

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 13th June, 1996

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Members:-

Frederick Fidelis Omulo Gumo.

George Munyasa Khaniri.

Mr. Orengo: On a point of order, Mr. Speaker, Sir. You have just administered the Oath of Allegiance in respect of only one Member of Parliament because the first person was introduced as a KANU member for Westlands and not as a Member of Parliament. Even as his escorts walked away from you, I think they were not sure they had introduced an MP to you.

Mr. Speaker: Well, the introduction notwithstanding I only swear Members of this House and not members of political parties.

PAPERS LAID

The following papers were laid on the Table:-

Annual Report and Accounts of Maseno University College for the year ended 30th June, 1993 and the certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of the University of Nairobi for the year ended 30th June, 1994 and the certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of the Teachers Service Commission for the year ended 30th June, 1993 and the certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of the Kenya Literature Bureau for the year ended 30th June, 1995 and the certificate thereon by the Auditor-General (Corporations).

*(By the Assistant Minister for Education (Mr. Komora)
on behalf of the Minister for Education)*

Annual Report and Accounts of the Lake Basin Development Authority for the year ended 30th June, 1993 and the certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of the Ewaso Nyiro South Development Authority for the year ended 30th June, 1994 and the certificate thereon by the Auditor-General (Corporations).

(By the Assistant Minister for Education (Mr. Komora) on behalf of the Minister for Land Reclamation, Regional and Water Development)

ORAL ANSWERS TO QUESTIONS

Question No. 536

FINDINGS OF DEVIL WORSHIP TASK FORCE

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

(a) whether he plans to make the findings of the Task Force Committee on the Devil Worship public; and,

(b) if the answer to "a" above is in the affirmative, will he tell the House when he intends to do so.

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

(a) The report of the Committee on Devil Worship is currently being analysed, and it will be premature to release its findings at this stage.

(b) Once the findings have been analysed, and their full implications known, a decision will be made on whether or not, to make the report public.

Mr. Gitonga: Mr. Speaker, Sir, it is alleged that some of the most senior officials of this Government are well known devil worshippers. Will the Assistant Minister tell this House that when this report is published, it will be published in its own entirety and not partially after censoring by this Government?

Mr. Awori: Mr. Speaker, Sir, I am not aware of any senior members of this Government, who are devil worshippers. Secondly, after analysis, and having studied it carefully, it is not possible to release it in its own entirety, because of the security angle.

Mr. Michuki: Mr. Speaker, Sir, does the Assistant Minister accept that those who pursue the ownership of money so much, and the ownership of plots and other public properties, are devil worshippers?

Mr. Awori: Mr. Speaker, Sir, I do not accept that.

Mr. Achieng-Oneko: Mr. Speaker, Sir, a lot of public funds have been used in this report, since it has taken a very long time since the Committee started its work. Will the Assistant Minister agree with us, that it will be a waste of public funds to delay its publication? Therefore, it necessitates that the report, whether in its crude form or whatever form, without any analysis being done, be made known to the people of Kenya so that we can know who are the devil worshippers.

Mr. Awori: Mr. Speaker, Sir, I know, and I am aware indeed, that public funds were utilised in the committee's sittings. But as I have stated, on the findings of the committee, we will have to release it in accordance with the terms and references of the Committee.

Mr. Gitonga: Mr. Speaker, Sir, will the Assistant Minister tell this House how long it will take to analyse this report before publication?

Mr. Awori: Mr. Speaker, Sir, it is possible that the analysis are almost at an end. So, very soon, we will be having it.

Question No. 527

PROCEDURE FOR CHARGING POLICEMEN

Mr. Ndzai asked the Minister of State, Office of the President the procedure of charging a policeman involved in an assault case.

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

When a policeman commits an offence of assault, he is charged with the offence and arraigned before the court like any other person.

Mr. Ndzai: Mr. Speaker, Sir, I have two letters here. One is from a policeman, and the other one is from the Officer Commanding Station (OCS), Malindi Police Station. The letter from the policeman reads as follows:

"Mimi, Francis Wambugu, nimekubali kwamba, nilimpiga na kuumiza Kahindi Ngonyo mnamo tarehe 28.4.94, na kwamba, nimekubali kugharamia matibabu yake mpaka atakapoona. Baada ya kupona, tutaketi tena na kuzungumza kuhusu makosa hayo".

The other letter is from the Police Station when the issue was reported. It reads as follows:

"Ref: Assault Case: Joseph Karisa John

The above named was assaulted by two persons, physically known to him. Please, examine and treat him. P3 Form to follow."

Mr. Speaker, Sir, up to now, nothing has happened. When such things happen, and we go to police stations, we are told that the policemen cannot be taken to court because there is a procedure. Can the Assistant Minister tell this House, what is the procedure to be followed when an innocent person is assaulted, so that those concerned can be taken to court?

Mr. Speaker: Meanwhile, you will table those documents. Will you do that?

Mr. Ndzai: I will do so, Mr. Speaker, Sir.

Mr. Speaker: Very well. But do it now at the earliest opportunity.

(Hon. Ndzai laid the documents on the Table)

Mr. Awori: Mr. Speaker, Sir, as soon as I have got those documents in my possession, the necessary action will be taken.

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, in June last year, hon. Mak'Onyango and myself were assaulted severely by police officers based in Mombasa, at Changamwe Police Station. We were issued with a P3 Form and the court ordered the police to take up the case and charge them. Nothing has been done up to date. Is the Assistant Minister aware that policemen have assaulted even senior politicians in this country and nothing has happened to them?

Mr. Awori: Mr. Speaker, Sir, if a senior politician provokes a policeman, the chances are that he may react.

Dr. Otieno-Kopiyo: On a point of order, Mr. Speaker, Sir. We are talking to an Assistant Minister who is in charge of security. We are giving him a specific case with specific statistics, and he knows about this. Then he says that if somebody provokes the police--- Are we having two sets of laws with one involving a police officer and the other one involving an ordinary person?

An hon. Member: Use common sense!

Mr. Speaker: Well, I do not know, but I thought under law, policemen are incapable of being provoked!

Mr. Awori: Mr. Speaker, Sir, if the hon. Member will be kind enough to let me have the statistics, I will definitely take the necessary action.

Mr. Wetangula: Mr. Speaker, Sir, the letter that hon. Ndzai read out, in fact discloses a further offence of a conspiracy to defeat justice. Is the Assistant Minister going to investigate that as well?

Mr. Awori: Mr. Speaker, Sir, regrettably, I have not read the letter, but most certainly if there is anything that requires to be investigated, it will be investigated and the necessary action taken.

Mr. Mak'Onyango: On a point of order, Mr. Speaker, Sir. The Assistant Minister is wilfully avoiding answering the question. He has been asked to tell this House the procedure followed on matters like this one, when the police are involved in committing a crime. What is the procedure?

Mr. Awori: Mr. Speaker, Sir, the procedure is as follows: When a policeman commits an offence of assault, and after the initial investigation it is revealed that there is direct evidence in support of the allegation, the suspect is charged and taken to court like anybody else. When there is no direct evidence against the suspect, then an inquiry file is opened and exhaustive investigations are carried out. After the investigations are finalised, the inquiry file together with the firm recommendations are channelled to the Attorney-General, through the Director of Criminal Investigations Department for the final decision. That is the procedure.

Mr. Badawy: Mr. Speaker, Sir, I think the Assistant Minister knows very well that when anybody is assaulted he will usually report the matter to the police station where that police man works. It is a practice that, more often than not, the assaulted person is not attended to because the entire police station in most cases is an interested party. Can the Assistant Minister tell us where the assaulted person should go to report that matter? Should he go to the chief, the Assistant Minister or go to who? Where should he go to report the matter if he is not attended at that particular police station?

Mr. Awori: Mr. Speaker, Sir, he has to go to the police station. The hon. Member is assuming that when a police man who has assaulted an innocent person and comes from a particular police station that all police officers who are there will be protecting their colleague. It is not so.

Mr. Mwaura: On a point of order, Mr. Speaker, Sir. Can the Assistant Minister assure the House that whenever a police officer is involved in assault, at least, that particular person is interdicted from the service to allow proper investigation? Could he do that?

Mr. Awori: Mr. Speaker, Sir, I think that is a supplementary question and not a point of order. But, nevertheless, I used to think that everyone is innocent until proved guilty.

Mr. Otieno: Mr. Speaker, Sir, the thrust of this Question is that police appear to be delaying investigations on cases involving their officers. Could the Assistant Minister undertake to bring to this House all the outstanding cases against police officers in which investigations are delayed? I have in mind three cases where KANU youth were shot in Rongo and we have not heard about the investigation!

(Applause)

Mr. Awori: Mr. Speaker, Sir, I would rather throw the responsibility to the hon. Members cases where they believe there have been a delay, and definitely action will be taken.

Mr. Ndzai: Mr. Speaker, Sir, because these are particular cases, can the Assistant Minister assure this House that he will investigate the matter and report to this House so that action can be taken against those police officers?

Mr. Awori: Mr. Speaker, Sir, I will give that undertaking.

Mr. Speaker: Next Question, hon. Farah.

Question No.534

INTERDICTION OF CHIEF KARUR

Mr. Speaker: Mr. Farah is not here? Next Question, Mr. Achola.

Question No.557

SALE OF TRADE BANK CENTRE

Mr. Speaker: Mr. Achola is not here? Next Question, hon. Raila.

Question No.524

PAYMENTS OF PLASTER TECHNICIANS

Mrs. Asiyu, on behalf of **Mr. Raila**, asked the Minister for Health:-

(a) if he is aware that Plaster Technicians in new/old Nyanza General hospitals have not received their salary increments since the Scheme of Service for Plaster Technicians came into effect in September, 1994; and,

(b) if the answer to "a" above is in the affirmative, what steps he is taking to remedy the situation.

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

(a) I am aware that Plaster Technicians in new/old Nyanza General hospitals have not received their salary increments since the Scheme of the Plaster Technicians came into effect in September, 1994.

(b) Although the Scheme of Service for Plaster Technicians was released by the Directorate of Personnel Management on 4th May, 1995 for implementation with effect from 1st September, 1994, the same could not be implemented immediately due to some technicalities and issues which were detected at the implementation stage.

My Ministry referred the case to the Directorate of Personnel Management for possible solutions including creation of posts to promote the staff and to secure guidance on those not fully qualified in accordance with the Scheme of the Service, but reply has not yet been received. The matter is still being pursued by our Ministry for an early solution.

Mrs. Asiyu: Mr. Speaker, Sir, does this apply to the whole country or only to the Plaster Technicians in new/old Nyanza General hospitals? Can the Assistant Minister, while answering this Question, tell us how many of the plaster technicians are now in the various grades from number III being the lowest, grade II and grade I, and where they are working?

Mr. Criticos: Mr. Speaker, Sir, the first question of the gracious lady is that it will apply to all plaster technicians in the whole of this country.

Two, I do not have the answer to know exactly how many people we have and in which areas we have these technicians in Kenya. Obviously, the question which I was asked was on the salary and not where plaster technicians are located.

Prof. Ouma: Mr. Speaker, Sir, to give a hope to these plaster technicians, could the Assistant Minister tell us the time frame within which a solution is supposed to come up, a time-frame rather than leave it open-ended?

Mr. Criticos: Mr. Speaker, Sir, I am unable to tell this House the exact time for the obvious reasons that it is not within our Ministry's power, it is with DPM and it is up to them when they will decide. Like I said earlier on, we are following up this matter to be resolved as soon as possible.

Mr. Mak'Onyango: Mr. Speaker, Sir, would the Assistant Minister share with me the view that this kind of situation is not only affecting these plaster technicians, but it is affecting so many other paramedics and that this kind of situation is affecting the entire medical services. What immediate steps is the Ministry taking to ensure that the services are not paralysed or undermined because of the negligence from the Ministry?

Mr. Criticos: Mr. Speaker, Sir, that is untrue.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, these people have not earned their salaries, and they look after people who have broken their limbs, not even sick. How does the Assistant Minister expect work to go on and what technicalities can he state here? Can he state and tell this House what technicalities can lead to a Government officer not receiving his salary on time?

Mr. Criticos: Mr. Speaker, Sir, obviously, the hon. Member has not read or listened to my reply and also listened to the Question. What we are talking about is the increase or the increment. Plaster technicians have already been paid salary, but what we are discussing here is an increase in remuneration of their salaries.

Mr. Speaker: Next Question, Mr. Busolo.

Question No.310

PROJECT PROPOSALS FOR WEBUYE

Mr. Busolo asked the Minister for Local Government what the current status report of the project proposals submitted to the Ministry by the Webuye Municipal Council since 1990 is.

The Assistant Minister for Local Government (Mr. Kamuren): Mr. Speaker, Sir, I beg to reply. The Council has forwarded the proposed capital programme since 1990 as follows:-

ProjectCost

1. Additional street lightsK£15,000
2. Renovation of Municipal MarketK£60,000
3. Renovation of Slaughter HouseK£25,000
4. Sewerage Phase IIK£50,000
5. Opening Access RoadsK£18,500
6. StadiumK£105,000
7. Fire BrigadeK£50,000

These are the proposed projects. The Ministry will try to look for donors once the feasibility study is completed. Local Government Loans Authority does not have funds for now.

Mr. Busolo: Mr. Speaker, Sir, whereas I thank the Assistant Minister for acknowledging that these projects have been received by his Ministry, I request him to tell us at what stage of the feasibility study the projects is and when the Local Government Loans Authority will fund them?

Mr. Kamuren: Mr. Speaker, Sir, in fact, the officer in charge should get in touch with the [Mr. Kamuren] Clerk of the Council to ask him to get the team, sit together with him, complete the feasibility study and then send it to the head office. While this is being done, the Ministry is looking for a donor.

Mr. Ndicho: Mr. Speaker, Sir, can the Assistant Minister tell us why the Ministry receives service charge money from all the Municipal Councils, Nairobi City Council, Town and Urban Councils in this country at the Ministry headquarters, while these kind of projects which are supposed to be serviced by this money go unattended? Can the Assistant Minister tell us where they take the service charge money because it is supposed to service these projects? What do you do with all those trillions of Kenya shillings?

Mr. Kamuren: Mr. Speaker, Sir, the Question is very specifically directed to a particular Municipal Council. What hon. Ndicho should do is to bring a Question to that effect and then we will be able to deal with it accordingly.

Mr. Ndicho: Mr. Speaker, Sir, it is very clear that the Assistant Minister is evading a general Question. The bulk of these projects at Webuye Municipal Council are supposed to be serviced by this kind of money. So, can I be specific and ask the Assistant Minister: Where does the Ministry take the money for service charge from Webuye Municipal Council?

Mr. Kamuren: Mr. Speaker, Sir, there is no money from Webuye Municipal Council taken anywhere.

What we are asking is for the feasibility study while we are looking for the donor.

Mr. Speaker: The last one, Mr. Busolo.

Mr. Busolo: Mr. Speaker, Sir, it seems to me that there is a certain level of discrimination when it comes to allocation of funding and services by the Ministry of Local Government to the local authorities. I have in mind local authorities like Eldoret and Nakuru which receive a lot of services, whereas, some like Webuye Municipal Council do not receive any service. I am wondering what criterion the Ministry uses to disproportionately allocate a lot of funds to certain local authorities and not to others. What criterion does it use?

An hon. Member: Barometer!

Mr. Kamuren: Mr. Speaker, Sir, there is no particular criterion. The fact remains that when a Municipality like Webuye recommends their projects, the recommendation has to go to District Development Committee (DDC) and immediately we get it, then we act upon those ones. I would say that that is one of the criteria used.

Question No.551

ELECTRICITY SUPPLY IN BARINGO EAST

Mr. J.D. Lotodo asked the Minister for Energy:-

(a) whether he is aware that Nginyang (Chemolingot), Tangulbei and Kolowa divisions of Baringo East Constituency have no electricity supply, despite recommendations by the District Development Committee, Baringo District; and,

(b) what steps he is taking to ensure that electricity is supplied to the above mentioned divisions, given the fact that power lines have reached nearby centres such as Kampi ya Samaki, Muge and Tot centres.

The Minister for Energy (Mr. D.M. Mbela): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) The Ministry will supply electricity to Nginyang (Chemolingot), Tangulbei and Kolowa divisions of Baringo East Constituency when sufficient funds have been secured.

Mr. J.D. Lotodo: Mr. Speaker, Sir, while appreciating the answer given by the hon. Minister, as there is a programme in this country known as Rural Electrification Programme, given the fact that most rural areas in this country require electricity, could the Assistant Minister consider installing electricity in Nginyang, Tangulbei and Kolowa divisions?

Mr. D.M. Mbela: Yes, Mr. Speaker, Sir, I have said we can do that when funds become available. But I can see this project taking a long time because the estimates that have been given involve construction of 113 kilometres of high tension line with 11 distribution sub-stations to serve 120 customers, costing Kshs105 million, which I consider quite expensive.

Dr. Kituyi: Mr. Speaker, Sir, some of us had taken as the truth, what hon. Obwocha had been told one time; that if you are in the Opposition and you want a project, you will be told "when the funds become available". We are surprised it is applying to an hon. Member from Baringo District.

But be that as it may, considering that there is a lot of variation in the practice of Government extending electricity in some rural areas under the Rural Electrification Programme, and yet in other areas, the consumers have to pay 100 per cent of the costs; can the Minister tell this House what the criterion of the Government is in allocation of money under the Rural Electrification Programme?

Mr. D.M. Mbela: Mr. Speaker, we rely on guidance from the District Development Committees (DDCs). In this particular case, the DDC has given it priority number one. Every district in Kenya under our Ministry's vote, receives an allocation ranging between Kshs6-8 million. It is the DDCs that tell us where to spend that money first.

Mr. J.D. Lotodo: Mr. Speaker Sir, given the fact that this project has been given first priority in the Baringo DDC, and given the fact that it should have been done in the 1996/97 financial year, could the Minister assure this House that there will be enough funds to undertake that project without further delay?

Mr. D. M. Mbela: Mr. Speaker, Sir, for the financial year starting from 1st July, 1996, there is Kshs7 million shown under Baringo District. In consultation with Baringo District, we can buy a generator to make sure that Nginyang becomes independent, provided we do not spend more than the allocated Kshs7 million.

Question No. 532

BREAK-DOWNS AT LIKONI FERRY

Mr. Ndzai, on behalf of **Mr. Rai**, asked the Minister for Transport and Communications:-

- (a) whether he is aware that tourists and wananchi from South Coast have experienced transport problems due to breakdowns at Likoni ferry; and,
- (b) if the proposed bridge connecting the Mombasa Island and South Coast is not possible, when an alternative route through Mazaras will be constructed in order to ease congestion at Likoni ferry.

The Assistant Minister for Transport and Communications (Mr. Morogo): Mr. Speaker, Sir, I beg to reply.

(a) It is not correct that tourists and wananchi from South Coast have experienced transport problems due to breakdowns at Likoni ferry crossing. There are currently four ferry vessels operated by the Kenya Ferry Services at the Likoni channels and all of them are in sound mechanical condition as they are regularly serviced and maintained. However, due to the ever increasing traffic, there are plans to increase the fleet in the very near future.

The Ministry, with the assistance of the Japanese Government, undertook a feasibility study on Likoni crossing project in 1984. Subsequently, a formulation mission from Japan was sent to Kenya from 11th-18th April, 1996. This mission has proposed that the scope of the study be widened to include the construction of the Likoni bridge as well as a by-pass. In this regard, my Ministry is studying the proposals and will be making the necessary recommendations soon, to enable the Japanese Government study the possibility of constructing the Likoni bridge and a by-pass.

Mr. Anyona: Mr. Speaker, Sir, the first part of this Question---

(Mr. Rai also stood up)

Mr. Speaker: Order! I am sorry. Obviously, you thought I was going to call you first time round as I should. But there is also nothing with me recognising Mr. Anyona, which I did.

Mr. Anyona: Mr. Speaker, Sir, the first part of this Question talks about the breakdown of Likoni ferry. The tragedy that took place down there some time ago is still fresh in the minds of Kenyans. We would not like to go through another agony of this kind. Can this Assistant Minister tell us exactly what the state of Likoni ferry is as we are sitting here, so that we do not lose more lives through carelessness?

Mr. Morogo: Mr. Speaker, Sir, I would like to assure hon. Anyona and the House that my Ministry is equally concerned with loss of lives and we are not taking any chances. As I said earlier, we have four vessels at the moment, and all are in sound mechanical condition. We are servicing the vessels in time so that we do not have a recurrence of the tragedy we had in the past.

Mr. Speaker: Mr. Ndzai, are you no longer interested in asking questions? Let us hear from Mr. Obure.

Mr. Obure: Mr. Speaker, Sir, what happened at the Coast was the darkest day for Kenya as we lost very many lives. In this country we do not have anything to put in place in the high waters to save lives.

My question to the Assistant Minister is this: What plans does the Ministry have for emergencies in case of any disasters? For example, when a ship is sinking or if it develops any serious problems; what preparations do you have as a Ministry to save lives in such a situation?

Mr. Morogo: We have enlisted the expertise of the Kenya Navy, which is not very far from the Likoni Ferry and the Mtongwe Ferry. As I said, we have undertaken a study which includes a package on dealing with emergency situations. I hope when this will be over we shall be able to serve our people better.

Prof. Ouma: The question of connection between Mombasa and the South Coast is so important not only for wananchi but also for the tourist trade which is a major lifeline to this country's foreign exchange. I am not satisfied with the answer which the Assistant Minister has given regarding the time specification. We often get answers which have got no time specification and as a result, they leave one very dissatisfied. He says they will build with Japanese help, but within what time limit? Give us some kind of time relation so that one can know where to figure his mind to and the people of the South Coast can have imaginations as to when they will have relief. What time will this be done?

Mr. Morogo: Please hon. Michuki, pay attention and you will hear me well. I cannot give a time

frame for this. All I can say is that the study is on now and we want to work as fast as we can. There are very many factors affecting the speed of this particular study and we cannot do something in a hurry because we want to get a very comprehensive and workable study so that we can solve the problem once and for all.

Question No. 525

PROVISION OF PUBLIC PHONE SERVICES

Mr. Michuki asked the Minister for Transport and Communications:-

(a) whether he is aware that there is a great demand for public telephone services in Kangema constituency;

(b) how many public telephone call boxes are there in Kangema Constituency; and,

(c) why the call boxes at Kanyenyaini, Kiawambogo, Gikui and Gakira were discontinued and when they will be re-instated.

The Assistant Minister for Transport and Communications (Mr. Morogo): Mr. Speaker, Sir, I beg to reply.

The Kenya Posts and Telecommunications Corporation is aware of the high demand for public telephones countrywide, Kangema included. However, the high demand cannot be met at the moment because of acute shortage of public telephones. Plans are underway to buy new payphones and when this is done, Kangema will be considered.

Currently, there are 17 public telephone call boxes in Kangema Constituency.

The payphones at Kanyenyaini, Kiawambogo and Gikui were removed due to vandalism. There are two payphones that are still in working condition at Gakira.

Mr. Michuki: The Assistant Minister has said that plans are underway to buy new payphones and that when this is done Kangema will be considered. Could the Assistant Minister give this House the time span. This is the same problem which we had with the previous question. Could he tell us, even if he might be wrong in doing so, the time span within which these services will be provided?

Mr. Morogo: We hope to buy the equipment and be able to provide it before the end of this year.

Mr. Anyona: The other day, I was in Kisii Post Office because of a similar problem and I was told that the Corporation does not have telephone boxes and the other paraphernalia. I would like to know what has happened because there is a complex in Gilgil and when I was the Chairman of PIC, we visited that complex, where these materials are manufactured. What has happened?

Mr. Morogo: I am sorry, I did not hear the question clearly.

Mr. Anyona: Mr. Speaker, Sir, what I am saying is that throughout--

Mr. Michuki: On a point of order, Mr. Speaker, Sir. We have a problem of communication here because the microphones are not working and these are very important questions. Could the Question be repeated?

Mr. Anyona: Mr. Speaker, Sir, I am not responsible for the failure of the microphones, but I will make my self loud and clear. What I was saying is that there is a serious shortage of equipment throughout the country. I said that in Gilgil there is a complex of the Corporation--

Mr. Speaker: Order! Order, Mr. Anyona! Is it the case that the microphones are not functioning?

Hon. Members: Yes. Especially on the Opposition side!

Mr. Speaker: Order! Order, hon. Members! If it is the case that we cannot communicate, can I find out whether I can have it done?

(Loud consultations)

Mr. Speaker: Order! Order! Hon. Members, it is, in fact, the right of the House to hear what is going on and I was just trying to find out if there is a breakdown in the system so that can be rectified. Well I am told it affects both sides of the House.

An Hon. Member: No, it is only the Opposition side.

Mr. Speaker: Order! I think hon. Members must be reasonable. You cannot sit there and testify that a microphone on the other side is working. It is not logical!

The Assistant Minister for Public Works and Housing (Mr. Mwanzandi): We reported the matter yesterday that while sitting on our Bench, you can hardly hear what is being said by an hon. Member and we only

depend on the sound coming from the mouth of the hon. Member talking. We do not get anything from the microphone on the Benches.

Mr. Speaker: Order! Order! Order, first of all! I suppose I am audible? Am I not? Hon. Members, I am trying to see how best we can sort out this issue because I am being told that from the machine out there, that it is working, but the hon. Members are saying it is not working. I do not know what to do just now. Maybe, we can proceed and see if we can hear.

Mr. Anyona: The point which I was raising is that there is an outcry for telephone equipment throughout the whole country and I know that these are manufactured by a section of the Corporation at Gilgil Complex. I visited that place when I was the Chairman of the PIC. What has happened with the production of equipment at the Gilgil Complex? Can you tell us whether someone else hijacked it and went to do his own business?

Mr. Morogo: Mr. Speaker, Sir, first and foremost, we are not responsible for the microphones in Parliament, but I am sure the Chair will take care of that problem. The Gilgil Complex is still operating and it has not been tampered with. The only problem has been difficulties in finances to purchase the necessary materials to produce telephones. In any case, not all telephones required are produced in the Complex.

Mr. Michuki: Mr. Speaker, Sir, can the Assistant Minister give the names of these 17 places because the way telephones and other things are provided in Kangema, has a lot to do with some people who pretend and who work as if they were elected Members in the area and they collude with the Ministry to provide services only to certain sections of Kangema? Could he give these 17 names, so that we know where these telephones are?

Mr. Morogo: Mr. Speaker, Sir, first I would like to inform hon. Michuki that neither myself nor my Ministry would be pushed to think along those lines. We serve Kenyans and the country as a Ministry for the people of Kenya. I did not have the names of these 17 places, but I will get them and I would provide them to the House.

Hon. Members: When?

Mr. Morogo: I will provide that information next Tuesday afternoon, Mr. Speaker, Sir.

Mr. Wamae: Mr. Speaker, Sir, we have been told several times that KPTC---

Hon. Members: What have you been told?

Mr. Wamae: We have been told many times that the Kenya Post Office is going to be privatised and broken down into three companies---

Mr. Anyona: On a point of order, Mr. Speaker, Sir. The Assistant Minister has undertaken to bring the list on Tuesday. I agree, but Tuesday is the Budget Day and there would be no Motion or other proceedings in the House other than the Budget Speech.

Mr. Speaker: Then in that case, Wednesday.

Mr. Wamae: Mr. Speaker, Sir, my question to the hon. Assistant is: We have been told that the KPTC is going to be split into three companies to provide better services. When will this be done?

Mr. Morogo: That is a different question, but for the benefit of the hon. Member the modalities are being worked on and that process should start later in the year.

Question No 534

INTERDICTION OF CHIEF KARUR

Mr. Speaker: For the second time, Mr. Farah is not in?

(Question dropped)

Question No 557

SALE OF TRADE BANK CENTRE

Mr. Achola: Thank you, Mr. Speaker, Sir. I had already received a useless answer during the last Session to this Question and consequently I do not wish to have it; take it!

(Question dropped)

QUESTIONS BY PRIVATE NOTICE

INSULTS TO HON. WETANGULA

(Mr. Leshore to ask the Minister of State, Office of the President the following Question by Private Notice:-

- (a) Could the Minister tell the circumstances that led to the molestation and insult to Hon. Moses Wetangula, MP, during the recent Hamisi By-election?
- (b) What urgent steps is the Minister taking to bring justice to the persons involved?

Mr. Speaker: Is Mr. Leshore not here?

(Question dropped)

ALLOCATION OF SHOWGROUND LAND

(Bishop Tanui to ask the Minister for Agriculture, Livestock Development and Marketing the following Question by Private Notice:-

- (a) Is the Minister aware that the annual Kericho Agricultural Show usually held every February did not take place this year?
- (b) If the answer to "a" above is in the affirmative, is he further aware that the reason why the aforesaid show did not materialise this year was because the showground land has been allocated to private developers?
- (c) What action is the Minister taking to revoke the allocation?

Mr. Speaker: Is Bishop Tanui not here?

(Question dropped)

OUTBREAK OF MALARIA IN KISII AND NYAMIRA DISTRICTS

Mr. Anyona: Mr. Speaker, Sir, before I ask this Question, I would like to read part (iii) of the Question. The original draft reads as follows: What was the fate of the National Malaria Control Campaign launched during 1994 malaria outbreak at the cost of Kshs 3.6 million, for the purchase of larvicides and spraying equipment?

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

- (a) Is the Minister aware of the current malaria out-break in Kisii and Nyamira Districts, and congestion at both Kisii and Nyamira District Hospitals and other health facilities?
- (b) Is he further aware that malaria does not adequately respond to chloroquine treatment and many patients cannot afford second-line drugs (Fansida, Metakefaine, etc) from private clinics and pharmacies?
- (c) What was the fate of the National Malaria Campaign launched during the 1994 malaria out-break at a cost of Kshs 3.6 million for the purchase of larvicides and spraying equipment?

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

(a) Yes, I am aware of the current out-break of malaria in Kisii and Nyamira Districts. I am also aware of the congestion at both Kisii and Nyamira District Hospitals and this is as a result of a malaria out-break.

(b) Yes, I am aware the malaria does not adequately respond to chloroquine treatment and I am also aware that many patients cannot afford second-line drugs. My Ministry has sent sufficient amount of second-line drugs to both Districts and other districts in the Republic.

(c) The Anti-Malaria Campaign launched in 1994 is still continuing in all the districts in the Republic through selective use of chemicals (larvicides and residuals) to control mosquitoes and through health education to the communities to destroy all possible mosquito breeding sites within their living environments. The result has been less and isolated cases of malaria this year.

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

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

Mr. Speaker: Order, Mr. Anyona. I gave hon. Dr. Kituyi the Floor.

Dr. Kituyi: Mr. Speaker, Sir, an hon. Member who has since defected would have raised this matter, but

why is the Assistant Minister talking about an outbreak of malaria, when malaria is not an infectious disease?

Mr. Speaker: What would you call it?

Dr. Kituyi: An increased incidence of malaria. There cannot be an outbreak of infectious disease.

Mr. Speaker: Maybe you should have seen Mr. Anyona earlier.

Mr. Anyona: Mr. Speaker, Sir, last year when I raised the same Question and at that time we used the word epidemic, I remember the Minister saying it is not an epidemic, but an outbreak. So we have been wiser this year and it looks like we are still far aware from being wise. Maybe they should tell the correct medical terminology. In any case, he knows what I am talking about.

Mr. Speaker, Sir, what I am saying is that the answer in part "a", the first line where he admits this outbreak of malaria and the answer in part "c", where he says that the Anti-Malaria Control Campaign is going, are both in mutual contradiction because if there was control, there would not be a serious outbreak like the one we have? I would like the Assistant Minister to explain how many people in Kisii and Nyamira Districts have been admitted because of this problem and what the effect of the Anti-Malaria Control Campaign, he is talking about has been given this outbreak this year?

Mr. Criticos: Mr. Speaker, Sir, as a matter of fact there should have been two Questions with parts "a" and "b" as one Question and part "c" being another question. However, we have attempted to answer both Questions in this matter. Therefore, obviously he is contradicting one versus the other because number two of the hon. Member's Question, is that as from 8th June, 1996, there were about 800 in-patients at the Kisii District Hospital and the capacity of the Hospital is about 350 in-patients. Therefore, we really had to try our level best to treat so many patients versus the bed capacity of the Kisii District Hospital.

Furthermore, I agree that it cannot be an outbreak, but an increase of malaria.

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. I have heard that word "outbreak" being contested. There can be an outbreak of malaria and I do not think it is wrong for anybody---

Mr. Speaker: Can I advise the hon. Dr. Lwali-Oyondi to get in touch with hon. Dr. Kituyi and argue it out, whether it is an outbreak or an increment of malaria and then come and report the solution to me.

Dr. Lwali-Oyondi: Yes, Mr. Speaker, Sir.

(Laughter)

Mr. Obwocha: Mr. Speaker, Sir, the Assistant Minister has said that there were 800 in-patients in Kisii District Hospital as from 8th June, 1996. Could he tell this House, how many cases have been handled in Nyamira District Hospital and what the Ministry is doing at the moment to eradicate this menace in Nyamira District?

(Applause)

Mr. Criticos: Mr. Speaker, Sir, I do not have a particular answer on exactly how many people were admitted in Nyamira District Hospital. I can find out but it is a completely different question to this one. What we are doing, as I said, is, that there is an anti-malaria campaign which was launched in 1994 which is being carried out and I hope all the Members of Parliament are educating their constituents. All the chiefs and various leaders of the various divisions and districts have been told what wananchi should be briefed on which is basically cleanliness.

Mr. Obure: Mr. Speaker, Sir, this Question came last year and we lost so many lives. Families in my constituency where the roads are impassable are now having a spate of about ten people dying per week if I should say the naked truth. In view of the fact that the roads are impassable in Kisii district and you realise that this is the rainy season, would the Ministry undertake an anti-malaria campaign by taking the medicines to dispensaries especially in remote areas?

Mr. Criticos: Mr. Speaker, Sir, I think this question should be referred to the Ministry of Transport and Communications because roads are not under the Ministry of Health.

Mrs. Nyamato: Mr. Speaker, Sir, the occurrence of malaria in Nyamira and Kisii districts has become a common occurrence now during the months of June and July and the two district hospitals cannot accommodate all the patients due to the shortage of beds in these two hospitals. Could the Minister consider to reinstate the private hospitals that were struck off from the National Hospital Insurance Fund so that the private hospitals could cater for the extra patients who cannot be admitted in the Government hospitals?

Mr. Criticos: Mr. Speaker, Sir, I am unable to do that because it will be contravening the Act.

Mr. Speaker: Well from now on we will go to the Supplementary Order Paper.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE PHYSICAL PLANNING (AMENDMENT) BILL

(Clause 2 agreed to)

Clause 3

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 3 be amended as follows:-

(a) in the definition of "development", in paragraph (b), by inserting after subparagraph (iii), the following new subparagraph:-

(iv) any local authority or statutory body shall within seven days, after completion of works carried out as in subparagraph (iii), restore the site to conditions that would not be injurious to users and the environment;

(b) by inserting the following new definitions after the definition of "land"

"Land Control Board" means a Land Control Board established under Cap 302 section

5 of the Land Control Act;

(c) in the definition of "local physical development plan", by inserting the words, "town" immediately after the word "municipal".

Dr. Lwali-Oyondi: On a point order, Mr. Temporary Deputy Chairman. I have been hearing the Assistant minister calling some things here as semi-columns. I am not sure what he means.

The Temporary Deputy Chairman (Mr. Wetangula): Let him tell us what he means. Carry on, Mr. Kaino.

The Assistant Minister for Lands and Settlement (Mr. Kaino): I will do so, Sir.

(d) in the definition of "owner" by deleting the word "owing", in line 2 and inserting the word "owning",

(e) by inserting the following new definitions after the definition of "owner"

"Permanent Secretary" means Permanent Secretary for the time being responsible for physical planning;

"Physical Planning Liaison Committee" means the National Physical Planning Liaison Committee, the Nairobi Physical Planning Liaison Committee, the District Physical Planning Liaison Committee, or as the case may be, the Municipal Physical Planning Liaison Committee established under Section 7 and any reference to the Liaison Committee shall be construed accordingly.

(Question of the amendment proposed)

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I thought we are free to contribute to these amendments of this clause?

The Temporary Deputy Chairman (Mr. Wetangula): You are free to comment.

Mr. Anyona: And I wanted to comment.

The Temporary Deputy Chairman (Mr. Wetangula): Has anybody stopped you?

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, the proposed amendments in (a) (iv), if you are

familiar with this kind of situation you will find that in a lot places as soon as these local authorities or other bodies finish their initial work, they just go away and leave open holes that can cause injuries. Now this amendment proposes that they should restore that situation within seven days in which a lot of harm can be done. Why can they not do this immediately as soon as they finish the work instead of waiting for seven days.

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I did not follow what the speaker has just said.

Mr. Anyona: All that I am saying is that this provision says that the people who are doing this kind of work are required to restore the condition of what they were doing within seven days in order to avoid injury and I am saying that in seven days you can have a lot of injuries taking place. So why not require them to fill these things immediately after they finish the work? Why do you want to give them seven days? You want more injuries to occur?

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, this was put at seven days because some may take no longer than two weeks.

Mr. Anyona: I think he is talking about within seven days and I am saying seven days is a long time. Injuries can occur within these seven days and many injuries have been caused through this carelessness and I want him to explain why he wants to give people leeway of seven days and thereby endanger the lives of the people. What is the reason behind these seven days because these people do work on sundays and even during public holidays?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, some of these extractions may require a bit of time to fill them up. Obviously the work should be done immediately but we are giving the councils adequate time so that they do not have to come back and say that they could not complete them in time. Seven days is not a very long time really when we are talking about a major building or extraction works.

Mr. Anyona: I want to give the Assistant Minister an example of a road in Kitutu Masaba which was made several years ago. In the course of the construction of that road, water pipes leading to a health centre were cut. Up to this day they have never been connected. So---

The Temporary Deputy Chairman (Mr. Wetangula): Seven days could mean one hour, could it not?

Mr. Anyona: Yes, I know. But it could also mean seven days! And I am saying if it takes seven days or more, as it does, what then happens? Why do you want to give this leeway. Why do you want to be lenient and endanger the lives of Kenyans?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Surely, Mr. Temporary Deputy Chairman, the example the hon. Member is giving has gone well beyond the seven days. So, if we had this law in place, the authorities would have been taken to task within that period.

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

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

(Clause 3 as amended agreed to)

Clause 4

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman Sir, I beg to move:-

THAT, clause 4(1) be amended by deleting the word "Minister" and inserting the words "Public Service Commission."

(Question of the amendment proposed)

Dr. Lwali-Oyondi: Mr. Temporary Deputy Chairman, I draw your attention to Clause 4. I thought that during our debate we had suggested to the Minister, that this Public Officer should be a qualified person and

not any public officer. He or she should be a qualified physical planner instead of just being a public officer.

The Temporary Deputy Chairman (Mr. Wetangula): What is your proposal?

Dr. Lwali-Oyondi: Now, if I could read it "There shall be appointed by the Minister a director of physical planning---"

The Temporary Deputy Chairman (Mr. Wetangula): He is taking away the powers from the Minister and transferring them to the Public Service Commission to appoint the Director of Physical Planning, and do recall that, that was the chorus suggestion from the Floor.

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

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

(Clause 4 as amended agreed to)

Dr. Otieno-Kopiyo: On a point of order, Mr. Temporary Deputy Chairman, Sir. What happens in the event where nobody votes, like it has happened a little while ago?

The Temporary Deputy Speaker (Mr. Wetangula): Such an event has not occurred. Hon. Nyachae said "Ayes".

Clause 5

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman Sir, I beg to move:-

THAT, clause 5(1) be amended as follows:-

(a) by deleting paragraphs (a) and (b) and inserting the following new paragraphs:-

(a) formulate national, regional and local physical development policies, guidelines and strategies;

(b) be responsible for the preparation of all regional and local physical development plans;

(b) by inserting in paragraph (f) immediately before the word "ensure", the words "require local authorities to"

(Question of amendment proposed)

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

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

(Clause 5 as amended agreed to)

(Clause 6 agreed to)

The Temporary Chairman (Mr. Wetangula): Mr. Kaino, you have proposed an amendment to a part that is not a Clause in the Bill. I do not know how you want to deal with it. Is Part III part of Clause 6 or Clause 7?

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, allow me to consult my Director.

Mr. Ndicho: On a point of order, Mr. Temporary Deputy Chairma, Sir. This was a very important Bill. We were not prepared to come with views that we feel are important to these amendments as we suggested during the time of debate. Now you can see that Clause 6 is not here and he is now consulting. Are you sure that we are

doing a good job on the particular Bill?

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Ndicho, what are you talking about?

Dr. Kituyi: Mr. Temporary Deputy Chairman, what is the Assistant Minister looking for when Part III is the heading for Clauses 7 and 8? Does he have to consult there just to read that line?

An Hon. Member: Wewe msaidie!

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Ndicho, you seem to have a misconception that the clauses that do not appear on the amendment list have been deleted but that is not the case. We will now move to Clause 7 and the proposed amendment, I believe, is part of the heading that guides Clause 7 downwards. So, can you move your amendment as prelude to Clause 7.

Part III - Heading

Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, I beg to move:-

THAT, the heading of Part III be amended by deleting the heading "ESTABLISHMENT OF LIAISON COMMITTEES" and inserting the new heading " ESTABLISHMENT AND COMPOSITION OF PHYSICAL PLANNING LIAISON COMMITTEES",

Dr. Kituyi: On a point of order, Mr. Temporary Deputy Chairman. You asked this Assistant Minister a very clear question. What is part three part of? He went to consult and he came back to read to us what is already on the Order Paper. Can he answer that question before he proceeds?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, I do not know what the fuss is all about. The heading which is a prelude to Clause 7 is being amended by inserting the words "Composition of the Liaison Committees." Can you protect us from the other side of the House?

The Temporary Deputy Chairman (Mr. Wetangula): They are perfectly right, hon. Ligale.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): I think Mr. Temporary Deputy Chairman, we have amended the heading to include the words shown in the amendment. That is very clear.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Wetangula): The matter is now very clear.

Dr. Kituyi: While we see the proposed amendments, the Assistant Minister has not completed proposing that, that amendment be carried.

The Temporary Deputy Chairman (Mr. Wetangula): He did!

Dr. Kituyi: I interrupted them in the middle of it.

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

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

(Part III as amended agreed to)

Clause 7

The Assistant Minister for Lands (Mr. Kaino): Mr. Temporary Deputy Chairman, I beg to Move:-

THAT, clause 7 be amended by deleting it and inserting the following new clause:

Establishment
Planning Liaison

7. There shall be established of Physical
Committees in accordance Committees

Physical Planning Liaison
the Provisions of section

(Question of amendment proposed)

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

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

(Clause 7 as amended, agreed to)

Clause 8.

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, I beg to move:-

THAT, clause 8 be amended by deleting it and inserting a new clause:-

- | | | |
|---|--|-----------|
| Composition of Physical Planning Liaison Committees | 8(1) The National Physical Planning Committee (hereinafter in this Act referred to as "the National Liaison Committee") shall consist of the following | members:- |
|---|--|-----------|
- (a) the Minister, who shall be the Chairman;
 - (b) the Permanent Secretary, who shall preside over meetings in the absence of the Chairman;
 - (c) the Director who shall be the secretary;
 - (d) the Permanent Secretary, for the time being in charge of the Provincial Administration;
 - (e) the Commissioner of Lands;
 - (f) the Director of Medical Services;
 - (g) the Director of Surveys;
 - (h) the Director of National Environment Secretariat;
 - (i) the Director of Urban Development;
 - (j) the Director of Housing;
 - (k) the Director of Agriculture;
 - (l) the Director of Industry;
 - (m) the Director of Education;
 - (n) the Director of Water Development;
 - (o) the Chief Engineer (Roads), Ministry of Public Works and Housing;
 - (p) the Chief Architect, Ministry of Public Works and Housing; and
 - (q) a Registered Physical Planner in private practice duly appointed by the Minister on the advice of the Physical Planners Registration Board.
- (2) The Nairobi Physical Planning Liaison Committee shall consist of the following members:-
- (a) the Provincial Commissioner of Nairobi, who shall be the Chairman;
 - (b) the Director of City Planning and Architecture, who shall be the secretary;
 - (c) The Director;
 - (d) the Commissioner of Lands;
 - (e) the Director of Housing;
 - (f) the Director of Agriculture;
 - (g) the Director of Urban Development;
 - (h) the Director of Surveys;
 - (i) the Director of Medical Services;
 - (j) the Director, National Environment Secretariat;
 - (k) the City Engineer, Nairobi City Council;
 - (l) the General Manager, Water Sewerage Department, Nairobi City Council;
 - (m) the Director of City Education;
 - (n) the Director of Water Development;
 - (o) the Chief Architect, Ministry of Public Works and Housing;
 - (p) the Town Clerk, Nairobi City Council, and
 - (q) a registered physical planner in private practice duly appointed by the Minister on the advice of the Physical

Planner Registration Board.

- (3) Each District Physical Planning Liaison Committee shall consist of the following members:-
- (a) the District Commissioner who shall be the Chairman;
 - (b) the District Physical Planning Officer who shall be the secretary;
 - (c) the Clerk of the County Council;
 - (d) the District Lands Officer;
 - (e) the District Surveyor;
 - (f) the District Roads Engineer;
 - (g) the District Education Officer;
 - (h) the District Agricultural Officer;
 - (i) the District Water Engineer;
 - (j) the District Public Health Officer;
 - (k) the Clerks of all Urban and Town Councils within the respective districts;
 - (l) the Chairmen of Town Planning and Works Committees of all local authorities in the respective districts;
 - (m) the District Environment Officer;
 - (n) the District Social Development Officer;
 - (o) the District Architect; and
 - (p) a registered physical planner in private practice duly appointed by the Minister on the advice of the Physical Planners Registration Board.
- (4) Each Municipal Physical Planning Liaison Committee shall consist of the following members:-
- (a) the District Commissioner who shall be the Chairman;
 - (b) the District Physical Planning Officer who shall be the Secretary;
 - (c) the Town Clerk;
 - (d) the District Land Officer;
 - (e) the Town Engineer;
 - (f) the District Water Engineer;
 - (g) the Chairman of the Municipal Town Planning and Works Committee;
 - (h) the District Environment Officer;
 - (i) the District Surveyor;
 - (j) the Municipal Architect;
 - (k) the Director of Social Services of the Municipal Council concerned; and
 - (l) a registered physical planner in private practice duly appointed by the Minister on the advice of the Physical Planners Registration Board.

(Question of the amendment proposed)

Dr. Kituyi: Mr. Temporary Deputy Chairman, notwithstanding the problem of how the insertions are being proposed, is it regular that we are having proposed amendments to the Bill without notice now and we hope that, then, the Bill is passed on the same day in this Committee?

Mr. Temporary Deputy Chairman (Mr. Wetangula): Hon. Kituyi, the Minister is right. He has authority to do so under Standing Order No.106(2). It states:-

"No amendment shall be moved to any part of a Bill by any Member, other than the Member in charge of the Bill, unless written notification thereof shall have been given to the Clerk before the commencement of the sitting at which that part of the Bill is considered in the Committee".

The Member in charge of this Bill is the Minister and he has authority to amend without giving notification, but you do not.

Mr. Anyona: Mr. Temporary Chairman, Clause 8(1) reads:-

"The National Physical Planning Committee (hereinafter in this Act referred to as "The National Liaison Committee")---".

Now, the word "liaison" is not in the title as contained in Clause 8(1) and yet it has been described in the paragraph. Is that correct?

Mr. Temporary Deputy Chairman (Mr. Wetangula): The Minister has amended the Heading under Part III and he has also amended the description of the paragraph by bringing in the word "liaison", or has he not done that?

Mr. Anyona: Mr. Temporary Deputy Chairman, Clause 7 is perfectly alright in accordance with the title, but in Clause 8 (1), the word "liaison" has been left out and I did not hear him propose an amendment to insert that word in which case the title does not sound right.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, I think the hon. Member is perfectly correct. We should insert the word "liaison" between the words "planning" and "Committee" to read "National Physical Planning Liaison Committee".

Mr. Anyona: Mr. Temporary Deputy Chairman, in spite of that, I do not understand the meaning of the word "liaison" in this context. This is a French word which has a certain meaning. What does it mean here? Does it mean that this Committee will just sit there and listen to people and do nothing?

Mr. Temporary Deputy Chairman (Mr. Wetangula): Why do you not understand it the way it means in French?

Mr. Anyona: That is correct. In French it means a committee that runs around trying to find out what is going wrong, talk to people, feel nice and do nothing. Is this what this Committee is supposed to do? I thought that this Committee is supposed to deal with serious problems this country is facing on land grabbing. Liaising is a public relations exercise.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, this is giving cognizance to the fact that the physical development plans are in fact a process that involves many other authorities. It does not only involve the physical planners. You are giving cognizance to that fact and therefore allowing a possibility of consultations between these various authorities.

Mr. Ndicho: Mr. Temporary Deputy Chairman, I stand to be corrected if I am wrong. I am also lost because I thought a liaison committee is where different people with some relevant skills come together. What is the role of the Director of Medical Services here?

The Assistant Minister of Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, the role of the Director of Medical Services in this field of physical planning is to oversee the issue of pollution and public health which might result from poor planning of industries and residential houses. In that case, we would need the person in charge of health to protect the health of the people.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Chairman, my question is on Clause 8(1) (a) which reads:- "The Minister, who shall be the Chairman;"

I am yet to see a Minister being a chairman of any committee. Why can the Minister not leave the Committee do its own work instead of chairing it? It does not seem right for a politician to chair a technical committee. Would the Minister explain why that is the case?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, in fact, in the context of recent events of land grabbing and all the rest of it, we want to place this at the highest level possible. In any event, we have indicated here that the Permanent Secretary in most cases may, in fact, end up chairing most of the technical committees.

Mr. Mulusya: Mr. Temporary Deputy Chairman, while I do not agree with the explanation given by the Assistant Minister, when he says that Permanent Secretaries may end up chairing most the technical committees what does he mean? We do not want confusion. It is not proper for the Minister or the Permanent Secretary to chair this Committee. We want somebody who is knowledgeable on these matters or a civil servant who is accountable to the public to chair the Committee so that things do not go wrong. In any case, can you imagine Gen. Mulinge chairing that Committee!

Mr. Temporary Deputy Chairman (Mr. Wetangula): Mr. Mulusya, since you have made such an important point, why do you want to dilute it by being personal to Gen. Mulinge?

Mr. Anyona, ask your very last Question before I put the Question.

Mr. Anyona: Mr. Temporary Deputy Chairman, is there a limitation?

Mr. Temporary Deputy Chairman (Mr. Wetangula): This is not a free debate. It is Committee Stage.

Mr. Anyona: Of course, but there is no time limit as far as I understand. As long as someone has a point to make, I think that is perfectly in order.

I totally disagree with this idea of making a Minister the chairman of a technical committee of civil servants who in any case are responsible for the mess we are in in this country. So you want to make the Minister part of that mess instead of letting him stay outside and monitor it? If that is the case, I would have thought that you make this a totally ministerial committee instead of mixing civil servants and Ministers in this manner. In any case, why do these committees preponderantly compose of civil servants? I thought what we want in this country is to have a committee of Kenyans who are able to administer justice to all the people. Our problem at the moment is the Civil Service. I have letters which emanate from desks of very senior Permanent Secretaries in this

country---

Mr. Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, there is a proposed amendment. Do you agree with it nor do you not and if you do not, what you want done?

Mr. Anyona: I am making my points so that the Assistant Minister can respond to them.

Mr. Temporary Deputy Chairman (Mr. Wetangula): You are now debating. We are dealing with this amendment. You are quarrelling with the Minister being the chairman of this Committee, whom do you want to be the chairman instead of him?

Mr. Anyona: Mr. Temporary Deputy Chairman, I am raising various issues. In the first place I am raising the question of the Minister being the chairman of a technical committee of civil servants. I am saying that if you want to make a committee of civil servants you can do that by making the Permanent Secretary the Chairman and let the Minister exercise control and supervision over the Permanent Secretary and the Committee.

The second point is why this Committee is preponderant of civil servants when we want a balanced committee of other Kenyans who have no Government connection.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, as a matter of fact, we would really have no quarrel if the Permanent Secretary was the chairman of the committee and maybe move the possibility of conflict. We have no quarrel with that. We can amend this provision to read that the Permanent Secretary will preside over the meetings and remove the words "in the absence of".

The Temporary Deputy Chairman: So, do we delete the provision under part (a)?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Yes, Mr. Temporary Deputy Chairman, Sir. We will delete Part (a) so that provision (b) becomes (a) and then the other letters can change accordingly.

The Temporary Deputy Chairman (Mr. Wetangula): So, provision (b) should provide that the Permanent Secretary shall be the Chairman. Hon. Anyona, you are satisfied with that. Are you not?

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I am quite happy with that.

The Temporary Deputy Chairman (Mr. Wetangula): What was your last point?

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, my second point - it is not necessarily the last one - about the preponderance of civil servants in this committee. I thought a committee of this kind should have a balance between Government officials and other Kenyans. It should have people from the church and other people who have a sense of probity. If we really want to help this country, the Government and this Ministry, we must balance the membership of this committee right down from the national to the district level. What is the explanation for the preponderance of the Government officials in the committee? Does the Assistant Minister think that he is doing this country a service by doing this kind of a thing? Government officials are responsible for implementation work!

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, Sir, that seems to be a new element. When this Bill was being debated here, I do not remember anybody questioning the composition of the committees. We may have made a few amendments here and there, but we are now in the Committee Stage. If that had been the wish of the House at the Second Reading Stage we would have had a chance to look at it.

Mr. Ndicho: Mr. Temporary Deputy Chairman, my other concern is that if you look at the composition of the whole committee from paragraphs (a) to (o) you will see that all its members are civil servants. But in Clause 8(3)(p) and (4)(k) there is provision for the membership of a physical planner in private practice. I do not understand how somebody who is not a civil servant will be incorporated to do Government work. Why can we not have a physical planner who is in Government employment instead of bringing in somebody who is not employed by the Public Service Commission? How shall it work.

The Temporary Deputy Chairman (Mr. Wetangula): I do not see what hon. Ndicho is quarrelling about!

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, Clause 8(3)(p) provides for membership of a registered physical planner in private practice, who will be duly appointed by the Minister on the advice of the Physical Planners Registration Board. This provision is in order.

The Temporary Deputy Chairman (Wetangula): I will now put the question on Clause 8.

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, what is your point of order? I am putting the question on this clause!

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I know you very well. I know that you have been very unhappy about the way things concerning land have been happening in this country. This House will be doing this country a disservice to rush a Bill of this kind through when there are serious flaws in it. What I am saying is that the Assistant Minister has very kindly said that they do recognise that the composition of these committees is not the best, but that the matter was not raised during debate at the Second Reading Stage. That does not take away the importance of membership balance in these committees. In that event, and in the interests of this country, would I be in order to move under Standing Order 107 that the Committee reports progress to the House? This will give the Assistant Minister time to consider a proper balancing of the membership of these committees and we will be doing justice to the country.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Speaker, Sir, I have the greatest respect for hon. Anyona, but [**The Assistant Minister for Land Reclamation, Regional and Water Development**] surely this is bringing in a new element rather late in the day when we want to complete business on this Bill. I do not really see that what he is saying will change drastically the final outcome in respect of these civil servants. In fact, we are providing for the possibility of the public viewing physical plans and making their comments so that amendments can be introduced to the law once the Bill has become an Act in force. I do not think we should delay the passage of this Bill unduly.

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona, the correct thing you could have done was to file proposals to amend the Bill with the Clerk of the National Assembly in accordance with Standing Order 106(2). Why did you not do that?

Mr. Anyona: Mr. Temporary Deputy Chairman, you realise that we are working on a supplementary Order Paper. This Bill was not on the original Order Paper. It has just been sneaked in this afternoon. In fact, hon. Members have not even had a chance to look at the proposed amendments. In fact, I went to the Office of the Clerk of the National Assembly to enquire why amendments were being proposed and at the same time we were being asked to approve them. That is why I am proposing under Standing Order 107 that the Committee should report progress to the House, so that we can give the Ministry ample time to consider the serious flaws in the Bill, one of which is the composition of these committees, and then bring the Bill back in an acceptable form.

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I am disagreeing with that. We can vote on the proposal.

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman, Sir. I have moved an amendment!

The Temporary Deputy Chairman (Mr. Wetangula): Order, Mr. Anyona! You have moved an amendment and, in accordance with Standing Order No. 107, I have to put the question to the House! Do you not want me to do that?

Mr. Anyona: I thought you were going on with the Bill.

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Members, hon. Anyona is invoking Standing Order 107 and requiring that we do report progress of the proceedings of this Committee to the House rather than conclude the matter under discussion in this sitting. The correct procedure under Standing Order 107 is to put the question to the House. If hon. Anyona's proposition is carried, then we will report progress of these proceedings to the House and we shall carry on at a later date. If that proposition is not carried, then we will move on to the next stage.

(Question, that the Committee do report progress of its proceedings to the House, put and negatived)

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

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

(Clause 8 as amended agreed to)

(Clause 9 agreed to)

Clause 10

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 10 be amended by deleting it and inserting a new clause as follows:

10: (1) The functions of the National Physical Planning Liaison Committee shall be -

(a) to hear and determine appeals lodged by a person or local authority aggrieved by the decision of any other liaison committee;

(b) to determine and resolve physical planning matters referred to it by any of the other liaison committees;

(c) to advise the Minister on broad physical planning policies, planning standards and economic viability of any proposed subdivision of urban or agricultural land; and,

(d) to study and give guidance and recommendations on issues relating to physical planning which transcend more than one local authority for purposes of co-ordination and integration of physical development.

(2) Functions of other liaison committees shall be:

(a) to inquire into and determine complains made against the Director in the exercise of his functions under this Act or local authorities in the exercise of their functions under this Act;

(b) to inquire into and determine conflicting claims made in respect of applications for development permission;

(c) to determine development applications for change of user or subdivision of land which may have significant impact on contiguous land or be in breach of any condition registered against a title deed in respect of such land;

(d) to determine development applications relating to industrial locations, dumping sites or sewerage treatment which may have injurious impact on the environment as well as applications in respect of land adjoining or within a reasonable vicinity of safeguarded areas; and,

(e) to hear appeals lodged by persons aggrieved by decisions made by the Director or local authorities under this Act.

(Question of the amendment proposed)

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

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

(Clause 10 as amended agreed to)

Clause 11

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move that:-

THAT, Clause 11(2) be amended by deleting the words "once every two weeks for the first two meetings following its establishment and thereafter", and inserting the words "at least".

(Question of the amendment proposed)

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

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

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 13 be amended by deleting the words "may within thirty days" and inserting the words "or matters connected therewith, may within sixty days".

(Question of the amendment proposed)

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

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

(Clause 13 as amended agreed to)

(Clause 14 agreed to)

Clause 15

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 15 be amended as follows:

- (a) in subclause (1), by deleting the words "thirty days" and inserting the words "sixty days";
- and,
- (b) by deleting the word "Minister" and inserting the words "National Liaison Committee" wherever it occurs.

(Question of the amendment proposed)

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

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

(Clause 15 as amended agreed to)

(Clauses 16 and 17 agreed to)

Clause 18

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 18 be amended as follows:

- (a) in paragraph (b) by deleting the word "and"; and,
- (b) by deleting paragraph (c).

(Question of the amendment proposed)

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

(Clause 18 as amended agreed to)

Clause 19

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 19 be amended as follows:

- (a) in subclause (10) by inserting after the words "development plan" the words "notify in writing to the local authority whose area is affected by the plan to make representation in respect of the plan and";
- (b) in subclause (3) by inserting the words "and shall give reasons in case of decline" at the end; and,
- (c) in subclause (5) by deleting the word "Minister" and inserting the words "National Liaison Committee".

(Question of the amendment proposed)

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

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

(Clause 19 as amended agreed to)

(Clause 20 agreed to)

Clause 21

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 21 be amended as follows:

- (a) in subclause (1) -
 - (i) by deleting the word "caue" in line 2 and inserting the word "cause";
 - (ii) by deleting the words "an officer authorised by him" in lines 3 and 4 and inserting the words "the Director";
- (b) by deleting subclause (3) and inserting the following new subclause -
- (3) on the approval of the regional physical development plan, no development shall take place on any land unless it is in conformity with the approved plan.

(Question of the amendment proposed)

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

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

(Clause 21 as amended agreed to)

(Clause 22 agreed to)

Clause 23

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 23 be amended as follows:

(a) in subclause (1) -

(i) by inserting after the word "development" in line 2, the words "potential or";

(ii) by deleting the words "the area of a local authority" in line 5 and inserting the "the jurisdiction of one or more local authorities."

(b) in subclause (2), by deleting the word "less" in line 2 and inserting the word "more."

(Question of the amendment proposed)

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

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

(Clause 23 as amended agreed to)

(Clauses 24 and 25 agreed to)

Clause 26

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 26 be amended in subclause (1) by inserting after the word "shall", in line 1, the word "not."

(Question of the amendment proposed)

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

(Clause 26 as amended agreed to)

(Clauses 27 and 28 agreed to)

Clause 29

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 29 be amended as follows:

(a) by deleting the figure "(1)"; and

(b) adding the following new paragraphs after paragraph (c):-

(d) to ensure the proper execution and implementation of approved physical development plans;

(e) to formulate by-laws to regulate zoning in respect of use and density of development; and,

(f) to reserve and maintain all the land planned for open spaces, parks, urban forests and green

belts in accordance with the approved physical development plan.

(Question of the amendment proposed)

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

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

(Clause 29 as amended agreed to)

Clause 30

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 30 be amended as follows:

- (a) by deleting subclause (4) and inserting the following new subclause-
- (4) Notwithstanding the provisions of sub-section (2),-
- (a) The local authority concerned shall require the developer to restore the land on which such development has taken place to its original condition within a period of not more than ninety days;
- (b) If on the expiry of the ninety days notice given to the developer such restoration has not been effected, the concerned Local Authority shall restore the site to its original condition and recover the cost incurred thereto from the developer.
- (b) in subclause (6)(b) by adding the words "including petroleum filling stations" at the end; and
- (c) in subclause (8) by deleting the words "ten thousand" and inserting the words "one hundred thousand."

(Question of the amendment proposed)

Mr. Anyona: Under Clause (4)(b), we are asking the Local Authority to sue developers who have refused or failed to restore this land.

As we know, many Local Authorities, as it had been put, they do not have enough money, resources and so on. And here we are asking them to incur extra expenses to hire legal services to get a developer to restore this land. Why can the Ministry not find a more effective way of compelling the developer to meet the obligations under this law? Why do we want to over-burden the Local Authorities?

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona, is the developer not compelled under clause (4)(a)?

Mr. Anyona: Mr. Temporary Deputy Chairman, I am talking about clause (4)(b).

The Temporary Deputy Chairman (Mr. Wetangula): He is compelled under clause 4(a). If he fails then the Local Authority will go ahead and do it and then recover the cost from him.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, if we compel and someone does not comply that is not compellation really because compel must be final. So, what I am saying is in clause 4(b), why do we not build in mechanism which then penalises the developer for refusing to comply with that compellation? That is what I am saying.

The Temporary Deputy Chairman (Mr. Wetangula): The penalty is in clause 32, hon. Anyona. Have you looked at clause 32? Anyway, hon. Assistant Minister, what do you say to that?

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Speaker, Sir, I think the conditions laid are sufficient for that.

The Temporary Deputy Chairman (Mr. Wetangula): In fact, Mr. Anyona, clause 38, the penalty has been enhanced from the original "ten thousand" to "one hundred thousand." Has the Assistant Minister answered you?

Mr. Anyona: Well, he has not answered. I do not think he understands what I am saying, Mr. Temporary Deputy Speaker, Sir. What I am saying is: We may have a penalty, but at the same time we are over-burdening the Local Authority because it has to recover the cost, and the way you recover cost is by hiring legal services. Is he also going to pay for those costs from him? I mean when they incur those extra cost of

having taken him to court, is that one covered in the penalty in the other cost?

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, it is stated very clearly that the Local Authority will do the work and the money would be recovered from the developer.

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona is asking you: Where is the Local Authority going to get the money to rectify the mess before looking for the money from the developer? Is that what you are asking?

Mr. Anyona: Yes, Mr. Temporary Deputy Chairman, Sir.

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Speaker, Sir, I get this one very clearly, from the Local Authority service charge or whatever. They have to use money in the Local Authority to rectify the mess.

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman, Sir. How would the Local Authority know that the developer is going to default and make budget provision for that? In any case, what we are saying and the experience of this country is that Local Authorities do not have money. And here, we, as Parliament, are asking them to incur extra cost. When a developer would have been compelled by this Parliament to meet his obligations in his provisions, why are you protecting people against the interest of the public?

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, this is a logical question, but I guess every local authority has got some emergency funds somewhere. Nobody can predict an emergency. If the hon. Member knows any other alternative way, let him tell us.

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Chairman, Sir. We come from places where there are local authorities and they have no emergency funds. If there are such funds, it has to come from the Central Government. The local authorities do not even have money to pay salaries and their workers have been going on strike. Is the Assistant Minister, therefore, in order to tell us that local authorities, including his, has emergency money?

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Kaino, what do you say to that?

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, this may not be the first defaulter. There might be some other developers who have also defaulted and they have paid and that money is kept somewhere. However, we would be pleased if the hon. Member could give us an alternative way of solving this problem. We can still consider it because the Government has a problem of getting money.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, we are asking this Assistant Minister a very simple thing, and we are trying to help them. But he is being on the defensive because I do not think he appreciates what we are trying to say. Instead of asking the local authority to go and restore the land and then recover the cost, why do we not, in this provision, authorise the local authority, instead of spending that money to restore the land, to sue the developer so that he can comply with his obligations? At least in that case, the local authority will spend a little less money and they might recover the damages. That is what we are saying.

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Assistant Minister, I believe what hon. Anyona is saying is: Where will the local authorities get the money? What I would expect you to do is to guide the local authorities that in the event that such contracts are entered into, the developer should deposit some refundable sum of money which will take care of such an eventuality so that, in the event when we have such a problem, it is covered. I believe you will advise your local authorities to that effect.

Mr. Ndicho: Mr. Temporary Deputy Chairman, Sir, even before the local authority takes this developer to court to recover the costs, there is no developer who will go to a site in this country without some documents, either dubiously obtained or otherwise.

The Temporary Deputy Chairman (Mr. Wetangula): How does that help us in Clause 30?

Mr. Ndicho: Mr. Temporary Deputy Chairman, Sir, it is in Clause 1(a), which reads: "The local authority concerned shall require the developer to restore that land".

First and foremost, the developer was allocated that land, either dubiously or otherwise, because he is being told to revert it to the original condition as it was discovered that he was erroneously given that land.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Ndicho, that is not the issue. We are talking of development and not allocation of land. The two are completely different.

Mr. Ndicho: Mr. Temporary Deputy Chairman, Sir, but the following is my problem: This developer, who is now being told to---

The Temporary Deputy Chairman (Mr. Wetangula): The developer is not necessarily the owner of the land. You know that?

Mr. Ndicho: But nobody will agree to incur expenses if he paid money to obtain that plot. He will demand the money from the person who sold him the land.

Hon. Members: No!

The Temporary Deputy Chairman (Mr. Wetangula): Even your colleagues do not agree with you.

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

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

(Clause 30 as amended agreed to)

(Clause 31 agreed to)

Clause 32

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 32 be amended as follows:-

- (a) in subclause (2) -
 - (i) by deleting the word "Director", in line 1, and inserting the words "Local Authority";
 - (ii) by deleting the words "referred to him", in line 2, and inserting the words "submitted to it";
 - (iii) by deleting the word "and" in paragraph (g); and
 - (iv) by deleting paragraph (h) and inserting the following new paragraphs -(h) the Director of Urban Development
 - (i) the Chief Architect, Ministry of Public Works and Housing;
 - (j) the Director of Forests; and
 - (k) such other relevant authorities as the Local Authority deems appropriate";
- (b) in subclause (3) -
 - (i) by deleting the word "Director" in line 1 and inserting the words "Local Authority";
 - (ii) by deleting the words "referred to him", in line 2, and inserting the words "submitted to it"
 - (iii) in paragraph (c) by deleting the words "officers or authorities referred to in subsection (2)" and inserting the words "Director, officers or authorities referred to in subsection (1) and (2)";
- (c) after subclause (3) insert the following new subclause -
 - (4) If any development application requires the change of user of any agricultural land, the Local Authority shall require the application to be referred to the relevant Land Control Board.
 - (5) The relevant Land Control Board shall recommend to the Local Authority to accept or reject the application for change of user and shall give reasons for its recommendations to the Local Authority.

(Question of the amendment proposed)

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, in the first place, this Bill was ineptly drafted. That is why we have very many amendments. But even now, if you look at subclause 3(b)(ii), there is the word "the" missing. What we have is "he". If you do not do it now, you will have to come back to this House and amend it just because of that little oversight. So, I do not know whether you want to amend that now or let it go and then come back to the House?

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, which one are you referring to?

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, it is subclause 3(b)(ii). It reads: "by deleting the words "referred to him", in line 2, and inserting the words, "submitted to it". I am proposing that should be "the" rather than "he".

An hon. Member: That is the one we are removing.

Mr. Anyona: You are not removing it. I do not think the hon. Minister for Health understands what he is saying.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, I do not quite get you. They are deleting the use of the word "him" and inserting---

The Assistant Minister for Land Reclamation Regional and Water Development (Mr. Ligale): No, Mr. Temporary Deputy Chairman, Sir, he has a point. We just have to add a "t" before "he" in subclause 3(b)(ii) to read "the words".

The Temporary Deputy Chairman (Mr. Wetangula): By deleting "he words" and inserting "the words". Okay, hon. Anyona, you are right.

Mr. Anyona: Yes, thank you, Sir, I knew I was right, for once.

(Laughter)

I also want to raise another point under part (c). Here, I notice that the local authority is required to refer applications to Land Control Board. There are very many Land Control Boards and some of them are fictitious, nobody knows where or who they are. So, I do not know which one is being referred to here. We have district Land Control Boards, at national level and also at sub-locations. If we are not careful here, it is going to cause a lot of delay in processing applications.

Could we be more specific in this provision and put in a time frame, and say; within this time frame, the Land Board should come back with their response? If you know how Land Boards operate, some of them are chaired by the District Officers (DOs), who are busy throughout the day drinking *chang'aa in mitaani*. So, can we put in some time frame in this thing so that they are under obligation to come back and not hold up applications?

The Assistant Minister for Land Reclamation Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, Sir, we only have one set of Land Control Boards.

The Temporary Deputy Chairman (Mr. Wetangula): In fact, that is not the issue that hon. Anyona is quarrelling about. He is saying, that at the end of local authority, he wants you to give the time frame: Say within a month, two or three months. I think that is what he wants.

Mr. Anyona: Yes!

The Assistant Minister for Land Reclamation Regional and Water Development (Mr. Ligale): Well, he had made the issue of Land Control Board---

The Temporary Deputy Chairman (Mr. Wetangula): The issue of Land Control Board was just a mandate. He knows about it very well. So, what is your response to that? Do you want to give a time confinement to the Land Control Board? That is what he is asking. Are you with him?

The Assistant Minister for Land Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, just give me a second to consult.

(Hon. Kaino consulted with hon. Ligale)

The Temporary Deputy Chairman (Mr. Wetangula): That is not an outrageous suggestion. I think it is normal. You should also know that under the law, the Land Control Board's consent has a life span of six months.

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, we have agreed, it should be within 30 days.

The Temporary Deputy Chairman (Mr. Wetangula): From when?

The Assistant Minister for Lands and Settlement (Mr. Kaino): He is given 30 days from the date of application.

The Temporary Deputy Chairman (Mr. Wetangula): Are you satisfied, Mr. Anyona?

Mr. Anyona: Where does that come in? Although I am quite happy with the time frame, where does that come from?

The Assistant Minister for Land Reclamation Regional and Water Development (Mr. Ligale): After the local authority, within that (c);

Mr. Anyona: Thank you, Sir. That is okay.

The Temporary Deputy Chairman (Mr. Wetangula): So, you have said it should be within 30 days?

The Assistant Minister for Land Reclamation Regional and Water Development (Mr. Ligale): Yes, Mr. Temporary Deputy Chairman, Sir.

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

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

(Clause 32 as amended agreed to)

Clause 33

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to Move:-

THAT, clause 33 be amended as follows:-

- (a) In subclause (2) by deleting the word "fourteen" and inserting the word "thirty";
- (b) in subclause (4) by deleting the word "Minister" and inserting the words "National Liaison Committee"; and
- (c) in subclause (5) by deleting the word "Minister" and inserting the word "National Liaison Committee".

(Question of the amendment proposed)

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

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

(Clause 33 as amended agreed to)

Clause 34

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, I beg to move:-

THAT, clause 34 be amended by inserting after the word "period" in line 4, the words "and for such reasons".

(Question of the amendment proposed)

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

(Clause 34 as amended agreed to)

Clause 35

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, I beg to move:-

THAT, clause 35 be amended as follows -

- (a) in subclause (3) -
 - (i) by deleting the word "fourteen" and inserting the word "thirty"; and
 - (ii) by deleting the words "Minister whose decision shall be final" and inserting the words "National Liaison Committee".
- (b) by inserting the following new subclause after subclause (3), -
- (4) Any person aggrieved by the decision of the National Liaison Committee may appeal to the High Court in accordance with the rules of procedure for the time being applicable to the High Court.

(Question of the amendment proposed)

Mr. Anyona: Mr. Temporary Chairman, under (b) above, it is provided that people who are aggrieved by decisions of the National Liaison Committee may appeal to the High Court. But in the Bill, there are a chain of Committees and people will be aggrieved at every stage of this Committees. Are we saying that people must wait until the matter comes to the National Liaison Committee before they can go to court? If so, are we not circumventing the legal process and access to the courts?

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona, I thought you would start by quarrelling with the idea of having the High Court as the court of original jurisdiction in the matter. Mr. Kaino, what is your reaction to that? A lot of Members suggested that we should not have appeal starting at the High Court because you do not give the aggrieved parties room to appeal to any other court other than the court of appeal.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman Sir, I would have no quarrel in removing the word "National" so that we can be referring to aggrievement to any of the Liaison Committees. So, that would deal with immediate problems raised by hon. Member. As to whether we can immediately appeal to the High Court or not, that I think I will have to consult.

Mr. Anyona: I think the duty of this Parliament is to make life as cheap as possible for our people. If we are going to require Kenyans to start cases of this kind at the High Court level; and I thank you very much Mr. Temporary Deputy

Chairman for raising this point, then we are overburdening Kenyans. This matter should start as low as---

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona, I agree with you. The matter is very simple. Litigation in the High Court is very expensive. Very few Kenyans have access to the High Court. It is a good idea if they started litigation from the Senior or Principal Magistrates Courts and then go to the High Court and the Court of Appeal if need be. We are closing out a lot of people because litigation is very expensive. But it is up to the Ministry to decide that.

*(Hon Kaino consulted officers
in the Civil Service Bench)*

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, Sir, there are two issues involved. Apparently under the amendment at (b) (4) of Clause 35, the reason for insisting on National Liaison Committee, is that in the liaison Committees, they also have a system of appeals. In other words, you can go from the Municipal Liaison Committee and if you are aggrieved by their decision, you can appeal to the National Liaison Committee within that system. Once you get to that level, if you are still aggrieved, you can then go to the court. The provision here is the High Court, but I do share the sentiments of the hon. Members that the High Court is an expensive affair. So we will have no objection to start off at the Senior Resident Magistrate Court, which covers the Chief Magistrate's Court. I will plead that under sub-clause (4) we retain the word "National" because there is a system of appeal from the district to the provincial right up to the National Liaison Committee. But at that level, if you are still aggrieved, you can then appeal to the Resident Magistrate's Court which I think is fair. Or what is your opinion?

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, I think he is right because there is a provision of appeal from the district to the province and to the National Liaison Committee. If you are still suffering an injustice, then you can go to the court by going to the Resident Magistrate's Court, then the High Court and later to the Court of Appeal.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I understand that. The experience in this country is: that all organs work in collusion such that if the first Liaison Committee has ruled against you, then there is collusion all the way and you are not likely to get justice. Therefore, waiting for appeals that are not going to give justice, does not really further injustice. What I am saying is: Does this Parliament have a right to deprive Kenyans off their automatic access to the courts of law whenever and wherever they feel aggrieved? Do we have the right to do that by creating a law of this kind?

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, these liaison committees are *quasi* judicial. I do not see any quarrel with that. They are all over. We have boards of inquiries, Physical Planning, the Law Society Disciplinary Committees. They are all *quasi* judicial and if you are aggrieved, you go to the court.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I agree with that. But what I am saying is this: They are *quasi* judicial, yes, but if any Kenyan feels that he can only get justice by going to the court as we have now agreed, what right do we have to stop that person from going to court and to make him wait for this sequence? Do we have that right? That is the matter and if so, under what provision?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, Sir, in fact, there is nothing in this Bill as established that stops anybody who feels that he does not want to appeal to the National Liaison Committee, and that from the District Liaison Committee, they want to go straight to court. There is nothing in this Clause that stops him.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, if I were to go to court in a matter relating to this Act, I will be subjected to the provisions of this Act.

The Temporary Deputy Chairman (Mr. Wetangula): That is correct.

Mr. Anyona: And this Act says that if you are aggrieved, you may only go to court after the final appeal to the National Liaison Committee. So what the Assistant Minister is saying is not correct.

The Temporary Deputy Chairman (Mr. Wetangula): What is your quarrel, Mr. Anyona? The ordinary man you are trying to defend, will go from the district to province literally for free and from the province to the National Liaison Committee, literally for free. Then he will incur expenses when he starts going to the court. He might get justice at the province or at the national level. I do not see the quarrel.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, first of all there is no such thing as getting it free. A person who leaves---

The Temporary Deputy Chairman (Mr. Wetangula): I said "relatively free", I did not say "free".

Mr. Anyona: But, Mr. Temporary Deputy Chairman, Sir, I am bringing a very important point here. I want to clear my own mind that, in fact, this Bill, we are still leaving the rights of Kenyans intact because wherever and whenever they want to go to court and not to subject them to the provision here which is rather not clear. I am saying now, you cannot go to court because you must wait for the final appeal. That will be the practical application of this Bill and we must consider that now. I am saying that it is dangerous to pass a provision like this, which will, then interfere with the rights of Kenyans. I do not see what we loose.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, I think what you should be arguing for, is for the Liaison Committees to be given a time-limit within which to determine an appeal Bill. But I do not see any point that you are arguing about.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, have you looked at the chain? We start with the district, local authority, provincial and then to the National Liaison Committee. That is a very process in the way things happen in this country. What I am asking is this: What do we loose if we allow those Kenyans, who feel that they want to go to court at the level of the local authority liaison committee? Those who want to wait for the process to go to National Liaison Committee, can do that.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, what would you loose if you move from the district to the province and your appeals succeeds without involving a lawyer or paying any fees or incurring any other expenses?

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I am considering the other case where you do not succeed and that is where the danger is.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, Sir, I have the highest esteem for Mr. Anyona. But in this particular case, I think he said foggy, a matter that may not flow. We have a chance here to deal with professionals who are able to understand and answer you in a professional manner and virtually for free. Instead of going to the court, and there you are likely to be arguing matters of procedure and law rather than professionally, you have a chance to appeal to a professional body. I would have thought that that is giving Kenyans an opportunity to deal and to argue with professionals.

The Temporary Deputy Chairman (Mr. Wetangula): In fact, Mr. Anyona, I have never seen a *quasi* judicial organ being so comprehensive as this. I do not know why you are being difficult in your argument.

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

*(Question, that the words to be
inserted in place thereof be*

inserted, put and agreed to)

(Clause 35 as amended agreed to)

Clause 36

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 36 be amended in line three by inserting after the words "sewerage treatment", the word "quarries".

(Question of the amendment proposed)

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

(Clause 36 as amended agreed to)

(Clause 37 agreed to)

Clause 38

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 38 be amended as follows:-

(a) in sub-clause (5) by deleting the word "Minister" and inserting the words, "National Liaison Committee"; and,

(b) in sub-clause (6) by deleting the word "Minister" and inserting the words "National Liaison Committee".

(Question of the amendment proposed)

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

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

(Clause 38 as amended agreed to)

Clause 39

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 39 be amended as follows:-

(a) in sub-clause (3) by inserting after the words "such material", in line four, the words "within thirty days"; and

(b) in sub-clause (4) by deleting the words "twenty thousand" and inserting the words "fifty thousand".

(Question of the amendment proposed)

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

(Question, that the words to be

*inserted in place thereof be
inserted, put and agreed to)*

(Clause 39 as amended agreed to)

(Clause 40 agreed to)

Clause 41

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir,
I beg to move:-

THAT, Clause 41 (6) be amended in the proviso by deleting the word "Minister" appearing in lines 3 and 5 and inserting the words "National Liaison Committee".

(Question of the amendment proposed)

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

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

(Clause 41 as amended agreed to)

(Clauses 42, 43 and 44 agreed to)

Clause 45

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir,
I beg to move:-

THAT, clause 45 be amended by deleting the words "whether or not it has actually been received by him" at the end.

(Question of the amendment proposed)

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

(Clause 45 as amended agreed to)

Clause 46

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir,
I beg to move:-

THAT, clause 46 be amended by deleting the words "twenty four", and inserting the words "forty eight".

(Question of amendment proposed)

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

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

(Clause 45 as amended agreed to)

Clause 47

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 47(1) be amended as follows-

- (a) by inserting the word, "the" immediately before the word "Antiquities", in line 1; and
 (b) by inserting the words, "after consultation with the Board of National Museums," immediately after the words "Director may" in line 2.

(Question of the amendment proposed)

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

(Clause 47 as amended agreed to)

(Clauses 48, 49, 50, 51 and 52 agreed to)

Clause 53

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 53 be amended as follows-

- (a) by inserting after subclause (1) the following new subclause-
 (2) The functions previously exercised by the Central Authority under the Land Planning Act Cap 302 shall stand transferred to the Physical Planning Liaison Committees under this Act.
 (b) by renumbering subclauses (2) and (3) as sub-clauses (3) and (4), respectively.

(Question of the amendment proposed)

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I want your guidance here. Now we are transferring these functions from this other Act so as to consolidate both Acts. At what stage will we then include those respective Acts? I would have thought that that provision would come under this clause.

The Temporary Deputy Chairman (Mr. Wetangula): Come again, Mr. Anyona.

Mr. Anyona: Under clause 53, we are transferring functions under the Land Planning Act to committees under this new Act. That means, therefore, that those functions can no longer be exercised under that other Act. What happens to that Act? Is it repealed and if so ---

The Temporary Deputy Chairman (Mr. Wetangula): If you have the Bill, Clause 52 repeals the Town Planning Act and the Land Planning Act.

Mr. Anyona: I now get it. Thank you.

The Temporary Deputy Chairman (Mr. Wetangula): Are we together?

Mr. Anyona: Yes. Thank you.

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

(Clause 53 as amended agreed to)

New Clause

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir,

I beg to move:-

THAT, after clause 51 the following new clause be inserted and that clauses 52 and 53 be renumbered as clauses 53 and 54:-

Publication of newspapers 52. Every notice published notices in the Gazette under any of the provisions of this Act, except the notices published under sections 49 and 50, shall be simultaneously published in at least two local dailies, one in English and one in Kiswahili.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I understand the importance of publishing these notices in the newspapers but the assumption here is that every Kenyan reads newspapers. A can read a newspaper and B cannot avail himself a newspaper which is not the case. Now, in any case, I think publishing these kinds of things in the newspapers would be more expensive than the official media. Now, why is it not possible at least to have one in the newspapers and the other in the electronic media so that the other people who do not have access to newspapers also have the advantage of knowing what is going on? I am proposing here that instead of publishing these notices in two newspapers, we post one in the newspaper and one in the electronic media, preferably Kenya Broadcasting information (KBC). That is the only useful thing that I think KBC can do for Kenyans.

The Temporary Deputy Chairman (Mr. Wetangula): In fact hon. Anyona the original suggestions by many Members on the Floor was that such publications be pinned on notice boards at the chiefs and assistant chiefs offices so that wananchi can reach them quickly and easily but it is up to you, Mr. Assistant Minister.

Mr. Assistant Minister, I think there is another point on that. I think you can sum up later if you can keep them together.

Yes, Dr. Kituyi.

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, as you have just remembered, it was a very strong suggestion by Members, that this notice be publicly displayed at Chiefs' offices and other public places. Why has the Assistant Minister not considered that possibility while proposing the amendments to the Bill as he is proposing now? Anaweza kufikiria kuongeza kwamba haya maneno yawekwe kwenye miti au ofisi za machifu, ili wananchi wote wayaone badala ya kuyaweka katika magazeti tu?

Mr. Achola: Thank you Mr. Temporary Deputy Chairman, Sir. I would also suggest that instead of just saying one "English newspaper," we should say that "the English newspaper with the largest circulation in the country".

Dr. Lwali-Oyondi: My suggestion was that since this is a fairly serious matter and it affects wananchi, could it not be possible to put it in all the newspapers on a Friday, for example, and the newspapers be asked to have a bit of concession?

The Temporary Deputy Chairman (Mr. Wetangula): How many Kenyans do read newspapers? We want to reach as many people in the villages as possible. I think you should put up a more---

Dr. Lwali-Oyondi: We want to publicise this as much as possible. If for example, it affects a certain division like Maragoli, the chief should also announce it in his barasa and have the normal---

The Temporary Deputy Chairman (Mr. Wetangula): Is that not what Dr. Kituyi said?

Dr. Lwali-Oyondi: Yes.

The Temporary Deputy Chairman (Mr. Wetangula): Why repeat it?

Dr. Lwali-Oyondi: No, I was thinking of putting it in all newspapers instead of one and, if it involves a big area, we should also use the radio broadcasts on the national service which should cost very little. Thank you.

Mr. Gitau: Although I did not get what hon. Dr. Lwali-Oyondi said, I suggest that we delete the words "at least two local dailies, one in English and one in Kiswahili" and say, "in all dailies."

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, the sentiments which have been expressed by Members are really welcome, especially with regard to the chiefs' notice boards. That can actually bring a wide coverage and we cannot add the third daily because it is very expensive. Previously it was only the Kenya Gazette and now we have added the two other dailies and we have also said that it should be reproduced after the Director has given the notice through the chiefs for wider coverage.

The Temporary Deputy Chairman (Mr. Wetangula): Do you then propose we put in an amendment to that. What do you want it to read?

The Assistant Minister for Lands and Settlement (Mr. Kaino): The chiefs could quote what---

The Temporary Deputy Chairman (Mr. Wetangula): The chiefs are not going to publish your Gazette without legal authority. Can you now give them legal authority by adding to this Clause? You cannot assume that chiefs will get Gazette notices and publish them to everybody, they must be compelled by law to do that.

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, let me consult and know how to frame it, to add it down here.

The Temporary Deputy Chairman (Mr. Wetangula): Order! The Attorney-General is here, he will---

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona, the Minister is consulting.

Mr. Anyona: Does that stop the House from going on? If he is consulting does the House not go on until he finishes?

The Temporary Deputy Chairman (Mr. Wetangula): No, we have to wait for him to respond, unless you have a point on the same matter. You have already made your point, hon. Anyona.

Mr. Anyona: Mr. Temporary Deputy Chairman, but I wanted to raise a point of order.

The Temporary Deputy Chairman (Mr. Wetangula): Until the Assistant Minister responds, then I will give you a chance.

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, I propose the following amendments; after the word "Kiswahili" we insert the words "and to be displayed at the chief's office". Assistant Chiefs do not have offices, it is only chiefs who have offices in this country.

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman, Sir. The truth of the matter is that chiefs in this country do not have offices anyway. Secondly, unless there is compulsion in the Act for the chiefs to display - Chiefs never display, if they get these notices they go and sell them. You have to do them a favour for them to tell you that this thing is going on. So, we shall not really do anything by saying---

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona, I think it is reasonable because they are saying that the Gazette must be published and then it should be published in at least two local dailies, in English and Kiswahili and be displayed at the chiefs' offices, so that if it is not displayed at the chief's office and you suffer an injustice, then you have a legal position to stand on and reverse the decision. I do not see what you are quarrelling with.

Mr. Anyona: I understand the legal technicality---

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Assistant Minister, do you want it to read "the offices of the chiefs" or "the chiefs' offices?"

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, "and to be displayed at the offices of the chiefs."

Mr. Shikuku: Mr. Temporary Deputy Chairman, I am sorry I had some problems but I am standing to thank the Mover of this amendment because I do recall in the Second Reading we tried to get this put in Kiswahili and in English, but when it goes to Kiswahili it means *Taifa Leo* which reaches most of the common men, and when he adds this question of chiefs' offices, to me that is the best he can do and I will be asking too much if I do not say so, and I am very grateful.

Mr. Anyona: Mr. Temporary Deputy Chairman, I am talking about a practical problem, which is that chiefs do not have offices. In my constituency, I have never seen a chief's office. So, I do not know where you are going to display these things. Secondly---

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona, I do not see what you are quarrelling with. First of all, we presume that chiefs have offices, but even where they do not have, they hold barasas and they can tell this to wananchi.

Mr. Anyona: Mr. Temporary Deputy Chairman, that was my second point. Unless therefore, you are going to require the chief by law to go to his barasa and tell people about this notice, then you are not giving it any legal effect. In any case, I am saying that as far as I am concerned, you will be serving the ordinary Kenyans better if at least you will put some of this on the radio. It is more important than these newspapers. How many

people do read them?

Dr. Kituyi: Mr. Temporary Deputy Chairman, this amendment "to be published in at least two local dailies," leaves the possibility of publishing it in more than two dailies and the next Clause is saying "one in English and one in Kiswahili." It does not give us the possibility that you can have two in English. There should have been "a second at least" before "the English." The first part provides for the possibility of three newspapers, the second part provides for only two newspapers.

The Temporary Deputy Chairman (Mr. Wetangula): At least two dailies.

Dr. Kituyi: If you want only those two, you cut out the "at least" in the first part of that sentence, but once you have "at least two dailies," you want to provide for the possibility that it will be published in two English newspapers and one Swahili newspaper. So, there should be a second at least after the local dailies.

The Temporary Deputy Chairman (Mr. Wetangula): No, you do not need to delete "at least," you can delete, on the third last line "one" and the other "one" so that it remains in English and in Swahili. You have the latitude to have more than one in English, so remove the two "ones". "At least two" means you can have more than two, so you cannot go ahead and say one in English and one in Kiswahili. We simply say in English and in Kiswahili so that if you want to publish more than one or two it is allowed. Assistant Minister what do you think? It is up to you.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Chairman, I think it looks fairly clear to me. We leave it the way it is.

The Temporary Deputy Chairman (Mr. Wetangula): Let me explain what Dr. Kituyi said. That, you have provided for at least two local dailies. Which means that at most, you can have more than two. And then you proceed to limit one in English, one in Kiswahili, which means the ceiling is two. That is what he is saying.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, I think this is very interesting. The way I interpret this, is that you must have at least two local dailies and that "at least two," one must be in English the other one in Kiswahili. It does not preclude having more than one in either English or Swahili, but at least those two, one of them must be in English and another one in Kiswahili. That is how I read this thing.

Mr. Gitau: Mr. Temporary Deputy Chairman, I will go with what Dr. Kituyi has said because, dailies are out to make money and if it is published in one English daily and one in Kiswahili, it will go either to *Kenya Times, The East African Standard or Daily Nation* only. But if it is at least two English---

The Temporary Deputy Chairman (Mr. Wetangula): In fact, you are adding a completely [The Temporary Deputy Chairman] different point. We are dealing with the issue raised by Dr. Kituyi. I will put it to the vote and those who agree will agree.

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman. I think, if we provide for more than two, then you must not limit it by saying one in English and one in Kiswahili. The proper course of action is what you have proposed, that we take away the word "one". Then once you have done one in Kiswahili and one in English, you can replicate that in the extras.

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona, the Chair gave its views. They are not binding on anybody, it is up to you.

Mr. Anyona: Mr. Temporary Deputy Chairman, that is correct. Drop the word "one".

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be
added to the Bill, put and agreed to)*

First Schedule

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, I beg to Move:-

THAT, the first schedule to the Bill be amended in the heading by deleting the word "DEALTH" and inserting the word "DEALT".

(Question of the amendment proposed)

Dr. Kituyi: Mr. Temporary Deputy Chairman, can the good Assistant Minister hon. Kaino tell us the meaning of the word he is proposing to us to delete?

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

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

(First Schedule as amended agreed to)

Second Schedule

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, the Second Schedule to the Bill be amended in the heading by deleting the word "DEALTH" and inserting the word "DEALT".

(Question of the amendment proposed)

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

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

(Second Schedule as amended agreed to)

(Third and Fourth Schedules agreed to)

Fifth Schedule

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, I beg to Move:-

THAT, the Fifth Schedule to the Bill be amended in the heading by inserting the word "DEFERMENT" after the word "REFUSAL".

(Question of the amendment proposed)

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

(Fifth Schedule as amended, agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Assistant Minister, before you come up, I must thank your Ministry for taking into account literally all the views that were given on this Bill by the House during the debate and this is really excellent.

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its consideration of The Physical Planning Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF
REPORT AND THIRD READING

THE PHYSICAL PLANNING BILL

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, I beg to report that Committee of the whole House has considered The Physical Planning Bill and its approval thereof with amendments.

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

The Attorney-General (Mr. Wako) seconded.

(Question proposed)

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think, the procedures of this House may end up not being followed strictly. Because I do remember that when the Assistant Minister moved this Bill, somebody should have nodded. No one nodded. But nevertheless, you have proposed the question. I think, nobody seconded, but I think we should be very alert when we are in this House. Since they have done a very good job, we must appreciate that too. I was here during the Second Reading and I am happy that most of the views expressed have been taken into consideration in reviewing these amendments that have come before the House. So, we must pat them on the back when they do a good job and tell them off when they do a bad job.

(Question put and agreed to)

The Assistant Minister for Lands and Settlement (Mr. Kaino): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Physical Planning Bill be now read the Third Time.

The Attorney-General (Mr. Wako) seconded.

(Question proposed)

Mr. Shikuku: Bw. Naibu Spika wa Muda, ningependa kuishukuru Serikali lakini ingefaa tufahamu kwamba, kupitisha sheria katika Bunge hili ni kitu kimoja na kuitekeleza na kuifuata ni kitu kingine. Sheria za Kenya ni nzuri lakini ubovu ni kwamba Serikali hii tukufu, na pengine takatifu, haitaki kuzifuata. Tumejaribu vile tuwezavyo kuufanya Mswada huu uwe wenye manufaa kwa Kenya. Sheria hii ikifuatwa, itaweza kuleta manufaa na kutuwezesha kutupilia mbali uovu huu ambao unaendelea. Isitoshe, tukishapitisha sheria hii ni lazima iheshimiwe. Ninashukuru kuona kwamba mhe. Mkuu wa Sheria yuko hapa kusikiza tunayosema. Sheria nyingi zinavunjwa na hali yeye ananyamaza. Sijui analipwa mshahara kwa kufanya kazi gani. Mshahara wa Mkuu wa Sheria unalipwa ili ahakikishe kwamba Shikuku na mtu mwingine yeyote yule anafuata zile sheria. Kuna watu wengine ambao hawafuati sheria na Serikali haichukui hatua yoyote. Ninafahamu kwamba kuna "contempt of court". Hiyo inafanyika siku hizi na Mkuu wa Sheria ananyamaza. Kwa mfano, juzi kulikuwa na kesi kortini na uamuzi ukatolewa kwamba mtu fulani hafai kuendesha uchaguzi wa chama chake kufuatana na sheria. Ajabu ni kwamba, badala ya Serikali kuona kwamba uamuzi wa korti unafuatwa, huyu mtu anaendelea kufanya uchaguzi na hakuna lolote linafanyika.

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to imply that, given the circumstances of that case, which was a civil case between various factions in FORD(A), the Attorney-General should have intervened and applied for contempt of court when the procedure is very clear that the party to that case who feels that the court order has been breached, should move the court to condemn the person who is in breach of the court order? Is it in order for him to have taken no action at all hoping that the Attorney-General would come to his aid?

Mr. Shikuku: Bw. Naibu Spika wa Muda, ninafahamu vyema habari ya korti. Ninakumbuka katika ile kesi ya *The People*, huyo jamaa hakufuata ile amri ya korti na ikawa yeye---

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir.

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

Mr. Shikuku: Ahsante Bw. Naibu Spika wa Muda. Na huyo ndiye Mkuu wa Sheria!

(Laughter)

Huyo jamaa hakutekeleza uamuzi wa korti. Korti ilimwita---

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order, hon. Shikuku! I think we are getting out of the Bill now. You raised a point and now it is developing into a debate. I want you now to stick to the Bill.

Mr. Shikuku: Bw. Naibu Spika wa Muda, ninaongea juu ya Mswada lakini nitachukua uamuzi wako kwa sababu ninaeleza jambo muhimu. Sasa huu Mswada tutakaoupitisha hapa utakuwa sheria na tunataka hiyo sheria ifuatwe na yule mtu ambaye hataki kuifuata, achukuliwe hatua na Mkuu wa Sheria. Haya ni maoni yangu na ninatoa mfano ili kuonyesha kwamba kuna mambo ambayo alifaa kuchukua hatua lakini hakufanya hivyo. Kwa hivyo, hakuna wakati wa kupoteza katika Bunge hili tukipitisha sheria ambazo hazitafuatwa.

Dr. Otieno-Kopiyo: On a point of information, Mr. Temporary Deputy Speaker, Sir. Hon. Shikuku might want to know that the Deputy Registrar-General was roughed up and beaten up in the Attorney-General's Chambers and nobody has been taken to court to date.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the tradition of the conduct of business in the Third Reading is to just make very few cursory observations but in this case, hon. Shikuku is actually indulging in a long debate which should be done in the Second Reading.

Mr. Shikuku: Bw. Naibu Spika wa Muda, ninaongea juu ya sheria itakayopitishwa sasa na yafaa mhe. Saitoti anipe heshima pia kwa sababu ninafahamu sana Standing Orders za Bunge hili. Hata ninakumbuka wakati mmoja nilimuuliza aniambie Standing Order No.2 inasema nini lakini hakuweza kunijibu na hali yeye ni professor! Sheria lazima ifuatwe na Upinzani na Serikali. The rule of law must apply to everybody. Sisi tulikula kiapo na hata wewe pia, Bw. Naibu Spika wa Muda, ulikula kiapo ukasema kwamba utalinda sheria za nchi hii. Kwa hivyo, tukipitisha sheria, lazima ziheshimiwe na mtu yeyote yule, awe Serikalini au katika Upinzani. Hatuna haja ya kuja katika Bunge kupitisha sheria ambazo hazifuatwi. Ninaunga mkono jambo hilo.

(Question put and agreed to)

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

Second Reading

THE AUCTIONEERS BILL

*(The Assistant Minister, Office of the President
(Mr. Sunkuli), on behalf of the
Attorney-General, on 11.6.96)*

(Resumption of Debate interrupted on 12.6.96)

Mr. Gitau: Mr. Temporary Deputy Speaker, Sir, this Bill is a very important one because most of the auctioneers, due to their non-specific profession and academic background, are not professionally qualified in any specific field and they have become a threat to our society. At any time when an auctioneer is called upon to

carry out his duties, many families feel that their lives are threatened. This Bill will help control the unbecoming behaviour of auctioneers.

Mr. Temporary Deputy Speaker, Sir, I want to go very fast through the Bill. What worries us about this Bill is that it gives control of its implementation to civil servants who, unless things change in future, have been politically influenced in their decisions. We have seen political lawyers and valuers. This Bill may end up giving leeway to auctioneers to harass people who are opposed to the Government. The proposed Auctioneers Licensing Board will have four non-Government officials and six Government officials. This will make the Board more of a preserve of civil servants than anything else. I would like to suggest that clause 3(1) be amended to provide for an extra member of the proposed Board. I am proposing that this extra member should be nominated by the Institute of Surveyors of Kenya. He should be a qualified and registered surveyor simply because most of the duties of auctioneers involve auctioning moveable and immoveable properties. The valuation of these properties is done by registered valuers. So, if we do not have a registered valuer in this Board we may be very unfair to some people. Therefore, I am proposing that after paragraph (h) we should have paragraph (i) providing for membership of the Board of a qualified and registered valuer, who is to be nominated to the Board by the Institute of Surveyors of Kenya.

This Bill excludes auction sales under the Coffee and Tea Acts.

The Temporary Deputy Speaker (Mr. Ndoto): Mr. Gitau, on which clause are you?

Mr. Gitau: Mr. Temporary Deputy Speaker, Sir, I am on clause 2(3), which states:-

"The provisions of this Act shall not apply to an auction sale under the Coffee or the Tea Act".

It is my feeling that, unless auctioneers who auction coffee and tea do not do any other kind of auctioning, then they should be covered by this Bill. Here is a Bill which leaves out coffee and tea, and these are movable items and those who auction them can also commit offenses in the course of their work. Clause 10, deals with the eligibility of the licence. Looking at this Report here, I can see that it is talking about O-Levels. Although this discrepancy was raised earlier by one of the speakers, we should be specific by saying what level of education is required. O-Level certificate is no longer a term of reference in our current education system. But we should talk about either 9,8 or 12 years of education in the current 8-4-4 system, or simply say: "Graduates of a certain degree". But noting that no specific qualification is required for anybody who wants to be an auctioneer, we should go up to the 12th year of education. We should also insist that this person ought to have a pass in English and Mathematics. This is because one may go all the way up to Form IV and come out with nothing. One may also buy a certificate. So, we must be very, very specific and ensure that this person has passed in English and Mathematics.

On the same Clause 10, subsection (c) excludes Members of Parliament and councillors. This is a matter of serious concern because councillors and Members of Parliament are not full-time workers in our respective duties as Members of Parliament and councillors. I note that at the moment, there are councillors who are auctioneers. What are they going to do? What is going to happen to their licences? Are they going to be cancelled?

Also as regards Members of Parliament and councillors, I believe by the nature of their work as public figures and also due to the temporary nature of their employment, they ought to be allowed to carry out this business, because you may be a Member of Parliament today, but after a number of years or after six months or so, you defect, and then lose your Seat permanently. Therefore, I am proposing that this subclause should be deleted, so that Members of Parliament and councillors can be free to practise as auctioneers. In any case, they are very good in talking. They can do auctioning very, very well.

Clause 29 states that:-

"The Chief Justice may make rules for the carrying out of the provisions of This Act and, in particular, such rules may provide for---"

Looking at this Clause, it makes us have a feeling that the Chief Justice has been given a lot of power by this Licensing Board. Unless the political system in this country changes, it may not serve any useful purpose because people in the Judiciary quite often have been accused of being very dependent politically. They are not independent and in that case, they may be influenced politically in making their decisions and this could put very many people out of their business. They could also put very many people into miserable conditions by making their property be sold and also unrecoverable.

When it comes to disciplining the licensed auctioneers, if somebody is not with the system politically, he may be dealt with personally by the Chief Justice and civil servants who are in this particular Board. So, we should go through this Bill and make sure that the Chief Justice is not very powerful because it empowers him to do a lot of things.

Mr. Temporary Deputy Speaker, Sir, let us move on to Clause 33. Clause 33, deals with distress for rent

act which is an amendment. Clause 33(b)(i) reads:-

"Approved valuer means a valuer licensed under the Valuers Act or a licensed auctioneer, but excludes auctioneer levying distress or any person acting on his behalf."

I would hate this confusion to be in this particular Bill because an auctioneer is not necessarily a valuer, but a valuer can be an auctioneer. Therefore, we should avoid, particularly in this subclause, to call an auctioneer or to give a licensed auctioneer the duties of a valuer.

Having said that, I would like to support this Bill. Thank you very much.

Mr. Wetangula: Thank you, Mr. Temporary Deputy Speaker, Sir for giving me an opportunity to contribute to this Bill. The Attorney-General should have brought this Bill more than ten years ago.

If there is any group of people in this country that needs serious regulation, it is auctioneers. Anybody who has been visited by auctioneers, and I am privileged to have clients who have been visited by auctioneers, goes through a traumatic cycle. Auctioneers in this country behave like gangsters, thugs and like hoodlums. It is like Chicago mobsters descending on a victim. I am surprised that in this Bill, the Attorney-General has omitted to mention the all important aspect of the need to train auctioneers on how to carry out their duties in a civil manner. This is because each and every auctioneer and courtbroker is totally lacking in civility. They operate as if they are a law unto themselves. When they descend on somebody's home, a gang of robbers behaves in a better manner and in a more civilised manner than auctioneers. I can see that in Clause 29(g), there is a very casual mention---

*(The Attorney-General consulted
with other hon. Members)*

Mr. Attorney-General, I want you to listen to me.

There is a very casual mention of the Chief Justice making rules for training auctioneers. I thought that the Attorney-General's first and foremost emphasis on the auctioneers is their training. If you look around the country, most auctioneers, if not all, are disgraced policemen, dismissed civil servants and all manner of social misfits who get licences and end up doing a good job badly all the time. When auctioneers descend on a home, it does not matter whether there are children, a pregnant woman or an invalid father, theirs is to loot literally. It is now time that we

refine this Bill into a law that will bring order and civility to the conduct of auctioneers.

In my humble view, the Attorney-General should have set a basic limit and standard on who should be an auctioneer. Hon. Shikuku, please, will you leave the Attorney-General alone? I want him to listen to me.

(Mr. Shikuku was in deep discussion with Mr. Wako)

The Temporary Deputy Speaker (Mr. Ndotto): Order! Hon. Attorney-General, the hon. Member on the Floor wants you to listen to him. He feels he is making a very important point.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy, Speaker, Sir, I have ears and eyes on my body. Other people here also have ears to hear the hon. Member. There is also the HANSARD. All these have to be taken into account.

On the issue of training, there are some provisions in the Bill on this. I will not dwell on that now, but I will reply to it at the end of the day.

An hon. Member: Why are there no civil servants here?

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, as I was saying, at the end of the day, the Attorney-General must bring civility to the behaviour of auctioneers.

Clause 2 simply describes an auctioneer in the following manner:

"An auctioneer includes every person who sells by auction".

I find this description most inadequate. Even a thug can sell by auction. Anybody can sell by auction. We must have a proper description and designation, qualifications and qualities of who should become an auctioneer. In certain jurisdictions, before I come to the nitty gritty of the Bill, like in the United Kingdom, for example, when court brokers and auctioneers or whoever they are come to a homestead, if it is a family with young children, they will not take away a television, children's beddings and children's tricycles. But what do auctioneers do in Kenya? It is like an invading army. And this has to be brought under control.

Mr. Nyagah: On a point of information, Mr. Temporary Deputy Speaker, Sir. I think the hon. Member on the Floor has gone too far from Kenya. We can look at examples in Tanzania where an auctioneer

goes to record what is there, and leaves the family to look for money and pay within a period of thirty days. That is the thing which we should be doing here.

Mr. Wetangula: Thank you, hon. Nyagah. I was going to say that at the very end of my argument.

We have a serious problem with auctioneers in this country. In fact, the Attorney-General should also limit the time which auctioneers must visit people's homes. Many times, they strike at 6 a.m. before the family wakes up and the descend on a family in manner which no one can describe. Sometimes they even injure the people they descend on. We need all these provisions in this Bill.

In the descriptions of the qualifications of an auctioneer, the Attorney-General has said: "Subject to sub-section (2) of this Section, a person who satisfies the Board that:- (a) is aged 65 years - I think the Attorney-General deleted this phrase - (b) is a Kenyan citizen, (c) has sufficient knowledge and experience in the business and practice of an auctioneer, (d) has not been convicted in the 10 years immediately preceding the application of an offence involving fraud, dishonesty, immorality and otherwise he is of good character and reputation, (e) is not disqualified under the provisions of this Act from obtaining or holding a license from the Board to be licensed to carry on the business of an auctioneer.

Mr. Temporary Deputy Speaker, Sir, where are the qualifications of an auctioneer? To be a Kenyan citizen is simple because anybody can be and even lunatics are. To have sufficient knowledge and experience in the business and practice of an auctioneer means we are reverting to the same people we are complaining about who are illegible to carry out this business. When we say that he should be a person who has not been convicted in the 10 years immediately preceding the application of an offence involving fraud, dishonesty and immorality; how many criminals are there in the streets and have not been convicted by any court? We need to have a very clear definition of who should be an auctioneer. We need to stipulate some basic academic standards, training and orientation for people to qualify to be licensed to be auctioneers.

I am saying this because it is partially said in Clause 19 that an auctioneer should behave like an officer of the court. Strictly speaking and in strict legal terms, auctioneers and court brokers are agents of the court and under the law, the conduct, the act, the omissions of an agent binds the principle. So, do we say these people who behave like gangsters are bound by the court in their conduct? Should the court allow an auctioneer to descend on somebody in a house in an uncivil manner as they do? These are the things that we must look at. What is the relationship between an auctioneer and the court whose orders and warrants they execute? If an auctioneer damages your car in the process of attaching it, is the court liable because it is a principle? Do you resort to suing the Chief Justice or the Attorney-General, who is the Chief Legal Officer to recover your damages? These are the fine points that I think at the end of the day, I would request my friend the Attorney-General to look at and incorporate in this Bill.

Above all, just like we passed a Bill recently on the training of lawyers, I think we need an expressed provision for the training of auctioneers. If, indeed, auctioneers are agents of the courts, then, we must treat them as para-legal and have a training programme for them at the Council of Legal Education to teach them how to behave within the confines of the law.

Mr. Temporary Deputy Speaker, Sir, this is what should be done. Another thing that the Attorney-General has to look at in curbing the behaviour of auctioneers, is the manner in which they handle attached properties. Literally, every auctioneer in one way or another, misappropriates the property attached to themselves or to their friends or relatives, to the extent where they would attach a vehicle worthy Kshs 2 million and the next day auction it at Kshs 100,000 without taking into account the value of the property, the interest of the person against whom they have attached and the interest of the society at large because falling into a civil debt is not a crime. Falling into a civil debt is not a matter for which you should be punished, hence the need to handle people with civil problems in a civil manner.

Mr. Temporary Deputy Speaker, Sir, I will give you an example. Recently auctioneers descended on my client and they were going to execute a warrant worth Kshs 400,000. They took from him a vehicle worthy Kshs 2 million, swept his house of property worth over Kshs 2 million, and they went and sold all these properties, and made a return that they had sold everything at Kshs 240,000. And this is happening everyday, everywhere in this country. If you go to the countryside, you do not need to ask to know how many people have suffered at the hands of auctioneers. For a debt of Kshs 10,000, they will sweep a herd of cattle from somebody's home. For a debt of Kshs 5,000, they will sweep your entire bedroom and for a debt of Kshs 50,000, they will take your Mercedes Benz and sell it, and account nothing to you. When I come to clause by clause, I will ask the Attorney-General that the penalties he has provided against errant auctioneers are kid-stuff. They are too lenient and auctioneers who transgress the law must face and feel the full weight of the law, if we have to bring sanity to their conduct.

Mr. Temporary Deputy Speaker, Sir, in Clause 2, the Attorney-General should describe an auctioneer in a better manner than simply calling him "every person who sells by auction". That is insufficient.

Mr. Temporary Deputy Speaker, Sir, Clause 3 says that a Board of Auctioneers is going to be established to license auctioneers. Its composition will be a Judge of the High Court, who shall be the Chairman, I have no quarrel with that, since the auctioneers are agents of the court; the Permanent Secretary in the Office of the President for the time being in charge of Provincial Administration; I would have thought that the Permanent Secretary in charge of the Police, would be more appropriate because, quite often, we shall need the police to control the conduct of auctioneers; The Chief Magistrate appointed by the Chief Justice and two advocates, I have no problem with that; one representative from each province to be appointed by the Attorney-General. I have no quarrel with this, but the feeling of many auctioneers out there is that this one representative of each province should be elected by themselves. I do not know what you think about that; a person nominated by the Chamber of Commerce and another one appointed by the Kenya Bankers Association to represent financial institutions; a member of the Board other than an *ex-officio* member shall hold office for three years.

Clause 4 (2) (e) is about Supervised and Licensed Auctioneers, Mr. Attorney-General, I think it is desirable to set out the level of degree and process of supervision and discipline so that it is not left to the whims of the Board.

(Hon. Shikuku mumbled something)

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Shikuku, there is somebody on the Floor.

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, Clause 7 says:-

"The Chief Justice shall appoint a public officer to be the secretary of the Board".

I would urge the Attorney-General to add that such person to be appointed by the Chief Justice to be secretary to the Board should be a lawyer because the Board will be sitting many times like a quasi-judicial body and we need a person qualified to take the court proceedings properly so that in the event of an appeal, we have a record to fall back to.

Clause 8 says that:-

"The expenses of the Board shall be defrayed out of monies provided by Parliament for that purpose. All this and other monies received by the Board shall be drawn from the Consolidated Fund."

I do not know what the Attorney-General thinks here but I thought that the Board should be able to finance itself fully so that we do not give them any money from this Parliament and, they should be able to regulate themselves to the extent where the money levied from themselves is enough to carry out their work.

Clause 9 (2) is about a person who contravenes the provisions of subsection 1 which reads:-

"No person shall in Kenya carry out the business of an auctioneer unless he holds a valid licence issued by the Board under this Act and a person who contravenes that shall be guilty of an offence and upon conviction shall be fined Kshs 100,000 or imprisonment of a term not exceeding two years."

Mr. Temporary Deputy Speaker, Sir, it is my feeling that two years as an alternative to a fine of Kshs 100,000 is not adequate. In many courts, two years is normally an alternative to a fine of Kshs 10,000 to 20,000. I would like the Attorney-General to consider increasing the custodial sentence from two years to five years.

Mr. Temporary Deputy Speaker, Sir, Clause 10 which I referred to earlier states out the eligibility of being an auctioneer and sub-clause 2 says:-

"Notwithstanding the provisions of subsection 1, the person who (a) is a judge or a magistrate or is employed in any capacity as an executive or subordinate officer of a court or (b) is a Member of Parliament or a councillor or is an advocate deemed under Section 10 (a) of the Advocates Act to be practising in his professional capacity or is employed in any capacity by such an advocate or (d) is a public officer or an official employee of his local authority, State corporation shall not be eligible to be licensed under this Act."

Mr. Temporary Deputy Speaker, Sir, first of all I do not see any problem in a member of Parliament being an auctioneer so long as he conducts---

Mrs. Wanjiru: Mr. Temporary Deputy Speaker, Sir, I have just come from my rural house which was actually in the hands of auctioneers and they had come with pangas and axes in order to break into my rural house and the person who had engineered that is an auctioneer from my place and he happened to be a politician. So it is good that politicians should be excluded from this profession.

Mr. Wetangula: Thank you, hon. Wanjiru, my view appears to differ with yours. I feel that there is nothing wrong with a Member of Parliament or a Councillor being an auctioneer, because being a Member of Parliament or being a councillor are not full time engagements and I am sure if they are well regulated and they conduct themselves within the law, and with civility, I would urge the Attorney-General to give them that latitude

so that those who want to earn an extra living can do so. I am saying this because as a Member of Parliament I am allowed to practise my law, Dr. Lwali-Oyondi runs his clinic, and many other professional colleagues here like hon. Obwocha runs his accountancy firm, and so on.

I do not see why we should limit those who want to venture out into something else, as long as they do not break the law. I do not know the philosophy behind the Attorney-General excluding the Members Parliament or councillors from being auctioneers. It might be a worthwhile occupation for them.

As a matter of fact, if an auctioneer is a councillor, he is unlikely to molest the people he represents in the manner auctioneers ordinarily molest people and that may quite be the case. I would urge the Attorney-General to seriously think of deleting Clause 10 (2) (B); "an advocate deemed under Section 10 (A) of the advocates Act---" Here it is not very clear and I would probably want the Attorney-General at the end of the day to explain to us what he means, because if anybody who has been admitted to the Roll of Advocates chooses not to practice law, I do not see any problem in him becoming an auctioneer if he so wishes, as long as he does not carry out a dual role of being an advocate and an auctioneer at the same time.

In fact, it will be despicable for any advocate to become an auctioneer in the same vein, but if he chooses to be one or the other, I would urge the Attorney-General to give him that latitude. On that issue of a judge or a magistrate being an auctioneer, I want to bring to the attention of the Attorney-General that if you go to small towns in this country, literally every second or third magistrates are involved with auctioneers either as a principal or as a partner. It is not so much the question of a magistrate having a licence to practise as an auctioneer, there should be an investigation mechanism to find out how many magistrates are involved with auctioneers as partners.

What happens is that magistrates, through their relatives and close friends, register auctioneers' firms, then they sit there in the court channelling out warrants, sometimes very unjustified and illegal to be executed from their courts. I do not think it is enough for us to just say that magistrates should not be involved in this business. An investigation should be carried out thoroughly to find out whether in fact they do it or not because we know some who do it, and this is wrong.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ndotto): Order! The House is now adjourned until next Tuesday, 18th June, 1996, at 2.30 p.m.

The House rose at 6.30 p.m.