saying.

Mr. Temporary Deputy Speaker, Sir, Clause 13 says:-

"Any person aggrieved by a decision of the Director concerning any physical development plan may within thirty days of receipt by him of notice of such decision, appeal to the respective liaison committee in writing against the decision in such manner as may be prescribed."

My contribution to this Clause is that, once the appeal is preferred, the Act must set out a maximum period within which the appeal must be determined and finalized. This is because if we leave it open-ended, we will have files upon files of appeals which nobody will hear or determine. I suggest that if the appeal is preferred within 30 days, then we should set out that, within 60 or 90 days, the appeal must be determined by the body or the person to whom the appeal is made. This will help in hastening the movement of appeals. It will also reduce the back-log of work which, quite often in such committees, is caused through incompetence or laxity on the part of those responsible.

Clause 14 says:

"No member of a liaison committee shall be liable to any action, suit or proceedings for or in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of the functions conferred under this Act."

Again, here is another Section that is likely to be thoroughly abused. Who will determine the good faith of the conduct, acts and omissions of the members of the liaison committee? I think what the draughtsman has in mind as constituting "good faith" should be set out. Where such good faith is not met in the standards set out in the Act, the member must be personally responsible for his acts and omissions. This will, in turn, get such members to be more careful in their work and reduce reckless conduct on their part. Sometimes, some of them act even maliciously and then turn round and say; "it was all in good faith".

Clause 15 says:

"Any person aggrieved by a decision of a liaison committee may, within thirty days of receipt by him of the notice of such a decision, appeal to the Minister in writing against the decision in the manner prescribed".

Again, upon receipt of such appeal, the Minister must determine it and give his decision within three months; no more than that. If we leave it open-ended, we shall have cases like the one hon. Raila was talking about, where hon. Angaine was "sitting" on appeals for two or three years because he was the only one to hear them and he could not delegate that responsibility.

Clause 15 (4) says:

"Any person aggrieved by a decision of the Minister under this section may appeal to the High Court against such decision in accordance with the rules of procedure for the time being applicable to the High Court."

With regard to this Clause and all other Clauses relating to appeals from the committee's or the Minister's decision, it is my humble view that the appeals should start from the Principal Magistrate's Courts so that those aggrieved have an opportunity, in the event of loss, to go to the High Court and end up in the Court of Appeal. We all know that, currently, litigation is very expensive. It is even more expensive in the High Court than in the Principal Magistrate's Court. Some of these decisions relating to land are quite simple and can be handled by a

competent Magistrate even of the first class or a District Magistrate Grade II. I do not see why we should start at the High Court when we have several other lower courts that can hear and determine these matters. In addition to that, the High Courts in this country are not evenly spread and it would cost a lot of money, for example, for a person aggrieved in Lodwar to come all the way to Eldoret to file an appeal in the High Court. A person aggrieved somewhere in Lokichoggio or Manderu has to come all the way to Machakos or Nairobi to appeal. However, in the first instance, if they were to appeal to the Principal Magistrates' courts which are spread all over the country, it would hasten the process. I hope the Minister will take that into account.

Clause 19 says:-

"The Director shall, not later than thirty days after the preparation of a regional physical development plan, publish a notice in the Gazette and in such other manner as he deems expedient to the effect that the plan is open for inspection at the place or places and the times specified on the notice."

One Member suggested that such notice should, in fact, be announced in the Chiefs' and Assistant Chiefs' barazas.

I would suggest that such notices should not just be limited to the English language. They should be published in English, Kiswahili and in the relevant local dialect of the area concerned and over and above that, they should be pinned on notice boards at the chiefs and assistant chiefs centres so that all people involved are advised. It should also be incumbent upon chiefs and their assistants to inform the aggrieved parties that such a notice has been put up and if they have anything to appeal against or any objection to raise, they have an opportunity to go and do so. The effects of a legal notice in the *Kenya Gazette* is that it takes effect whether you have come across it or not and in the process we know that we have a lot of Kenyans who can neither read nor understand English. In that case, what will be happening is that a Gazette notice will be published and not spread out to anybody but it has an effect on depriving somebody of their livelihood in terms of land.

Clause 19 (3) states:-

"The Director may in his

discretion accommodate or decline to accommodate such representations or objections to the plan, and in either case, shall within thirty days of his decision, notify the petitioner in writing accordingly."

Mr. Temporary Deputy Speaker, Sir, the Clause should be expanded to say, "The Director must give reasons for his decline". It is not enough for him to say, "Your case has been turned down", and leave it there. When the person aggrieved seeks to appeal, what is he appealing against if no reasons are given for the rejection? So the law should be made very clear that the Director, in rejecting any proposition, must give reasoned reasons which an aggrieved party can have the opportunity to appeal against.

Again Clause 19 (5) says:- "A person who is aggrieved by a decision of the Minister may appeal against such decision to the High Court in accordance---." I said that it should start at the principal magistrate's court and ascend to the High Court and Court of Appeal in that manner.

Clause 23 (1) states:-

"The Director may, by notice in the Gazette, declare an area with unique development problems as a special planning area for the purpose of preparation of a physical development plan irrespective of whether such an area lies within or outside the area of a local authority".

Again as hon. Raila said, this is rhetorical framing of a clause that is meaningless. If the Act says that a local authority has the meaning of a local authority under the Local Government Act, then it is superfluous to say whether such an area lies within or outside the areas of local authority. There is no single inch of land in this country that does not lie under the local authority. So this kind of superfluous drafting should be corrected and not only that, if the Director is to declare an area with unique development problems in the manner prescribed in the Clause, the Director must first seek the views of the people involved. He must seek the views of the people of the general area and he must also give very clear reasons for his intentions to declare such an area in the manner set out in the Act otherwise leaving it to the whim of the Director runs the danger of being abused if the occupant of the office is not a person of sound conduct.

Clause 26(1) states:-

"The Director shall later than thirty days after the preparation of a local physical development plan, publish a notice in the Gazette and in such other manner as he deems expedient to the effect that the plan is open for inspection at the place or places and at the times specified in the notice."

Again, this falls under that Clause where I remember hon. Shikuku complained that the *Gazette* may not reach many people. I also wish to say that it should be published in English, Kiswahili and the local dialect of the area involved in this kind of planning so that more people can read what is in the *Gazette*, understand it and raise the objections as and when they are necessary.

Mr. Temporary Deputy Speaker, Sir, clause 29 is probably the most important one in this Bill. But I hasten to point out that the local authorities in this country are often manned by disastrously unqualified persons, be they councillors or officers. All that we hear and see, is that the day-to-day official responsibility of any physical planner seconded to a local authority is to hunt for open spaces in the local authority, and to see how to appropriate them either to himself or to his friends.

We have a problem with the quality of councillors all over the country across parties. My humble view is that in future we must set minimum standards of persons eligible to become councillors. As it is now, every Tom, Dick and Harry has the opportunity to become a councillor. The councillors quarrel over plots and other issues that are not related to development. They just deal with matters other than---

Mr. Orenge: On a point of information, Mr. Temporary Deputy Speaker, Sir. I want to inform hon. Wetangula, whose contribution I am really enjoying, that there was a requirement that councillors have a basic minimum standard of education. That was the position until President Moi took over the leadership of this country, when that requirement was changed. That is the fact of the matter.

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. cheeky Member of Parliament for Ugenya in order to say that before President Moi took over the leadership of this country councillors were always literate? To the best of my knowledge it was, in fact, the other way round: Literate people started becoming councillors after President Moi took over the leadership of this country!

The Temporary Deputy Speaker (Mr. Ndotto): Order! Hon. Orenge, you are out of order. Hon. Wetangula proceed.

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear the word used by the hon. Sunkuli?

The Temporary Deputy Speaker (Mr. Ndotto): I have a problem with that word, hon. Shikuku! It was mentioned this morning and, I think, there was a ruling on it, which we have to go by. Hon. Wetangula, can you continue?

Mr. Wetangula: Thank you, Mr. Temporary Deputy Speaker, Sir. I would want to point out to my learned senior, hon. Orenge, that, that is the kind of information that I do not require.

As I was saying, we must have councillors of integrity; we must have councillors with honest disposition, a vision and whose interests are those of the people they represent. To that end, I am suggesting that in future we may be required to set minimum academic standards for people to become councillors. We want people who would understand that it is important to have a green belt in a town or city; people who must understand that we need recreational facilities for people in towns. We want people who must understand that we need to have sewage lines, streets and street lights; people who must understand that a town must be truly a town and not a slum. Today, the main pre-occupation of the kind of councillors we have in many local authorities is who will own which plot or who will influence the grabbing of which plot. Who will influence the awarding of which centre? Who will influence which contractor to get what job? Who will influence the payment of which creditor? That kind of thing is not helping this country at all.

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member on the Floor appears to be blaming the allotment of the plots on the councillors. Does he know that all the beach plots in Mombasa and other plots in this City are beyond the grabbing of the councillors? I know they do grab, but there are plots which are given out, and the councillors cannot dare touch, or even think about them. "Zinatoka from juu juu zaidi".

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, Clause 30 states as follows:-

"No person shall carry out development within the area of a local authority without a development permission granted by the local authority under Section 33."

This is one area which has either been neglected or abused. We have seen development being carried out within towns where you find - Mr. Temporary Deputy Speaker, Sir, would you restrain hon. Shikuku from menacing me as I make my contribution?

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order, hon. Wetangula who is that?

Mr. Wetangula: Hon. Shikuku is menacing me as I am making my contribution.

The Temporary Deputy Speaker (Mr. Ndotto): Order, Hon. Shikuku. Carry on, Mr. Wetangula.

Mr. Wetangula: Thank you, Mr. Temporary Deputy Speaker, Sir. As I was saying, development must and ought to be done with express permission of the local authority involved. But we have situations where you find that in the middle or just next to a housing estate, there is a disco house, bar, petrol station and now the notorious houses of comfort.

(Laughter)

Mr. Temporary Deputy Speaker, Sir---

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order!

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. Under Standing Order No. 68, you will have to hear me out and rule me out. A Member of this House has used a word that some of us do not know. We believe all houses are comfortable. Which are these comfortable houses that he talking about?

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, if hon. Shikuku was listening to me, I did not say more comfortable houses. I said houses of comfort.

Mr. Shikuku: What are they?

The Temporary Deputy Speaker (Mr. Ndotto): You can approach him later and he will tell you what they are. So, you can proceed, hon. Wetangula.

(Laughter)

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir---

Mr. Nthenge: On a point of order, Mr. Temporary Deputy Speaker, Sir. When a professional decide to use technical terms, it is normal that they should translate them into ordinary mans language so that we can understand. We are here not as members of one profession. Tomorrow, hon. Dr. Wameyo will use a term which only himself and his medical colleagues here will understand. There are only two doctors here.

Mr. Temporary Deputy Speaker (Mr. Ndotto): Order! Order, hon. Nthenge. The word "house of comfort" is not unparliamentary. If it is too technical, you can approach hon. Wetangula and he will let you know what it means. Carry on, hon. Wetangula.

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, as I was saying, I went to visit a friend recently in an estate called Mugoya. In the middle of that estate, I saw a board written "clearing and forwarding". For people to set up such businesses, they require licences. Who lisences, for instance, a clearing and forwarding business to be carried out in the middle of a busy residential estate?

We have had questions on the Floor of this House. I think as late as October or November, 1995 hon. Mutere raised an issue here that a person had opened a bar in River Bank Estate in the middle of the estate. This is like a directory of local authorities; estates everywhere. You go there and you find people are licensed to do all sorts of things. They are running disco houses next to residential houses, where children are growing up. It is the responsibility of the local authorities to ensure that these kind of businesses are stamped down. That these kind of businesses are not allowed to go on because if they are allowed to go on, sooner than later, there will be nowhere comfortable to stay in this country. We must have our local authorities working and to do so, may I come back to what I was saying. That those people that we elect as councillors, those people that we appoint as officers of the council must be people who understand what it means to have an industrial area, what it means to have a residential area, what it means to have a recreation area and so on, so that the planning of our towns can be systematic and orderly.

Mr. Temporary Deputy Speaker, Sir, Clause 30(2) states as follows:-

"Any person who contravenes Clause 1, shall be guilty of an offence and shall be liable to a fine not exceeding Kshs100,000 or to an imprisonment not exceeding five years or both."

My view is that the sentence set up here may not sound excessive, but its application may end up hitting kiosk owners and other smaller people, but the big people, who will make illegal structures and erections of structures on areas which

are not licensed, will not be prosecuted. In that case, if we are talking of a uniform application of the law, as it should be, a person who has erected an illegal kiosk on a piece of land without the permission of the local authority, if he is fined Kshs.100,000 he will end up in prison for five years. My suggestion is that the punishment to be meted out should be relevant to the value of the structure erected on that property so that where we have somebody erecting a structure worth millions of shillings, the court should be left to deal with him and fine him up to a million shillings. Where it is a kiosk, it should be relevant to the ownership of the kiosk. For a person who has erected a kiosk worth Kshs10,000, it will be futile for a court of law to enforce a fine of Kshs100,000. He will, for sure, not afford it and will end up in prison. As it is, we already have problems of overcrowded prisons.

The Clause also gives the local authorities the power to restore the place to its original condition before

the development took place. I want to suggest here that in the event of the enforcement of Clause 30(4), the Act, when it comes into operation, should be amended to provide for:-

(1) Where a demolition is ordered, the cost of demolishing and removal of the debris from the plot, must be borne by the person who erected the illegal structure. So that the local authority does not incur any unnecessary expenses to rectify a mischief committed by another person because the cost of demolishing and removal of the debris, if we are talking of a massive structure, will run into a couple of a thousand shillings. That money can be used to do some other functions by the local authority.

Mr. Temporary Deputy Speaker, Sir, it should also be noted that whoever flouts this Clause more than once by erecting a structure which is demolished and erects again, that person should stand the penalty of forfeiting that property to the local authority because most of these local authority lands are on leasehold and when you get a property on leasehold, you are supposed to abide by the terms and conditions of the lease. If you blatantly violate those terms and conditions, you have no business holding that lease. The opportunity should be given to a more law abiding citizen who can put that kind of land to better use than people who are bent on greed and how to make money, disregarding all norms of planning and the interest of others.

Mr. Temporary Deputy Speaker, Sir, sub-clause (6), comes back to what I just mentioned. It says: "For the purposes of sub-Clause (5) commercial uses include shops, offices, hotels, restaurants, bars, kiosks, markets and similar business enterprises and trade, but does not include petroleum filling stations." I do not know what this means. Is the Minister telling us a petroleum filling station cannot amount to commercial use? I think they have to look into this and rectify that clause because by excluding it, I do not know the reason; or does this mean that a petroleum filling station can be erected anywhere regardless of the provisions of the planning of an urban centre? Or do they mean that they will designate special places where petroleum filling stations are going to be located?

Again, Mr. Temporary Deputy Speaker, Sir, if we go to less developed and less endowed parts of this City and many other towns, we will find in the residential areas, very booming businesses of selling kerosene and other fuels that are used for cooking and so on. In doing so, the standards of safety are not normally adhered to and in the event of a fire accident, we can have a real problem. Quite often, we hear of fires taking place in slums and this could be the causes. It would be a good idea if the local authorities, when designing a housing estate, they must strictly provide for areas where charcoal fuel, kerosene and so on, is to be sold so that wananchi do not run the danger of explosions of kerosene tanks that are not normally kept up to the required standards. Wananchi need kerosene, but they must also buy it from a safe place and not from anybody's bedroom, kitchen or house. This has to be controlled because it is necessary.

Under sub Clause (7): "No local authority shall grant a development permission for any of the purposes mentioned in sub clause (5) without a certificate of compliance issued to the applicant by the Director or an officer authorised by him in that behalf." Again, if we go to Nairobi City Council or any other local authority, these certificates give somebody right to develop literally for sale. It is immaterial that we are going to develop something viable if it can reach the officer concerned, that is all it requires and something has to be done about this. Some three weeks ago, I said here that Nairobi City Council is a beehive of corruption. I want to repeat my remarks and also say that something must be done with the Department of Lands on the hill. If we want to know what corruption is, how corruption is willed or how it is consumed, go to the Ministry of Lands and Settlement on the hill and you will see exactly what goes on there!

(Applause)

Mr. Temporary Deputy Speaker, Sir, if we go to the City Hall, it is impossible to get anything done. Recently, a client of mine applied for a small variation on change of user of a premises. He submitted plans drawn by a qualified architect, and an officer of the City Council whose name I was given as Mr. Theuri, rang my client and even walked to his premises and told him: "I need Kshs50,000 to pass this through." I have no doubt that this was done because my client went back and found the Director of Planning and had the matter sorted out. Theuri's argument was that: "you people only feed the big ones, we small ones must also eat as well." This is dangerous and we---

An hon. Member: The Government has to resign!

Mr. Wetangula: Order! Sorry! Sorry!

(Laughter)

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order!

Mr. Wetangula: Sorry, Mr. Temporary Deputy Speaker, Sir, I forgot that probably I was not on the Chair.

The Temporary Deputy Speaker (Mr. Ndotto): You are not in the Chair!

Mr. Wetangula: The crusade against corruption in this country must be carried out and extended to literally every sector.

It takes two to tangle. Even my colleagues who are thumping the Floor also consume it. We know that one person cannot be corrupt if there is no any other person to corrupt him. It is our moral responsibility, as leaders, to speak out against corruption and to tell those fellows at City Hall that they have a duty to serve wananchi irrespective of their party affiliations, tribe, race and what they have in their wallets. They have a duty to serve everybody. This illegal mushrooming of illegal structures everywhere is as a result---

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Wetangula to really keep hammering on these small people on the issue of corruption when, in fact, the hon. Member knows or ought to know that the only effective way of fighting corruption in this country is to find out how high up it has gone and start fighting it from up there, downwards? That is the only way which we can finish corruption.

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order hon. Muite! That is not a point of order. It is a point of argument. Continue, hon. Wetangula?

Mr. Wetangula: I want to inform my senior learned colleague, hon. Muite, that the status of an elected and a nominated Member in this House is the same. So, I do not know why he should stress it. I have said here before, and I want to say it again that it is the responsibility of everybody, hon. Muite included to tell the councillors in his constituency that they have a duty to serve wananchi without fear or favour or demanding *kitu kidogo*.

An hon. Member: That happens only in KANU!

Mr. Wetangula: I have no doubt that there are no KANU councillors in hon. Muite's constituency.

Mr. Ndicho: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am rising on a very serious point of order, as well as to seek guidance from the Chair whether the hon. Wetangula, who is a good friend of mine is in order as a lawyer, to divulge information which is supposed to be in confidence of his client? He has told us that one of his clients paid Kshs50,000 to Mr. Theuri of Nairobi City Council.

If I want to know who that client is, I will go to Mr. Theuri because he is bitter about such information and he will tell me who this client is. Has he not contravened professional ethics which bars lawyers from divulging confidential information about their clients?

Mr. Wetangula: I forgive my friend hon. Ndicho because Section 134 of the Evidence Act Cap. 84 only gives me the privilege not to divulge from my client if and only if it is for honest purposes.

Where an offence is disclosed, I have a duty to say so. The privilege does not extend to an area whereby it becomes a conspiracy. That is what the law says. My client, in fact, came to see me and asked me to assist him to reach anybody who could assist him including his local Member of Parliament, hon. Ndicho.

Mr. Ndicho: On a point of order, Mr. Temporary Deputy Speaker, Sir. Now that the hon. Wetangula has even gone further to tell this House that this particular client, is my constituent, would I be in order to ask him to tell the House who that person is, so that I can now assist him from Mr. Theuri, so that he gets his papers back without paying the Kshs50,000? Can he do that?

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, Clause 30(7) states that:-

"No local authority shall grant a development permission for any of the purposes mentioned in sub-section 5 without the certificate of compliance issued to the applicant by the Director or an officer authorized by him in that behalf."

Mr. Temporary Deputy Speaker, Sir, I had already mentioned that. Subclause 8 says:

"Any person who contravenes subsection (5) or (7), shall be guilty of an offence and shall be liable to a fine not exceeding Kshs10,000 or to an imprisonment not exceeding 12 months."

Mr. Temporary Deputy Speaker, Sir, I do not understand why in subclause (2), the penalty is so stiff and in subclause (8), it is so lenient for offenses that to me look similar. In subclause (2), they are imposing a fine of Kshs100,000 or five years imprisonment or both. In subclause (8), they are imposing Kshs10,000 or imprisonment of 12 months or both. The Minister should look into harmonizing those penalties.

Mr. Temporary Deputy Speaker, Sir, Clause 34 states that:-

"A local authority may, if it deems it expedient, by notice of deferment served on the applicant in the manner prescribed, defer consideration of development application for such period as may be specified in the notice."

Mr. Temporary Deputy Speaker, Sir, it would be a good idea if a minimum period is set out so that the deferment maybe for a month or two months or something like that instead of leaving it open-ended.

Mr. Temporary Deputy Speaker, Sir, may I say something on Clause 35(3). Here I agree fully with the views that were expressed by the hon. Member for Butere, hon. Martin Shikuku. Clause 35(3) says:

" A person aggrieved by the decision of the liaison committee may , not later than 14 days after he has been notified of the committee's decision, appeal against such decision in writing to the Minister whose decision shall be final."

Mr. Temporary Deputy Speaker, Sir, first, the period of 14 days is too short. It should be extended to be either 60 or 90 days because if the decision of the liaison committee is notified to a person in writing and through registered post, the legal position is that the effect of a registered letter, is from the time it is registered. We do know that these days the post office is not very efficient and a letter may not reach the person intended within the 14 days, within which he would lose his right of appeal. To say that the decision of the Minister on this matter shall be final, is an abuse. There would be a great danger of the Minister abusing his authority in this regard. The decision of the Minister must be subject to a court process, so that in the event of the Minister making a decision in disregard of material facts or makes a decision in ignorance of the law or makes a decision maliciously or the combination of both; the affected party should have the opportunity to go to court, starting with the Principal Magistrate's court, then appeal to the High Court and the Court of Appeal as the case maybe. There I fully agree with hon. Shikuku, and I think the Minister should look into this. More particularly, earlier on, the Bill says that the principal office shall be in Nairobi.

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Wetangula, which Clause are you on?

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, I am in Clause 35(3).

I am on Clause 35 (3) where it is stated that the principal office shall be in Nairobi. For a person in Vanga, Lodwar or Moyale, fourteen days within which he must appeal against a decision are too few and he may not even know in time because the period is too short. And the Minister should never be given such powers as to be given authority to make a decision that is final because this is always open to abuse. Every Minister or public officer must know that their acts and omissions are subject to court supervision, questioning and process and to due process of the law as established through the court. It would be dangerous for us to pass laws that would outlaw the function of courts by making Ministers' decisions final.

Mr. Temporary Deputy speaker, Sir, Clause 36 is in connection with the development application and it states:-

"A local authority is of the opinion that proposals to industrial location, dumping site , sewerage treatment or any other development activity will have injurious impact for the environment; the applicant shall be required to submit together with the application an environmental impact assessment report."

Mr. Temporary Deputy speaker, Sir, reading through the whole of this Bill, that is the only clause that goes close to mentioning about the environment. there is no other mention of the protection, resuscitation or the maintenance of the environmental balance in the whole Bill. Yet as I said earlier, this Act is going to govern the use and management of every inch of land in this country. The Minister concerned should bring more elaborate Clauses making it mandatory, setting out penalties and so on those who disregard environmental regards and environmental protection. It should be set out very clearly that every local authority must have a certain percentage of the acreage of land under its control under forests. It must be set out clearly that every municipal area must have some green belt. It should be set out that every municipal authority has a certain designated percentage of its landmass set out for recreation like football fields, playing grounds for children and so on. There should be public parks like Uhuru park. Unless we legislate with express provisions to punish those who flout the law, they will simply not take any initiative and giving a blanket Clause that they must take into account the environment is not enough. I have in mind for example, Pan African Paper Mills in Webuye which was set up way back in 1969/1970. I do not think the environmental impact of that factory located in that densely populated area was ever studied or assessed. In deed, recently a Minister told us that studies are being carried out to find out the environmental impact of Pan Paper Mills, twenty four years after it was set up! We must have very stringent environmental regard in our planning.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Members, the House is now adjourned until Thursday 9th May, 1996 at 2.30 p.m.

The House rose at 6.30 p.m.