

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 13th May, 1997

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Annual Report and Accounts of Kenya Airports Authority for the year ended 30th June, 1994 and the certificate thereof by the Auditor-General (Corporations).

*(By the Minister of State, Office of the
President (Mr. Koech) on behalf of the
Minister for Transport and Communications)*

Annual Report and Accounts of Kenya Accountants and Secretaries National Examination Board for the year ended 30th June, 1995 and the certificate thereof by the Auditor-General (Corporations)

Annual Report and Accounts of Moi University Pension Scheme for the year ended 30th June, 1994 and the certificate thereof by the Auditor-General (Corporations)

Annual Report of Moi University Pension Scheme for the year ended 30th June, 1995 and the certificate thereof by the auditor-General (Corporations)

Annual Report and Accounts of Moi University Pension Scheme for the year ended 30th June, 1996 and the certificate thereof by the Auditor-General (Corporations)

*(By the Minister of State, Office of the
President (Mr. Koech) on behalf of
the Minister for Education)*

Annual Report and Accounts of Agro-Chemical and Food Company Limited for the year ended 30th June, 1996 and the certificate thereof by the Auditor-General (Corporations)

*(By the Minister of State, Office of the
President (Mr. Koech) on behalf of the
Minister for Agriculture, Livestock
Development and Marketing)*

Annual Report and Accounts of the National Social Security Fund for the year ended 30th June, 1994 and the certificate thereof by the Auditor-General (Corporations)

*(By the Minister of State, Office of the President (Mr. Koech) on behalf of the Minister for Labour
and Manpower Development)*

NOTICES OF MOTIONS

Mr. Rotino: Mr. Deputy Speaker, Sir, I beg to give notices of the following three Motions:-

SELECT COMMITTEE TO REVIEW
LIVESTOCK INDUSTRY

THAT, in view of the fact that livestock industries are a major undertaking for over 75 per cent of the population; realising that the industry has been neglected over the years, to the extent that livestock farmers have almost abandoned dairy and beef farming; noting that the country continues to lose a lot of foreign exchange through the importation of dairy and beef products, this House resolves to establish a select committee to study and recommend viable methods of revitalising the livestock industry and in particular the revival of Kenya Meat Commission and the establishment of livestock marketing centres in all primary livestock producing districts such as Turkana, West Pokot, Samburu, Marsabit, Laikipia, Isiolo and Garissa.

REMITTAL OF POWER REVENUE
TO POKOT COUNTY COUNCIL

THAT, while appreciating the Government efforts in the socio-economic development of the disadvantaged districts; bearing in mind the limited resources of revenue by those districts and noting that local authorities find it extremely difficult to run the councils because of financial constraints and bearing in mind the limited resources available through the Exchequer, this House urges the Government to remit 5 per cent of the total revenue earned from the sale of power generated from the Turkwel Dam owned by Kerio Valley Development Authority to Pokot County Council.

ENHANCEMENT OF COUNCILLORS' ALLOWANCES

THAT, while appreciating the Government's efforts in assisting local authorities to run their day to day activities and bearing in mind that the councillors do work in the locations and wards and while noting that the cost of living in Kenya has risen threefold since 1992, this House urges the Government to increase the councillors' allowances from the current Kshs3,600 per month to Kshs15,000 and backdate it to July, 1996.

Mr. Sifuna: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motions:-

PAYMENT OF SALARIES AND
ALLOWANCES TO COUNCILLORS

THAT, noting the great concern; the financial problems that face most of the local authorities in this country and noting that councillors like Members of Parliament are elected by the taxpayers, this House resolves that:-

- (a) The Central Government pays salaries and allowances to councillors and chief officers of local authorities.
- (b) The revenue from the councils and service charges be strictly used for maintaining services in the councils and payment of salaries for junior staff

RE-REGISTRATION OF CIVIL SERVANTS UNION

THAT, noting with great concern the problems that most civil servants get when dealing with employment disputes with the Public Service Commission, this House urges the Government to recognise their need and re-register the Civil Servants' Union.

NON-APPROVAL OF POWER
COMPANY LOAN GUARANTEE

Mr. Mulusya: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House resolves not to grant approval to the proposed Government Guarantee of a loan to the Kenya Power Company Limited for Sondu Miriu Hydro-electric Project as contained in the Sessional Paper No.3 of 1997 laid on the Table of the House on 6th May, 1997 and dated 8th May, 1997.

ORAL ANSWERS TO QUESTIONS

Question No.069

COMPENSATION TO WORLD WAR VETERANS

Mr. Murungi, on behalf of **Mr. Muite**, asked the Minister of State, Office of the President:-

(a) whether he is aware that Kenyans of European/Asian origins who fought in the 1st and 2nd World Wars were compensated and that Kenyans of African origin who fought in the same wars have never been compensated; and,

(b) what measures the Government is taking to compensate those who fought in the 1st and 2nd World Wars and are still alive.

The Minister of State, Office of the President (Mr. Koech): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) Kenyans of African origin who fought in the 1st and 2nd World Wars were compensated by the British Government. Available records show that the War Discharge Book indicates that they were paid what was owed to them in return for their war service. However, should there be any Kenyans who were not paid their dues, the Government is prepared to take up their claims for compensation with the British Government.

Mr. Murungi: Mr. Deputy Speaker, Sir, the Minister says he is not aware but I have with me here a list of 12 World War II veterans from Kikuyu Constituency who were not paid compensation and whose names we are now giving to the Minister, so that he can take up the claims with the British Government. I do not wish to read the 12 names but I will lay the document containing the names on the Table. In the same vein and the good gesture which the Minister has shown, could the Minister also consider compensating other war heroes in the country - especially those who fought for Independence like Bildad Kaggia who are living in abject poverty - so that it is not only the British Government which is paying compensation, but our African Government also recognises and compensates our own heroes?

(Mr. Murungi laid the document on the Table)

Mr. Koech: Mr. Deputy Speaker, Sir, quite a good number of Kenyans had settled in the former European lands. I believe if there was any genuine claim earlier than 1980s, it could have been settled.

Mr. Kamuyu: Mr. Deputy Speaker, Sir, could the Minister tell this House the total amount paid to the First and Second World War Kenyans to date? I also want to know the procedure to follow, to present claims for my ageing father who fought in the Second World War and has never been paid to date.

Mr. Koech: Mr. Deputy Speaker, Sir, it is generally known that in a war situation, compensations are very difficult to pay. We must know that during the war, it was the British Government which was paying its citizens, which included the Africans. When the war ended, we have shown that these people signed in their books that they were given something. Some of them were compensated by being given clerical jobs. They might not have been paid much, but this was an agreement between the British Government and its own citizens at that particular time.

Mr. Obwocha: Mr. Deputy Speaker, Sir, the Minister is not answering the question. I too, on behalf of my father, would like to know the procedure. He is a veteran of the Second World War. He has not been paid his dues.

Could the Minister tell this House what procedure we should follow to get this money for these old men who worked tirelessly on behalf of the British Government?

Mr. Koech: Mr. Deputy Speaker, Sir, the war veterans worked for the British Government as British subjects. After the war, they were given some form of compensation. I do not agree that they were given the best compensation. But this was between the British Government and those particular citizens.

Mr. Moiben: On a point of order, Mr. Deputy Speaker, Sir. The Minister is saying that the veterans were likely to have been paid. Unfortunately, the case is not true. There is a case of my late grandfather who only came home with a pair of tyres and nothing else. What procedure can we follow to claim their dues? They were never paid anything at all, but just a pair of tyres!

Mr. Koech: Mr. Deputy Speaker, Sir, as I said before, the discharge books indicated that they were paid something. It is one thing to say that they were not given fair compensation. But during the colonial time, what

was given by the colonialists was fair, according to them.

Question No. 026

PROHIBITION OF *AFRICA CONFIDENTIAL*

Mr. Kamuyu asked the Minister of State, Office of the President why the Government prohibited the sale of the periodical *Africa Confidential* in Kenya.

The Minister of State, Office of the President (Mr. Kalweo): Mr. Deputy Speaker, Sir, I beg to reply. The Government has never prohibited the sale of the periodical *Africa Confidential*.

Mr. Kamuyu: Mr. Deputy Speaker, Sir, that is not correct. You are aware that the *Africa Confidential* writes in detail about corrupt dictators in Africa, and the Government has refused to facilitate the importation of this periodical, although they claim that it is free.

Can the Minister tell us why, in all Kenyan bookshops, vendors, kiosks and even in the archives, you will not find the *Africa Confidential*?

Mr. Kalweo: Mr. Deputy Speaker, Sir, this paper is mailed to individual subscribers and we have no knowledge of anything. So, it is up to the people who subscribe to it because it is mailed to individual people. So, whether it is mailed to the individuals or not, it is not our concern. But so far, I do not know of any time that we have prohibited the sale of this periodical.

Mr. Murungi: Mr. Deputy Speaker, Sir, we are happy with the answer given by the Minister, that the Government has no problem with *Africa Confidential*. Since this is the case, can the Minister tell this House that the Government has no problem with the Librarian of Parliament stocking copies of *Africa Confidential* so that hon. Members can be reading it?

Mr. Kalweo: Mr. Deputy Speaker, Sir, I do not know how to answer that question because it should be directed to the Speaker and not me. I do not know about Parliament.

Mr. Kamuyu: On a point of order, Mr. Deputy Speaker, Sir. The Minister is evading the question from hon. Murungi. If, indeed, this is free and it is not cosmetic, can he with immediate effect, authorise the Librarian to start stocking the *Africa Confidential* here and now? I am asking the Minister this, through you, Mr. Deputy Speaker, Sir.

Mr. Kalweo: Mr. Deputy Speaker, Sir, I think this is a difficult situation. We have the *East African Standard* and the *Daily Nation*. But it is not for my office to know what is kept in the Library. It is this House, the Speaker and the Clerk of the National Assembly. So, if it is free for them to do so, they can do so, but not through my office.

Dr. Lwali-Oyondi: Mr. Deputy Speaker, Sir, arising from the answer given by the Minister, could I from today, start taking the necessary papers to hon. Members so that they can import all the past copies of the *Africa Confidential* and put them in the library here?

Mr. Kalweo: Mr. Deputy Speaker, Sir, that is a personal problem and not my problem.

An hon. Member: Does the Chair have any problems with the periodical?

Mr. Deputy Speaker: The Chair has no problem with any periodical!

An hon. Member: The Chair does not even have time to read any articles in the library!

Mr. Deputy Speaker: No! No! No! I have been reading *Africa Confidential* for many more years than you can imagine. Next Question!

Question No. 107

BEEF EXPORT QUOTAS TO EEC

Mr. Deputy Speaker: Is Dr. Otieno-Kopiyo not here? We will leave his Question until the end. Let us move on to the next Question.

Question No. 009

COLLECTION OF LAND RATES

Mr. Githiomi asked the Minister for Local Government:-

(a) whether he is aware that Nyandarua County Council has commissioned lawyers to demand land rates from farmers in Kipipiri Constituency;

- (b) if the answer to "a" above is in the affirmative, the amount of money the Council has paid to the said lawyers; and,
- (c) whether he could establish a litigation office in Nyandarua County Council to deal with matters pertaining to land rates and subsequently, save the farmers from paying extra money in form of legal fees to the lawyers who have been commissioned.

The Minister for Local Government (Mr. F.P.L. Lotodo): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Nyandarua County Council has commissioned one lawyer on a one-year contract as from June, 1996 to recover outstanding rates of Kshs39,170,514.08 as at 31st December, 1995. The lawyer has sent out demand notes to all defaulters in the district, and not only in Kipipiri Constituency. The Council engaged the services of the lawyer since defaulters had ignored bonds issued to them earlier on.

(b) So far, the Council has recovered Kshs6,500,000 and this lawyer has been paid Kshs520,000 as fees.

(c) The Council will create the post of a counsel if the need arises, since it would be expensive to create that post at the moment.

Mr. Githiomi: Mr. Deputy Speaker, Sir, thank you very much for the answer that has been given by the Minister whom I really respect. We have a problem in Nyandarua because this lawyer, the only thing he does is to sign the notices, and the notices are normally taken to the farmers by the enforcement officers. That is why we are requesting that we form a litigation office in Nyandarua so that, that will save farmers from paying this lawyer.

In actual fact, it was a deal between this lawyer and the former Nyandarua County Council Chairman who gets a share of the money that is normally paid by the farmers. I urge the Minister to, at least, employ one lawyer in Nyandarua County Council who can be signing these notices instead of the lawyer just signing them and being paid Kshs520,000 out of Kshs6 million which the farmers have paid. Could the Minister do so?

Mr. F.P.L. Lotodo: Mr. Deputy Speaker, Sir, that is a good suggestion, but the Council is not in a position to do that at the moment, maybe, at a latter stage.

Mr. Ruhii: Mr. Deputy Speaker, Sir, I agree with the hon. Githiomi. Although this lawyer gets a share of the money, is the Minister aware that last year Nairobi City Council was ripped off millions of shillings by lawyers who were commissioned by the council to collect rates in Nairobi? What is the Minister doing to ensure that this work is given to reputable lawyers so that what they collect is delivered without withholding even a cent to the Local Authorities?

Mr. F.P.L. Lotodo: Mr. Deputy Speaker Sir, the Minister is not aware of that. Secondly, I am dealing with Nyandarua, County Council not Nairobi City Council. If he asks a Question about Nairobi City Council next week, I will answer him.

Mr. Mulusya: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to state here that he does not know that Nairobi City Council was "robbed" of millions of shillings when his predecessor tabled in this House the list of lawyers who have defrauded the Nairobi City Council of millions of shillings and some Cabinet Ministers were in that list?

Mr. F.P.L. Lotodo: Mr. Deputy Speaker, Sir, hon. Mulusya should know how to ask questions. I am dealing with Nyandarua County Council and not Nairobi City Council. When he puts a Question about Nairobi City Council, I will answer that.

An hon. Member: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Order! With all due respect, hon. Members, I think on this issue the hon. Minister is right; supplementary questions must relate to the main Question. If you ask a Question about Nyandarua County Council and you ask a supplementary question about Nairobi, it will be unfair "ambushing" the Minister. If the Minister feels he is competent and ready to answer, fine! He is welcome! But if he says "This is a question I could not have foreseen", he is entitled not to give the answer to that question!

Dr. Lwali-Oyondi: On a point of order, Mr. Deputy Speaker, Sir. My point of order is that you heard hon. Mulusya state that among those who ripped-off millions of shillings from the Nairobi City Council was a hon. Minister. Could he substantiate that?

Mr. Mulusya: Mr. Deputy Speaker, Sir, I have been challenged---

Mr. Deputy Speaker: Order! Order! I think I am very familiar with the subject and I think the hon. Members should be careful here. I think you too know the subject very well. I was here when the list was tabled and I remember there was a name which read like the name of the officer presiding over the House there then and he inquired. It was a similar name, but not the same and, likewise, I think as for the name you mentioned everybody knows which is the lawyer he is referring to. So, I do not think that in a cheeky manner you should force a violation of the Standing Orders which you know protect hon. Members like you in the House.

Next Question, Mr. Obure.

Question No.286

DISMISSAL OF MS ANGWENY

Mr. Obure asked the Minister for Labour and Manpower Development:-

(a) if he is aware that Ms Euniah Nyanjama Angweny, Personal Number 775, was dismissed from Oserian Development Company Limited having served as a casual worker for a period of 14 years;

(b) if he is further aware that Ms E.N. Angweny was given 12 hours notice to vacate the company house; and,

(c) if the answer to "a" and "b" above are in the affirmative, what steps he is taking to ensure that Ms E.N. Angweny is reinstated or paid full terminal dues.

The Minister for Labour and Manpower Development (Mr. Masinde): Mr. Deputy Speaker, Sir, I beg to reply.

(a) First of all, this lady was not employed on casual basis because anybody who works on a casual basis cannot have staff number. However, according to available records, she served on permanent terms and her services were terminated because she was found with an illicit brew in the labour camp, a thing that had been forbidden.

(b) Yes, I am aware that she was ordered to leave the camp upon termination of her services.

(c) I believe the lady was properly terminated and, therefore, there is no need to order for her reinstatement.

Mr. Obure: Mr. Deputy Speaker, Sir, Ms E.N. Angweny had worked for 14 good years in this company. On the material day, the lady was carrying a white *kibuyu* with water from the river because there was no water in that compound. Since she was not in good terms with the management, she was a victim of circumstances that were not of her choice. If the lady was drinking an illicit beer, she could not have worked for 14 years without being caught. The lady was chased away like a dog. Her children and all her belongings were left in the house. The Minister says here that the management is paying her due benefits.

How much is she being paid?

Mr. Masinde: Mr. Deputy Speaker, Sir, in fact, she has been paid almost like somebody being declared redundant which, under normal circumstances, are better terms than termination. However, although she was supposed to be summarily dismissed, she was terminated and paid a salary of one and half months in lieu of notice. She was paid for 13 days which she had worked, paid leave that had not been taken, paid one way travelling allowance and given service pay at 15 days per year completed. The amount was substantial. However, she had borrowed Kshs14,000 from the co-operative and this was deducted from the final dues. I think there has been a ruling in this House before by the Speaker that we really do not have to mention how much an individual was paid. But here since she had already been paid, the balance that she was given was Kshs7,294.

Mr. Obure: Mr. Deputy Speaker, Sir, you have heard for yourself how Kenya communities are suffering under the auspices of this Government. A lady has worked for 14 good years and yet her final dues are Kshs7,000. Imagine such an amount being paid to a person who has children and a family to feed? She cannot get something better from that company. Now, what is the cheque number and when was that cheque paid to Ms. Angwenyi?

Mr. Masinde: Mr. Deputy Speaker, Sir, she has been informed to pick her money from our Naivasha Labour Office. I do not know whether she has picked her money or not. If she has not picked the money, she can go to Naivasha and pick it since her money is there.

Mr. Deputy Speaker: Mr. Minister, the hon. Obure was asking for the cheque number. Do you have it?

Mr. Masinde: Mr. Deputy Speaker, Sir, I do not have the cheque number here but the money is available. If she goes to our Naivasha Labour Office, she will get her money; amounting to Kshs7,294. I do not know whether it was given to the office by way of cheque or in hard cash form. But our office has got the money.

Hon. Members: On a point of order, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: Hon. Members, I think we have exhausted the answers to that Question. You are at liberty to come back later. Question 103, Mr. Obwocha!

Question No.103

CREATION OF EMPLOYMENT OPPORTUNITIES

Mr. Obwocha asked the Minister for Labour and Manpower Development that in view of the

increased number of school leavers, college and university graduates, what plans does the Government have in the current labour market to provide employment opportunities.

The Minister for Labour and Manpower Development (Mr. Masinde): Mr. Deputy Speaker, Sir, I beg to reply.

The Government is fully committed to the generation of more productive employment opportunities for the increasing number of school, college and university graduate leavers by formulating policies and plans which are aimed at promoting rapid and sustainable economic growth as an overall employment strategy. The specific plans geared towards providing employment opportunities include far-reaching reforms in the agricultural sector and we have had here, in the recent past, a Sessional Paper to that effect. There is also the small-scale and *Jua Kali* sector. We have also had Sessional Paper No.2 of 1992 on Small Enterprises and *Jua Kali* Development in Kenya. We have also had Export Processing Zones which have also helped in creating employment. There is also the Investment Promotion Centre (IPC) for advising the possible members who wish to invest in this country. The Government has also initiated the National Youth Development Fund (NYDP) and at the moment it is organising to have a harambee for women groups. This is all geared towards the creation of employment for Kenyans; as employed workers or self-employed workers.

The Government is also trying as much as possible, to assist where possible, to enable Kenyans to secure employment opportunities outside this country and assist those with the proper qualifications to secure these jobs in other countries.

Mr. Obwocha: Mr. Deputy Speaker, Sir, Kenyans know that one of the biggest problems in job creation has arisen because the Government has established a flawed education system. The Minister has elaborated the areas they are going to look into in order to create more job opportunities. But the Report of the Presidential Committee on Employment by the late Philip Ndegwa produced in 1991 entitled "A Strategy for Transformation of the Economy" indicated that in 1990 there were seven million Kenyans who were in employment and projected that nine million Kenyans would be employed by 1996. Could the Minister now tell this House how many Kenyans are employed in various fields like traditional agriculture, rural land farms and other sectors that these projections estimated?

Mr. Masinde: Well, Mr. Deputy Speaker, Sir, in general, especially in the salaried employment, we must be having slightly over two million employees. These exclude the self-employed and those that are employed in small agricultural enterprises. We must realise also that unpredictable situations in the country, like the recent drought that we have had and the structural adjustment programmes (SAPs), have also interfered with the normal generation of employment in the country and the Government is trying its best to make sure that the situation is stabilised.

Mr. P.N. Ndwiga: Mr. Deputy Speaker, Sir, is it not true that in fact, the EPZ which the Minister is claiming is one area where the Government is trying to generate employment, have been successful because people have been sacked from it and it is actually a failure? Is it also not true that one of the major causes of lack of employment in this country is poor infrastructure in the countryside? There are no roads and thus the agricultural sector is not creating new employment because farm produce cannot reach the market. Is that not true?

Mr. Masinde: Mr. Deputy Speaker, Sir, I have actually mentioned some of the things that have interfered with the normal employment creation and my hon. colleague has just done a good thing to give one of the reasons for this sorry state of affairs which is poor infrastructure which the Government is handling.

Mr. Kiliku: Mr. Deputy Speaker, Sir, could the Minister clarify what kind of employment he is talking about? This is because we have two categories of employment; that is wage employment and self-employment. What he has talked about right now is self-employment; that is the *Jua Kali* and the informal sector. Could he clarify that?

Mr. Deputy Speaker: One question at a time, hon. Kiliku! Are you still on that question?

Mr. Kiliku: Yes, Mr. Deputy Speaker, Sir. The Minister was misleading us by saying that the Government is committed to creating employment. This is because the so-called World Bank and International Monetary Fund conditions which the Government has bowed to have led to a reduction of the workforce in the Civil Service and in the parastatals. So, the Government is working against its own policy.

Mr. Masinde: Mr. Deputy Speaker, Sir, I thought that was just a comment. I did not see what the question was all about. This is because if he is talking about the World Bank conditions and the Structural Adjustment Programmes which I had mentioned earlier, then he is just repeating what I said and I do not know what the hon. Kiliku wants to know.

Mr. Obwocha: Mr. Deputy Speaker, Sir, the Minister gives the small-scale enterprises and *Jua Kali* sector as one area where the Government wants to create more jobs. But this House knows that the same

Government has created chaos in the *Jua Kali* sector by way of not solving the current crisis in the union that manages this *Jua Kali*. Could the Minister assure this House that he is going to contact his colleagues in the Ministry of Research, Technical Training and Technology to resolve the issue of the *Jua Kali* sector leadership?

The Assistant Minister for Home Affairs and National Heritage (Mr. Mutiso): On a point of order, Mr. Deputy Speaker, Sir. I really hate to see hon. Maore trying to interrupt the hon. Member who is on the Floor. He crossed between you and him, and you could not see him---

Mr. Deputy Speaker: He is lucky I did not see him! I hope he stands reminded that he is out of order.

(Laughter)

Mr. Masinde: Mr. Deputy Speaker, Sir, I am sure that the *Jua Kali* sector is doing a commendable job in helping to create employment opportunities. I am also aware that there is a problem in its own management. But the people of *Jua Kali*, like any other employers, have a right to form their own associations and see how best to handle them. For that reason, I do not see why the Government should come in seriously, although I am aware that my colleague in the Ministry concerned has tried to solve that problem. In fact, even the late Minister, hon. Dr. Onyonka, tried to mediate and let the feuding parties come to a compromise and run their businesses properly. In fact, we have tried.

Question No.328

PROSECUTION OF SELF-CONFESSED WITCHES

Dr. Kituyi asked the Attorney-General what action he has taken to reprimand and charge self-confessed witches who claimed on oath that they had practised witchcraft in the run up to the last general elections in Webuye Constituency.

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

The court in election petition No.64 of 1993, between Joseph Maloba Elima and Charles Ohare, and Musikari Kombo, requested the Attorney-General to investigate two witnesses, namely, Elly Khamala Wanyama and Simon Bilet Wawire, who, during the hearing confessed that they were witchdoctors contrary to the provisions of Cap.67 of the Laws of Kenya.

Pursuant to those directives by the court, the Attorney-General duly instructed the Director of Criminal Investigation to investigate the matter. I am yet to receive the investigation file.

Dr. Kituyi: Mr. Deputy Speaker, Sir, I am not a lawyer and I stand to be advised about the magic of the legal process. Cap.67(2) and(3) of the Witchcraft Act states:-

"Any person who holds himself out as a witchdoctor shall be guilty of an offence. Any person professing a knowledge of the so-called witchcraft shall be guilty of an offence punishable by five and 10 years in jail, respectively".

Mr. Deputy Speaker, Sir, that is not about a person who is investigated and found to be practising witchcraft, but a person who holds himself out to be a witchdoctor. I have two copies of the affidavits sworn and delivered in the High Court of Kenya. One, Elly Khamala Wanyama said: I, Elly Khamala Wanyama, identity card No...., address ..., Bungoma, within the Republic of Kenya make oath and state as follows:- "one, that I am a witchdoctor. Two, on 23rd December, 1992, I helped one Francis Wafula also a witchdoctor".

The second affidavit of Mr. Simon Bilet Wawire also sets out in exactly the same language. After declaring his name, identity card number and address in Bungoma in the Republic of Kenya, I make oath and state as follows:-

"One, that I am a witchdoctor. Two, on 24th December, 1992, Elly Khamala, a fellow witchdoctor, sought my assistance".

Mr. Deputy Speaker, both of these men were saying in a court of law that they were witchdoctors and that also they were assisting somebody to carry out witchcraft, contrary to Cap.67. It is also very clear if you look at Cap.66(9) about undue influence under corrupt practices:-

"Every person shall be guilty of the offence of undue influence who directly or indirectly by himself or by any other person on his behalf makes out threatening---"

They describe how to make the mistake politically. The court of law was satisfied that these were honest people and in the ruling of the petition court, I will just quote one sentence: "We saw and heard the witnesses

give evidence and these witnesses struck us as simple, straight forward, rural men, hardly capable of concocting or maintaining a made-up story of nature". That means that the learned court was satisfied that these men were speaking the truth when they said that they were witchdoctors and they were practising witchcraft. On the basis of that, what investigations has the Attorney-General been undertaking for the last four years when all the relevant evidence was available on oath in the High Court in Nairobi? What is it that has taken all this time for the Attorney-General to find out what was submitted in the High Court in an affidavit by the two witchdoctors?

(Applause)

Mr. Wako: Mr. Deputy Speaker, Sir, it is true that those two affidavits were sworn in the High Court. It is also true that the two men were cross-examined in court. It is also true that the judgement referred to those two people is as has been read in this august House by the hon. Questioner. But one has to go to the very end of the judgement to find out exactly what the Attorney-General was supposed to do. What was the Attorney-General supposed to do? After the affidavits had been read and after the two men had been cross-examined in court and so on, at the very end of the judgement on page 20, when they come to the conclusion, they direct me to investigate.

Mr. Deputy Speaker, Sir, as you know, when the court is hearing these matters, they direct me and it is I, to obey the orders of the court. The court says that the two individuals stated that they were witchdoctors. So, the court did not question the fact that the two stated that they were witchdoctors. They also said that they were licensed to practise traditional medicine by the Government. "These witnesses could not be licensed to practise witchcraft since they cannot be licensed to do that which is prohibited by law. We would like to think that they are herbalists or traditional medicinemen and it would appear that the line between "traditional hearers" and "witchdoctors" is not very clear, but we shall leave that to the Attorney-General to investigate". So, I am investigating the line between the witchdoctors and the traditional medicinemen, and investigations are continuing, as soon as I get the file, I will take appropriate action.

(Laughter)

Mr. Murungi: Thank you, Mr. Deputy Speaker, Sir. The provisions of the Witchcraft Act Cap.67 are quite clearly. In fact, Cap.67(9) provides that the District Commissioner can remove a suspected witchdoctor from one part of the district and order him to live in another part of the district, but under his supervision. But District Commissioners do not do these things because some of them are afraid of the witchdoctors. Can the Attorney-General confirm or deny to this House that the reason why he has not done these investigations for the last four years is because he, himself, is afraid of the witchdoctors?

(Laughter)

Mr. Wako: Mr. Deputy Speaker, Sir, I emphatically deny that I am afraid of the witchdoctors. In fact, I am not afraid of anybody under the sun, but only God, I respect.

Dr. Kituyi: Mr. Deputy Speaker, Sir, in his supplementary reply, the Attorney-General tells this House that he is investigating this issue. That may be of academic interest to him, but it is not my concern in my Question. My question is about what action he has taken against persons who have confessed on oath in a court of law, that they practised witchcraft. The provisions of the relevant Act state that any person who claims that he is a witch doctor, or that he influences people through witchcraft, is guilty of an offence. Since those people have claimed on oath in a court of law that they are witch doctors and practise witchcraft--- Apart from his interest in investigating the boundary, maybe among the Bakhayo, between witchcraft and traditional medical practice, can the Attorney-General tell the House what he has specifically done in the matter of an obvious crime that has been committed?

Mr. Wako: Mr. Deputy Speaker, Sir, I have answered that question: The claims were made in a court of law. The court heard witnesses, who were crossed-examined in the court. The court itself was doubtful as to whether or not what the witnesses were saying was true. Were they traditional herbalists or witches? The Attorney-General was asked to investigate that point. Obviously, if the results of the investigations show that the witnesses were actually witch doctors I will prosecute them.

Dr. Kituyi: On a point of order, Mr. Deputy Speaker, Sir. Is the Attorney-General in order to mislead this House about whether the court was satisfied that people had practised witchcraft or not, when an hon. Member

of this House lost his parliamentary seat on conviction for facilitation of witchcraft? If there was no clarity in the court of law that there was witchcraft, Mr. Musikari Kombo would still be in this House. The fact that he lost his parliamentary seat on the ground of practising witchcraft means that there was practice of it, in the view of the court. Why is the Attorney-General meandering about the boundary between traditional medicine and witchcraft when we are asking him to follow the logical conclusion of the court, that witchcraft was involved and charge the witches in a court of law?

Mr. Wako: Mr. Deputy Speaker, Sir, the orders of the court were very clear, and I have read them out before this House. Pursuant to those orders of the court, I have instructed the Commissioner of Police to investigate the matter, but I am yet to receive the investigation report.

Mr. Deputy Speaker: Mr. Ruhii's Question.

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

Mr. Deputy Speaker: Order! We have moved from Question No. 328 to Question No.113 by hon. Ruhii.

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

Mr. Deputy Speaker: Disallowed! We have spent one hour on Questions and have not come to Questions by Private Notice. That is actually very poor management of parliamentary time, which, I think, is partly due to my fault. Yes, Hon. Ruhii.

Question No.113

BRUTAL ASSAULT ON MR. NGUGI

Mr. Ruhii asked the Attorney-General:-

(a) whether he is aware that Mr. Christopher Kamoni Ngugi was on 3.2.90 assaulted and shot while in police cells at Buru Buru Police Station until he lost consciousness and that up to now he has a bullet lodged in his body;

(b) whether he is further aware that Mr. Ngugi requires special surgery to remove this bullet from his body as his health is deteriorating rapidly; and,

(c) whether he could inform the House what circumstances led to this brutal assault and why the civil case No.2313 of 1992, Nairobi, has not been heard and determined.

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

(a) Yes I am aware the Mr. Christopher Kamoni Ngugi was on the night of 3.2.90 shot while attempting to a escape from police custody at Buru Buru Police Station. But I do not know that up to now he has a bullet lodged in his body.

(b) I am not aware.

(c) Mr. Ngugi was attempting to escape from lawful custody when he was shot. Mr. Ngathi Irungu, an Advocate of Kituo cha Sheria, filed, in the Chief Magistrates Court, Civil Case No.2313 of 1992 on behalf of Mr. Ngugi as plaintiff on 27.3.92. The said advocate has yet to move the court to hear and determine the case.

Mr. Ruhii: Mr. Deputy Speaker, Sir, I am not surprised that the Attorney-General has given such a misleading answer to this House. The fact of the matter is that Mr. Ngugi went to Buru Buru Police Station to seek protection from muggers. It was in the evening at 8.00 pm. He was given shelter and told that he would be escorted to Buru Buru Estate later. But on leaving the station at about 10.00 a.m. he was mistaken for a suspect who had been locked up in the cells. As a result, he was shot at point-blank, at the police station. One and a half years later, he was hospitalised and examined at Kenyatta National Hospital. The surgeon made his observations as follows:-

"Examination on the patient noted him to be in a fair general condition. He was mildly pale.

There was noted a bullet hole of entry on the right posterior of the chest.

Mr. Deputy Speaker: Mr. Ruhii, ask your question.

Mr. Ruhii: Mr. Deputy Speaker, Sir, I wanted to show that, as the doctor at Kenyatta National Hospital said, there is a bullet lodged in Mr. Ngugi's chest.

Mr. Deputy Speaker: And you will lay the document you are reading from on the Table.

Mr. Ruhii: Mr. Deputy Speaker, Sir, I am not satisfied with the answer read out by the Attorney-General because it was given to him by the police, who want to cover up the case. This patient is suffering immensely because there is a bullet inside his chest. Can the Attorney-General ensure that further investigations are conducted with a view to compensating this very unfortunate member of my constituency?

Mr. Wako: Mr. Deputy Speaker, Sir, as the hon. Member knows, a civil case has been filed and during its hearing the issues of liability and compensation will be canvassed. As I have said, the plaintiff's advocate has not taken any step to have the case heard and determined. Therefore, as far I am concerned, at this stage the matter is *sub judice*

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. This is the Attorney-General of the Republic of Kenya. His main job under the Constitution is to investigate cases and institute prosecutions where necessary. An hon. Member of this House has asked a Question, in which he requires the Attorney-General to investigate a case. But the Attorney-General comes here and tells this House that he is not aware that this man has a bullet in his body. The hon. Member has come up with documents to prove that the Attorney-General is wrong. Are the Chair and the House satisfied that the Attorney-General has done what he was required to do? He has not investigated the case, but instead has taken the word of the police, who themselves are responsible for that illegal action. How safe are we?

Mr. Wako: Mr. Deputy Speaker, Sir, the Attorney-General cannot be wrong if he was not aware of what is alleged. Secondly, the fact of the matter is that there is a case pending before a court, at which all these issues will be canvassed. I would request that the advocate concerned moves fast on the case. We are prepared to discuss and see whether we can reach an amicable settlement of that case. That is my advice to the hon. Member.

Mr. Deputy Speaker: Dr. Otieno-Kopiyo's Question for the Second Time.

Question No. 107

BEEF EXPORT QUOTAS TO EEC

An hon Member: He is not in yet!

Mr. Deputy Speaker: Dr. Otieno-Kopiyo still not in? Question dropped.

(Question dropped)

Mr. Shikuku: On a point of order, Mr. Deputy Speaker, Sir. I would like to lay a letter on the Table of the House. Hii barua inayosema kwamba daktari amesema kuwa Bw. Ngugi ana risasi katika kifua chake. Ninataka kumsaidia mhe. Ruhui kuiweka katika Meza, ili Mkuu wa Sheria aweze kuisoma.

Mr. Deputy Speaker: Namekupatia ruhusa ufanye hivyo.

(Mr. Shikuku laid the letter on the Table)

QUESTIONS BY PRIVATE NOTICE

IMPLEMENTATION OF SOCIAL
DIMENSION PROGRAMME

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

(a) In view of the famine which has hit most of the northern Kenya Districts, resulting in great losses of Livestock, which is the economic backbone of those areas, could the Minister state how much money has been allocated to Samburu District to alleviate general poverty, under Social Dimension Programme?

(b) Could he further state the on-going and/or intended projects under the same programme and the cost of each project in Samburu East?

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

(a) The Government has allocated Kshs145 million to Samburu District under the Social Dimensions Development Programmes to alleviate the general poverty.

(b) The following are the on-going programmes in Samburu East: Famine Relief which has now spent 14,666 bags of maize worth Kshs19,972,400; one tonne of seeds worth Kshs210,342; bursaries to needy students worth Kshs305,739.60; school feeding programmes costing Kshs20 million; essential drugs worth Kshs1 million; rehabilitation of dams at the cost of Kshs745,916; purchase of one generator set worth Kshs100,000, a restocking programme at the cost of Kshs1.2 million, support of women groups at a cost of Kshs113,000, food worth Kshs1.5

million and, the training and marketing of livestock at the cost of Kshs100,000.

The constituency will also benefit from Kshs4.9 million already allocated to the district under the National Youth Development Programme and the following are the intended projects under the same programme: Water Development programmes estimated to cost Kshs16.5 million; livestock programmes estimated to cost Kshs4.4 million and health projects estimated to cost Kshs12 million. The details of all the projects are here appended.

Mr. Leshore: Mr. Deputy Speaker, Sir, Samburu District and other northern Kenya districts have been adversely affected by drought during the year 1996. I specifically asked this Question because we depend on livestock and there is famine and drought which have resulted into severe shortage of water and diminishing grazing land for our cattle and camels. Could the Assistant Minister tell us what he intends to do to make the right policies on marketing because we have suffered greatly due to lack of a market for our animals?

Mr. Manga: Mr. Deputy Speaker, Sir, that is why the Government has allocated some money for a training course on marketing which as I have said, is costing Kshs100,000.

Mr. Falana: Mr. Deputy Speaker, Sir, there are two classes of people who have been victims of these droughts; the crop farmers and livestock farmers. The Government has done something about the crop farmers because they have been given food-crop seeds. What is the Government planning to do for the livestock farmers whose livelihood depends on milk, meat and even blood, in some cases, to keep them going? This has contributed to insecurity in this country because the able people whose livestock have died are going for the few livestock which have survived anywhere in the country. What is the Government doing to assist or restock the livestock farmers who have been very unfortunate to lose all their livestock?

Mr. Manga: Mr. Deputy Speaker, Sir, under this programme, the Government is spending Kshs1.2 to restock the animals. Moreover, to make sure that there is water for the livestock, the Government is rehabilitating dams.

Mr. Falana: On a point of order, Mr. Deputy Speaker, Sir. The problem is not only in Samburu District, it is a national issue. Could the Assistant Minister tell this House what plans the Government has to solve the problem for the unfortunate livestock farmers nationally, and not just in Samburu District only? He is dwelling only on the Samburu District.

Mr. Manga: Mr. Deputy Speaker, Sir, I am now answering a Question on Samburu District. However, I can also say that what is applying to Samburu District is applying to all arid and semi- arid areas.

Mr. Deputy Speaker: Mr. Mwangi Gichuki's Question by Private Notice.

PROVISION OF AFC LOANS

(**Mr. Gichuki**) to ask the Minister for Agriculture, Livestock Development and Marketing the following Question by Private Notice.

(a) Is the Minister aware that the farmers in Nyandarua and Laikipia districts particularly in Ol kalau, Ol Joro-Orok, Ndaragwa and Rumuruti Divisions have prepared their land ready for planting during the current rainy season?

(b) Is he further aware that most of the farmers are poor with meagre resources and are wholly dependent on loans that were previously provided by the Agricultural Finance Corporation?

(c) In order to prevent another famine occurrence in these division, could the Minister direct the management of the Agricultural Finance Corporation to immediately give loans to enable the farmers purchase farm inputs farms such as seeds and fertilisers?

Mr. Deputy Speaker: Mr. Mwangi Gichuki not here? The Question is dropped.

(Question dropped)

RE-ALLOCATION OF PUBLIC UTILITY PLOTS

Mr. Anyona: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands and Settlement the following Question by Private Notice.

(a) Is the Minister aware that the following land parcels in Manga Settlement Scheme (No.88) in Borabu Division of Nyamira District allocated for public utilities have been re-allocated to private developers: P.I. No.319, allocated to the local community in 1993 for the development of Mebeno Primary School and P.I. Mo.821 (337), set aside for a water dam for animal and domestic use by the local community?

- (b) Who authorised the re-allocation of the land parcels to private developers?
- (c) Will the Minister give the names of the private allottees and cancel the re-allocation?

The Minister for Lands and Settlement (Mr. Ngala): Mr. Deputy Speaker, Sir, before I reply, I would like to make some correction in part "C"; the year "1962" therein should read 1992.

I beg to reply.

(a) According to the records held in my Ministry, the status of the plots Nos.319 and 821 in Manga Settlement Scheme is as follows:-

Plot No.319 was allocated to one Mrs. Nyaboke Nyakundi, ID No.2753656/3 in 1993 on recommendation from Nyamira District Development Committee under Minute No.9/93 of the meeting held on 4th June, 1993.

Plot No.821 has not been allocated to an individual and is still a Government property after the residents failed to acquire it through Manga Farmers Co-operative Society.

(b) The re-allocation of plot No.319 was recommended by the Nyamira District Plot Allocation Committee and plot No.821 has not been allocated.

(c) Plot No.319 was allocated to Mrs. Nyaboke Nyakundi as compensation for a plot No.Kitutu/Bonyamondo/172 which she surrendered to Enchoro Primary School in 1992. It is, therefore, not possible to cancel the allocation. There is no cancellation to be done on plot No.821 as it is still Government property. In case the hon. Member has any other evidence, he can give it to me for appropriate action.

Mr. Anyona: Mr. Deputy Speaker, I would like to thank the Minister for doing what I expected him to do. At least, he has got the facts right. I would like to express my appreciation with regard to the answer to plot No. 319. Indeed, the lady who got the plot is a member of Kitutu Masaba Constituency and I was involved in recommending that she be allocated the plot. It is only that we were not sure that it was allocated to her. I am grateful for that allocation. Can the Minister, in the same spirit, also consider other members in that area who surrendered their land to Enchoro Primary School? In fact, I was in a meeting last week-end and the same issue was raised. Could he kindly consider a few other people who also donated their land in the same manner as this lady?

Mr. Ngala: Mr. Deputy Speaker, Sir, I think there would be no problem. If the information is given to the appropriate Committee, I think these things can be looked into.

Mr. Anyona: Mr. Deputy Speaker, Sir, I am very grateful again for that response, and I will prepare the necessary information and pass it on to the Minister. But in the next answer regarding Plot No.821, I am not quite clear what the Minister means when he says that the community failed to acquire it through Manga Co-operative Society. The position as I know it is; that this is a dam, which is used by the community for domestic and animal watering. What is the problem in letting the community acquire that particular property so that they can use it for domestic purposes and also for the animals?

Mr. Ngala: Mr. Deputy Speaker, Sir, I would not be in a position to know the reason why the Manga Co-operative Society was not able to acquire it. May be, if it was set aside as a watering point, then that is the main reason why they were not able to acquire it. That would be the reason.

Mr. Anyona: Mr. Deputy Speaker, Sir, I think there is some misunderstanding here. If Manga Farmers Co-operative Society tried to acquire it at all, they were acquiring it for the community. What I know is that the community around there was objecting to an individual acquiring that particular plot. Would the Minister give an assurance that whether it is Manga Co-operative Society acquiring it for the community or whether it is the community as a whole, that plot will still be reserved for public use? Could he confirm that?

Nr. Ngala: Mr. Deputy Speaker, Sir, I can give that assurance. If the plot is set aside as a public utility, it will remain so.

TELEPHONE EXCHANGE FOR RONGO

Mr. Aluoch: Mr. Deputy Speaker, Sir, before I ask this Question, I would like to make a correction. I am not the member for Kerio East; I am the hon. Member for Rongo. In the written reply the Minister has given me, he has referred to me as the hon. Member for Kerio East.

Nevertheless, I would like to ask the Minister for Transport and Telecommunications the following Question by Private Notice.

(a) Is the Minister aware that the telephone exchange at Rongo frequently goes out of service, inconveniencing subscribers connected to this exchange, especially during the rainy season?

(b) Is he further aware that this exchange is a sub-exchange of the main exchange at Suna, hence the many technical problems caused to the subscribers?

(c) Could the Minister urgently consider providing those subscribers with an independent exchange with a new dialling code number?

The Assistant Minister for Transport and Communications (Mr. Morogo): Mr. Deputy Speaker, Sir, I note with regret that the hon. member has been referred to as the Member for Kerio East. We will take note of that and we will address him as the hon. Member for Rongo. I beg to reply.

(a) Yes I am aware.

(b) Rongo has an independent exchange and it is not a sub-exchange of the main exchange at Suna. The problems at Rongo exchange are of technical nature and they arise from lightning strikes.

(c) Dialling codes are given according to designated areas. In this case, Rongo exchange falls within a designated area with code 0387, which is also used by Suna exchange.

Mr. Aluoch: Mr. Deputy Speaker, Sir, the Assistant Minister has given me a very absurd reply. Telecommunications is a technical industry, and I am sure where there is lightning, like in Nairobi, there must be a technical way of alleviating this problem. Can the Assistant Minister go into this problem and sort it out? There must be a technical way of alleviating these frequent break-downs in lightning prone areas.

Mr. Morogo: Mr. Deputy Speaker, Sir, it is true that there is a technical way to sort out this problem. But what happens is that we can never sort it out completely. These problems not only occur in Rongo but also in other areas, particularly, during the rainy seasons. It is a regrettable matter and for the time being, we will have to live with it.

Mr. Aluoch: Mr. Deputy Speaker, Sir, I am still not satisfied with that answer. But can the Assistant Minister also tell me---

(Mr. Boy consulted with Messrs. Morogo and Ngala)

Hon. Morogo, are you listening to me or you are talking to another hon. Member?

Mr. Deputy Speaker: Order! Will you just ask your question?

Mr. Aluoch: Mr. Deputy Speaker, Sir, the Assistant Minister tells us that dialling codes are given according to designated areas. Can he tell us how big the area covered by code 0387 is?

Mr. Morogo: Mr. Deputy Speaker, Sir, the exchanges cover certain radius. In this particular case, I would not know how big the area covered by this particular code is, but I can bring the radius that is covered by the code 0387.

ENFORCEMENT OF SECTION 43 OF THE CONSTITUTION

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

In view of the imminent registration of voters exercise and considering that many eligible Kenyans were allegedly disenfranchised from voting in the 1992 general elections due to non-registration, could the Government enforce Section 43 of the Constitution and allow for proof of citizenship, the use of such documents as old or new generation identity cards, birth certificates, passports, driving licences and National Social Security Fund cards?

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

(a) By virtue of Section 42(a) of the Constitution, the Electoral Commission is responsible for the registration of voters, maintenance and revision of the register of voters. It is, therefore, the constitutional responsibility of the Electoral Commission to ensure that whoever is registered as a voter complies with the qualifications set out in Section 43 of the Constitution. The Electoral Commission is an independent body not only because members enjoy security of tenure during the five year period of appointment, but also because Section 41(9) of the Constitution provides as follows:

"In the exercise of its functions under this Constitution, the Electoral Commission shall not be subject to the direction of any other person of authority."

It is for the Electoral Commission and not the Government, as this Question implies, to implement the provisions of Section 43 of the Constitution.

Mr. Raila: Mr. Deputy Speaker, Sir, arising from that absurd reply, I would like to draw the attention of the Attorney-General to Section 41(1) of the Constitution which provides for the appointment of the Electoral Commission by the President.

I will read Section 41(6) of the Constitution and it states as follows:

"A member of the Commission shall be removed from office by the President if the question of

his removal from Office has been referred to a tribunal appointed under Section 41(7)".
And Section 41 (7) states as follows:

"If the President considers that the question of removing a member of the Commission under this section ought to be investigated then, (a) the President shall appoint a tribunal which shall constitute of a chairman and four other members elected by the President from among other persons."

Physically, this makes a complete nullity of security of tenure which the Attorney-General is talking about. If the President considers an action by the Chairman of the Commission to constitute misbehaviour, all he needs to do is appoint a tribunal consisting of four people. Having said that, is the Attorney-General aware that sometimes last year, the Chairman of the Electoral Commission of Kenya stated publicly that both old and new generation identity cards would be acceptable for the purpose of registration, but two days later, the President refuted this and said that only the new identity cards would be used? Is he aware that in so doing, the President was usurping the powers of the Chairman of the Electoral Commission under this Constitution? If he is aware, what is he, as the Attorney-General and the Chief Legal Advisor of the Government and the President, doing to ensure that this Constitution is not violated by His Excellency the President?

Mr. Wako: Mr. Deputy Speaker, Sir, I am aware the President was stating his opinion and as I have said, the constitutional responsibility on the issue of registration of voters, lies with the Electoral Commission.

Mr. Anyona: Mr. Deputy Speaker, Sir, in spite of what the Attorney-General has stated with regard to the provisions of Section 41(9) and Section 42(a) of the Constitution of Kenya, the truth of the matter is that the Electoral Commission is responsible to this Parliament through the Attorney-General. That is the correct legal position. It cannot be an institution of its own outside the control of Parliament. Now, that is why when they require to make regulations with regard to elections, the Attorney-General has to bring the regulations to Parliament so that Parliament can authorise the Electoral Commission to operate in accordance with the proposed regulations.

There is a serious misunderstanding of the law and the Constitution on the question of registration and elections. Right now, we are being told that registration is beginning on Monday. I have prepared a Paper which I am going to lay on the Table of this House, which indicates that it is not legally possible for registration to begin on Monday until the Attorney-General comes to this House in accordance with provision of Sections 34(2) of the National Assembly and Presidential Elections Act. If he does not do that, this exercise cannot take off. Will he now assure this House that between now and Monday, he is going to make a comprehensive statement so that this exercise does not have a false start? I beg to lay this document on the Table so that he can prepare that statement before the House in accordance with the issues we have raised here.

(Mr. Anyona laid the document on the Table)

Mr. Wako: Mr. Deputy Speaker, Sir, the hon. Member is entitled to his own legal opinion, which I respectfully do not agree with. I do not want to go into the debate in as far as that is concerned. I need to correct him that the Attorney-General's portfolio does not include the Electoral Commission. There is a relevant Ministry which is responsible for the Electoral Commission.

As I have said, the constitutional responsibility rests purely and simply with the Electoral Commission on all issues relating to the registration of voters.

Mr. Moore: Mr. Deputy Speaker, Sir, what logistical legal problems will the Government face if they accepted old identity cards as well as the old identity cards since they share the same serial number?

Mr. Wako: Mr. Deputy Speaker, Sir, on the issue of old and new identity cards being used for registration, I can say that since Form "B" of the National Assembly Elections Registration of Voters Regulations refers to a national identity card number; and the Declaration therein refers to the national identity card number; and in so far as the Minister responsible for the registration of voters Act has not yet invalidated the old identity card, the old identity cards can be used together with the new identity cards. But I can also add that under Section 17 of the Registration of Voters Act, the Minister can declare the old identity cards invalid in which case, I would strongly advise all Kenyans who want to vote to obtain the new identity cards.

Prof. Anyang'-Nyong'o: On a point of order, Mr. Deputy Speaker, Sir. The question that hon. Raila asked was a very important one and the points that hon. Anyona made were equally important. Is it in order for the Attorney-General to continue attempting to answer this question when he, himself, has said that he is not the Minister responsible for the Electoral Commission? Hon. Anyona has requested that a Ministerial Statement be made in this House regarding the issues that hon. Raila has raised and the issues that pertain to the Electoral

Commission. Is it in order for the Attorney-General to continue giving his opinion contrary to the correct Government stand taken by the relevant Government Ministries?

Mr. Wako: Mr. Deputy Speaker, Sir, as the Principal Legal Advisor to the Government, I and other institutions, including the courts because I am a friend of the court, I can tender my advice.

Mr. Raila: Mr. Deputy Speaker, Sir, this House is not just interested in the Attorney-General's opinion. We are interested in the opinion of the Government. Section 43(a) of the Kenya Constitution states that:-

"A person shall not be qualified unless at the date of the application to be registered as a voter, he: (a) is a citizen of Kenya who has attained the age of 18 years, and; (b) has been ordinarily resident in Kenya either for a period of not less than one year or immediately preceding that date".

Mr. Deputy Speaker, Sir, proof of citizenship is the issue here. It is not an issue of new or old identity cards. The question is whether you are a Kenya citizen or not. Does the Attorney-General agree with me that you can use any other document, for example, a passport, a birth certificate, an NSSF card or a driving licence, to prove that you are a Kenya citizen? Does the Attorney General agree that is the legal position?

Mr. Wako: Mr. Deputy Speaker, Sir, birth certificates are not proof of citizenship. Anybody born here, for example, at Nairobi Hospital or on the streets in Nairobi can obtain a birth certificate whether he is, or not a Kenyan citizen.

Even driving licences are not a proof of citizenship. All it shows is that you have obtained it in Kenya and so on. Therefore, that is why the whole issue of--

Hon. Members: What about passports?

Mr. Wako: The whole issue is the Constitutional responsibility of the Electoral Commission. Regulation 7 says:-

"For the purpose of satisfying himself, as to the qualifications of the applicants to be registered as an elector, the registration officer may require of the applicant such further information and may make such inquiries, and may take such advice as he deems fit".

Therefore, it is for the Electoral Commission to be satisfied that whoever wants to register is a Kenya citizen, 18 years and over.

Mr. Mak'Onyango: On a point of order, Mr. Deputy Speaker, Sir. The questioner has stated categorically that the issue is the question of citizenship and there are other methods of proving citizenship, at least in accordance with Section 43 of the Constitution of this country. There are other documents which I am sure can be used. Is the Attorney-General in order to evade the question? Could he answer the questioner's issue?

Mr. Wako: Mr. Deputy Speaker, Sir, I have already answered the question. Section 43 of the Constitution only requires somebody to be a citizen of Kenya and must have attained 18 years. Section 42 says: "The Electoral Commission is responsible for registration". Therefore, this is an issue for the Electoral Commission, and the Electoral Commission is an independent institution, operates independently and not subject to directives from the Attorney-General or anybody.

Mr. Deputy Speaker: Next Order! We have finished question time. I am calling for the next order and I know this is the stage at which Members who will have most probably consulted with the Chair will raise their points of orders. Mr. Ruhiu, I recognise you in that regard.

POINTS OF ORDER

MINISTERIAL STATEMENT: RE-TARMACKING OF EASTLANDS ROADS

Mr. Ruhiu: On a point of order, Mr. Deputy Speaker, Sir. I rise on a very important serious matter concerning diversion of Stage Coach Buses by the Kenya Bus Services. Nairobi residents, especially in the Eastlands area are suffering. They cannot get home before midnight. They cannot get to their places of work before midday. They are suffering because the roads are impassable. I am standing here to require a Ministerial Statement this week from the Minister of Local Government and, perhaps, the Minister for Public Works and Housing, as to when these roads will be rectified so that residents of the so-called East African Republic can get home and to their places of work in time. The places affected are in my constituency, for example, Dandora, Komarock, Mathare and the rest.

Mr. Deputy Speaker, Sir, time has gone when colonial masters thought that Africans could not own cars but could only own bicycles. We need better roads in Eastlands.

Mr. Deputy Speaker: What is your point of order?

Mr. Ruhiu: Mr. Deputy Speaker, Sir, I want a Ministerial Statement.

Mr. Deputy Speaker: Good! Hon. Falana!

MINISTERIAL STATEMENT: INSECURITY
IN MOYALE DISTRICT

Mr. Falana: Thank you, Mr. Deputy Speaker, Sir. I am rising on a point of order to demand a Ministerial Statement from the Minister in charge of Internal Security pertaining to a very deteriorating situation in Moyale District.

Mr. Deputy Speaker, Sir, two days ago, a chief by the name of Buke Nivan was killed. He was the chief of Gololo Location in Sololo Division of Moyale District.

Mr. Deputy Speaker, Sir, when contributing to the Presidential Speech hardly a month ago, the Member from the area hon. Galgalo made an appeal to the Kenya Government to take action on the killings of Kenyans by people thought to be bandits from across the border. The hon. Member read a list of over 20 Kenyans who had been killed in cold blood by persons from across the border. The Government is yet to respond to that request. After the hon. Member had made that appeal, three other lives have gone. The chief who was killed on Sunday is a chief of this Government and yet, the Government does not look concerned.

Mr. Deputy Speaker, Sir, this chief was killed as he was coming from a ceremonial anniversary of an assistant chief who was killed on 11th March, 1996, exactly a year ago. This is not a joke. I want to be given a hearing. My colleagues on the other side are taking it as a joke and laughing, while I know how painful it is. These are lives of Kenyans and it is not a joking matter.

Mr. Deputy Speaker: Can you note that this is a point of order?

Mr. Falana: Yes, Mr. Deputy Speaker, Sir. I am just giving the background to the Minister who might have been ill informed or not informed at all. I do not know whether the system is waiting perhaps for the hon. Member himself to die so as to take action! Because, it has come to that level. It is such a big threat. Almost all the chiefs in that location are refugees. They have moved to where they think they can be better protected. Is that not a serious issue? These are Kenyans who are entitled to protection. There is insecurity there, people live in fear and most of the leaders have taken security to other parts. Could the Minister give this House and the country at large a Ministerial Statement.

Mr. Deputy Speaker: Okay, the very last one to hon. Ndicho! Better be brief, this is not an opportunity to make speeches.

MINISTERIAL STATEMENT: PROBLEMS
IN RUIRU TOWN COUNCIL

Mr. Ndicho: On a point of order, Mr. Deputy Speaker, Sir. My point of order is directed to the Ministry of Local Government.

Mr. Deputy Speaker, Sir, over the last one week, a lot of problems have arisen in Nyahururu, Nairobi and Kisumu local authorities. In Ruiru especially, the councillors on Friday rejected the Town Clerk of Ruiru Town Council and the operations in that council have now come to a standstill. There is no activity going on and the impasse is costing the local people dearly. I am demanding a Ministerial Statement from the Ministry of Local Government to send a probe team to this council.

Mr. Deputy Speaker: For Heavens sake, what is your point of order?

Mr. Ndicho: Mr. Deputy Speaker, Sir, I am seeking a Ministerial Statement.

Mr. Deputy Speaker: Then you leave it at that!

Mr. Ndicho: No, Mr. Deputy Speaker, Sir. I must explain why I am seeking this Ministerial Statement because it is very serious. Operations have come to a halt, the office of the Clerk is locked and the councillors have vowed that, that clerk is not going back to that council.

Mr. Deputy Speaker, Sir, I am demanding that a probe team be sent to Ruiru so that this clerk is removed.

Mr. Deputy Speaker: Next Order!

BILLS

Second Reading

THE RETIREMENT BENEFITS BILL

*(The Minister for Finance on 30.4.1997)**(Resumption of Debate interrupted on 8.5.97)*

Mr. Murungi: Mr. Deputy Speaker, Sir, I wish to take this opportunity to continue with my contribution on this Bill.

When the House rose on Thursday, last week, I was contributing on the legislative policy of this Bill and I talked on the politics of the Bill, especially in the broader context of constitutional reforms. My argument then was that this Bill is not urgent and it is not a priority in this country at this present time because our priority is to have constitutional reforms. The Bill is just being brought to this House to keep Members of Parliament busy, so that they do not focus on the real issues which relate to broader reforms. Today, I want to move on and talk about the economics of this Bill. I would like to highlight the salient features of the Bill and especially its policy contradictions.

Mr. Deputy Speaker, Sir, this Bill only affects a tiny proportion of the Kenyan population. According to our current development plan, 3 million Kenyans are unemployed and 11 million live below the national poverty line which means that they do not earn Kshs2,000 per month. Most of our farmers, pastoralists and fishermen in this country have no pension schemes. Peasant women, pastoralists and people out there have no pension schemes. As you might know, we, the children of the peasants are their pension schemes. We are the ones who look after the old people in the rural areas; we look after our mothers, fathers and grandmothers. We also have the family and clan networks and the harambees playing the role of pension schemes for most of the people in this country. So, I would be happier if the Government is seriously promoting the development of the Retirement Benefits sector. If it could have brought a Bill which encompasses a broader cross-section of the Kenyan society - which would cater for old aged illiterate grandmothers and grandfathers in this country and the majority of our people who are out there in the rural areas. I think the universal problem of the old people countrywide is health.

If you visit your grandmother any day in the village, first of all, she will tell you that her back is aching, how her knees have problems and so on - and she wants to know whether you have brought her some money which can help.

Mr. Deputy Speaker, Sir, the KANU Government has totally failed in addressing the problems of old people in this country. We should be thinking of an innovative scheme which can have a comprehensive health benefits for all the old people in this country, irrespective of their socio-economic status. I was surprised the other day when the late Prof. Ojiambo - a top cardiologist in East Africa passed away and the hon. Attorney-General went to hold an Harambee to make it possible for this top cardiologist to be buried. It is a great shame to this country that we cannot even afford to bury great people who have served this country without conducting a Harambees. The other day, a former Speaker of the National Assembly, hon. Mati was in hospital and the MPs were called to do a Harambee in the Dining area, so that we could pay for his medical bill. One day, we shall be called upon to do a Harambee for President Moi, Mr. Biwott and the Attorney-General when they are sick because of lack of imagination. We should have a scheme where the Government takes care of its senior officers; where the Government is able to burry its senior officers when they die without conducting Harambees. So, we should think at that broad level. This Bill is too narrow.

Another issue is that I am in total agreement with hon. Kibaki when he dismissed this Bill as a racket by the economic and social bandits who are out to rob the poor in this country. We are used to the banditry of livestock in the northern part of Kenya, but here, we have economic banditry in the city because some people raid savings schemes.

Dr. Lwali-Oyondi: They are economic rustlers!

Mr. Murungi: Mr. Deputy Speaker, Sir, Dr. Lwali-Oyondi says they are economic rustlers and not the cattle rustlers. This is a Bill to promote the interests of the economic rustlers. The Bill wants to create a bureaucracy where there was no bureaucracy at all. It wants to create a big Civil Service, a bureaucracy to rip-off a living extracted from a pension scheme. You know what goes on in a bureaucracy. There will be directors, lawyers, valuers, assessors, secretaries, beautiful buildings, air-conditioned offices, Mercedes Benzes - chauffeur driven for the Chief Executive - all extracted from the pension scheme. Part of the money which is benefiting the contributors of those schemes today will go towards paying that bureaucracy. I think we should avoid this unnecessary, luxurious and unproductive exercise. We should not legalise a racket of this magnitude. It is high

time that we let those who contribute to pension schemes to benefit without trying to cream off. I also think that there is a lot of old thinking in this Bill. When one looks at the Development Plan, we are changing the role of the Government. The Government from now henceforth is going to play a facilitative role in the economy. The Government is to create a favourable and enabling environment for the private sector to thrive in order to produce and circulate goods. How does this Bill fit in within the broad framework which is contained in our Development Plan? This Bill creates a hostile environment for the development of the pensions sector. It provides for over regulation of this sector. The Government is unnecessarily interfering with pension scheme funds which have operated smoothly all this while and without any complaint.

Mr. Deputy Speaker, Sir, this Bill is contrary to the overall development policy. It is contrary to the policies of privatisation and liberalisation. Hon. Members of Parliament should not be called upon to endorse a contradiction of our own development policy.

If you look at Clause 6 which talks about the Board of Directors, it is quite clear that this is a Civil Service affair. It says: The Management of the Authority shall vest in a Board of Directors, which shall comprise:-

- (a) The Chairman appointed by the Minister.
- (b) The Executive Officer appointed under Section 11. Under Section 11, the Chief Officer is appointed by the Board in consultation with the Minister. So, the Minister is involved in both (a) and (b).
- (c) Permanent Secretary in the Ministry of Finance or his representative. This is another civil servant.
- (d) Five Members who are not public officers, appointed by the Minister, by virtue of their knowledge or experience in matters relating to administration of scheme funds, insurance, law or actuarial studies.

Mr. Deputy Speaker, Sir, our experience in this area is that whenever we create a new body, and we try to appoint directors, who are either civil servants or KANU sycophants. At no time will any competent manager who has expressed any sympathy for the Opposition sit in this Board.

Dr. Kituyi: On a point of information, Mr. Deputy Speaker, Sir. Thank you very much, hon. Murungi.

I wish to inform hon. Murungi that apart from the categories of civil servants and sycophants of KANU, there is also a growing mentality that you look at what another dictatorship is doing and imitate it. So recently, we saw President Mobutu sent his son to South Africa as an ambassador. Soon, we were also sending our own bastard son to represent us to Mr. Kabila. These are imitations which have no logic, whether bureaucratic or otherwise.

Mr. Murungi: Thank you. In fact, you will not be surprised to find the son, brother-in-law or somebody like that of the Minister, who knows nothing about pension schemes, showing up in the list of the directors of the Authority that we are creating.

So, our experience is that there is really no rhyme or reason. Qualifications do not make sense because the ultimate decision is whether unapiga makofi ya kilo or you are wearing the badge which has got somebody's head. That is the qualification that you need to be appointed a director of this Authority.

Mr. Deputy Speaker, Sir, we also have prior licensing in Clauses 22 and 23. That is---

Mr. P.N. Ndwiaga: On a point of information, Mr. Deputy Speaker, Sir. While I concur with hon. Murungi, I wish to inform him that part of the problem of the appointments of these directors. We have seen beautiful examples at the Kenya National Assurance Company (KNAC). When the KNAC was led by competent Kenyans and individuals like hon. Dalmas Otieno, who was a director there, it was functioning very well. When the Government started appointing sycophants and relatives in the name of hon. Kosgey, they ran down a beautiful institution. We have now rendered 1,300 Kenyans jobless today, as a result of that mismanagement.

Now, we want to have the pension funds put in one pot and then get the semi-illiterate to run the schemes.

Mr. Deputy Speaker: Order! To refer to an hon. Member as a sycophant cannot be allowed. Can you withdraw it?

An hon. Member: But the Chair knows that there are very many!

Mr. P.N. Ndwiaga: Mr. Deputy Speaker, Sir, I did not refer to any hon. Member as a sycophant. I said sycophants are the ones who are appointed to these places. Incompetent people are also appointed, and then I mentioned--- I did not call that one a sycophant. Obviously, he is and you know that, but I did not call him a sycophant!

Mr. Deputy Speaker: Order! Order! Now you have said it! I am ordering you to withdraw it and apologise!

Mr. P.N. Ndwiga: I withdraw and apologise. But, Mr. Deputy Speaker, Sir, the knowledge that you have and the knowledge that we have means that the House has knowledge!

We are saying that we are opposed to this Bill because this is another area where pensioners---

The Minister for Labour and Manpower Development (Mr. Masinde): On a point of order, Mr. Deputy Speaker, Sir.

Mr. P.N. Ndwiga: But I am on a point of information, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: You asked for a point of information and you have gone on to make your own speech!

The Minister for Labour and Manpower Development (Mr. Masinde): That is exactly what I wanted to inquire. Is it in order for hon. P.N. Ndwiga, who stood on a point of information, to take the Floor and start lecturing the House?

Mr. Murungi: Mr. Deputy Speaker, Sir, I do not think there is any rule in the Standing Orders which indicates how long a point of information should take. I am very grateful to the information given to me by the hon. Member and it was very relevant. Unless we appoint people of integrity and on merit, without consideration about their politics, loyalty and sycophancy, the Board that we are trying to set up will be nothing, but a gang of thieves sleeping in a den of robbers.

Mr. Deputy Speaker, Sir, I was referring to Clauses 22 and 23 of the Bill which provide for prior registration. Clause 22 reads:-

"No person shall establish a retirement benefits scheme except in accordance with the provisions of this Act, and under the authority of certificate issued under this Act."

Clause 23 reads:-

"A person proposing to establish a retirement benefits scheme, or to manage a scheme fund shall, before establishing the scheme, or commencing management of the Fund, apply to the Authority for registration."

This means that a company cannot set up a pensions scheme tomorrow. First, it will have to make an application to this Authority for permission to set up the scheme. Then, if it wants to employ a manager for the scheme, he should also come before the Authority to seek registration, for him to be a manager of that scheme.

[Mr. Deputy Speaker left the Chair]

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

We have a lot of experience in the area of prior licensing. My own political party, Safina, applied for registration before it can exist two years ago. It took two years to consider the application and even up to date, the Registrar of Societies has been unable to say yes or no. We have only got rumours from State House that we will not be registered. Can you imagine a pensions scheme which has made an application to the Authority, and two years down the line, they have not been registered? How about if you want to employ a manager for the scheme and two years down the line, the Authority does not know whether he should be employed or not?

Mr. Temporary Deputy Speaker, Sir, schemes which would have existed are going to be prevented from existing because of these two provisions. I think a better provision would be for you to go and set up the scheme, employ whoever you want and once in the existence, you report to the Authority purely for their records because this privatisation is going to have a chilling effects in the growth of this sector.

Mr. Temporary Deputy Speaker, Sir, we also have Clause 26 which deals with the requirement with regard to trustees. It says:-

"Every scheme other than a scheme established by a written law shall be established under all irrevocable trust. No person shall be a trustee of any scheme fund if such a person has been sentenced to imprisonment by a court of competent jurisdiction for a period of six months or more."

Mr. Temporary Deputy Speaker, Sir, this is too general a provision. Many of the hon. Members from the Opposition could be sentenced to imprisonment for six months because of offenses of sedition, holding meetings without licences, traffic offenses and such things. Would such offenses disqualify a person from being a trustee? What relevance does traffic conviction, sedition conviction or other convictions which have nothing to do with moral integrity of a person have to do with an Act like this? I think, we have to narrow down and say a person either convicted of fraud, theft or offenses relating to property should be disqualified. We cannot slap a ban on

any kind of conviction.

Mr. Temporary Deputy Speaker, Sir, we also find Clause 32 which deals with the control of investments of the scheme fund too open. The Clause reads:- "There shall be in respect of every scheme other than a scheme funded out of Consolidated Fund." This removes from this law schemes like NSSF and other Government controlled schemes. "A scheme fund into which all contributions, investments standing income and all monies payable under the scheme rules or provisions on this Act shall be paid." The investment Clause 32(3) states:-

"Subject to the provisions of this Act, the Minister may, with the consultation with Authority make regulations with regard to the funding, investing, management, application and transfer of scheme funds and the accounting for such funds."

Mr. Temporary Deputy Speaker, Sir, here the Government wants to control areas in which the scheme funds should be invested. As far as we know, the Government has had a very bad record in investment of schemes or pension funds. And we can take two as examples, NSSF or NHIF. Where have we invested funds from the NSSF and NHIF? We have done so in the sky-scrapers in town which are bought at five times their real value. These institutions have also provided the trading capital, the deposits for the "politically-correct banks."

Mr. Temporary Deputy Speaker, Sir, this Clause 32(3) which gives the Minister power to make regulations with regard to the funding, investing, management, applications and transfer scheme of funds could be abused to direct investment in risky and unproductive areas.

Mr. Temporary Deputy Speaker, those pool funds could also be borrowed by politicians and political parties. We have had cases where coffee money with the Coffee Board has been loaned to politicians who have no coffee. It is not impossible that politicians once they know there is a fund like this will come hunting for it for campaign purposes. You remember we had said in this House some time back that if you want to avoid corruption in this country, let us publicly fund the political parties. Let us allocate money from Treasury for KANU, DP, FORD(A), FORD(K) and other political parties because, like now, we are going to an election. KANU is going to spend not less than maybe Kshs5 billion and the Opposition might spend Kshs100 million or so. But the question we should be asking now and the question Kenyans should be asking themselves is: "Where is all that campaign money going to come from?" We, as a Parliament, are not going to allocate any hon. MP money for the campaign, we are not going to allocate any party money for the campaign, but as Kenyans say, "Money will be poured out there." Where will this money be poured come from? Money to be poured will be stolen from schemes like this one which we are setting up. It might be stolen from institutions like NSSF, NHIF and any other public source because I do not see any individual leader, either in KANU or Opposition, who is going to spend his own Kshs50 million so that he can win a seat in Parliament.

Mr. Temporary Deputy Speaker, Sir, I am calling upon the Government to consider once again this question of transparency and having a visible source of income for political parties because until we solve that problem, we are going to set up these schemes, but all that money will always be stolen during election time so that politicians can survive.

Mr. Temporary Deputy Speaker, Sir, I think, it is also proper that money from pension funds be invested in the areas which are of some benefits to the contributor. I thinking about low-cost housing. All the money from NSSF has gone to build middle and high class housing in this City. It has not benefited the power, but it has benefited the rich.

Mr. Temporary Deputy Speaker, Sir, hon. Mukhisa Kituyi, one day brought papers in this Parliament to show how NSSF was used to buy a hopeless useless quarry in Eastlands somewhere in Embakasi. The money from this schemes could also end up buying other useless quarries around the country.

Mr. Temporary Deputy Speaker, Sir, we have sufficient money to set up a reasonable comprehensive medical schemes for all the contributors to these pension schemes. Why do we not invest some of the money in the medical schemes so that we do not have Harambees every time a child is sick or when a contributor dies and so on? Let us use the interest from these pensions schemes to bury our people, to invest in reasonable medical schemes because this is where most of the savings are going today.

Mr. Temporary Deputy Speaker, Sir, finally, let me talk on behalf of our sector which is a political sector. We need a sound retirement benefit scheme for politicians in this country.

Mr. Temporary Deputy Speaker, Sir, I think it is common knowledge in the country that hon. Members end up very miserably. Hon. Dalmas Otieno might be driving a Mercedes Benz with a flag today and then tomorrow he will be riding a bicycle. The Daily Nation has been carrying this interesting profile of former Members of Parliament which is headed "The Rise and Fall of...". Tomorrow it might be Kiraitu Murungi and the other day they carried a profile of a former Minister, that is Daniel Mutinda, and instead of calling it the "The Rise and Fall of Daniel Mutinda", they called it "The Fall and Fall of Daniel Mutinda."

Mr. Temporary Deputy Speaker, Sir, these are people who have contributed immensely to the development of this country. Why should a Member of Parliament, who is a Minister and who has served this country, live a miserable life of abject poverty and die an insignificant death somewhere in a rural area? I think it is high time that we did something about the Retirement Benefits Scheme for Members of Parliament who have served their term. In fact, the current benefits scheme is based on our basic salary. The basic salary for a Member of Parliament, until last year, was Kshs5,000. Now, if you have a scheme based on Kshs5,000 then you might be earning Kshs1,500 per month. What do you buy with Kshs1,500 per month? Cigarettes? You can only buy *chang'aa* with it and that is why some people are dying. I think now the pension scheme would be based on Kshs10,000 for Members of Parliament including Ministers and for a country which is developing the Retirement Benefits Sector, I think, it is high time we paid more attention to this issue. We do not want to be having Harambees here to raise money for the Speakers of the National Assembly. I wish the Temporary Deputy Speaker a happy and long life. But I do not want to come to your Harambee, hon. G.G. Kariuki, when you get sick because we have the opportunity now to provide for that.

Mr. Temporary Deputy Speaker, Sir, we have also been thinking in this country about a good pension scheme for the President.

Mr. P.N. Ndwiga: On a point of information, Mr. Temporary Deputy Speaker, Sir.

Mr. Murungi: On the condition that you do not take all my time.

Mr. P.N. Ndwiga: Mr. Temporary Deputy Speaker, Sir, I wish to inform the hon. Kiraitu Murungi that the hon. Temporary Deputy Speaker is a member of the Kikuyu elite. Thus it is not possible that we will do a Harambee for him.

(Laughter)

Mr. Murungi: Thank you Mr. Temporary Deputy Speaker, Sir. I can see that the people in the House wish you well. So, do not be surprised if you do not see me in your Harambee.

We have been thinking about how to protect our top leaders in this country when they are alive. One of the jobs that we have been targeting is the job of the President. We have been saying that let us talk to the President and see what he really wants. If it is a big motorcade then we will provide it in his retirement. If it is security, we will provide that security in his retirement and give him a large farm and other good things in life so that people do not cling on to power.

Hon. Members: Even give him a wife!

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, the MPs are talking about wives but I think that is a personal decision. When we were in SAFINA, before it was refused registration, we had actually given this matter considerable thought and we had also said that in addition to the President, we should offer his Ministers very good retirement benefits so that they also do not encourage him to remain in power even after his time has expired. We had thought that people like the hon. Biwott, hon. Kamotho and hon. Saitoti should be given very attractive retirement packages, so that when the elections come, some of them can even offer not to run because of the effective benefits that they are going to be given. We thought that this was a very good policy. It is a policy that, if one day Safina itself came to power, its President will enjoy. There are other people who are eyeing the seat, like hon. Martin Shikuku who says that he has been eyeing the seat for 40 years, and we thought that maybe with those benefits, he could step up the campaign for the job so that there is more democracy in the contest for that seat.

Mr. Temporary Deputy Speaker, Sir, it is very unfortunate that by a snap of the fingers all these beautiful dreams about how our leaders will retire well has been destroyed by refusal of registration of Safina. We are asking the other registered parties like KANU, FORD(K) and DP to take up this matter which they have prevented us from exposing. Let them consider retirement of their leaders. Let them consider what attractive pension schemes we could set up so that very good material is attracted to the leadership of this country, knowing that they are going to be comfortable in their old age and that The Daily Nation will not be writing about the "fall and fall" of so-and-so.

Dr. Kituyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I wish to inform the hon. Kiraitu Murungi that even with good packages of pension, unless you have a leadership culture that recognises and rewards talents, you will always end up with methods where the best are shoved back and people are humiliated like what happened to our Foreign Minister in Eldoret when after the photo session he was shown the door before a meeting of Presidents or like he was ordered yesterday to go home when he was supposed to go to Russia.

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, in our pension scheme, we had also provided for a

situation where people are given a cup of tea at the time when they are retiring.

The Temporary Deputy Speaker (Mr. Kariuki): Hon. Murungi, could you follow the point of information that you got?

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, actually I did not understand what the hon. Dr. Kituyi said.

The Temporary Deputy Speaker (Mr. Kariuki): Dr. Kituyi, what was your point of information?

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, I am glad that the Chair also wants to get the information I was passing to the hon. Kiraitu Murungi where I am saying that I appreciate his concern that there will be a good package in order to attract good people. But I said that there has to be a certain managerial culture which rewards talent and people are not just frustrated because of short-term political expediences like the embarrassment suffered by hon. Kalonzo Musyoka when he was shown the door at the start of the formal meeting in Eldoret and a fellow colleague from the Cabinet is present who is not the Minister for Foreign Affairs and International Co-operation or like what happened to him yesterday, when he was supposed to lead the Kenyan delegation on the trip to Russia and then he was ordered to go home when he was supposed to be going to the airport.

An hon. Member: Just like the late Ouko!

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, I am very sorry if that is what happened to my old classmate. I hope the Minister for Foreign Affairs and International Co-operation, the hon. Kalonzo Musyoka, is not on his way out before we pass this law because if he goes out now, he cannot benefit from the scheme that we are thinking we should be setting up. So, we hope that---

Dr. Otieno-Kopiyo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Kiraitu Murungi in order to mislead this nation that the problem of leadership in the country is lack of funds from leadership when we know very well that, those at the top get the maximum? They are already getting too much. In fact, he should not imply that we shall give them anything else. These people should go to jail instead.

The Temporary Deputy Speaker (Mr. Kariuki): Order! You are out of order.

Mr. Murungi: Thank you Mr. Temporary Deputy Speaker, Sir. Maybe, hon. Dr. Otieno-Kopiyo will not require benefits from these schemes that we set up but there is need now to encourage people. Many people are afraid that they are going to be poor when they leave Parliament or that they are going to be poor when they leave the Presidency. But we want to set up an attractive scheme, so that we are assured that even if we leave Parliament or Presidency or the Ministerial post, we are going to be comfortable. We will be playing with our grandchildren happily where we would be. This is the idea that we had as SAFINA when we were working out the modalities of this retirement benefits scheme for politicians.

Mr. Temporary Deputy Speaker, Sir, I am sorry to say that without knowing it, hon. Biwott by denying us registration has also denied himself an attractive pension which we had worked out---

The Temporary Deputy Speaker (Mr. Kariuki): Order, Mr. Murungi! Hon. Biwott is not here and there is no reference of hon. Biwott in this Bill. Why do you not stick to the Bill?

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, I only referred to him because he was to be a beneficiary of this scheme. I would plead with the Minister---

The Assistant Minister for Finance (Mr. Keah): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Murungi to insinuate that SAFINA was denied registration by the hon. Biwott when we all know that the hon. Biwott is not the Registrar of Societies? Can he, even with the support of his friend, hon. Dr. Kituyi, please, elaborate on that because this is really misleading the House?

The Temporary Deputy Speaker (Mr. Kariuki): Order, Mr. Murungi! I think you are completely out of order, keep off from this Biwott debate.

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, I am keeping out from that angle, but I would like to enlighten the Assistant Minister about how this Government operates. Although, we have a Registrar of Societies, he does not actually register societies; he has to consult with the Office of the President through the Special Branch. It is the Office of the President which decides which society is to be registered and which political party is to be registered. As for SAFINA, a decision was given at State House and the Registrar of Societies was not there and if he does not agree with me, he should read this week's copy of *The East African* because it shows how the decision was made.

Mr. Temporary Deputy Speaker, Sir, I know many of my colleagues want to contribute on this Bill, but I am appealing to the Minister to study this Bill carefully and make sure that, at least, the benefits of retirement reach more people than are currently being targeted.

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

Mr. Otieno: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity also to contribute to this Bill.

I want to say that this is a very timely Bill. If anything, it should have been brought more than 10 years ago. It is true that we are talking about "big money" and you can tell from the apprehension in this House as to who would have control of this money. If you look at the Bill, the word "control" is only used once with respect to the Board controlling the finances of the Authority. The Bill is so carefully worded. According to the objectives, it will regulate, supervise and more important, motivate the growth of this sector and then inspect the Schemes. Usually the Government would not be the spending authority in any of the Schemes.

The current schemes under the Act are the Government schemes funded through the Consolidated Fund. Those are paid for "on as-you-go-basis". So, they will continue as they are. They are just paying from tax money, the civil servants, the Army and the Members of Parliament.

The NSSF will come under the Retirement Benefits Act if this Parliament passes the Bill. In fact, it will be a big opportunity for members of the NSSF to ensure that their interests are protected from any improper decision by the trustees of the NSSF. So, in that respect, this Bill is very timely and will serve the purpose of protecting the rights and interests of the members of the different schemes and also of the sponsors who are largely the employers of different schemes.

Mr. Temporary Deputy Speaker, Sir, it is pension funds throughout the world that have been the single most important source of investment funds for growth in most of the economies. In fact, in this country, our domestic savings rate has been hovering around 17-18 per cent of GDP for a very long time. At the birth rate of 3 per cent or so per annum, in Kenya, we need to invest more than 25 per cent of our GDP every year and we have never been able to raise domestic savings to those figures. In fact, the fastest developing economies have been able to raise domestic savings at levels almost approaching 30 per cent of GDP. The weakness in our economy has been in this pension and retirement benefits sector. There has, of course, also been a weakness in the development of the stock exchange, but that has been addressed and there is a Capital Markets Authority which, if it does the promotional work, it should be able to achieve that side of the economic activities necessary for the growth of our economy.

The players in retirement benefits are usually the employees who are beneficiaries and now, if this Bill is passed, it would be the Authority that would regulate, supervise, motivate and inspect the scheme. Scheme funds would always remain under the control of the sponsor and the manager of the scheme in accordance with the rules of the scheme. What this Bill will be doing now is to make sure that those managers manage those schemes in accordance with the rules of those schemes. There are certain requirements of retirement benefits in terms of their investment and so on, which are standard worldwide and all that the Authority will be doing is to ensure that the managers and sponsors or trustees of the schemes do conduct the affairs of those schemes in accordance with the rules of those particular schemes. So, there is no time that the Government would come in to mess up the scheme. If anything, the Bill would be empowering the Authority to ensure that the members' interests are adequately protected.

Most members may not be aware, but there are a lot of current malpractices in the management of pension schemes and other retirement benefits in the country, as of now. In fact, sitting in the PIC, I know of a number of parastatals whom I could say have literally messed up the pension programmes for the employees of those parastatals. With this Retirement Benefits Bill, those employees would now be able to seek protection and would be able to ensure that their rights are not infringed by poor managers. You may find a scheme with as much as Kshs1 billion of benefits due to the employees of the parastatal and yet, all that Kshs1 billion is mixed up with the assets of that parastatal. There are private sector schemes where employee benefits of as much as Kshs100 million are deposited in banks as guarantees to loans borrowed by the sponsoring employer. When such an institution, or company, goes bankrupt, you will find that the employee benefits will equally sink with the company that has gone bankrupt. So, the Bill is very timely. If anything, I feel it has come late.

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

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

But Mr. Temporary Deputy Speaker, Sir, the main suspicion that arises is that the two boards, as it were, that would manage scheme. There is the fear that an Authority like the one on retirement benefits, whose establishment we are debating today should, ideally, be totally non-political and should not have loopholes through

which politics could creep into the issues that it is supposed to manage. These kind of loopholes should be blocked. The two organs of significance under this particular Bill are the board of directors of the Authority and the membership of the appeals board. If there is fear that there could be political interference or appointment of people who do not have the right expertise, this can be spelt out in the Bill. At least, as far as the board is concerned, the qualifications of the chairman have not been given. Maybe the Minister should think of specifying the kind of personality who is best suited to be on the board, and even express that in the Bill, so that false appointments are avoided right from the enactment of a Bill like this one.

The qualifications of the chief executive officer have already been specified and they are adequate. So, there is a basis on which somebody can challenge a wrongful appointment of a person into the position of the chief executive officer of the Retirement Benefits Authority. The Permanent Secretary to the Treasury, or his representative, is appointed in a way that we are familiar with. We have no problem with that. It is also specified that the other five members of the board would be appointed on the basis of their experience related to banking, insurance, pension and so on.

However, other than the chairman of the appeal board, who must be an advocate of seven years' experience, the other four members could be anybody. Maybe the Minister should consider spelling out who should be a member of this board, and base his requirement for appointment on experience and skills. In that way fears of hon. Members that politics may creep into the affairs of an institution as important as the one we are trying to create today, can be allayed.

One other thing which the Minister can consider, and possibly can do, is to provide in the law that when he appoints the board he will lay the names and qualifications of its members before this House. If this is done any hon. Member who feels somebody who is not adequately competent to be a member of this very important Retirement Benefits Authority has been appointed by the Minister on a criteria other than competence and ability to serve on that particular board, can challenge that appointment. It is also possible to provide that once the Minister has appointed members of the Appeals Board, their curriculum vitae and names should be tabled in this House. In this way if an hon. Member wants to challenge a particular appointment, he will have an opportunity to do so and then, the Minister can reconsider his appointment of such a member to the board. This would be necessary to allay the fears of hon. Members that political interference would creep into the operations of such an important institution as the proposed Retirement Benefits Authority that will be regulating, supervising and inspecting management of billions of shillings for the future of Kenyans. These will be funds which we will need to promote investment in our economy and increase our rate of growth, if we do it successfully.

Mr. Temporary Deputy Speaker, Sir, up to now, there are no guidelines for whoever may wish to start a pension scheme, or any other form of retirement benefits programme. With the enactment of this Bill, there will be guidelines. When drawing up the rules of a pension scheme, there are particular issues that one will have to take into account. For example, he should prepare an irrevocable trust before he can be allowed to start a pension scheme. So, we are not blocking the establishment of schemes. If anything, the Bill aims at promoting establishment of more pension schemes. We hope that after the Bill is enacted, the Minister for Finance will seriously consider giving incentives to employers to enable them establish retirement benefits schemes for their employees.

At present, other schemes, like the National Social Security Fund, are governed by their own Acts. Other schemes are registered under the Income Tax Act, Cap 470. All other schemes are not registered under any Act, and are operating without any knowledge of the Government. Employers just agree to contribute a certain percentage of an employee's salary - it does not matter whether it is income tax allowable or not- towards a pension scheme. Employees are also encouraged to contribute to the scheme. But then, the money could end up being misused for the benefit of certain directors of the very company which is the employer.

Registration of schemes under the Income Tax Act does not matter much. This is because the Commissioner of Income Tax and the Minister for Finance are so stingy that they will not even allow you to contribute into the scheme an amount exceeding Kshs90,000. Even if they allowed you to contribute to it Kshs100,000 per year and somebody works for 50 years the contribution will only be Kshs5 million. If on retirement at the age of 50 years a retiree lives for another 20, that is peanuts by way of pension. So, we hope that with a framework to regulate and control pension schemes, the Minister will seriously consider giving incentives that will encourage establishment of pension funds in our country. He should give incentives to both employers and employees, so that the pension sector in our country could grow and flourish.

I have mentioned that, if we establish the Retirement Benefits Authority, we should allow it to operate with the least political interference. If you look at this particular Bill, you will see areas through which possible interference would creep in from the Ministry of Finance, not necessarily from the Minister but from bureaucrats in the Ministry. Clause 25(b) states:-

"No applicant for registration as a manager should be registered unless such applicant has such minimum paid up share capital as may be prescribed".

The Bill leaves out so many regulations, or provisions, to be made later. Further, this clause says:- "...meets such additional requirements as may be prescribed".

When a clause talks of "as may be prescribed" our assumption is that the prescription is to be done by the Minister. These are loopholes through which some interference may creep into the management of the affairs of the Authority which we are trying to establish. It is better if we specified who would make that prescription. The prescribing should be done by the Authority and should not be left to a Minister, because this really means that we are leaving the matter to some civil servant in the Treasury.

Mr. Deputy Speaker, Sir, in that particular Clause, I would have been happier myself, if it had said "minimum paid up share capital as may be prescribed by the Authority", so that we know who will make the prescription. If we have a Minister who asks for 10 per cent, he will not go asking the schemes for additional incentives to himself to be able to make this prescription.

On page 204 (b), Clause 34 which states that the trustees of every scheme shall cause to be kept all proper books and records and then part (d) says such other documents as may be prescribed". It should be "as may be prescribed by the authority".

A simple thing like a document should not be taking us to the Minister to prescribe because the more an Act of Parliament refers many things to be decided on by the Minister, the higher the level of politicisation in the management of the affairs supposed to be regulated by such particular act. So, such should be reduced.

On page 203, Clause 37, (3), states that:

"...they shall be submitted to the Chief Executive Officer in respect of every scheme, a statement of all the investment of the schemes's funds in such form, manner and at such intervals as may be prescribed".

We should be able to say that, "as may be prescribed by the authority" so that the form of report does not have to require a political decision after we have enacted it.

Mr. Deputy Speaker, Sir, a very contentious clause has been Clause 37 (2) which says that the investment policy of a scheme shall be implemented subject to the provision of any regulations the Minister may, in consultation with the authority make for that purpose. I agree because we still need the Minister for Finance to make certain regulations and provide certain incentives under the National Fiscal and Monetary Policies in this country to enable the growth of this scheme. So, the Minister should make those restrictions. But we hope that this particular clause will not be abused in the manner that the Minister would make prescriptions, for example, that all the Fund's 40 per cent should be invested in Treasury Bills because it has happened before, where the law allows for that kind of regulation to be made.

Now, in some Acts, the problem has not been with the Acts themselves, because they have turned out to be the abuse of the law or the loopholes which have been given in the law. I could have given more examples of Acts where we have left loopholes for additional political interference which should be sealed. If the form or requirement is to be prescribed by the authority, or if it is to be prescribed by the Minister, we should say so. Where it is to be prescribed by the Minister, that kind of regulation should be tabled in the House so that the Members are able to give their reactions to the regulations that the Minister has made. If we feel that the Minister is making regulations that are not entirely in the interest of the programme as stipulated, then it is the Members who will then talk to the Minister about those regulations. When it is the authority that is not making regulations in the interest of the programme, as such, then we have the appeal mechanism to challenge the decision of the Chief Executive and the Board of the Authority. That has already been adequately provided for in this Bill.

For the first time, there will be management requirement and possibly some standards for pension schemes. I think, this is in the interest of the Members, both the employers and the employees of these schemes. Requirements regarding the accounts, revaluation and more important those regarding attachment.

Secondly, if you intend to have some funds to be for the benefit of somebody in his old age, 10 or 30 years from now, those funds should not be exposed to attachment in case the institution sponsoring it has run into financial difficulties. The Bill does provide for the inspection of these schemes.

There is an issue regarding the personal liability of the Board members and the personal liabilities of the staff or the interim administrators. The Bill has made a provision on page 211 (8) which reads as follows:

"Neither the Chief Executive Officer nor any officer, employee or an agent of the authority nor the interim administrator nor any other person appointed, designated or approved by the Chief Executive Officer under the provisions of the Fund shall be liable in respect of any act or omission done in good faith in the execution of the duties undertaken by him."

Now, we are proposing this Act, so that people who are mismanaging schemes may be dealt with appropriately. But then, with regard to the people we are appointing to inspect and supervise the scheme--- we are saying that, so long as they act in good faith, they should not be held personally liable. I think, it is time we deleted this clause from our law. This is the clause that allows civil servants to mess up institutions because they are not going to be personally held liable.

If directors of corporations private or public are held or should be held liable personally for their actions that leave anybody suffering a loss or injury, why should we exempt them? If he is not competent he should not take the job. So, it is not enough to say that, "if done in good faith" because proof of good faith has been very difficult to come by. For example, an institution goes bankrupt and an official receiver is appointed to liquidate it. If he does not have personal liability for wrongful action that he may take, he is absolved so long as it is said that he has done it in good faith. I do not believe that they do most of the things in good faith.

Mr. Temporary Deputy Speaker, Sir, for example, we talked of the Auctioneers Bill the other time. If at the moment the group of auctioneers, receivers and so on get into the assets and particularly pension assets or retirements assets where there is somebody who is still expecting to be paid, they should not go free on the assumption that they will always act in good faith because it is not difficult to prove. This clause should be deleted completely, so that they are personally and entirely accountable and liable for all their decisions and errors. Since the authority is established under the supervision of the Minister he should budget for the compensation of the parties who may be injured as a result of the decision made by certain incompetent officers who may be appointed by the Authority.

Again, on page 195, Section 14, talks about the Board employees who will be provided with protection from personal liabilities.

"No thing or matter done by a member of the Board, any officer, employee or an agent of the Authority, shall if the matter is done *bona fide* in executing the functions, powers or duties of the Authority render the member, officer, employee, an agent or any person acting on their direction personally liable for any action, claim or demand whatsoever".

First of all, if I was the Minister, I would have to absolve him from all personal liability, should he mismanage the institution. This kind of protection should be eliminated in our laws. All past laws have had this provision and I feel this has encouraged the continuing appointment of incompetent people. Some of them mess up one institution and then they are transferred to another institution where they repeat the same mistake, until they are transferred to a third institution. Still, they are absolved from personal responsibility in such cases, even where they are administering an institution controlled by an Act of Parliament. So, hon. Minister, you should seriously think about whether or not your appointees should be shielded from the complete rigors of transparency, accountability and competence in the performance of their duties.

Mr. Temporary Deputy Speaker, Sir, I have noted here that under this Bill, if enacted, some employers may be able to get the option to contract out of the National Social Security Fund (NSSF). Section 33 says:-

"Notwithstanding the provisions of any written law for the time being in force, an employer may, with the approval of his employee, pay any statutory contribution in respect of such employee into any scheme fund prescribed for that purpose."

In this Section, the expression 'statutory contribution' means contributions required under the provisions of the written law to be paid into retirement benefits schemes. So, in future, if an employer has got an adequate scheme under this Act, it will be possible to contract out so that instead of continuing to remit contributions to the NSSF, they can be remitted to the newly established scheme regulated under this particular Act.

You note that with the appeal mechanism under this Act, it will be possible for somebody now to write to the Chief Executive Officer of the Retirement Benefits Authority and tell him that: "The National Social Security Fund has made this particular investment decision which is not in my interest as a member". The Chief Executive Officer will be obliged to investigate that decision. If the ruling of the Chief Executive Officer does not satisfy the member, there is room to appeal to the Appeals Tribunal against the decision or recommendation of the Chief Executive Officer. So, there is plenty of room to correct certain misgivings or misconduct in the affairs of all retirement benefits funds that may exist in the country at present.

Mr. Temporary Deputy Speaker, Sir, I beg to support this whole-heartedly, with a few refinements necessary to allay the fears of hon. Members as regards politicisation so that we end up with an Authority that operates like a private sector authority, supervising the private sector funds in the most efficient and accountable manner.

I beg to support.

Mr. Ndicho: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to say a few words concerning this very important Bill. I support the immediate speaker, hon. Otieno, that this Bill

is not only timely, but long overdue.

We are talking about a Bill that is going to help many Kenyan workers employed in various institutions, who contribute a lot of money during the course of their working life, which should help them when they go on retirement. We have heard various questions raised in this House concerning workers whose money is shown as having been deducted when they were still working but not remitted to the pensions fund. These people discover very late, when in fact, they have gone on retirement that the money that had been deducted from their salaries for many years was never forwarded to the NSSF for safe keeping. I hope this Bill will be timely to regulate, as the hon. Minister says, supervise, promote and develop the system of collecting workers' money and keeping it, so that it can help the worker in the future. The biggest enemies of workers' money in this country have been known to be Asians. I come from a constituency referred to as the 'Birmingham' of Kenya, where we have got over 150 industries which employ many people. Many of these workers come to me with diverse problems of their money having been deducted and never submitted to the NSSF.

I hope that this time round, the Ministry will take stern action against these kind of employers, majority of whom are Asians. We have got three types of employers in this country: The Asians, the Africans and the Europeans. Of the three groups, the most notorious as far as workers' money is concerned are the Asians. Second to Asians are Africans, our own people. You find that they deduct money, show it in the payslip as having been deducted but they never take it to the NSSF. So, I fully support this Bill because it will regulate this money as it leaves the employer to the NSSF or to this Authority that this Bill is seeking to establish. This is the time that this kind of money must be supervised as the Bill says, because of what we have experienced, for example, misuse of members' money. Workers' money is misused to the point that even when they retire, they go for five or even ten years before they are paid their benefits. This occurs because either there is no money to pay them, or the system of balancing this money is so difficult that you end with some people who retire and die without having been paid their benefits. It is very serious.

I support Part 2 of Clause 3(b), where the Bill talks about investing in purchases of equipment. I would like to take this opportunity to ask the Minister to computerise this Authority. As this Authority is being established, it must go hand in hand with computerisation. The Ministry should introduce cards which every worker should buy and keep it for themselves. I am referring to the card like the one introduced by the banks for Moneylink. A card similar to that used in banks, for example, Barclay Card, ought to be introduced so that once a worker retires he goes to this Authority with this card and gets his dues on the spot. This card will eliminate such excuses as files missing, the person in charge of the retiree's Ministry being on leave and that kind of thing.

This Authority must make use of computers. It is important that we also enter into the era of computerization. Computerization will help to curb corruption because at the moment there is no worker who gets his retirement benefits without first bribing his way out. It was only the former Attorney-General, Mr. Charles Njonjo, who managed to get this pension benefits without bribing, and this was because he was feared. Any other Kenyan trying to get his retirement benefits, must bribe the clerks concerned because if he does not do that, his file gets "lost".

The Assistant Minister for Lands and Settlement (Mr. Sumbeiywo): On a point of order, Mr. Temporary Deputy Speaker, Sir. I did not want to take my colleague's time, but is it in order for him to mislead the House that the only person who did not bribe to get his pension benefits was the former Attorney-General yet some of us got our pension benefits without bribing?

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, you will realise that the hon. Member was the head of Presidential Escort. Nobody could have asked him for a bribe.

The Temporary Deputy Speaker (Mr. Wetangula): But you said it was only Mr. Njonjo who did not bribe to get his pension benefit.

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, I stand to be corrected. I am happy to hear that there is another person who did not bribe to get his pension benefits. You can see that it is only the most influential people who are not required to bribe to get their pension benefits. I am talking about that very ordinary worker; a sweeper, messenger and so on. He will not be paid his dues, if he does not give out Kshs10,000. His file will be missing.

This bribe actually depends on how much each of these people will be paid. The people who prepare these payments peg their tips on the amount of money a worker will receive. It is out of this that I am calling upon the introduction of computers in this Authority because once that card is inserted into a computer, there is no way the person handling such a claim will say that the computer is lost unless he says that it is not functioning. But even if his station is not working, there are other computers in the office. This is something I strongly support.

When somebody retires at the age of 55, he has only about ten years to go before he kicks the bucket. Why give him all these problems? He should be paid his money and enjoy life for the remaining few years. We

hope that this Authority that the Minister is seeking to establish will not work like the current National Social Security Fund.

The Bill is also talking about lending money. I am asking the Minister to consider establishing loaning facilities to workers. The Government can establish a bank which will be lending money to workers at low interest rates. A worker can be given a small loan against the security of his shares or his salary. In this way, this money will benefit other people. I would still call upon the Minister to consider that kind of loaning scheme for the workers.

Workers contribute money while they are working for 20 or 30 years so that it will help them when they retire. I am calling upon the Minister to consider putting in the element of interest on this money. If a worker has contributed about Kshs1 million he should be given some interest on his retirement benefits. We should not forget that this money has been with these people for this long and where they had banked it, it was earning interest. So, who takes this interest? It is important that the Minister considers that the interest accrued thereof should be included in the final payment of the worker's money. This is the only time that somebody can feel proud of having worked for many years. He can, therefore, enjoy the fruits of his labour.

There is also the point of who is to be included in the disbursement, management, regulation and supervision of this money. If you look at the Bill, there is nowhere where the workers will be represented by one of their own. This is why I support the idea of having a representative from Central Organization of Trade Union (COTU). Although the Bill talks of the Board deciding on who should be sitting in that Authority, there should be somebody specifically put there from the workers' body to represent the workers. This is money that has been taken to people who do not care at all of what goes on. Somebody like Mr. Joseph Mugalla, the Secretary-General of COTU, should be a representative of the workers in the Authority. Such a person will not allow worker's money to be misappropriated. I call upon the Minister to consider bringing some amendment in the same Bill so that members of COTU are represented in this particular Authority. This is the only way the worker's money will be secure. It is very unfair for some people to contribute money and have it managed by people who do not belong to that organization.

I belong to several co-operative societies and the people who are represented in the management committee are themselves members of those co-operative societies.

Mr. Temporary Deputy Speaker, Sir, it is my earnest call that the Minister is going to consider this kind of thing. Workers in the Government and especially in the local authorities are suffering too much. I have got a case in point where the Town Clerk of Ruiru Town Council has misused the Council's money. That is the money which is contributed or earned by that Council through contributions of people of that authority. It is the employees of this local authority who are collecting those millions and yet, the Town Clerk has got the audacity to misuse that money. I also know of a case where some of the employees have shown me their pay slips which look funny and which, for example, two ladies retired and when they went to check for their money, there were almost chaos when they discovered that their money had not been transmitted to the NSSF. It was a very sad situation and yet, the Local Authority is a Government body. If it was an Asian company, it would be a different issue.

Mr. Temporary Deputy Speaker, Sir, you can even see how senior Government employees like the Town Clerk of Ruiru is misusing money belonging to employees and the Government. This is a gentleman who has even purchased vehicles that even I, the Member of Parliament for that area, cannot afford. Last week he purchased a Musso vehicle, registration No.KAJ yet if you look at his salary, he cannot afford that kind of vehicle. This man also drives a Volvo vehicle. Where does he get all these money from? It is the taxpayers' money collected by employees who he also refuses to remit their NSSF contributions. He just does not care.

Mr. Temporary Deputy Speaker, Sir, the Government has got an obligation to take care of and guard the welfare of its own workers. If you went to the NSSF building, some of the people you find there on the queue are even from the Civil Service. They have a lot of problems which have been caused by the Accounting Officers from their respective departments, for example, the Ruiru Town Clerk and the Government should not condone these kind of officers. Because, these are the people who are even giving a bad name to the Government. When somebody retires and stays for years without being paid, he blames the Government.

Mr. Temporary Deputy Speaker, Sir, this is high time that we must take care of our employees who contribute a lot in terms of human resources to make the economy of this country tick, yet they are the most frustrated fellows.

Mr. Temporary Deputy Speaker, Sir, one of the reasons why Mr. Tony Blair won the elections in Britain was the issue of employment. I read his party's manifesto and he talks about taking care of the benefits of the worker. The majority of Kenyans in this country are working and so, you find that the whole matter is also bordering on politics. If the KANU Government would like to be popular, let it straighten the issue of retirement benefits so that workers can be motivated. The morale in the Civil Service is very low and these are some of the

reasons why we have all these problems.

Mr. Temporary Deputy Speaker, Sir, because I know my colleagues want to contribute on this Bill, I would like to say that when I went through this Bill, I found it very appropriate, and I wanted to find time to come and fully support it as I am doing so now. But I hope the Ministry is going to make recommendations as the Members are suggesting on the Floor of this House.

Mr. Temporary Deputy Speaker, Sir, we know that when this Bill is brought to this House in this format, it is almost complete. Since we came here in 1993, we have never seen a Bill debated here and amended as per the Members' contributions and wishes. So, we are fearing that the Government has made us a "talking shop". Let us see whether this particular Bill will be amended according to the Members' contributions. What we have seen is that, this is the final stage of the Bill and once it goes to the Committee Stage, it is passed and whatever I and other hon. Members said is just ignored. When it becomes an Act of Parliament, we rarely see our recommendations being taken care of. So, I think it is high time the Government must make sure that we are not like the Sixth Parliament which was accused of being a rubber stamp. I think, we are only loud rubber stamps. It is high time that we treated Parliament as the highest institution where Members' contributions are taken seriously and where recommendations and amendments as suggested by Members are taken into consideration and effected.

Mr. Temporary Deputy Speaker, Sir, I hope the Ministry is going to listen to our views because we are representing workers, we are the people who are fed by the workers, we are the people who workers tell the sufferings they undergo and therefore, it is our responsibility to tell the Ministry what to do.

Mr. Temporary Deputy Speaker, Sir, I am looking forward to a time when the Kenyan Parliament will be a Parliament with authority and where Members come to give recommendations and they are taken heed of by the Government. I also look upon that time when before such a Bill is even drafted and brought for debate in Parliament, during the preliminary stages, it is brought to the Floor of the House and then we debate it. All we see are the technocrats of various Ministries drafting these Bills to bring to Members. So, we dance according to the wishes of the technocrats of these Ministries. If we are going to be a serious Parliament, let us be involved in the drafting of the Bills so that when they come here, we are part and parcel of those Bills. As of today, we only come here to rubber-stamp what has been said. What we recommend is never taken into account. So, what I do is wait for my salary at the end of the month and say: hurrah. So, I look upon that time when Parliament will be given the responsibility of enacting laws and being involved in the drafting of these Bills.

With these few remarks, I wish to support. Thank you.

Dr. Lwali-Oyondi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to say something about this Bill.

First, most of the Bills that come into this House have good intentions on the face of it. But the practice of it is that, they are making Kenya a worse place than it was before. Before we had NSSF, Kenya was going on quite well. Later on, there was the enactment on the NSSF Act, and it was set up. It was supposed to be a saviour of the worker, but as it has turned out, money of NSSF has been blatantly stolen. The Government knows about it and nobody does anything about it. We all get paralysed here and we go back and try to have another Bill and make it into an Act of Parliament, only to make things worse.

Mr. Temporary Deputy Speaker, Sir, we have failed in various boards of parastatals. All of them have been scandalised and in the end, we have come to the conclusion that we should privatise everything because civil servants are completely incapable of running anything economically. That is why they are civil servants! I was once a civil servant for four years after I left school. After that, I started a private business which flourished very well. Those who remained as civil servants are actually professional civil servants and they are not supposed to undertake any economic undertakings and those who have tried to go into commercial business after a long time in the Civil Service - unless they are helped by any other crooked means, they normally do not make it.

In other words, all of us have been given a role to play in life. We cannot be all shopkeepers, doctors or accountants like hon. Keah but we have various roles to play in the society. We have failed because we think that a person who is qualified to be a civil servant can come out and look after a commercial undertaking and hope that it will succeed. The practise always is that they do not succeed. The NSSF and NHIF have not succeeded because they are scandalously managed and they are almost helping nobody.

We now have here the Retirement Benefits Bill trying to set up a Retirement Benefits Authority. Who will manage this authority? It is obvious that it will be managed by the same civil servants who are involved in NSSF and other authorities that have been gigantic failures in this country and have impoverished the ordinary mwananchi in this country. Therefore, I do not, personally, expect much from this Bill. Another thing is that the establishment of these various boards has been for the protection or enabling certain people in politics to make sure that they are cushioned economically. The NSSF money has been mis-used with the help of various authorities and politicians who have made use of various people to swindle a lot of money from the NSSF which

end up eventually in the hands of those politicians.

We have had the Central Bank of Kenya, for example, which lost a lot of money. Some people are claiming that it was lost through the hands of certain Asians. I do not believe that those Asians are really the powers behind that kind of scandal. The powers behind these scandals are politicians and that is a fact. The Asians are only used like some people use parking boys to steal spare parts from cars. They pay them Kshs10 and get spare parts which may be Kshs10,000 or more. The Asians are only used because they are more faithful and they are not likely to run away with that money. They are likely to handover and they get their normal 5 per cent.

If you gave that to mwananchi, he will get hold of the money and never hand it over. I remember a case somewhere, where somebody had a television broadcasting station within Nairobi. He was told to handle it and he had no money of his own. But when he got hold of it, and the owners wanted to take it over, he refused. That matter has been in the courts for a long time. If he was an Asian, a case like that could not have arisen. That is why Asians are used by Africans. Therefore, there is no need of blaming Asians because the prime movers are Africans.

Anyway, coming back to the Bill, if you look at Clause 3, it talks of the establishment and incorporation of Retirement Benefits Authority. If you look at Clause 3 (2) part (b), it reads:-

"Taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property."

This is what the Authority will do. This is the part which gives various Parastatals, Boards and Authorities a lot of powers. They can purchase, acquire, hold, charge and even dispose of movable and immovable property. I do not know what the Minister will do. This is because when these Board have these powers, they normally sell public property without reference to anybody. They do not sell such property for the benefit of those who are supposed to benefit from it, but they sell it for the benefit of individuals in such parastatals, boards and authorities, to the detriment of the supposed beneficiaries.

To give an example, we have heard that certain school boards have authority given to them by a section similar to the one that I have just read. As a result, some school boards have even sold part of the school land. The Minister should tell us how we are going to avoid such a situation, whereby, the Authority's Board disposes of property belonging to the Authority to benefit a few individuals. How are we going to prevent that?

For example in Nakuru, we have a problem: The Chairman of the Board of Governors of Afraha Secondary School has sold the school. He turned it into his own private property since it was entrusted to him as the Chairman. He used a provision similar to the one above, which stated that the Board of Governors can move movable and immovable properties, buy and sell. This man read a Clause like this and then sold the school. The parents are up in arms against the person because he sold a school which was put up on a harambee basis. It is a harambee school and not private property.

Another case involves the Trustees of the Rift Valley Institute of Science and Technology. I asked a Question here, and I am glad that the Minister is here. We were told that this particular Institute had only 700 acres of land. I have got documents here which show that this school (and I quote from them) has two large agricultural farms next to the Rift Valley Institute of Science and Technology. One is called the Technology Farm which has 2,700 acres of land. It has got a map which is here and I can show the Minister. It has 2,700 acres and not 700 acres. Therefore, the principal of the institute has already "stolen" over 2,000 acres and sold it to individuals. We have got---

The Assistant Minister for Finance (Mr. Keah): On a point of order, Mr. Temporary Deputy Speaker, Sir. I would be interested in knowing which part or clause of the Bill the hon. Member is referring to because I am trying to follow, but it would appear that what he is debating is not this Bill at all?

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, I am debating Clause 3. If the Assistant Minister could look at Clause 3 which says:-

"There will be established an Authority to be known as the Retirement Benefit Authority."

If the Assistant Minister could pay attention, I will not have to repeat it.

Clause 3(1) says:-

"There will be established an Authority to be known as the Retirement Benefit Authority. The Authority shall be a body corporate with perpetual succession and a common seal shall be in its corporate name be capable of:-

(a) suing and being sued, and,

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable properties."

[The Temporary Deputy Speaker

(Mr. Wetangula) left the Chair]

[Mr. Deputy Speaker resumed the Chair]

Mr. Deputy Speaker, Sir, this is the part I am saying is very dangerous. That is why these people are disposing of immovable property and this is why I give this as a concrete example whereby the principal has "stolen" 2,000 acres of land from the Rift Valley Institute of Science and Technology and deceived the Minister that there are only 7,000 acres. Here is a document and a map showing the actual farm and its acreage as opposed to what the Minister said here. It has got another 4,000 acres of land known as the Dalolaine(?) Farm. This may also be "stolen" because they have been given an Authority such as the Minister is trying to give this scheme. How shall we guard ourselves against this which I am going to lay on the Table?

(Dr. Lwali-Oyondi laid the document on the Table)

Mr. Deputy Speaker, Sir, how shall we make sure that these billions of shillings are not going to be taken away? They are not going to be invested in some bogus banks. It is possible, the Authority can start a bank and put billions of shillings from there and where it can force various retirement benefits schemes to deposit in those banks and then falls.

Mr. Deputy Speaker, Sir, we have heard of certain financial institutions which took a lot of money from the NSSF. We have in mind banks like the Pioneer Building Society, Thabiti Finance Bank which is owned by a former Minister and so on. They have got a lot of public funds and they have disappeared. Now, the Minister will have to tell us how we can guard ourselves against this. It is only proper that once we have suffered such setbacks that in future we guard ourselves against them instead of simply going to the statute books and copying the Bills and only replacing the word "The Retirement Benefits Authority" or whatever other is already lying there. So, we have to try and guard ourselves against these malpractices.

Mr. Deputy Speaker, Sir, Clause 5 states:-

"The object and the functions of the Authority shall be (a) to regulate, supervise, establish and management of retirement benefits schemes".

I have no quarrel with any other thing except the last words of this sentence that says "the management of retirement schemes." It is so baffling. I wonder how this Retirement Benefits Authority can manage to manage hundreds of schemes unless the Minister will tell us how they will do it. They cannot manage them. Probably they can supervise or try to look at them but here, as far as I understand, one of the functions is to "regulate, supervise the establishment and management of retirement schemes." I do not know whether they will be able to manage hundreds and hundreds of schemes. Please, give me some information, Mr. Assistant Minister.

The Assistant Minister for Finance (Mr. Keah): On a point of information, Mr. Deputy Speaker, Sir. The point that you are talking about that, is the management of these schemes, was very much spoken about even last week by other hon. Members and this information will be helpful. What the Authority is going to do will be to regulate and supervise the establishment and also regulate and supervise the management. They will not themselves do the management. That is the point that I want to clarify. That is the point that I want to clarify and that is my point of information. The management of the pension schemes will be done by the fund managers, but the Authority will merely regulate and supervise; that is make sure that the pension schemes are managed in accordance with the rules and regulations of the schemes.

Dr. Lwali-Oyondi: Okay. Thank you very much, Mr. Assistant Minister. Of course, in law, and this should be made very clear if it can be paraphrased, I think it could give a better meaning because there is a time somebody will quote this and try to manage some private schemes. This is because he will say that "I also have the authority to manage the schemes". So, if it can be paraphrased in a better language to mean what we want it to mean, then that is fine.

Mr. Deputy Speaker, Sir, now, on Clause 5 (b), the Bill talks of protecting the interests of the members and sponsoring of retirement benefit schemes. Well, that is quite ideal.

But the practice has been that the various boards, including the NSSF Board of Trustees, have never protected the interests of their members. I do not care about sponsors because those ones can protect themselves, but members who work tirelessly and remit their contributions to NSSF have never been protected. The Minister should tell us how this protection will come about because we might end up with looters. I am almost certain that the Permanent Secretaries for the Ministry of Finance and the Ministry of Labour and Manpower Development and so on, are going to be members of the Authority. How can the Minister assure us that they would not come

with their bad habits and begin finding loopholes from which they can loot workers money? The Minister should give us an assurance on this during his reply because we have not been protected so far. The Minister should also tell us how he is going to make sure that money paid into various schemes, like NSSF, is actually paid. Some of the biggest culprits who are not remitting statutory deductions from workers are Government institutions. For example, the Ministry of Local Government, Municipal Council of Nakuru, never pays in time members contribution to NSSF, NHIF and SACCO funds. They are never paid and that is the Ministry of Local Government. If they do not do it, how do we expect the private sector to do pay?

How is this Authority going to go round "sifting" and making sure that these statutory deductions are paid in time? We might just be making another beautiful Authority that is going to fleece wananchi. We have KPA, but how is it protecting this country's income in taxes and various levies? It has been involved in a lot of scandals and thefts. For example, 1,000 cars vanished during the day and that is an Authority. What is the use of establishing another Authority, if they could not see 1,000 cars moving through guarded gates? How are we sure that this Authority that we are establishing will not swindle away millions of shillings which can be kept into small bags? Somebody amused me one day. He told me: "You people are just complaining that we are stealing money, what is money? It is just paper, we have been rustling cattle. How is it that we cannot rustle paper which cannot talk and which cannot be easily seen?"

So, in this case, if 1,000 cars could disappear from KPA, how can we be assured that this Authority will not make workers money disappear as it has been disappearing from NSSF? That is why I am very sceptical about the Minister's purported security for the various schemes which, by the way, have been working very well. Most of the private sector retirement benefits schemes have as yet to come out with scandals, like that one organised by the Government. If the Minister knows of any, let him tell us which one it is. We have companies like BP Shell and Kenya Breweries, whose former employees are enjoying their pension in such a way that you cannot know that they have retired. They continue to maintain their big tummies which they had when they were working. This means that their retirement schemes are quite good. After Government employees retire they are usually very miserable. I have seen former Government employees whose ties are hanging from their thin necks like pieces of robes. They happen to be very thin-looking. Usually, they say they have been suffering from malaria, which is not true: Their retirement benefits are not good enough to maintain them.

Mr. Deputy Speaker, Sir, the proposed Authority will act retrogressively because it will interfere with liberalisation of pension schemes. It will decentralise them and have a negative effect on various private pension schemes. I wish it could supervise the pension schemes without too much interference with them, or provide rules to enable workers to go to court when they have not been paid their money. That would be better than the Authority trying to interfere with private schemes.

Another thing that I am afraid of is that this authority might introduce corruption into private schemes, which may not have known it. We nowadays look at Government officers very sceptical because we think they are the fathers of corruption. I also wish to draw the attention of the Minister to Clause 5(b), which says that one of the functions of the Authority will be to advise the Minister on national policy to be followed with regard to retirement benefits schemes and to implement all Government policies related thereto. I think policy cannot come from the proposed Authority. Government policy is already there. It is the work of the Government to crystallise its policy, and it is for the Authority to implement it. I was just wondering why the Minister should be advised by the Authority. He should not be! He should have a policy in place to be followed by the Authority in its day today work. If I headed a government, I think, I would crystallise my policy and it would be for the civil servants to implement that it. If the Authority has to give us the policy which they will then try to implement then it will become the judge, prosecutor and the jury. Its work should be to implement Government policy.

If I could draw your attention to Clause 6, it says:

"The management of the Authority shall vest in the Board of Directors which shall comprise of a Chairman to be appointed by the Minister".

Mr. Deputy Speaker, Sir, with regard to that Clause, the Minister may appoint the Chairman, but he may appoint his youth wingers or his own brother or sister. So, this should be qualified. The appointment of the Chairman should not be political; we should have some knowledge or background of the person who is to be appointed. As it has been pointed out, it is high time the National Assembly through its Committees helped the Minister in the appointment of various dignitaries. Appointments have been done in the past ending up in an illiterate person being appointed to head the department which deals with soil conservation. Since this is a very scientific and technical body, this man cannot know exactly what is happening. We have a lot of people who are qualified on soil science, agriculture and various other fields of soil conservation, but they were not given that chance. An illiterate person who cannot read nor write was appointed who can only put a thumb print where he is supposed to sign. So, such appointments do not help this country at all. First of all, by doing so, we frustrate

those who have undergone such courses and have the knowledge to run the boards. Instead they are left out, a person who is just a simple youth winger of some people is appointed. I do not know whether we should call him an old winger of some people or what.

Mr. Deputy Speaker, Sir, this Chairman should be appointed with the help of the Committees of this House. The Chief Executive should also be knowledgeable and qualified in this sphere. The Permanent Secretary in the Ministry of Finance is appointed in almost every body that is created in this country. Fine, we have no quarrel with that, but the Permanent Secretary in the Ministry of Finance with the help of the Minister should have various Under-Secretaries who are specialists so that whenever the Permanent Secretary is wanted in a given Board, he sends somebody there who is specialised in that particular sphere so that he can give reasonable contribution apart from giving that body the monetary gain as far the Government is concerned.

Mr. Deputy Speaker, Sir, as it has been pointed out, Clause 6 states as follows:

"Members who are not public officers appointed by the Minister by virtue of their knowledge or experience in matters relating to the administration of scheme funds; insurance, law and actuarial studies--"

These members should include the contributors. As it has been pointed out the COTU would be the best because it represents the workers and the Kenya Federation of Employers which represents the employers, should also be there.

Mr. Deputy Speaker Clause 14 says:-

"No matter or thing..."

I do not like that word "thing" and I do not know how such a word should be used in courts of law. What "thing?"

"No matter or thing done by a member of the Board or any officer employed or agent of the Authority shall..."

What is that "thing?" I am not so sure what the Minister is afraid of mentioning. He is mentioning a "thing" which nobody knows what it is. I think the word "thing" should be expunged from this Clause. I am sure you have a lot of other words you could use instead of that word because it could mean anything. Apart from that, this Clause exempts the members of the Authority from being prosecuted personally. But on the other hand, in Clause 54, when it comes to the sponsors of schemes, it says:-

"When an offence under the provisions of the Act is committed by a body corporate"---Just like the Authority which is a body corporate.

"The body corporate and every director or officer thereof, who has knowledge or should have had knowledge of the commission of the offence, and who did not exercise due diligence to ensure compliance with this Act commits an offence."

Part 2 says:-

"Where an offence is committed under this Act by a partnership, every partner or officer of that partnership, who has had knowledge or who should have had knowledge of the commission of the offence, commits an offence."

Part 3 of Clause 45 says:-

"That a person shall be personally liable for an offence against this Act whether committed by him on his own account or as an agent or a servant of another person."

Mr. Deputy Speaker, Sir, it is bad law that discriminates. If the individuals forming that body cannot be prosecuted individually, how is it that the sponsors, as a body corporate, will be prosecuted personally? This is discrimination in law which is against the Constitution. Therefore, we ask the Minister to strike off this anomaly.

It is very unfair and unconstitutional to apply law by convenience. If the sponsors can be prosecuted individually, we recommend that the Authority should also be---

ADJOURNMENT

Mr. Deputy Speaker: Order, hon. Members. It is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 14th May, 1997, at 9.00 a.m.

The House rose at 6.30 p.m.