

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 7th June, 2006

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

Annual Report and Accounts of Nyayo Tea Zones Development Corporation for the year ended 30th June, 2001, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Kenya Sugar Research Foundation for the year ended 30th June, 2002, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Kenya Sugar Research Foundation for the year ended 30th June, 2003, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Kenya Sugar Research Foundation for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

*(By the Minister for Agriculture)*

Annual Report and Accounts of Kenya Medical Training College for the year ended 30th June, 1999, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Kenya Medical Training College for the year ended 30th June, 2000, and the certificate thereon by the Controller and Auditor-General.

*(By the Minister for Agriculture on  
behalf of the Minister for Health)*

Annual Report and Accounts of Postal Corporation of Kenya for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Kenya Broadcasting Corporation for the year ended 30th June, 2003, and the certificate thereon by the Controller and Auditor-General.

*(By the Minister for Agriculture on  
behalf of the Minister for  
Information and Communications)*

Annual Report and Accounts of the Kenya Tourist Development Corporation for the year ended 30th June, 2003, and the certificate thereon by the Controller and Auditor-General.

*(By the Minister for Agriculture on  
behalf of the Minister for  
Tourism and Wildlife)*

Annual Report and Accounts of Kenya National Trading Corporation Ltd. for the year ended 30th June, 2003, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Kenya National Trading Corporation Ltd. for the year ended 30th June, 2004, and the certificate thereon by the Controller and

Auditor-General.

Annual Report and Accounts of Industrial and Commercial Development Corporation for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

*(By the Minister for Agriculture  
on behalf of the Minister for  
Trade and Industry)*

Annual Report and Accounts of Thika Municipal Council for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

*(By the Minister for Agriculture  
on behalf of the Minister  
for Local Government)*

## QUESTIONS BY PRIVATE NOTICE

### DELAY IN DISBURSEMENT OF GLOBAL FUND FOR HIV/AIDS MONEY

**Mr. Ojode:** Mr. Speaker, Sir, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) What has caused the delay in the disbursement of Kshs7.2 billion by the Global Fund for HIV/AIDS, malaria and tuberculosis?

(c) Could the Minister table the names of non-governmental organisations (NGOs) that have mismanaged funds meant to fight the aforementioned diseases?

(c) What action is he taking to ensure that the misappropriated funds are paid back?

**The Minister of State for Special Programmes** (Mr. Munyes): Mr. Speaker, Sir, I beg to reply.

(a) The Global Fund placed several conditionalities that we had to meet before they could release the approved funds totalling to US\$70,065,361 for Phase II.

(b) There were 29 NGOs that implemented activities under the Global Fund Round II, Phase I. The report from the Controller and Auditor-General confirmed that all the funds disbursed by Ernst and Young, the financial management agency, had been accounted for. Given this confirmation, there are no names of offending NGOs to be laid on the Table.

(c) Since it has been confirmed that no NGOs misappropriated the funds disbursed under the Global Fund, there is no legal action being contemplated.

**Mr. Ojode:** Thank you, Mr. Speaker, Sir. I do not know whether the Minister knows what

he is talking about. The Global Fund---

**Mr. Speaker:** Mr. Ojode, why do you think the Minister does not know what he is talking about?

**Mr. Ojode:** Mr. Speaker, Sir, this is not a matter that we should treat lightly. The Global Fund withheld a total of US\$52 million that was pledged as a grant. The Fund cited corruption within the National AIDS Control Council (NACC). The NACC and the NGOs had not accounted for the US\$2.5 million out of the US\$10 million they had been given.

Mr. Speaker, Sir---

**Mr. Speaker:** Mr. Ojode, you are making a speech!

**Mr. Ojode:** Mr. Speaker, Sir, I am giving the Minister background information because it appears as if he is not aware of what he is talking about.

**Mr. Speaker:** Mr. Ojode, put a question to him!

**Mr. Ojode:** Mr. Speaker, Sir, the Global Fund wanted among other things---

**Mr. Speaker:** Mr. Ojode, you should ask your question!

**Mr. Ojode:** Mr. Speaker, Sir, let the Minister also know what is happening.

**Mr. Speaker:** Order, Mr. Ojode! This is Question Time!

**Mr. Ojode:** Mr. Speaker, Sir, the Global Fund gave out some conditionalities that had to be met before it could disburse those funds. The Fund asked the Government to give it the action plan before it could release those funds. The Government was also to give a strategy on how those funds would be distributed or disbursed.

**Mr. Speaker:** Order, Mr. Ojode! I will call out the next Question!

**Mr. Ojode:** Mr. Speaker, Sir, is the Minister aware that the Kenyan Government had not given the action plan on how the US\$52 million grant would be distributed to reach the grassroots level?

**Mr. Speaker:** Mr. Ojode, why did you labour to ask that simple question?

**Mr. Ojode:** Mr. Speaker, Sir, I had to give the Minister the background information first!

*(Laughter)*

**Mr. Munyes:** Mr. Speaker, Sir, it is true that one of the conditionalities that was put to us was to ensure the revision of Phase II procurement plan and the preparation of a comprehensive strategy. However, with regard to the misappropriation of those funds, the Controller and Auditor-General has done a good job by proving that no NGO misappropriated the funds. The financial consultancy agency, Ernst and Young contracted to audit the funds also proved that the NGOs did not misappropriate the funds. However, with regard to the strategy, we are improving it.

**Mr. Ojode:** Thank you, Mr. Speaker, Sir. Could the Minister confirm or deny that four NGOs were not allocated the funds because of misappropriation? Could he also confirm that ten other NGOs were under investigation? Could the Minister lay on the Table the list of the NGOs which were not given any money, and the ten which were under investigation?

**Mr. Munyes:** Mr. Speaker, Sir, I am not aware of what the hon. Member has said. However, I can lay on the Table a list of the 29 NGOs which we have disbursed funds to. The report is here.

**Mr. Oparanya:** Mr. Speaker, Sir, we are dealing with lives of people. The Minister has said that there were some conditionalities that the Government was supposed to meet before the money could be released. He has mentioned one conditionality. Could he inform this House the other conditionalities that the Government has to meet before the funds could be released by the Global Fund? Could the Minister also tell us how far the Government has gone in meeting those conditionalities so that the money can be released immediately?

**Mr. Munyes:** Mr. Speaker, Sir, the conditionalities were aimed at ensuring that there is

transparency and accountability. The specific conditionalities were the strengthening of funds by the principal recipient which is the Ministry of Finance. That Ministry was supposed to establish a unit to specifically handle those funds.

Secondly, the external audit of the beneficiaries, that is the NGOs and the Community Based Organisations (CBOs), should have been effected by 12th June, 2006.

Thirdly, the Global Fund wanted Phase II to be revised and the procurement plans whose progress has been made and the report is due for presentation.

Putting 14,000 patients on anti-retroviral (ARVs) drugs by December, 2006, was another conditionality that has to be met. So far, each conditionality is on course. The action plan to meet these conditionalities will be finalised by July, 2006.

**Mr. Ojode:** Mr. Speaker, Sir, could the Minister tell the House why it took the Government several months before giving out the conditions which were required by the Global Fund?

**Mr. Munyes:** Mr. Speaker, Sir, these conditions were given to us by the Global Fund. There is the process of dealing with them and I think we have tried as Government to ensure we are on the right course.

POLICE MOTORCYCLE OUTRIDERS FOR  
GOVERNMENT SPOKESMAN ON KISUMU VISIT

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

(a) Could the Minister explain why the Government Spokesman was escorted by a convoy of eight vehicles and police motorcycle outriders during the visit to Kisumu on 4th April, 2006?

(b) Why was it necessary to give him this type of motorcade during the visit?

(c) How much money was spent during the visit?

**Mr. Speaker:** By consent of the Minister and Mr. Sungu, this Question is deferred to Tuesday, next week.

*(Question deferred)*

ACUTE WATER SHORTAGE IN MATUU TOWN

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Water and Irrigation the following Question by Private Notice.

(a) Is the Minister aware that Matuu Town is currently experiencing an acute water shortage which has persisted for over six months?

(b) What measures is he taking to ensure that the residents do not continue suffering?

**The Assistant Minister for Water and Irrigation (Mr. Wanjala):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Matuu Town has been experiencing water shortage due to prolonged drought which has caused low flow at the source of Matuu Water Supply. The water supply is served by Yatta Canal which conveys water from Thika River.

(b) The onset of rains in March this year has restored the normal flow in the Yatta Canal and Matuu Water Supply is now fully operational. My Ministry has undertaken rehabilitation works on the Yatta Canal to restore its design capacity and has also undertaken repair of the pumping equipment at Matuu Water Supply to ensure reliable service delivery.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, the problem with water supply to the town is that there is no water in Thika River. This lack of water has occurred because Del Monte, which is a

multinational, has expanded. Another reason is the construction of Ndakaini Dam. What measures has the Government put in place to ensure that the people of Matuu Town do not continue suffering because of lack of water in the river?

**Mr. Wanjala:** Mr. Speaker, Sir, in order to supplement the Yatta Canal source for Matuu Water Supply, we have undertaken to do a feasibility study to identify other sources including the viability of constructing a dam and even drilling of a borehole. I want to assure the hon. Member that in next financial year, we will drill a borehole there.

**Mr. J. Nyagah:** Mr. Speaker, Sir, you heard the hon. Member say that a dam is being built by the Del Monte Factory. Was a NEMA environmental report done which would have clearly given the information and would have made it quite clear that Matuu would suffer if this dam was built? Is there a NEMA report to cover the dam that Del Monte constructed which has caused chaos in Matuu Town where I normally pass through on my way from home?

**Mr. Wanjala:** Mr. Speaker, Sir, that is a completely different Question.

**Mr. Speaker:** Mr. Wanjala, as I understand it, the problem of Matuu Town has arisen because there is no water in the canal. There is no water in the canal because the dam has taken away the water from it. The hon. Member is asking this: Before that dam which took away the water was constructed, was the NEMA environmental impact assessment report received?

**Mr. Wanjala:** Mr. Speaker, Sir, I said that the shortage of water at that time was caused by prolonged drought and not because another dam was being built elsewhere. The Ministry is doing a feasibility study to see the possibility of putting up another dam.

**Mr. Khaniri:** Mr. Speaker, Sir, the Assistant Minister is deliberately refusing to answer the question that was asked by Mr. J. Nyagah. Could he tell the House whether there was a NEMA report or not? The answer is "yes" or "no".

**Mr. Wanjala:** Mr. Speaker, Sir, I was very clear. I said I do not know about the dam he is talking about. We are doing a feasibility study as a Ministry to see the possibility of putting up another dam to supplement the water supply in Matuu Town.

**Mr. Mbai:** Mr. Speaker, Sir, 70 acres of land have been set aside at the source of Yatta Canal. Why can the Ministry not construct a dam on this land?

**Mr. Wanjala:** Mr. Speaker, Sir, that is why we must start with a feasibility study to involve even NEMA.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, apart from shortage of water in the river caused by Ndakaini Dam, the other major problem we have is that when there are rains like we have now, the treatment plant is constantly breaking down. What is the Ministry doing to ensure that they totally overhaul the pumping unit and the treatment works?

**Mr. Wanjala:** Mr. Speaker, Sir, it is true that, that is happening. In this year's Budget we want to set aside funds to rehabilitate the whole project.

#### DESTRUCTION OF CROPS IN MASINGA BY ELEPHANTS

**Mr. Mbai:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Tourism and Wildlife the following Question by Private Notice.

(a) Is the Minister aware that elephants are crossing Masinga Dam from the adjacent Mwea Game Reserve to Kyangosi village causing massive destruction to crops available in the area?

(b) What urgent measures is he taking to contain the situation?

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

(a) I am aware that elephants do cross the Tana River from Mwea Game Reserve causing destruction to people's crops in Kyangosi village.

(b) The Mwea Game Reserve has a team of seven rangers to deal with problematic animal

cases. The team is based about 15 kilometres from Kyangosi village. During the month of May, three cases were reported to the Kenya Wildlife Service station in Mwea Game Reserve and they were all attended to. This was on 2nd, 3rd and 18th of May respectively.

However, the Ministry has initiated a comprehensive review of Cap.376, Wildlife Conservation and Management Act of 1989, with a view to exploring sustainable options available for compensation. The KWS has also worked closely with the Provincial Administration in dealing with the human-wildlife conflict cases. In terms of high conflict, the KWS maintains a rapid response team that is normally deployed in such areas to boost efforts.

**Mr. Mbai:** Mr. Speaker, Sir, this is not the first time that I have brought this Question to the Floor of this House. I brought this Question two years ago and the then Assistant Minister promised to put up an electric fence along the game reserve so that the KWS could prevent the animals from invading those villages. Why has the Ministry not put up that electric fence?

**Mr. Ndile:** Mr. Speaker, Sir, the hon. Member claims that he asked this Question two years ago, but I was not the holder of this office then. Since he is a good friend of mine, he should have just walked into my office so that we discuss this issue.

**Mr. Mbai:** On a point of order, Mr. Speaker, Sir. I referred to the then Assistant Minister and not him.

**Mr. Speaker:** I think the hon. Member is right. Ministries continue but office holders do change. In any case, there is no friendship in the House. Answer the question!

**Mr. Ndile:** Mr. Speaker, Sir, we will consider that option.

**Mr. J. Nyagah:** Mr. Speaker, Sir, these elephants come from my constituency because Mwea Game Reserve is in my constituency. I have a similar problem with crocodiles eating my people. I was there on Saturday and I noted that the fence is broken. My concern is that those crocodiles might start eating my people. Could that fence be repaired immediately? Secondly, could the crocodiles be stopped from crossing to the villages in my constituency?

**Mr. Ndile:** Mr. Speaker, Sir, I will give instructions to my officers to that effect.

**Mr. Munya:** Mr. Speaker, Sir, the Assistant Minister was quoted as having decided to come up with a noble idea of family planning for elephants. How far has he taken the plan?

**Mr. Ndile:** Mr. Speaker, Sir, at the moment that is not applicable.

**Mr. Lesrima:** Mr. Speaker, Sir, I am aware that the Ministry is preparing a policy paper with the possibility of reviewing the G.G. Kariuki Bill. Where are we on that one now, because it could deal with some of the issues raised?

**Mr. Ndile:** Mr. Speaker, Sir, that question is not clear. Could the hon. Member repeat it loudly?

**Mr. Mwandawiro:** Jambo la nidhamu, Bw. Spika. Je ni haki kumtaabisha Waziri Msaidizi kwa kumuuliza maswali kwa Kiingereza ilhali anaweza kujibu maswali vizuri kwa Kiswahili?

*(Laughter)*

**Mr. Speaker:** Mwenyewe alichagua kujibu kwa Kiingereza.

**Mr. Lesrima:** Bw. Spika, tunaelewa kuwa Wizara ya Utalii, na Wanyama Pori inaendelea kubuni sera kuhusu wanyama pori. Je, tumefika wapi kuhusu sera hiyo ambayo tulitarajia ifanyiwe marekebishi ili kurudisha ule Mswada wa Bw. G.G. Kariuki ambao Rais alikataa kutia sahihi?

**Mr. Ndile:** Mr. Speaker, Sir, we are fine-tuning that policy.

## ORAL ANSWERS TO QUESTIONS

*Question No.201*

WITHHOLDING OF MONEY ALLOCATED

## TO CBOs BY NACC

**Mr. Munya** asked the Minister of State for Special Programmes:-

(a) whether he is aware that two community-based organisations (CBOs) namely, CIWIT Self-Help Group and Kirimanchuma Makena Women Group were allocated Kshs350,000 each by the National AIDS Control Council in April last year;

(b) if he is further aware that not a single cent has been released to these CBOs despite their fulfilling all the conditions required for the release of the money; and,

(c) whether he could undertake to have this money transferred to the two CBOs immediately.

**The Minister of State for Special Programmes** (Mr. Munyes): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that CIWIT Self-Help Group and Kirimanchuma Makena Women Group were allocated Kshs350,000 each by the National AIDS Control Council in April, 2005.

(b) No single cent has been released to the groups because by the time they satisfactorily completed their application for accessing the funds under the World Bank Credit that was supporting the community initiative, all the funds had been exhausted from the kitty.

(c) The money cannot be transferred to the CBOs because the World Bank Credit No.3415KE where the funds were to be drawn from was closed on 31st December, 2005.

**Mr. Munya:** Mr. Speaker, Sir, this good Minister is now attempting to mislead the House when he says that he is not aware and yet I have documents from the National AIDS Control Council (NACC) indicating that these Community-Based Organisations (CBOs) were allocated Kshs350,000 each. Is he not misleading the House? I have documents clearly indicating that those CBOs were allocated the money and they processed the documents that they were required to process so that they could be given the money. Should I table the documents? I have documents indicating that these CBOs were allocated the money way back in April 2005 but because of the corruption in the NACC, this money was never released to them.

**Mr. Munyes:** Mr. Speaker, Sir, the procedure is that we allocate money but the groups have to satisfactorily conclude the application process and in this case their applications came very late after the funds had been exhausted.

**Mr. Ojode:** On a point of order, Mr. Speaker, Sir. You can see that this is more or less a similar Question to the one I also asked. There is misuse or misappropriation of these funds. If you go through the list of those who are being given money, you will find that there are some schools which are also benefitting; like Makini School was a beneficiary of the global funds. Could the Minister tell us why some schools are operating as private enterprises are also beneficiaries of these kind of funds if it is not a misuse?

**Mr. Speaker:** Order, Mr. Ojode! I thought you stood on a point of order. Was that one? There is no such point of order! In fact, you wanted to short-circuit the process. Who was on the Floor?

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

**Mr. Speaker:** Sorry!

**Mr. Ojode:** Why?

*(Laughter)*

**Mr. Speaker:** Mr. Munyes, were you responding to the question before the point of order was raised or you had already responded?

**Mr. Ojode:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead this

House that they are not misappropriating the funds which are meant for HIV/AIDS-related cases and tuberculosis by disbursing the same funds to schools and other institutions which do not actually deal with HIV/AIDS orphans?

**Mr. Munyes:** Mr. Speaker, Sir, I do not see where misappropriation comes in because funds are disbursed to institutions and schools are also institutions. We use those schools to inform our children about HIV/AIDS-related problems and, therefore, schools and universities are also receiving these funds.

**Capt. Nakitare:** Mr. Speaker, Sir, I am wondering since in accounts terminology when an amount of money has been allocated to CBOs and the same CBOs have not received this money, that means the money was not used and it is still there. Why should the Minister say the kitty has been emptied? Where did that money go?

**Mr. Munyes:** Mr. Speaker, Sir, funds are allocated to CBOs and those who satisfactorily complete their application forms get the money. There is a list of so many NGOs. So, the first ones actually got the money and so these ones which applied very late were not successful.

**Mr. Munya:** Mr. Speaker, Sir, I am not satisfied with the answer because the documents I have indicate that these two particular CBOs were allocated money in April 2005 and I followed it up and found out that they completed all the requirements and the money was not released to these CBOs. Could the Minister tell us what happened to that particular money that was allocated to these CBOs? The documents are here from the NACC. Was the money misappropriated or diverted to politically-correct CBOs in certain regions?

**Mr. Munyes:** Mr. Speaker, Sir, to be fair to my colleague, I think I need to look at those documents and verify whether it is true.

**Mr. Speaker:** Very well. Next Question by Mr. Choge!

**Mr. Ojode:** On a point of order, Mr. Speaker, Sir. Could I be in order to request the Chair to defer this particular Question since the Minister is still going to peruse those documents with hon. Munya?

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

**Mr. Munya:** On a point of order, Mr. Speaker, Sir. Will the Minister answer my Question after verification of my documents?

**Mr. Speaker:** No, Mr. Munya! Your Question is not hanging. We have concluded it. What is left is further and better consultations between you and the Minister which the Chair encourages all the time. Next Question by Mr. Choge!

*Question No.303*

INSURANCE DUES FOR  
MR. HEZRON SHAI

**Mr. Choge** asked the Minister for Finance:-

- (a) whether he is aware that Hezron K. Shai held policy number 20067348 with British American Company Limited; and,  
(b) when his dues will be paid.

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

(a) I am aware that Mr. Hezron K. Shai was the appointed beneficiary of the policy number 20067348 with the British American Insurance Company Limited.

(b) As a beneficiary, the dues have been calculated and a cheque has been issued by British American Insurance Company Limited and is awaiting collection by Mr. Hezron K. Shai.

**Mr. Choge:** Mr. Speaker, Sir, I thank the Assistant Minister for the answer. However, could he confirm that the figure he is talking about, of settlement, covers the time up to July 2003?

**Mr. Kenneth:** Mr. Speaker, Sir, I think, first of all, credit should go to British American



Insurance Company Limited because this is a policy that had elapsed and they reinstated it. Initially, what British American Insurance Company wanted was to refund the premium but they have decided to pay the actual beneficiary the entire amount of the entire package. I think the hon. Member should assist his constituent to collect this cheque and immediately start benefitting.

**Mr. Choge:** Mr. Speaker, Sir, I once again thank the Assistant Minister for that answer. Could he confirm whether I can go to his office tomorrow to pick the cheque?

**Mr. Kenneth:** Mr. Speaker, Sir, we are not custodians of this cheque. I am requesting the hon. Choge to get his constituent, go to the British American Insurance Company Limited and collect his cheque which has been lying there for the last two months.

*Question No.108*

INTRODUCTION OF COMPULSORY  
PRIMARY EDUCATION

**Mr. J. Nyagah** asked the Minister for Education:-

- (a) if the Ministry plans to make free primary education compulsory; and,
- (b) if so, when.

Mr. Speaker, Sir, the emphasis of the answer should be on the issue of compulsory education.

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Speaker, Sir, on behalf of the Acting Minister for Education who is out of the country, and equally his two Assistant Ministers, I beg to reply.

(a) The Ministry plans to make free primary education compulsory. Towards this end, the Government, through the Ministry of Education, will continue to provide free primary education to all children to ensure that we meet the target of education for all by the year 2015.

(b) The Free Primary Education Programme (FPEP) is expected to be implemented in partnership with parents, communities, civil societies and development partners. The Children Act (2001) provides for free and compulsory primary education. The Ministry, therefore, works with all relevant agencies, especially the provincial administration, to ensure that all school-going children attend school.

**Mr. J. Nyagah:** Mr. Speaker, Sir, the problem I have is that in parts of my constituency, children are refusing to go to school. When I ask the chiefs to force them to go to school using the Chiefs' Act, they say they have no powers to do so. Could the Government make a categorical statement that education is compulsory so that I can force chiefs in my area to ensure that children go to school?

**Mr. Awori:** Mr. Speaker, Sir, under the Children Act, the law provides that every child of school-going age must go to school. That is in fulfilment of their constitutional and human rights. The Government uses every agency to fulfil that obligation. In the rural areas, the agency that we use is the Provincial Administration. This includes chiefs and the assistant chiefs. If any assistant chief or chief refuses to implement that, then they are themselves in breach of their jobs. So, we would like to know the names of these chiefs or assistant chiefs who refuse to ensure that children go to school.

**Mr. Twaha:** Mr. Speaker, Sir, as the Government goes about increasing the number of children obtaining free and compulsory primary education, what steps is the Government taking to ensure that the quality of education is maintained and not compromised?

**Mr. Awori:** Mr. Speaker, Sir, the Government believes that in all schools the quality of education is the same. Therefore, I do not understand the question really because the quality of education in all schools should be exactly the same.

**Mrs. Mwendwa:** Mr. Speaker, Sir, is the Government aware that children in certain areas

of this country do not go to school because they are starving? In those areas, the school feeding programme is not fully operational. These children do not go to school because they cannot learn on empty stomachs. What action is the Government taking to tackle this issue?

**Mr. Awori:** Mr. Speaker, Sir, in the ASAL areas in particular, the Government is very conscious of that. Only yesterday I was in Shunkuri in Garissa District. I witnessed children having lunch there. Indeed, I was told that was the only meal that they were having in a day and they were saving some to take to their parents for the evening. So, the Government is doing that.

**Mr. Speaker:** Last question, Mr. J. Nyagah!

**Mr. J. Nyagah:** Mr. Speaker, Sir, I have no further questions.

**Mr. Speaker:** Very well. Let us move on to the next Question!

*Question No.191*

UNDERCAPITALIZATION OF  
SUGAR COMPANIES

**Mr. Oparanya** asked the Minister for Agriculture:-

(a) if he is aware that Nzoia, Sony, Chemelil and Muhoroni Sugar Companies, where the Government is the majority shareholder are under-capitalized and over-indebted; and,

(b) what steps he is taking to remove the companies from their current operational problems.

**The Minister for Agriculture** (Mr. Kirwa): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Nzoia, Sony, Chemelil and Muhoroni sugar companies are heavily under-capitalized and also over-indebted.

(b) The Ministry has prepared a Sessional Paper to address the current operational problems of the companies and the recommendations in that Sessional Paper include the following:-

(i) Financial restructuring of the factories in which the Government has an interest.

(ii) Divesting Government interest in existing sugar companies.

(iii) Providing incentives to promote private sector participation in the sugar industry.

**Mr. Oparanya:** Mr. Speaker, Sir, I thank the Minister for that answer. However, when we ask Questions relating to the sugar industry, the Minister usually gives us very comprehensive answers. In this particular Question, the Minister has just given a general answer. I would want to know how much of the loans that are owed to financial institutions, that have been guaranteed by the Government, have been paid from 2003 to date? How much interest was paid?

**Mr. Kirwa:** Mr. Speaker, Sir, as I said, the details of all the issues are contained in the Sessional Paper, but suffice it to say the following:-

The total level of indebtedness of all the sugar companies is to tune of Kshs16 billion and that money has been taken over by the Treasury because the loans were guaranteed by the Government. However, they will still appear in the records and books of those companies before a Sessional Paper is brought before the House for purposes of writing them off.

**Mr. Ochilo-Ayacko:** Mr. Speaker, Sir, the presentation of the Sessional Paper, its debate and passage is not known as yet. Could the Minister tell us whether sugar-cane growers and consumers of sugar will have something to smile about in the next financial year, immediately the Budget is read?

**Mr. Kirwa:** Mr. Speaker, Sir, the smile is dependent upon the efforts of hon. Members in conjunction with the Government.

**Prof. Olweny:** Mr. Speaker, Sir, the Minister has given us a good answer, but this answer falls in the same pattern of some answers we have been getting in this House. Could he tell us specifically when this Sessional Paper will be presented before this House?

The Government keeps promising Kenyans policy papers and amendments to various Acts every time. When will this particular Sessional Paper be presented before this House? After all, this Government has only one-and-a-half years to go.

**Mr. Kirwa:** Mr. Speaker, Sir, the duration of this Government is dependent upon the mandate of the people of Kenya. However, what is important today is that I have had the opportunity to discuss the Sessional Paper in question with my colleagues as a way of involving stakeholders. We, in the Ministry, have finalised with it. We have also given the comments of the Treasury. We are looking for a day when all hon. Members from sugar-producing areas, the Ministry of Finance and my Ministry will have a sitting so that we can chart a common position for purposes of cleaning the sugar subsector.

**Mr. Speaker:** Last question, Mr. Oparanya!

**Mr. Oparanya:** Mr. Speaker, Sir, the Minister appointed a committee in 2003 to look into the problems facing the sugar industry. All these recommendations were contained in those papers. He is aware of that. That notwithstanding, he said the Treasury has taken over the Kshs16 billion owed by sugar companies. Could he assure this House that the interest on this Kshs16 billion has been suspended and, therefore, it will not be charged to the sugar industry's profit and loss account?

**Mr. Kirwa:** Mr. Speaker, Sir, the information is no longer being reflected in the daily operations of those companies. However, in totality, the information is still reflected in the books of all those companies because the writing has to be done by the House.

*Question No.211*

IMPLEMENTATION OF NYANJA  
REPORT ON KPLC/KENGEN

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

(a) what action his Ministry has taken to implement the Report of the Technical and Financial Audit Committee on the Kenya Power and Lighting Company (KPLC) and the Kenya Electricity Generating Company (KenGen) of 2003, popularly known as the Nyanja Report; and,

(b) how much money was spent on preparation of the report.

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

The Report of the Technical and Financial Audit Committee of the Kenya Power and Lighting Company (KPLC) and the Kenya Electricity Generating Company (KenGen) of 2003 popularly known as the Nyanja Report was quashed by the High Court of Kenya on 28th July, 2005, following an application by Mr. Samuel Gichuru, the former Managing Director of KPLC under High Court civil application No.413 of 2004, which was instituted in March, 2004. However, before the report was quashed by the High Court, the KPLC board of directors had taken the following measures.

First, disciplinary action was taken against those people adversely mentioned, where there was sufficient evidence to do so. Secondly, the board commissioned forensic auditors, Ernst and Young to carry out forensic audit on the alleged cheque fraud. However, it turned out that there was no evidence of the alleged fraud. Appropriate measures were instituted to strengthen the system control process. Finally, cases which were criminal in nature and required further investigations were referred to KACC for appropriate action.

(b) The total amount of money spent in the preparation of the report was Kshs1,283,522.

**Mr. Weya:** Mr. Speaker, Sir, the Kenyan consumer is paying the highest [**Mr. Weya**] tariff within Africa. Our neighbours pay USD3.2 per every 50 units, whereas Kenyans are paying USD6.4 as indicted in the report. Some of the reasons given include total abuse of office, unethical practices---

**Mr. Speaker:** Order, Mr. Weya! A report or any document that has been quashed by the High Court becomes null and void. Therefore, you are not allowed to go into its analysis in this House. So, can you ask a question, not related to the quashed report?

**Mr. Weya:** Mr. Speaker, Sir, that is okay. Is the Assistant Minister aware that for all the wiring done by KPLC, Iberafrica financed up to Kshs800 million for the plan and Westmont was also being supplied by Gap Oil, which KPLC was paying for?

**Mr. Kiunjuri:** Mr. Speaker, Sir, that is a totally different question.

**Mr. Speaker:** Yes, I agree with you.

Next question, Mr. Mukiri!

**Mr. Mukiri:** Mr. Speaker, Sir, there was a lot of money which was lost by KPLC through the former employees and directors who are mentioned in the Nyanja Report. I appreciate when the Assistant Minister says that the matter was referred to KACC for further investigations. It is now two years since the High Court made that ruling.

**Mr. Speaker:** Mr. Mukiri, you heard the Assistant Minister say that the High Court quashed that report. That means it does not exist.

**Mr. Mukiri:** Mr. Speaker, Sir, I am talking about the irregularities that prompted the setting up of the Nyanja Commission. Those irregularities still exist. The Assistant Minister has said that the matter was referred to KACC. Could I know what progress KACC has made because there are small companies and groups in the rural areas which contributed their money to KPLC and the money was embezzled by the directors. That is why the Nyanja Report was necessary, although it was quashed by the High Court.

**Mr. Kiunjuri:** Mr. Speaker, Sir, the only person in a position to answer that is the Minister for Justice and Constitutional Affairs or the Attorney-General of the Republic of Kenya.

*Question No.249*

NUMBER OF NATIONAL EXAMINATIONS  
COUNCILS/BOARDS IN KENYA

**Dr. Ali** asked the Minister for Health:-

(a) how many national examination councils or boards there are in the country;

(b) what the status of the National Medical Laboratory Science Examinations' Board is, and why the board is examining students pursuing courses in Medical Laboratory, which by law should be conducted by a legally registered examination body;

(c) whether she could ensure qualified graduates from universities, polytechnics and other institutes are registered by the board so as to enable them enter the job market which is not the case now; and,

(d) if she could prohibit the board from examining laboratory students and restrict its operations to those provided by section 5(1) of the Medical Laboratory Technicians and Technologists Act of 1999.

**The Assistant Minister for Health** (Dr. Kibunguchy): Mr. Speaker, Sir, that Question could be best answered by the Minister for Education. However, in medical courses, the training institution is the examining body, with the exception of the medical laboratory science courses, for which the examining body is the Kenya Medical Laboratory Technicians and Technologists Board.

(b) I am aware of the existence of the National Medical Laboratory Examinations

Secretariat which was created under Section 5(1) and Section 40(c) of the Kenya Medical Laboratory Act of 1999 for the purposes of examining students pursuing courses in medical laboratory science. The secretariat consists of qualified registered medical laboratory technologists drawn from training institutions approved by the board.

(c) I may not compel the board to register persons trained in courses not approved by the board in accordance with Section 15(a), (b) (c), and (d) of the Act. In accordance with the Act, I cannot prohibit the board from examining medical laboratory science students as the Act under Section 5(1) mandates the board to control the training, which includes examination, practice and employment of such persons.

**Dr. Ali:** Thank you, Mr. Speaker, Sir. I had directed the Question to the Ministry of Education and it appears as if it was directed to the Ministry of Health. The board is for medical laboratory technologists and technicians. What happens to those students who are pursuing degree courses in medical laboratory?

**Dr. Kibunguchy:** Mr. Speaker, Sir, if I understood the question well, there is a board which regulates training, registration and practice of laboratory technicians and technologists. The board is recognised through an Act of Parliament. That is the board that approves the colleges that are supposed to offer those courses.

**Dr. Ali:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is avoiding my question. I acknowledge that the board is for medical laboratory technicians and technologists. However, what happens to students who are pursuing courses in medical laboratory which is a degree course, yet they are being denied an opportunity to be registered?

**Dr. Kibunguchy:** Mr. Speaker, Sir, that is what I was trying to answer, but the hon. Member cut me short. Eventually, I was going to get there. There are institutions that are approved by this Board. If those students are training in institutions that are not approved, they will not be registered by the Board.

**Dr. Ali:** Mr. Speaker, Sir, the institutions which are approved by these boards are lower cadre institutions which are involved with certificates and diploma courses. What about students who go to universities which are recognized by the Ministry of Education and the Kenya National Examinations Council (KNEC)? What happens to those students who pass through the university and who these boards are sitting on by not wanting to register them?

**Dr. Kibunguchy:** Mr. Speaker, Sir, that is why I said that this Question is best answered by the Minister for Education. You are taking me out of the Ministry of Health where there are certain colleges which are recognized by the board. Those are the colleges that issue training, and the board registers these students.

**Mr. Speaker:** Order! Order, all of you! I suppose there is much more than a Question in this. I think that it is a matter that needs to be sorted out. Listening, as I do, to the hon. Member and the Assistant Minister, I think this issue needs to be comprehensively and conclusively addressed. Therefore, I direct the Ministry of Education, charged as it were with regulating examination standards, so that they can, hopefully, in conjunction with the Commission for Higher Education, sort out the matter. Would that be all right with you, Dr. Ali?

**Dr. Ali:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** The Question is deferred. I order that it be redirected to the Ministry of Education.

*(Question deferred)*

**Capt. Nakitare:** On a point or order, Mr. Speaker, Sir. Am I in order to request the Speaker to guide this House on this Question, because in the event that the Ministry of Education

says that this issue does not fall within their docket, it is for the Ministry of Health, what are we going to do?

**Mr. Speaker:** Order! There is nothing for me to guide the House because I have already done so. Somehow, the Government must know who examines people for what, and that must be the Ministry of Education. If nobody knows, then they should bring an amendment to change the law to make it possible for people to know who examines what.

Next Question, hon. Ndolo!

*Question No. 089*

CRITERIA FOR SALE  
OF NCC MARKETS

Mr. Ndolo is not here?

**Mr. Mwandawiro:** On a point of order, Mr. Speaker, Sir. Mr. Ndolo is out of the country on parliamentary business. So, could I be in order---?

**Mr. Speaker:** Which parliamentary business?

**Mr. Mwandawiro:** They have gone for an educational tour!

**Mr. Speaker:** What education?

**Mr. Mwandawiro:** He is in the Departmental Committee for Health, Housing, Labour and Social Welfare. They have gone to Cuba.

**Mr. Speaker:** I have my own reservations. This Question is dropped.

*(Question dropped)*  
*Question No. 043*

ALLOCATION OF LAND TO SQUATTERS  
IN KOITABURO LOCATION

**Prof. Olweny** asked the Minister for Lands and Housing:-

(a) whether he is aware that over 1,000 families comprising Koguta community have been living in Koguta Village, within Koitaburo Location of Soin Division in Kericho District as squatters;

(b) whether he is further aware that since Independence, the community has made several efforts to have the land on which they are living allocated to them without success; and,

(c) since the community has been living in this place since 1908, whether he could consider allocating them the land.

**The Assistant Minister for Lands and Housing** (Mr. Kamama): Mr. Speaker, Sir, I beg to seek the indulgence of the House to answer this Question on Tuesday next week because the information that I have is scanty and not appropriate. I need to do further research because it involves about 1,000 squatters and we need to assist them.

Thank you, Mr. Speaker, Sir.

**Prof. Olweny:** Thank you, Mr. Speaker, Sir. I think that is very encouraging because all the answers in the written response that I have here are negative. For the benefit of the Assistant Minister, I have a bunch of documents here which may help him.

**Mr. Speaker:** Order! Order! The Question is not before the House. You can see him before Tuesday.

This Question has been deferred to Tuesday next week.

*(Question deferred)*

Next Order!

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

IN THE COMMITTEE

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

THE RETIREMENT BENEFITS  
(AMENDMENT) BILL

*(Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10,  
11, 12, 13, 14 and 15 agreed to)  
(Clauses 16, 17, 18 and 19 agreed to)*

*(Clauses 20 and 21 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Assistant Minister for Finance** (Mr. Kenneth): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Retirement Benefits (Amendment) Bill and its approval thereof without amendment.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Speaker in the Chair]*

### REPORT AND THIRD READING

THE RETIREMENT BENEFITS  
(AMENDMENT) BILL

**Mr. Khamasi:** Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered The Retirement Benefits (Amendment) Bill and approved the same without amendment.

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

**The Minister for Justice and Constitutional Affairs** (Ms. Karua) seconded.

*(Question proposed)*  
*(Question put and agreed to)*

**The Assistant Minister for Finance** (Mr. Kenneth): Mr. Speaker, Sir, I beg to move that The Retirement Benefits (Amendment) Bill be now read the Third Time.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua) seconded.

*(Question proposed)*  
*(Question put and agreed to)*  
*(The Bill was accordingly read  
the Third Time and passed)*

## **BILLS**

### *Second Readings*

#### THE CONSTITUTION OF KENYA (AMENDMENT) BILL

*(Mr. Keter on 6.6.2006)*

*(Resumption of Debate interrupted  
on 6.6.2006)*

**Mr. Speaker:** Who was on the Floor? The Minister for Justice and Constitutional Affairs!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, like I said, at the outset, yesterday, I rise to oppose to the Bill. I am also saying that although the Government accepts the purpose of the Bill, the timing and the workmanship is wanting. As all hon. Members are aware, we have come from the constitutional review process where the proposed Constitution that people renamed "The Wako Draft" had provided for changes that are far more drastic than what is being proposed by this Bill. The Government was propagating and accepting those changes, including a clause on how to impeach a sitting President. May I, therefore, confirm that the Government and the Executive is not afraid of necessary reforms to conform with modern democratic society.

Mr. Speaker, Sir, why then do I say that the timing is wrong? It is wrong because Kenyans expect that as a legislative institution, we should be in the fore front of leading to comprehensive review. Kenyans have indicated that although they rejected the so-called Wako Draft, they are still desirous of having a new Constitution. The question I would pose is whether piecemeal enactment of amendments to the Constitution militates against the speedy completion of this journey Kenyans began more than 15 years ago. You will recall that during the Referendum debate, certain contentious issues came out and which remained outstanding and to a large extent contributed to the failure to complete the process successfully. The Executive was one of the contentious issues. The amendment being sought relates to this contentious area. The question we must pose ourselves is---



**COMMUNICATION FROM THE CHAIR**DEFERMENT OF DEBATE ON CONSTITUTION  
OF KENYA (AMENDMENT) BILL

**Mr. Speaker:** Order, Madam Minister! Could I just interrupt you to give guidance to the House? I think I recall sometime last year when this Bill came to my attention when it was first published; I brought to the attention of the hon. Member certain provisions of that Bill that I thought were inconsistent with one another. I, in fact, directed that those contradictions be removed before this Bill comes to the House. I think we were in agreement with Mr. Keter. I believe they were also taken to the Attorney-General. However, I now notice exactly the same inconsistencies in Clause 59 (1) and (2) still persist. If you read Clause 59 (1), (2) and (4) these sections contradict one another. It has the potential of not knowing when we are going to an election and when Parliament is dissolved; whether it is on 30th November or five years after its first meeting. For example, if it is dissolved in November and Parliament does not come back to meet until, for instance, 10th February, when does the time begin to run? Is it from the time of dissolution or time of the first sitting? If it is the time of the first sitting, in my view, the period never lapses if the House first meets on 10th February until 9th February, five years later.

Meanwhile, another part of this Bill says that Parliament will be dissolved on 30th November of the fifth year. That can bring monumental crisis. I think the best way in this situation is for the House not to labour on a thing that, on the face of it, is clearly wrong. What I would advise is that we step this Bill down for the time being. If nothing is being done about it to make it correct or withdraw it and correct it, then it will not continue for debate in the House in the manner in which it is.

*(Applause)*

I will, therefore, step it down for now. It will not come back unless the inconsistencies are removed or rectified.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I am much obliged.

I talked about structural defects in **[The Minister for Justice and Constitutional Affairs]** the Bill, and precisely these were the issues. I have actually this afternoon discussed them with the Mover of the Bill. I am most obliged and will not belabour the point. If only you allow me, I wish to say, yes, as hon. Muturi said yesterday, I supported a Motion that talked of amendments to the two chapters, but which had features that are different. It was proposed that Mr. Speaker takes over the presidency in the case of a vote of no confidence in the Government. That was only for purposes of clarification. I wish not to go any further.

I abide by Mr. Speaker's ruling. I also appreciate the forthrightness of the Mover, who has, on his own motion, conferred with the Chair to point out those defects.

**Mr. Speaker:** Very well. I think a lot of those things, including the latter, were discussed in the past. I told Mr. Keter, on the issue of impeaching the President, that he should never let the Chair to ever have any remote interest in it. I thought we had agreed on it, but, maybe, he brought the wrong Bill. So, let us continue that way. I now order that the matter be left there, pending discussion. If the Mover does not take the necessary action, it will not come back here.

Next order.

*(Debate on the Constitution)*

*of Kenya (Amendment) Bill  
was deferred indefinitely)*

**BILL**

*Second Reading*

THE KENYA MARITIME AUTHORITY BILL

**The Minister for Transport** (Mr. Mwakwere): Mr Speaker, Sir, I beg to move that the Kenya Maritime Authority Bill be read the Second Time.

This is a very important Bill, considering that Kenya is a maritime nation. It is a maritime nation that does not only serve itself in maritime matters but also serves many

countries in the hinterland of Africa. It is important that we give this Bill due consideration, because at the moment a lot of activities that should be done by Kenya are being done in other countries on behalf of Kenya. We can take the example of training of seafarers, people who work on ships that call at our ports and those who sell our goods to other parts of the world. Kenyan seafarers do not qualify to work on board those ships. It is important that we have the Bill passed because at the moment we train our seafarers in Tanzania, at the Tanzanian Bandari College. Our neighbours have a maritime authority in place, and, therefore, are allowed by the International Maritime Organisation (IMO) to follow the prescribed syllabus to train their seafarers. We end up suffering because we train very few people, when we should otherwise train bigger numbers, if we had our maritime law in place. We also spend foreign exchange, because our seafarers have to be trained in other countries.

Mr. Speaker, Sir, it is well known that safety and security at sea depends on the involvement of maritime countries to ensure that global safety is maintained. A country can participate at that level only if it has a maritime law that is operational. At the moment, Kenya is party to a few conventions of the IMO, but we cannot participate in maritime affairs effectively. We have failed to receive global recognition as a maritime nation.

Mr. Speaker, Sir, there is need to ensure that there is safety at seas. There is a lot of spillage that endangers marine life. However, as a country, we cannot participate fully in ensuring legal action is taken against ships and ship owners polluting our ocean and destroying marine life, because we do not have a maritime law in place.

*(Mr. Speaker left the Chair)*

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

Of course, we are now operating on the executive order that was issued two years ago under the State Corporations Act. It is important that we have a substantive law in place.

It is also worth noting that we have to conduct research in conjunction with other countries. This will ensure that we, as a maritime nation, take our rightful place. We have a problem at the moment. We are in the council of the IMO, but we have a problem of not having a substantive maritime law. It is important that we have a law that will help Kenya to take its rightful place in the maritime affairs of the world.

There is also the issue of search and rescue operations. A few countries have been made

centres of rescue operations and Kenya is one of them. In fact, there are three others, namely South Africa, Nigeria and Algeria. These are countries that are centres for search and rescue operations for marine vehicles and lives of people at sea. We cannot fully operationalise the IMO statutes, because we need to have that done under a maritime authority. We have established it, as I said earlier, but we have done so under the State Corporations Act, as per the Kenya Maritime Authority Order, 2004.

Mr. Temporary Deputy Speaker, Sir, it is important also to note here that, even though we have an institution like the Bandari College, we cannot, as a country, train seafarers and marine staff from other countries. We cannot train even our own to a certain level, because of these problems that I have already mentioned. We need to pass this Bill, so that we proceed and take our rightful place in the world.

Countries which have substantive marine law and authorities can go to the extent of arresting ships. It is very difficult for us to arrest ships that ply our waters, even if they commit offences that, under the IMO rules, deserve action by maritime nations. There are cases of countries bringing their ships and abandoning them in the Kenyan waters. The wrecks that we have off our shores indicate that we need a maritime authority to ensure that they are removed. We need a maritime authority to ensure that our oceans are, particularly for merchant shipping, monitored and maintained in a secure way.

Kenya also serves as part of the great highway. We have ships that sail along the east coast of Africa. Kenya is in charge of a very significant part of that highway, which is used by all the ships that sail from the Gulf to southern Africa and beyond. These are both the south-bound and the north-bound ships. It is a very busy highway, and we have the responsibility of ensuring that, that highway is safe and sound. When we have problems of ship pirating at sea, we should be in a position to play our role and ensure that violation is stopped. We can only do so with the co-operation of other countries in the world only if we have a maritime authority, such as the one established under the order made in 2004. If we pass this Bill, we shall be able to play our rightful role, because we are an important maritime nation in Africa and beyond.

It is important to note that Kenya is a member of the council of the International Maritime Organisation (IMO). In fact, Kenya is the only country in Africa that serves on the council of the IMO. This is a great honour that was extended to us last year. A couple of weeks ago, the Director-General of the IMO visited Kenya and encouraged us, as a representative of the United Nations (UN) on maritime matters, to ensure that we do the needful to comply with what the international committee expects a maritime nation to do with regard to the management of ocean-going vehicles and the oceans that are used not only by our own country, but also by other countries.

Mr. Temporary Deputy Speaker, Sir, the role of this Maritime Authority will be to regulate and co-ordinate activities that relate to maritime affairs. The authority will do a lot of this work in conjunction with the Kenya Navy. A lot of security issues will require the intervention of the Kenya Navy. They will also work together with the Kenya Ports Authority (KPA) because a lot of things that the authority will engage in will have far-reaching implications on KPA and will improve its performance. It is, therefore, important that the Kenya Maritime Authority's role be formalised so that it can participate effectively in the management of our seas.

There is the question of enforcing international maritime regulations. A lot of the ships that sail into our seas are unseaworthy. Just as we have unroadworthy vehicles, there are also ships that are unseaworthy. The role of ensuring that the ships that sail into Kenya comply with international regulations lies squarely with a maritime authority which we have to put in place if we really want to make sure that as a maritime nation, our role is recognised and given due consideration.

I know that many people might not understand the importance of maritime affairs. It should be recognised that well over 90 per cent of our international trade depends on the Port of Mombasa

and by extension our economy depends very much on what is going on in our oceans or exclusive maritime zone. The zone will be managed by the authority. Matters such as security, safety, utilisation and other activities will be under its jurisdiction. With regard to regulating the licensing of marine vessels, it is unfortunate that we do not have a register of marine vessels that belong to Kenya or those that ply our waters regularly. That is done by the Royce of London, but it only covers ships of a certain size. What about the coasters, that is, the ships that ply between Mombasa and Lamu or Zanzibar? We need to have a maritime authority that will be keeping that register and regulating standards that must be adhered to by ocean-going vehicles.

It is, therefore, important to ensure that we pass this Bill and give it top priority because as a nation we are maritime by name and not by international legislation. That weakness must be rectified and put right to ensure that our role is recognised as any other maritime nation.

Mr. Temporary Deputy Speaker, Sir, with those comments, I beg to move and ask Mr. Wetangula to second.

**The Assistant Minister for Foreign Affairs** (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to second this Bill which is critical to the economic revival of this country.

All over the world, any country with a maritime shelf is a country that sits on a gold-mine. The maritime shelf is in many countries a source of enormous economic activities and opportunities. It is important, therefore, that we should have a maritime authority whose mandate is to ensure safety, orderly navigation, training and exploitation of opportunities of our maritime shelf for the benefit of the people of Kenya.

This authority that we intend to create via this Bill will have a far-reaching effect on the development of our coastline. Its mandate includes the management and development of new anchoring centres along the coast. As you know, we have the undeveloped ports of Lamu, Malindi and other points along the Kenyan coast that this authority should, once operational, focus on.

Equally, this authority will be vested with powers to deal with issues of environmental management along the maritime shelf. You know that in many areas which have busy shipping routes, for example, the Kilindini Harbour, if you do not have a strong authority with proper legal support, pollution from ships coming into the harbour can be a nightmare. It is this authority that will have the duty to ensure that the environment along the coast, our shipping routes and harbours is safely and properly maintained.

The authority will also be vested with power to ensure that ships that come to our ports do not discharge hazardous material or cargo. Such cargo could be dangerous not only to the environment, but also to the people of this country. Quite often you hear of the battles that the Green Peace Movement undertakes against ships from developed countries which try to clandestinely and criminally dump waste material, especially nuclear waste, into the high-seas. This is going to be part and parcel of the legal duties of this Authority.

Mr. Temporary Deputy Speaker, Sir, once we pass the Bill, I hope that the Minister responsible for this Ministry will ensure that persons appointed to the Board of the Authority and the person appointed as the Director-General of the Authority is a person of impeccable qualifications and character. They should be persons who will take the duties and interests of this country at heart. I say this because when you talk of a ship carrying industrial or nuclear waste material anchoring in Mombasa, it is possible to have people going to great lengths to compromise the management of the authority in order to be allowed to discharge such dangerous materials. We, therefore, need Kenyans who are patriotic and who have impeccable credentials. They should be beyond temptations. We want Kenyans who are like Caesar's wife; Kenyans who nobody can even suspect that they can be perverted by merchants of death who are many. You have heard of merchants of death carrying industrial and nuclear waste from Europe to dump it on the coast of

Japan, thus polluting the high seas. We, as a country with a maritime shelf, stand that risk. Equally, the Authority is given power to train sea-farers and other personnel that deal with maritime issues. Once the Bill is passed and the Authority is operational, I want to see a proper institutional framework. A college will be set up with proper facilities not just to train Kenyans to deal with marine issues at the Kenyan Coast, but also to deal with the bigger picture. We should have a college that will cater for the whole region, including the East African Coast.

*(Mr. Moi made a facial gesture)*

Mr. Temporary Deputy Speaker, Sir, could you restrain the hon. Member for Baringo Central from making faces that are distracting my attention?

**Mr. Moi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I know that I am very handsome, but I do not understand--- Why is the hon. Member claiming that I am making faces and he knows that I am not? You do not just stand and talk badly about Mr. Moi!

**The Assistant Minister for Foreign Affairs** (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, the hon. Member is a "mono" in this House! We will have to help him to get the grips of what goes on.

**Mr. Moi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. You have heard this other "mono" saying that I am a "mono". Honestly, is it in order for him to say that I am a "mono"?

**The Temporary Deputy Speaker** (Mr. Khamasi): No! He is not in order. Mr. Wetangula, you are out of order. Mr. Moi is not a "mono".

**The Assistant Minister for Foreign Affairs** (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, the honourable young man does not appreciate humour.

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. Wetangula! You are still out of order. There is no young man here. There are honourable Members of Parliament.

**The Assistant Minister for Foreign Affairs** (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir. I will leave that and move on.

I was saying that, that is an enormous opportunity for this country to set up a maritime training institute that will be a centre of excellence in Africa. Kenya is a member of the Indian Ocean Realm Organisation, which brings together all countries whose shores are washed by the waters of the Indian Ocean. By passing this Bill and creating an Authority with powers to set up a training institute, it is an opportunity that will develop manpower and womanpower in this country. It will bring in foreign exchange in this country. We will be able to offer training facilities to marine personnel all over Africa and, perhaps, from the whole world. In fact, I suggest to the hon. Minister that, when that college is started, it should start by giving degree courses, so that the quality of what will be produced is good. We can have a college that will give certificates, higher certificates, diplomas and degrees, so that we can attract foreign exchange from other countries.

Mr. Temporary Deputy Speaker, Sir, as we pass this Bill, we have said over and over again that the privatisation of the port of Mombasa is long overdue. This country is losing out every day we procrastinate on the issue of privatisation of the Mombasa Port. If we do not do it--- Our neighbours are doing it. Dar-es-Salaam is doing it. Even Tanzania is building a second port in Tanga. We know what Mauritius is doing. We know the developments that are going on in the ports of Beira, Nambula and Maputo in Mozambique. All those are developments at the expense of Mombasa. Mombasa Port still remains one of the best located ports on the Eastern Coast of Africa. It has the capacity and ability to serve a hinterland of over 300 million people in the region. Opportunities do not wait for us. We must seize them when they appear. Let us develop Mombasa into a free port to develop the economy of this country.

Mr. Temporary Deputy Speaker, Sir, before we reach Committee Stage, I would like to

draw the attention of the Minister to Section 3(1). It reads:-

"There is hereby established an Authority to be known as the Kenya Maritime Authority."

Article 3(4) reads:-

"The Authority shall be the successor to the authority known as the Kenya Maritime Authority."

You cannot have the Kenya Maritime Authority succeeding the Kenya Maritime Authority. There must be some error somewhere. I hope the Minister will clarify that because it does not add up.

Clause 3(6) reads:-

"The Headquarters of the Authority shall be in Mombasa."

I am always very wary about fixing such issues in the law. Suppose there is an earthquake that brings down Mombasa? Where do you operate from? To move it to Lamu or Ukunda, one will need to come to Parliament and amend the law. This is not a good legislation. I hope that the Minister will correct that anomaly, so that we can anticipate both the good and the bad times of the future. When something happens, we do not need to reconvene Parliament to change the law, so that we can be operational. It would be advisable to say:-

"The Headquarters of the Authority shall be at the Coast of Kenya."

That way, you leave it free. You can put it anywhere you want. That way, it will be a good law.

Mr. Temporary Deputy Speaker, Sir, I also want to mention that the Bill provides that the Authority will maintain and administer ship registers. That is very critical. With the development and emergence of dangers of pollution, dumping and terrorism, it is absolutely important that impeccable records of ships that anchor in any of our ports are kept properly, so that we can know who comes in our territory. Together with that, the Authority will work with our Navy to protect our Kenyan coast.

I say that because, in the last three or four months, the level of sea piracy along the Kenya-Somali Coast has risen to alarming and frightening levels. In the last five or six months, we have recorded close to 30 cases of high sea piracy. Criminal gangs from Somalia are attacking ships as far as 200 kilometres off the Coast of Kenya and Somalia. They have put sea navigation into danger. I hope that once we pass this Bill and create the Authority, we must sufficiently empower it with money, equipment and capacity, including helicopter patrols along our coast, to protect the navigational and trade routes that are important not only to Kenya, but to our hinterland, landlocked neighbours and East African Coast. That is very important. I laud the Minister for giving the Authority power to do exactly that.

Mr. Temporary Deputy Speaker, Sir, equally, the Authority will not be limited to the Coast. It will also be responsible for the management of our internal waterways. We are talking of Lake Victoria, Lake Turkana, Lake Naivasha; in the future, we may develop Tana and Athi rivers as waterways. We may even have canals built on Nairobi River. All these will fall under the Authority. The Authority will then be responsible for several things, including the safety of those waterways, their environmental viability and to ensure that those waterways are properly utilised for the benefit of the people of Kenya.

So, you can see that the sum total of this Bill is absolutely positive. It is good for this country, and I urge all my colleagues who may wish to contribute to support it fully. When we pass this Bill, we shall be moving a step further in liberalising the economy of Kenya, in creating opportunities, wealth creation and more important, in making Kenya a shipping hub for the region.

With those few remarks, I beg to second the Bill.

*(Question proposed)*

**Mr. Maore:** Mr. Temporary Deputy Speaker, Sir, the Kenya Maritime Authority Bill has been long overdue. We have had this behaviour before by the Government, whereby very noble pieces of legislation are not usually initiated voluntarily by the Government. As we deliberate on this Bill, we are kind of giving some blanket authority or *post-facto* authority to the current Kenya Maritime Authority. I wanted to politely inform my predecessor that there exists a Kenya Maritime Authority.

Mr. Temporary Deputy Speaker, Sir, for the first time, we are creating legislation to cover that Authority. It came into being under what we call the "Presidential fiat". Executive orders are usually supposed to be some humble pieces of legislation that do not look like they are taking the role of Parliament. You do not usurp the legislative role of Parliament when there is a legitimate Parliament in place, unless you have dissolved or disbanded it.

Mr. Temporary Deputy Speaker, Sir, sometime in 2005, the International Maritime Organisation put a requirement that the Kenya Government must, as of urgency, have that kind of Authority in place. Now, the successive Ministers for Transport did not find it convenient to come to the House to seek legal authority, but instead went for the Executive Order to create the Kenya Maritime Authority under the State Corporations Act. This is an outrageous way of running a Government.

**The Minister for Transport** (Mr. Mwakwere): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to refer to a legal process which is within our legal system as outrageous?

**Mr. Maore:** Mr. Temporary Deputy Speaker, Sir, the role of an Authority is not like that of a parastatal. An Authority is supposed to be a body that can be sued, which can sue and which has so many sweeping powers. It is not like where you would wake up one morning and declare KICC a State Corporation; an Authority is different.

Mr. Temporary Deputy Speaker, Sir, we, as the Departmental Committee on Energy, Communications and Public Works, have been to Mombasa where this Authority is housed. We met the management, and they are also as confused as this House and the country, as to under what legal basis they operate on. *The Kenya Gazette* did not spell out the details of what they should do. But we know what an Authority is supposed to do, and that is what is spelt out in this Bill.

Therefore, when we have a body that is pre-existing before this piece of legislation, it is not legitimate for them to sign instruments that are binding in international conferences.

The issues raised under Clause 5 actually cover the memorandum of the Bill, of what this Bill is supposed to do. If you remember, on 7th April, 2005, there was an oil spill by a single-haul vessel that had docked in Mombasa, which had been banned from many other ports. But, apparently, it had been delivering crude oil to one of the major oil companies in the country. When it came, it spilled its contents at the Coast. We visited the scene and realised it had caused some damage to our marine life and spoilt the beaches all the way to Nyali. When we were there, we found out that it was not even possible to detain that ship because we do not have a law which would have given the Kenya Maritime Authority authority to do so. The only amount of money they had put forward as compensation was US\$100,000, which is about Kshs7 million. That was not even enough to make any compensation for the damage.

Mr. Temporary Deputy Speaker, Sir, this Bill is very urgent. It is also supposed to be a precursor of the Merchant Shipping Bill, which is supposed to come immediately thereafter. Now, that is what would be the work of the Kenya Maritime Authority. It is after the Merchant Shipping Act is enacted that Authority will have a proper job. For now, they are just idlers picking salaries and allowances for doing almost nothing. They just exist to help those who are at the headquarters of the International Maritime Organisation.

Mr. Temporary Deputy Speaker, Sir, when the Committee went through this Bill in the preliminary stages sometime in October last year, we agreed on most of the clauses. Whatever issues that are not included, or the ones that have been added thereafter, we shall put them in at the Committee Stage as amendments. The Kenya Maritime Authority (KMA) would have the legal umbrella to protect all our shipping activities in the country. Our seafarers are not able to get jobs in many parts of the world, and yet this is a very lucrative venture for the people who live long the coast. They are not able to be certified by anybody because there is not any college or institution which can help them to get jobs overseas.

Mr. Temporary Deputy Speaker, Sir, when we have a seaport, it is beyond a gold mine. We need to control and utilise it. Some Japanese or Chinese fishing vessels have been loitering over our waters because there is not any legal framework on which to contain them. The fishing industry is a major natural resource for any country. But we are not able to utilise it because we do not have adequate resources which we can use to acquire these kind of ships or the technology. Unfortunately, we do not even have the law to protect those resources. We cannot even make money from either the Chinese or Arab fishing vessels.

With the passage of this Bill, this country will be many miles ahead in harmonising our laws with the International Maritime Organisation (IMO). As a result, we can claim adequate compensation if some rogue companies come with toxic waste to dump on our coastline. At the moment, we cannot take them anywhere. Even if we can sue, we do not have the capacity of being sued ourselves. So, it makes it difficult to sue, because we are not part of the maritime organisation in the legal sense as of now.

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

**The Assistant Minister for Foreign Affairs** (Mr. Mungatana): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. May I first start by congratulating the Minister for moving this Bill. On behalf of the people of Garsen Constituency whom I represent, I want to thank him very much for this Bill. I also want to thank the preceding speaker who has shown support for this Bill. This is the kind of Bill that calls for bipartisan support of this House in order to protect our people.

Mr. Temporary Deputy Speaker, Sir, my constituency borders the sea on the side of Kipini. There are people who have known no other type of life, except fishing. They do not have any form of training. They do not know any new technology or means of fishing. They have been practising the type of fishing that they were taught by their fathers and forefathers. Although their lives depend on the sea, they have no formal training. When there is a requirement for seafarers go out of this country, these young men are denied the chance to work in international organisations or vessels that operate on international waters. The reason is very simple. There is no training institution within this country that is recognized internationally. As a result, we have lost many opportunities that would have improved the livelihoods of constituents who live along the sea. So, the establishment of the KMA as proposed by this Bill and the power to ensure that they train is a very welcome development for all the coastal people who get their living from the sea. This will open a new way of earning a living for our people who live in those areas. So, this Bill is timely.

Clause 5(o) of the Bill talks about the protection of the marine environment. We have had many vessels that operate in the high seas. They venture past the 200 nautical miles limit into the waters where our small fishermen do the normal fishing. When these big vessels come nearer the coast, they scrape the floor of the sea and spoil the breeding ground of sea animals that are found near the coast. This has not only ruined and polluted the marine environment, but has also ensured that the people who would have otherwise managed to get some fish from within the 200 nautical miles limit do not get this important source of income.

Mr. Temporary Deputy Speaker, Sir, the damage those vessels cause when they come to the



areas the ordinary fishermen fish is tremendous. They spoil the breeding grounds for fish. As a result, the fish in certain areas, particularly Kipini Division in Garsen Constituency, have been depleted over a period of time. Unfortunately, the big vessels which are messing up our environment and causing poverty within the sea are not owned by Kenyans. They are owned by Greeks, and whenever we confront them, they show us some form of authority from the Fisheries Department. They pay Kshs50,000 for a whole year, yet, in one swoop, they collect fish worth Kshs6 million. They do not give anything to the locals who are there. They do not pay taxes. Worse still, they destroy the environment, so that the local fisherman does not even get the fish that sustains him. I would like to say that an Authority that is coming into place now to protect the marine environment is an institution that will protect the lives of the ordinary people.

Mr. Temporary Deputy Speaker, Sir, I would like to add that some of the vessels use gas as a fishing method which kills a lot of fish. They use nets which take even the small fishes from the sea, making our people even more poorer. Our people cannot compete with the vessels which employ these illegal methods and which pollute the environment.

Therefore, I would urge the House to support the enactment of this Bill, which gives the envisaged Authority power to ensure, in collaboration with other public agencies, the prevention of any pollution within our sea coast. I thank the Minister and everybody else who will participate in supporting this Bill.

Mr. Temporary Deputy Speaker, Sir, there is another issue that concerns the discharge of oil into the sea. Oil spill causes tremendous losses to our local fisherman. The local fisherman is not able to maintain his normal livelihood, and nobody compensates him for such losses. I support this Bill which gives specific powers to the envisaged Authority to address the question of oil spills and how to control it.

Even more so, I would urge that we consider adding a clause that will specifically give power to the Authority to assess damages and losses that may be caused to the local fisherman in the event of oil spillage and come up with adequate compensation for that fisherman. The Authority must be given that power in order for it to be felt by the local fisherman in Garsen Constituency. We also urge that a clause be included in the Bill to make provision for compensation. When the big vessels come to the coast, especially when they pass the 200 nautical mile limit, they go into areas where, as they continue to scrape the sea floor, they cut even the nets that our local fishermen have put there.

Mr. Temporary Deputy Speaker, Sir, there has been no legal framework to protect the local fisherman when he suffers losses as a result of intrusion by large fishing vessels into areas where he is gathering his fish. I would urge that a small clause be added to empower the Authority to be able to assess any damage that may be occasioned by vessels that enter into the coast. The Authority should be given the power to assess and order compensation to the local fishermen who are affected by the activities of any ships that breach the normal regulations.

Mr. Temporary Deputy Speaker, Sir, with regard to the issue of co-ordinating policies relating to maritime affairs, there is need to introduce in this Bill, a clause which must be more specific about monitoring the safety of the sea. We all remember what happened when the *Tsunami* hit other parts of the world. On the Kenyan coast, we had one casualty in Malindi area. From Lamu to Kipini, Malindi and all the way to the South Coast, the effects of the *Tsunami* were felt. We were very lucky that only one casualty was reported.

Unfortunately, there was no Authority that existed at the time which would have forewarned the people of the possible consequences of the *Tsunami*. The people should be educated to know that there is an Authority in place which, when it issues a certain warning, people must evacuate or be evacuated from areas that are considered risky. We would like this aspect to be specifically reflected in this law. The Authority must have the responsibility of ensuring the

existence of an early warning system for the people who inhabit the coastal areas of this country, to avoid situations where we would have casualties in the event of developments such as the *Tsunami* taking place.

Mr. Temporary Deputy Speaker, Sir, I do not need to over-emphasise the need to maintain and administer a ship register. This is obviously important to avoid strange ships that carry toxic waste patrolling our coast. This is an important aspect which needs to be reiterated. This Bill is generally excellent and I would like to urge hon. Members to support it. The proposals I have made can be looked into and be added to the final draft.

Mr. Temporary Deputy Speaker, Sir, under Clause 3(ii), the proposed Authority, which will be a body corporate, will be in perpetual succession. It will be a body corporate that will have powers to sue and can also be sued. However, I have a problem with the provision in Clause 24(4), under Miscellaneous. There is a rider that is called "Relief from Prosecution", which says as follows:-

"No action shall lie against the Authority or its officers who are performing any duties under this Act in good faith."

This kind of blanket forgiveness for any Authority is dangerous to the locals who inhabit such an area. I would want to propose that this clause be deleted. If the Authority has been given power to sue and be sued, that should be sufficient. If we give the Authority blanket protection against prosecution, what are we telling the person in Kipini within Garsen Constituency?

If the proposed Authority officials go to Kipini and tell the inhabitants: "We have taken away your land in good faith. A title deed is being issued in the Authority's name. We are telling you in good faith that these landing bays are no longer yours. We are not going to allow you to land your fish here. In good faith, we are annexing this whole region because the Maritime Authority needs it", where will the local people seek redress? How will my constituents be protected? This is a dangerous clause.

As the Member of Parliament for Garsen, I would like this clause to be deleted. Hon. Members should be aware of the consequences of this clause. Such a provision will encourage abuse of office by public officers; shifting of heavy power around and oppressing the local people. Therefore, as the Bill goes through refinement, I would urge not only the relevant Departmental Committee, but also the House to beware that this particular clause must not pass. The proposed Authority must operate in such a manner that it will not be above the law. The Authority must be beneficial to the people. If it wrongs the local residents in Garsen constituency, they must be able to have recourse to the law. Whether or not the courts will rule in the Authority's favour, that will be a matter for the courts to decide, but they must not be blocked by such a provision as contained in the Bill.

Mr. Temporary Deputy Speaker, Sir, in conclusion, I would like to once again thank the Minister for bringing this fine piece of legislation to the House and urge hon. Members to pass it in a bipartisan spirit as demonstrated by the Official Opposition responder. For once, let this House give a token to the inhabitants of the coastal region of this country.

I beg to support.

**Mr. Moi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to the debate on this Bill. First and foremost, I would like to notify the hon. Members that the report of the Committee on Energy, Communications and Public Works will be made available tomorrow for the House to peruse. Having said that, I would like to say that as a Committee, we support this Bill.

It is important to note that the Government found it prudent to create a Maritime Authority before legislating its creation. There is no law that backs the Authority. The Government must have come under intense pressure from the International Maritime Organisation (IMO) to domesticate its

conventions. It is now upon Parliament to legitimise what the Government had done.

This Bill seeks to do many things, which include safer shipping, having cleaner oceans, lakes and rivers and piracy in high seas. However, there are provisions in the Bill that hon. Members should critically look at before passing it. I would like to raise some of these issues and if you look at my Committee's report tomorrow, you will see them in detail. We will be moving some amendments during the Committee Stage.

First, the Bill gives the Maritime Authority powers to invoke the Merchant Shipping Act and other legislations which are related to the maritime sector for the time being. We should be aware of the fact that the Merchant Shipping Act is archaic. The Act was drafted word by word from the United Kingdom. To date, this Act has had very few amendments and updates. It is absolutely archaic! We should have overhauled the Merchant Shipping Act before passing the Maritime Authority Bill. Be that as it may, we now realise that this is legislation by reverse.

Mr. Temporary Deputy Speaker, Sir, secondly, the Bill concentrates on how to manage coastal waters. There is really not much in it concerning inland waters. The Bill seeks to streamline human and economic activities, especially around our lakes and rivers. Of course, we know that population and environmental degradation happen around our lakes and rivers.

Thirdly, on Page 111, the Bill provides for the Kenya Maritime Authority Headquarters to be in Mombasa, but it is very silent about having regional offices. I am sure we will need some offices in Kisumu and Turkana to take care of the issues of Lake Victoria and Lake Turkana respectively. We will also need other regional offices in my constituency to take care of the issues of Lake Baringo. We will recommend that there should be a provision for the establishment of the Authority's branches upcountry. You have seen the tragedies which happened in Lake Baringo and Lake Turkana. Part of the duties of the Authority is to co-ordinate issues of rescue. So, it is important that we have regional offices.

Mr. Temporary Deputy Speaker, Sir, there is also the issue of the composition of the Board of the Kenya Maritime Authority. The Bill provides that the Board should have 11 members. The President should appoint the Chairman and the rest of the members should be appointed by the Minister. As a Committee, we do not want to leave it to the Executive to appoint the members. We would rather continue with the current trend whereby the industry players nominate the persons who, they believe are best qualified and give the names to the Minister, who, in turn, appoints the members. This is what happens all over the world and even in our country.

The other issue which we have addressed in our report is the hiring and firing of the Kenya Maritime Authority Director-General. The Director-General should be appointed or fired by the Minister. As a Committee, we believe that the hiring of the Director-General should be left to the Board. There should be some security of tenure for the Director-General, so that he can feel that he is not a prisoner of circumstances. He should be free to act at his best.

The Committee has also looked at the contract of the Director-General and the powers of the Minister in regulating the financial aspects of the Authority. The Minister has powers to accept increments of the financial requirements of the Authority, but he does not have powers to reduce them. Even academically, he should have powers to go one way or the other. I am going to be brief and we will talk more when we go to the Committee of the whole House.

Mr. Temporary Deputy Speaker, Sir, lastly, the Committee felt that the word "Chairman" should be changed to "Chairperson". The word "man" in generic sense means male and female and it is just as safe as the Biblical application is concerned. The truth is that women are demanding the insertion of the particular reference. We have gone through the Bill and these are some of our recommendations. We will be looking at these issues when we go to the Committee of the whole House.

With those few remarks, I support the Bill and I thank the Minister for bringing it to the

House.

**The Temporary Deputy Speaker** (Mr. Khamasi): I would like to bring to the attention of the hon. Members the fact that we have now been listening to the debate here and we would like to play by the rules. Please, do not use arguments which have already been used by other hon. Members on the Floor. If you do that, I will interrupt you and call upon somebody else to contribute.

**Capt. Nakitare:** Mr. Temporary Deputy Speaker, Sir, the Maritime Authority Bill has come at an opportune time. I stand to support it wholeheartedly.

Mr. Temporary Deputy Speaker, Sir, the Indian Ocean waters, particularly at the coast of Kenya, lack rules and regulations. This has caused misuse of the coastal resources. As an integral international country, Kenya must also be respected by the maritime users. It was a very good gesture from Mr. Moi for having brought the report they compiled. Today, under the International Maritime Organisation, we have the causeway. This is an international boundary which bars barges and large vessels from interfering with maritime investments and habitation of the host country. The coast is manned by Kenya and Kenyans are supposed to control it. However, without rules and creating an Authority, there is likelihood of abuse, just like the case we had where barges came as close to the coast as Lamu.

Mr. Temporary Deputy Speaker, Sir, Mr. Mungatana noted some observations which have been seen. In fact, the coastal people have been wondering what this Government is doing to protect our waters. We are invaded by international fishermen, and yet there is no law to guard against that.

Mr. Temporary Deputy Speaker, Sir, there is also the issue of liability. Whenever the barges come and crush one of our own fishermen, the international law does not cover liabilities on high seas, particularly with regard to deep-sea fishing. I am bullied because under maritime laws, we have buoys, cons and other beacons that mark the boundaries. We have been following the legislation that was passed by the colonialists. Under the colonial rule, there were different measures that probably favoured the Commonwealth countries. Just to give an example, a country like Japan coming as close as 60 nautical miles to the coastal strip of Kenya infringes the international law.

Mr. Temporary Deputy Speaker, Sir, popularly speaking, they have degraded our investments. The seafarers have got rough, careless and carefree ways of fishing by introducing heavy and dip-dug doves that get down to the bottom of the coral and even destroy the coral reefs. Controlling this has been difficult because Kenya does not have coastguards. Kenya has the Kenya Navy that can only go to the precincts of the boundary within the military laws. However, we need coastguards who can also be included in this Authority and be given powers to arrest and prosecute.

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

*[Mr. Deputy Speaker took the Chair]*

Mr. Deputy Speaker, Sir, our water is a masterpiece. We have a shipmaster at Mombasa. We have heard that we have to legislate and cover the inland waters. This will enhance and enforce our country to protect not only the maritime at the coast, but also the waters inland. Although we have not had any foreign invasion, we know very well what those fishermen come to do. For example, the Japanese and the Chinese are very well known for harvesting coral. Coral is harvested and taken away to manufacture coral calcium which is brought back and sold to us as food

supplement. This has taken an international trend. Without acting on this - that is why I am supporting this Bill - we will be losing our investments.

Mr. Deputy Speaker, Sir, I would also support the fact that the seamen, whose association is under the Kenya Maritime Authority, must be recognised. Along the coast, we have had incidences of piracy. However, our sea boundary has not been revised, notwithstanding the fact that, at the moment, we have written a Paper to be taken to the United Nations (UN). The Paper proposes to re-do our waterways boundary. Without infringing on other people's soil, Kenya has its own known international water boundary. We have to support that. We have to come to terms with that because the clauses that guide the maritime organisation, life and authority will vehemently come through this Bill.

Mr. Deputy Speaker, Sir, we can go down to Merchant and Shipping Act. When you look at this Act, it is totally foreign. In any case, very few of our nationals are members of the shipping organisation. For example, very few people from Kenya are members of the maritime clubs in Mombasa. Many of the members are from foreign countries. Therefore, to localise those clubs, we should make sure that this Maritime Authority Bill is supported and passed. It will enable us have regulations. We can also use this Authority to guard our investments.

Mr. Deputy Speaker, Sir, notwithstanding the climatic conditions on the high seas, we need to have our own experimental stations on the waters. We have flotations where we can put stations at floats. We can then install computers in those stations to determine the behaviour of the sea; the sea waves and the under-current that causes havoc. As much as we have seen what happens in other countries, we are privileged that our coastal line is blanketed by India. The speed of the harsh monsoon winds is reduced because of our location. However, this does not mean that when there is a disaster such as high winds and hurricanes, we can avoid them and claim to be safe.

We would like to support this Bill. It will also help our people. Our coastguards will have a fair share of dealing with administration on the waters.

With those few remarks, I beg to support.

**Mr. Kipchumba:** Mr. Deputy Speaker, Sir, I beg to support this Bill and I want to also make my comments. At the onset, I want to state that this Authority should have been established quite a long time ago. I know Mombasa is the headquarters, but I was just wondering whether that should indeed be included in this Bill because as we are moving towards integration of the East African region, some of those regional headquarters could easily be established as we move along. Therefore, I am always opposed to being very specific on naming a certain town as being a headquarters of an institution.

Mr. Deputy Speaker, Sir, I have looked at this Bill and in many of the authorities, the chief executive, who is in this case the Director-General, is always made to be the secretary of such institutions. I was just wondering why the Director-General would indeed not be the secretary of this Authority. There is no merit in us having a Director-General who is an *ex-officio* member of the Board and yet employ somebody else who will again come and perform other functions as a secretary of this institution. I think we will be wasting resources. Indeed, I do not think there is a lot of work in a Director-General undertaking this noble task, given that he has other employees under him. Therefore, I would strongly suggest that the Director-General appointed under Section II be the secretary of the Board. I think that will make a lot of sense and indeed the Authority will save quite a lot of money.

Mr. Deputy Speaker, Sir, just like I said yesterday on the Cotton (Amendment) Bill, we have looked at many of the Permanent Secretaries that have been seconded to sit on the boards and we have had a lot of problems because many of them have no idea of what happens in many of these institutions. Therefore, I was of the view that we only retain the Permanent Secretary responsible for Maritime transport. The Permanent Secretary in the Ministry of Finance and even

the Attorney-General are of no use in the Board. If, indeed, there are any undertakings that are made by the Board, the Permanent Secretary in charge of Maritime issues, who is in this case representing the Government, must pass any resolutions that have been arrived at this Board to the Government, because the case of Uchumi is still fresh in our minds. We have so many permanent secretaries who sit in the Board and we pay them a lot of allowances. They come and sleep in hotels, attend these meetings and go home without having conceived anything. Therefore, in order for us to save a lot of resources, many of these boards should only have one Permanent Secretary. There is no value in us having an Attorney-General. We are not coming to make laws. In fact, many of the board members could easily be lawyers if indeed we need that assistance. Therefore, I would strongly suggest that the Attorney-General be struck off from that list and the Permanent Secretary in charge of Finance be removed altogether so that only one Permanent Secretary is made part of the Board.

Mr. Deputy Speaker, Sir, I have looked at the other six members, but I would wish that the Minister be more specific. It is not sufficient to tell us that the members of the Board must have knowledge and experience. I think it is important that the Minister identifies all the institutions that are stakeholders in that industry. Those particular stakeholders in the Maritime industry must be listed in this Bill so that when choosing members who sit in the Board because it is a very important and useful institution for the running of any institution, that, indeed, we must say the owners of ships or those who are in charge, like the captains or such other persons of such organisations, must be listed so that when choosing the Board members, we are not ambiguous. Therefore, I would suggest that the Minister identifies all those institutions who are stakeholders and thereafter list them here so that we know who are the six members, and that such other institutions where they belong will be given power to appoint them.

Mr. Deputy Speaker, Sir, I am aware that in the past, and I have seen that this Authority will ensure that whenever there are oil spills, they will regulate the oil industry because we have had oil spills in Mombasa in the past and it has been very difficult to know who we are going to lay blame on. Therefore, this Bill, once established, will establish a technical arm because I have known in the past that many oil companies have been called to contribute to ensure the safety of many of the ships. Some are not willing and others are because in the absence of a legal instrument like this, it will be very difficult. It will require stakeholders to contribute money for which no proper accounting is done. I would, therefore, be very happy that a technical institution be established so that whenever there is an oil spill it can be sorted out quickly.

Mr. Deputy Speaker, Sir, I was looking at the books of accounts and I am happy that the Controller and Auditor-General will be responsible for the accounts. However, I would also want to request the Minister that the Director-General be appointed for a period of three years, which can be renewed for another term of three years. There is a lot of ambiguity when we say that: "He can be appointed by the Minister on the recommendations of the Board and shall hold office on such terms and conditions as shall be specified in the instruments". Those terms have been abused in the past. We want that to appear in the Bill and we will be sure that the Director-General will be serving for a certain period. Now, the normal period is three years, but that can be renewed for another three years and the Director-General will not be subject for further renewal. In that case, that will give us comfort that indeed that fellow will not serve for ten years because when you leave it the way it is, then the Minister can appoint somebody for 15 years, and given that it is provided for in the Act and whenever he is given a letter of appointment to the same, then nobody will have any complaint. In the end, I want to request that, that addition be made to that effect.

Mr. Deputy Speaker, Sir, I have seen also that the Director-General must have a degree from a recognised institution and ten years' experience. Once you have ten years' experience in a relevant skill, a degree may not necessarily be relevant. In that case, even people who have

diplomas and higher diplomas in such a field and have ten years' experience could easily perform even better tasks than fellows who have degrees. Therefore, I would urge that, that requirement that the fellow must have a degree and ten years' experience be made such that even somebody who has ten years' experience and not necessarily having a degree could qualify to be appointed because you are well aware that there are very few people who have ten years' experience in this field and have degrees. In fact, many of the fellows who are there can perform, in fact, a better task.

Mr. Deputy Speaker, Sir, I have also looked at this Bill and it specifies the officers to be appointed by the board of the Kenya Maritime Authority (KMA) to perform various tasks. I do not see merit in us listing the designations of the officers who will serve in this institution. For example, they have listed the Registrar of Ships and Sea Farers. We are aware that the world is changing. There are always reforms in all sectors of the economy. What will happen if after a few years, these titles are changed as per international requirements? Will we say that we must amend the Act to reflect the international requirements? I think it is sufficient to say that the board will appoint officers with relevant titles to perform tasks as may be required. To the extent that in the listing we will have, for example, a Principal Surveyor, Principal Receiver and so on. Who says these positions are sufficient? If we look at the requirements as per international standards, these positions may not be sufficient. Therefore, I would like to request that the Minister deletes the requirement giving specific titles of persons who will be employed in this sector so that, as time changes, we easily employ people without necessarily contravening the Act.

Mr. Deputy Speaker, Sir, under the operations of the KMA, Clause 15(6) says:-

"If the Minister fails to grant written approval of the business plan or to direct any changes within 60 days after the submission for approval, the business plan shall be deemed to have been approved by the Minister."

I do not see why we should use the word, "deemed". If there is, indeed, a Minister in charge of maritime activities, there is no reason why that business plan should not be approved. It will be an abdication of our responsibility to deem a business plan to have been approved by the Minister after 60 days even if he has not approved it. Those are grey areas. When do we count the 60 days? Therefore, I would strongly suggest that such a clause be deleted altogether because it is unnecessary and we have a Minister in charge of the KMA. The Minister must approve the business plan so that we are sure that, indeed, he is performing his responsibilities.

Mr. Deputy Speaker, Sir, this Bill is good. The only thing we should do is remove a few of those anomalies and ensure that it meets international requirements. The Minister should also move with haste.

One of the responsibilities of the KMA is to oversee the disposal of the many ships that are lying idle. I do not know who is supposed to dispose them or what procedure is supposed to be followed. They are nuisance to Port of Mombasa. I wish this KMA would be mandated to ensure that ships which have not been claimed or those that have been detained because they have failed to pay or are not sea worthy are destroyed within a certain period of time. There are so many un-sea worthy vessels that dock at the Port of Mombasa. The KMA should also have power to oversee the maintenance of the Port of Mombasa. In the past, there have been complaints as to whether our port conforms with the international requirements.

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

**Prof. Maathai:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. I too wish to support this Bill. It is a very good Bill and it is very timely.

The most important thing we should do is to financially support the KMA and empower it. It is no use having an authority that cannot do the very difficult work of keeping our ports and seas in good order. In particular, I wish to say that one of the areas where we are very weak is in that of our navy. I would like to appeal for the support and empowerment of our navy, so that it can have

the equipment that they need to be able to protect our coastal line. Some of the contributors have already mentioned the fact that our coasts are overfished often by night by boats that are not easy to apprehend because our navy does not have what it takes to keep our coastal waters safe. The KMA should work very closely with our navy. In supporting our navy, we would be supporting the KMA because some of the activities that we would expect them to do would surely be better done in cooperation with our navy. So, I would like to recommend that, although it is not mentioned, to me, it is closely connected with our ability to protect our coastal waters and to ensure that we are not invaded by foreign boats, especially for fishing.

Mr. Deputy Speaker, Sir, the other thing that I would like to appeal for is that the KMA be empowered to be able to monitor and remove any invasive species that may be brought into our waters by foreign ships. This is extremely important because we know that invasive species can be destructive in our waters.

Mr. Deputy speaker, Sir, I am particularly thinking of Lake Victoria. It is one of the very important lake for the East African region. However, it has been invaded by an invasive species of plant that has become such a problem, not only to the local communities, but also for boats and ship. I must say that somehow we are not on the look out and that is why we need this kind of a body. This is because what happened to Lake Victoria many years ago, is also happening to Lake Naivasha at the moment. As I speak, the hyacinth has already invaded Lake Naivasha and it is slowly beginning to accumulate. We are just watching until perhaps the problem is as big as it is in Lake Victoria where we are literally unable to control the expansion of this weed. So, the KMA should also be empowered and financially supported to be able to protect our waters whether they are in the lakes or at the coast because with invasive species whether they are plants or animals, we can lose---

### QUORUM

**Mr. K. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. I wish to notify the Chair that there is no Quorum in the House.

**Mr. Deputy Speaker:** Yes, Mr. K. Kilonzo. Indeed, there is no Quorum. I, therefore, order that the Division Bell is rung.

*(The Division Bell was rung)*

**Mr. Deputy Speaker:** Order, hon. Members! As you can see, we now have a quorum. Prof. Maathai, you were the one on the Floor.

Please, proceed.

**Prof. Maathai:** Mr. Deputy Speaker, Sir, as I was saying, it is extremely important that the authority is supported by being provided with financial resources and the expertise to protect our waters from invasive species. I had said that I am, particularly, thinking of Lake Victoria where the growth of hyacinth has polluted the lake. What happened to Lake Victoria some years ago is now happening to Lake Naivasha and many other lakes in the Rift Valley. It is important for us to have an authority that will be on the look out to ensure that our waters; oceans, seas and lakes are protected from the invasive species. Unless the authority has the capacity to monitor and protect what is happening in our waters, it is very easy to have plants and animal species invade our waters.

The other problem we have is that the authority should monitor and deal with pollution, especially from oil spills and dumping. We all know that there are certain individuals and companies that are fond of dumping pollutants along the coastline. The authority should be able to



deal with that problem. I mentioned that our Kenya Navy should be empowered to provide such service. Otherwise, there is no use of having an authority that cannot monitor or take action when the safety of our waters is threatened.

I know that, especially at the coastline, we have waste matters which come from processing of oil. It is very important that the authority monitors what is being done with effluent so that it is not thrown to our environment which includes our seas. If the effluent is thrown on land, it could very easily invade our water systems. That is extremely important. We have also seen waste being dumped on dry land, yet it is not processed. Nobody knows what happens to it. Therefore, we need an authority which is extremely alert and has the expertise to monitor what can be done to prevent pollution. Some of the pollutants are thrown on the coastal waters and are drifted by the waves to the coastline. People suddenly find waste dumped on the coastline, yet they have no idea how it got there and what to do with it. They are not even aware of the dangers they are exposed to. All those issues should be dealt with by the authority.

So, I would like to support this Bill very strongly and encourage financial and professional support to deal with the issues I have mentioned. The other point I want to mention is the fact that we all know the kind of problems we have in this country because of drugs.

Mr. Deputy Speaker, Sir, we know that some drug-trafficking is done along our coastline. It is important to have an authority that can monitor and prevent ships from landing on our shores and bring in drugs. I have often wondered why there is no adequate concern about drug-trafficking in this country. Of course, we arrest people at the airport and take them to court. However, I think we can do much more by preventing the trafficking of the drugs into our country. Drugs are doing a lot of damage to our children. It would pain any parent to hear that there are drugs in high schools. There is no future in a country where drugs are found in high schools. That should be taken as a crisis and we should be empowering such an authority very strongly to ensure that we do not get drugs into this country. Sometimes, I tend to think that we are more concerned about the symptoms of what happens when drugs are brought in, rather than efforts to prevent them from being brought into our country. I know that sometimes, it is because we do not have the capacity at the coast to deal with the ships that come in and leave. An authority should be there and be supported with such issues in mind, knowing that we will be protected from drug-trafficking.

I know that when we were debating the Sexual Offences Bill, we were very concerned and wanted to recommend very strong punishment for people who commit any related crime. However, we all know that one of the reasons why crime has escalated in our country is because of the misuse of drugs and alcohol. The reason why drugs are still being brought into our country is partly because we are not able to protect our borders. So, I really see a major role that this authority can play and I strongly support its formation. I hope that not only shall we establish it but also give it the financial and manpower support that it will need to serve the country well.

With those few remarks, I beg to support.

**Eng. Okundi:** Thank you very much, Mr. Deputy Speaker, Sir, for giving me a chance to support this very important Bill. Up until now, the legal instrument that operates in place of a maritime authority in this country is the Merchant Shipping Act, which is a very old Act. It was necessary because we are a seafaring nation.

Mr. Deputy Speaker, Sir, Kenya is so well endowed with maritime resources. At this point, we have, at least, nine points on the coast of Kenya which are natural harbours with very quiet and deep waters. If our country was rich enough and the maritime industry well organized and promoted, we would be handling the shipping requirements of the whole region, so that most ships would come to Kenyan ports and just offload trans-shipment goods which can be carried to other places like what is happening in Singapore at the moment.

Mr. Deputy Speaker, Sir, the maritime law is so important to countries which have sea

ports or coastal lines like ourselves that it actually allows the country to claim revenue, because it can register ships. If you have established your own shipping line, which is one of the major functions for a maritime authority, that national shipping line is allowed to carry at least 40 per cent of all goods which leave your country for export to other countries. By the same token, you are also allowed to claim 40 per cent of all goods carried to your country so that the freights on those goods can actually accrue as revenue to your country. This is allowed by international law. You do not even need to have a ship or a national shipping line. You only need to have a strong maritime legal establishment like the proposed Kenya Maritime Authority to regulate the situation so that you can have very good income to your country as a result of the free gift that the Lord has given us in terms of our coastal line and the port that we have.

Mr. Deputy Speaker, Sir, a country like Liberia does not really have its own ship, but it is one of the most famous country for registration of ships because it has a very strong maritime authority. Many ships are titled "Liberia Carrier" and they carry the flag of that country. That is a major gift to a country that has that law. In this way, if we have a maritime authority, it is one of the duties that, that authority will have to ensure that it actually happens in our country.

The maritime authority will ensure that the safety of shipping lines along our coast, to and from our coast are insured. For this, the country gains substantial revenue. The authority will ensure that the safety beacons are put at the right places. Once ships are in the big sea, they do not even know where they are going except that they are guided by the various beacons which are used even by the Global Positioning System (GPS) satellites now, which enable ships to know where they are going. These are functions that are vested in a maritime establishment like the proposed Kenya Maritime Authority. When this happens, then our shipping will be well organized and good for our country.

Mr. Deputy Speaker, Sir, in shipping, there is oil spillage which is spread in the ocean and coastal areas. It also kills the fish that breeds in those waters. The Kenya Maritime Authority will ensure that this law on conservation of the environment will be there and will be well maintained. Otherwise, if it is left as it is today, very loose and allowing the Kenya Ports Authority (KPA) to do all it can to deal with it, it is not the mandate of the KPA. The mandate for the KPA is in terms of utilisation of the cargo, shipping and berthing. It will not deal with the Act that can really handle the pollution aspects.

We are so lucky that we have trees that grow in marine areas. Some of them are mangroves. Where they have their roots, you will find shrimps, which is one of the most precious sea food fished all over the world. Japan is known for this. They catch this fish wherever they are and pursue them. If we have a strong maritime law under the Kenya Maritime Authority, this will be protected because in Kenya, we have some of the deep waters. We have at least nine very deep quiet natural harbours in our shores. We know that a lot of shrimps breed in those areas. Sometimes, even now, fishermen from Japan are in the high seas. They catch the fish, pack, process and export them on board in our territorial waters. This is a huge income to this country. It goes on all the time. There is very little we can do about it because we do not have a legal position with the authority that ensures that this legal instrument is actually enforced. In this regard, the Kenya Maritime Authority has a chance. This is an idea that has come a bit too late but one that its time is really here for us to establish it.

Mr. Deputy Speaker, Sir, many industrial countries have waste that they dump. A lot of this waste is nuclear. As they industrialise, they produce a lot of unwanted material that they can do nothing about. They are, therefore, looking for a place to dump this waste. When I was running the KPA, many times, in Mombasa, we had to arrest ships that were carrying this industrial waste to dump in our waters. One time, we woke up and found that for most of the coast of Mombasa, the waters that were coming had thick bitumen look-like and which had sealed the whole coastal

waters. We did not know where it was coming from. The reason was that these were part of the dumping that were taking place in the high seas sometimes at night so that those industries can carry on producing the stuff where the waste is coming from.

Mr. Deputy Speaker, Sir, if you do not have a strong maritime administration like what we are proposing now, the Kenya Maritime Authority, it is very difficult to deal with these industrial dumps. These dumps are a problem all over the world. You find that some of the major international conferences are dealing with dumping on people's coastal lines. These spills kill fish and all the sea animals. This will kill sea life, pollute and destroy the environment. So, here again, industrial dumps or hazardous materials can be dealt with very well.

Mr. Deputy Speaker, Sir, ships in most countries transport most of the trade goods. Any country, whether it is land locked or not, has more than 60 per cent of its trade goods transported by ship. Many ships do not pay dues at ports. So, we must have a strong maritime authority, which can control and survey ships to make sure that they do not go away without paying the dues owed by them, because of facilities that are made available to them at ports. This is another reason why you need a maritime authority in order to do these things.

I can go on enumerating the things a maritime authority is supposed to do. I actually went through it and had always supported it. I am now happy the Minister, Mr. Mwakwere, who was one of my colleagues at the Kenya Ports Authority (KPA), has acted. We discussed this issue very many times. He even had to go to Malmö, a university in Sweden, to study in details how to handle this issue. Indeed, he has maritime knowledge. I am happy that he is now the Minister for Transport. He has the knowledge of what should be done through this particular Bill. So, it has come at the right time. It is something that we need badly.

Mr. Deputy Speaker, Sir, we have been operating Bandari College. For a long time it has been handling certain aspects of the shipping industry. However, this college is concerned mainly with what the KPA needs in order to run the port. The shipping industry requires enormous knowledge. We need to expand this maritime college. We should pass this Bill in order to establish a Kenya Maritime Authority to promote the maritime industry for the future benefit of our economy. Bandari College, which the Minister had the opportunity to head before he joined politics, will benefit a great deal from the oversight of a Kenya Maritime Authority.

Mr. Deputy Speaker, Sir, the shipping industry is, I would say, infested, with stowaways. Stowaways are people who do a lot of off-loading and loading work of a docked ship. Then when the ship leaves, they hide somewhere inside its cargo. If the ship's captain finds these people while in the high seas, and they are unlucky, they are thrown overboard into the sea, and whales and other sea animals enjoy a good meal. This is sad thing that happens in the shipping industry. Many times these things happen when a country does not have a strong good and well administered maritime law. I know that in this Parliament there have been all kind of queries about the widening and deepening of the approach channels to Kilindini Harbour. I think that was done by the assistance of the USA when a company called Great Lakes came in and worked on the channels. Thereafter, the Kenya Navy made the channels much deeper in order to operate its ships which we need for our own protection as a country.

Mr. Deputy Speaker, Sir, this is an industry that requires very good management. If it is not properly managed the country can easily incur a lot of losses because the amount of money required to clear the waterways or channels so that ships easily dock, off-load cargo and then go requires enormous amount of cash and technical studies. These works well when you have a very strong maritime authority working side by side on the development of ports and also management of such developed ports. This is one of the issues on the long list which the maritime authority will have to deal with.

This Kenya Maritime Authority will deal with very huge revenue because it will see the

industry picking up rapidly and the amount of money that people will be getting. For example, the national shipping line alone can claim 40 per cent of the total revenue got from the cargo that leave the country to outside countries. Also it can claim 40 per cent of the revenue got from cargo coming into the country. Now, if you do not have proper management of such money, it might not end up in our KRA. Here is where we need a strong maritime authority managed with a good board. We need good managers and leaders.

When we set up the board, we need a board which has highly educated people in this area. The persons to be appointed on the board must be business-minded and highly focused on the long-term benefits of the maritime industry in our country. You know, shipping is extremely private sector-driven and motivated. When doing this the Minister and the people concerned must see to it that the people who we select to run such a body are people who have the full understanding of the shipping industry, the cargo industry, the general maritime industry and the actual maintenance and management of the effects of pollution in our country.

When I refer to pollution, I think all of us on earth must do something about it. Pollution will soon catch up with everybody wherever they are and, particularly the wet areas. In maritime areas, it is permanently wet and pollution just dramatically increases. This is why you need a very strong pollution control mechanism.

In the KPA we used to have what was called "boom". They just floated on top of the water and collected all the oil spillage. This was going on all the time. When we could not do this, we had to use some chemicals which are called oil dispersants. When you drop them in such areas, they actually dissolve the pollutants. Those pollutants allow the wrong weeds to grow very fast. Just as hon. Prof. Maathai said, Lake Naivasha is now infested with the water hyacinth to the extent that it is growing even faster than was the case in Lake Victoria. This problem has to be dealt with right from the start.

In the Kenya Ports Authority (KPA), we used to say: "Look, we are spending a lot of money dealing with pollution and yet, this is a total affair of the country." It is not an issue that the port should address. It is so big that it needs the country to handle it. A maritime authority can charge the bill on any one who brings pollution into the country. I can go on and on in this particular area. But it is important for us to pass this Bill. It is long overdue and it needs to be passed and implemented as fast as possible. I know that some of my colleagues would like to speak before the Minister responds. We would like to pass this Bill without too much debate.

So, I beg to support.

**Prof. Mango:** Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to contribute to this interesting Bill. This country needs a maritime authority. It is long overdue. We have not made much use of our Coast. Instead, we have left it to foreigners to exploit. For example, we have fish in the sea, but we hardly exploit it. We allow foreigners to come to our coastline to fish and take away our natural resources while we complain that our country does not have enough to feed its people.

Mr. Deputy Speaker, Sir, we do not seem to have developed sea transport. As a result, and due to lack of a maritime authority, foreigners come with their ships and go away with our natural resources without us noticing. At one time, I was doing field work and somebody came and harvested a ship-load of grass. To the local people, they thought it was a joke. But in reality, that person was taking away seed from our natural resources and exporting it to his own country. The following year, that area did not have that grass. That happened because we lacked a maritime authority to regulate such exports. So, we need a strong maritime authority to regulate all activities in the sea. That way, we can even protect our flora and fauna along the coast. The coral reef is wearing out very fast because of pollution. In the past, many ships have dumped dangerous chemicals in the sea. Those chemicals kill the coral reef. The coral reef is a living animal.

**Ms. Ndung'u:** On a point of order, Mr. Deputy Speaker, Sir. This debate has gone on for a while! Would it be in order, at this stage, to ask the Mover to reply?

**Mr. Deputy Speaker:** That is up to the hon. Members.

*(Question, that the Mover be  
now called upon to reply,  
put and agreed to)*

**The Minister for Transport** (Mr. Mwakwere): Mr. Deputy Speaker, Sir, I humbly request your permission to donate three minutes to Mr. Syongo to make a contribution to this Bill.

**Mr. Deputy Speaker:** Well, I have no objection to that. But the hon. Member must stick to three minutes.

**Mr. Syongo:** Mr. Deputy Speaker, Sir, the Bill does specify that the headquarters be in Mombasa. I want to appeal to the Minister to ensure that he is not only dealing with our resources in the Indian Ocean. Inland waters are equally important. Presently, we have 6 per cent of Lake Victoria with over 3,000 vessels. At present, 98 per cent of our total fish exports actually come from Lake Victoria. Therefore, it is an area of important resource and, therefore, that Authority should take cognisance of that fact.

Secondly, with regard to the composition of the Board, I think there is an omission. The Kenya Navy is going to be an integral part in the performance of that Authority. I suggest that the Ministry of Defence, and specifically the Kenya Navy, should be represented in the Board.

Mr. Deputy Speaker, Sir, Prof. Maathai and Eng. Okundi have emphasised the need for this Kenya Maritime Authority to deal with the issue of environmental protection. The Ministry for Environment and Natural Resources should also be involved.

The question of the exclusive economic zone, which is 200 nautical miles, is very important for us. On any given day, there are, at least, between 100 and 150 foreign fishing ships and vessels in our exclusive economic zone. I suggest that we include specifically, under the roles of this Kenya Maritime Authority, the protection of the exclusive economic zone. It is very important. For this purpose, the Authority must have a rapid response capacity so that when we detect any intrusion into this exclusive economic zone, there should be an immediate response to arrest those fishing illegally or those who are trying to dump waste material.

Finally, I request the Minister that when playing his role under Clauses 5, 15 and 17, which specify the roles or the intervention of the Minister, that he intervenes cautiously so that the autonomy of this Kenya Maritime Authority is not jeopardised by excessive use of Ministerial authority. Presently, we have a good Minister. But we do not know who will be in charge tomorrow. We may have a busy body who will be interfering with the performance of this Kenya Maritime Authority.

With those remarks, I beg to support.

**The Minister for Transport** (Mr. Mwakwere): Mr. Deputy Speaker, Sir, I would like to thank my colleagues for their excellent contributions and very useful suggestions. I must admit that I could take any of their contributions to serve as my response. We have experts here in maritime matters. Among many others, we have Eng. Okundi with whom I worked at the port when he was the overall head. If I was to make my reply very short, his contribution could be taken as the reply.

However, I fully agree with my colleagues' suggestions that some components of the Bill need to be improved. I will not narrate all of them, but I have taken note of them, and something will be done. There is the question of the board. Definitely, there is need to incorporate the Ministry of Defence, particularly the Kenya Navy to sit on the board, because they are key players on matters of security in the port. Indeed, the Director of the National Environment Management

Authority (NEMA) and the Director of Fisheries need to be there because, as an economic zone, the activities will impact to a large extent on what the country can benefit from the 200 nautical miles.

Mr. Deputy Speaker, Sir, many suggestions have been made and repeated, that the headquarters of the Kenya Maritime Authority (KMA) need not be in Mombasa. Of course, our largest stretch of water is at the coast. So, it makes a lot of sense just to note that the headquarters will be at a port determined by the Minister or appropriate authority at the coast. I think it is extremely important that we have branches at our inland port, for example, Kisumu. I am sure other inland ports will develop in the course of time.

The environment is extremely important. The Kenya Maritime Authority will play a very significant role in ensuring that our waters are safe from pollution and even development of some natural phenomena like the growth of the water hyacinth in Lake Victoria and Lake Naivasha.

It is extremely important that we give full support to this Bill. I am delighted that speaker after speaker has made very constructive and useful suggestions which I am sure will make the Bill even more viable when it comes to the time of implementing it. We have the problem of hazardous waste as highlighted by my colleagues. Countries which do not have maritime authorities or bodies that regulate and monitor activities in their waters end up being victims of the dumping of hazardous materials. Some of these materials are extremely injurious to the health of human beings and fish in the ocean. This is extremely important and I know our Kenya Maritime Authority will be in a position to do the necessary monitoring and control of such illicit activities. There is, of course, the need for the Kenya Maritime Authority to be empowered appropriately. Therefore, equipment becomes extremely important because we cannot do any meaningful surveillance on large expanses of water, such as our exclusive economic zone, if the Authority will not have an aircraft, helicopters or even maritime vessels that will give effective monitoring and control of our economic zone.

Mr. Deputy Speaker, Sir, it is necessary for us to ensure that as we give support to this Bill, we also take note of the role that our country plays in the region as a maritime nation. Indeed, we are serving our economic interests, but they are not just dependent on what happens in the country, but also the economic activities of neighbouring countries which are landlocked and depend on our port and ocean for their survival. It is, therefore, important that their interests are also taken care of. This is because the success of their economic interests spell greater success to the economic development of this country.

I am sure the International Maritime Organization (IMO) will, indeed, be giving greater support to Kenya. In fact, they have already given a level of support that was made in anticipation of our success in establishing a maritime authority. Next year, we shall have the first ever conference of the IMO to be held in Africa. They are coming here because of the record that Kenya has maintained and the effort that she is making in managing maritime matters.

Mr. Deputy Speaker, Sir, some of my colleagues talked of seafarers, which is extremely important. We are one of the very few countries that do not have a proper Authority to award seafarers certificates. At the moment, our seafarers are being trained in neighbouring countries such as Tanzania. However, the numbers being trained there are not sufficient to meet the needs of Kenyans and the interests of Kenyans who would like to be seafarers. Once we have a maritime authority in place, we will be in a position to do the necessary certification as approved internationally by the International Maritime Organisation (IMO) and other bodies that look into maritime issues.

Sometimes we have the problem of wrecks. Some international companies that own ships and would like to dump them because scraping them in other countries would be a problem, just sail them to our waters, leave them there to go rusty and, in the process, destroy our environment.

Once we have a maritime authority in place, such activities will no longer take place because we will be in a position to monitor the movement of ships in our waters and establish necessary controls and penalties that go with such activities.

Mr. Deputy Speaker, Sir, it is extremely important that this Bill be passed, but the greatest excitement not only to me, but also to the maritime world, is that once Kenya takes this position it will be able to train other people in rescue operations. We have already been given that offer by the IMO. The Director-General of the IMO was in the country last month. He opened the Early Rescue Centre in Mombasa. It is expected that Kenya will train people from South Africa and west African countries on marine rescue operations. However, the strength of those activities will depend on the establishment of a proper authority that will be engaged on a day to day basis in the activities of rescue operations.

That also goes with early warning systems. There are many ships that we, of course, do not see because they use the marine highway, just outside the Port of Mombasa but within Kenya's exclusive economic zone of 200 nautical miles. That is a very busy highway but there are also problems with marine highways. It is along the same highway that some ships empty their contents. This can be dangerous to us, particularly when it comes to oily substances that can be washed onto our beaches. This has happened to a small extent, before. With the empowerment that will be given to the maritime authority, proper surveillance and necessary action will be taken to ensure that our beaches which are the mainstay of our tourism industry, are not spoilt and in the process we do not suffer economically.

Mr. Deputy Speaker, Sir, there were suggestions relating to the role of the Director-General. These are points that have been taken into consideration. Of course, everything has to be done in line with many other parastatals which are already working very well, such that some of the suggestions given may look good but it would be a problem to operationalise them. For instance, there was a suggestion that the Director-General should be the Secretary to the Board. In theory, that sounds good but in practice, so long as he is the Chief Executive of the Kenya Maritime Authority, the role of a secretary becomes too narrow for the Director-General in the real sense of the word. This is an issue that will be looked into.

We will be in a position to ensure that his role is not relegated to one who just takes secretarial notes for the directors. It goes to a broader level because, as the Director-General, he will have to interact a lot with the International Maritime Authorities, just the way the Director of the Kenya Civil Aviation does with international organisations in that sector. A lot of the protocols and agreements that Kenya signs would serve as the basis of the activities of our maritime authority. That is so because maritime work has an international perspective and in many cases, some of the concerns that have been raised have already been addressed in the international agreements and protocols. The implementation of those international policies will be done to ensure that what is done in Kenya is at the same level with what is done elsewhere in the world. This can be given with many examples, but I need not do so.

Mr. Deputy Speaker, Sir, there was a mention of the problem of stowaways; people who just board ships without the authority of the ship owners and sometimes they are dumped on high seas, left to the sharks in the oceans and many of them drown. The Kenya Maritime Authority will be in a position to receive such people and the law will take its course. Right now, many Kenyan stowaways of Kenyan origin end up being abandoned in high seas, although we do not encourage this, and are thrown overboard and left at the mercy of sharks and other types of fish. However, with the establishment of the Kenya Maritime Authority, the ship captain that arrests those stowaways can take them back to the Authority for the country concerned to do the necessary legislation.

I need not continue in my reply because as I said earlier, my colleagues have given very

encouraging support to this very important Bill since it is a backbone to our economy. I would like to thank my colleagues.

At this juncture, I beg to move.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

### **POINT OF ORDER**

#### DEFERMENT OF BILLS DUE TO ABSENCE OF MINISTERS

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Deputy Speaker, Sir, the Minister did not anticipate that the debate on the Kenya Maritime Authority Bill would be through that quickly. I beg to move that the debate on these other Bills continues tomorrow. I can see we only have a few minutes. Also, the Minister for National Heritage was here just now, but he has just left because he had seen that time was running out. However, the other two Bills, namely, the HIV and AIDS Prevention and Control Bill and the Tobacco Control Bill fall under the Ministry of Health. I apologise for whatever inconvenience the five minutes may cause.

**Mr. Deputy Speaker:** Hon. Members, just for the purpose of record, hon. Ms. Karua has said that the Minister for Health is not here to deal with the two Bills. We still have five minutes to go, but owing to lack of business, we have to adjourn.

*(Bills Deferred)*

### **ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 8th June, 2006, at 2.30 p.m.

The House rose at 6.25p.m.