

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 3rd October, 2002

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.504

DISTRICT OFFICER FOR MUTARAKWA DIVISION

Mr. Speaker: Mr. Kimeto is not in? We shall come back to that Question later on!
Next Question!

Question No.157

TERMINAL BENEFITS FOR MR. KITHI

Mr. Speaker: Mr. Maitha is not in? We shall come back to that Question later on!
Next Question!

Question No.495

SUSPENSION OF MS. WAMBUI

Mr. Muya asked the Minister for Environment:-

(a) whether he is aware that through instigation of letters by one Mr. J. Kibe, dated 5th October and 20th November, 2000, Ms. Mary Wambui Anthony, P/No.79091141, was suspended from employment as a driver at Muringato in Nyeri without pay, through a letter Ref. No.EST/79091141/72, by Mrs. M.A. Owele, dated 28th March, 2001; and,

(b) if he is satisfied that the suspension was done in accordance with the circumstances surrounding the case.

The Assistant Minister for Environment and Natural Resources (Mr. ole Ntutu): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that through information from my field officers, Mrs. Mary Wambui Anthony, P/No.79091141, was arrested on 3rd June, 2000, on assault charges and remained in police custody until 12th June, 2000. Pursuant to this, she was suspended from performance of her duties with effect from 3rd June, 2000, in accordance with Section 24, sub-section 1 of the Public Service Commission Act of the Laws of Kenya.

(b) I am satisfied that she was suspended from performing her official duties in accordance to Section 24, sub-section 1, of the Public Service Commission Act, Cap.165 of the laws of Kenya, which stipulates that a public officer be suspended from performing duties if convicted of a serious criminal offence, which applies to her case.

Mr. Muya: Mr. Speaker, Sir, this is a case of the police being used to perpetrate injustice on Kenyan citizens. Perhaps the Assistant Minister could tell us who the complainant in this case was and what the sentence on conviction was.

Mr. ole Ntutu: Mr. Speaker, Sir, according to the information from the Ministry, a man by the name Kibe took the information to the Ministry because of the mess that the lady had done. The issue was reported to the police station and the police took action. The lady was taken to court and fined Kshs10,000.

Mr. Muite: Mr. Speaker, Sir, the Assistant Minister very eloquently referred to the code of regulations for

public servants, which demand that one should be dismissed on conviction by a court of law on any criminal offence. Is the Assistant Minister satisfied that those regulations are enforced uniformly? If so, why were the air traffic controllers dismissed prior to conviction?

Mr. ole Ntutu: Mr. Speaker, Sir, I am satisfied with the action taken by the court.

Mr. Muya: Mr. Speaker, Sir, in his answer, the Assistant Minister mentioned a Mr. Kibe as one of the persons who complained to the Ministry. Could the Assistant Minister tell us whether Mr. J. Kibe is one of the field officers, what his employment number is, and where he is stationed?

Mr. ole Ntutu: Mr. Speaker, Sir, according to Mr. Kibe's information, the Ministry investigated and found that the information was true. That is why the Ministry decided to take action, and the lady was taken to court.

Mr. Muya: On a point of order, Mr. Speaker, Sir. The Assistant Minister is not answering my question. What I would like to know is whether Mr. Kibe who gave the information to the Ministry is one of the field officers, or he is just an outsider. Is he an employee of the Ministry?

Mr. Ntutu: Mr. Speaker, Sir, Mr. Kibe is not an employee of the Ministry, but he volunteered very important information which we investigated and--

Mr. Speaker: Order! Order! Mr. Muya, is it a fact that your constituent was charged and fined? If so, why can she not appeal? Why should you bring the issue to the House? We cannot reverse what was done in the court.

Mr. Muya: Mr. Speaker, Sir, the Assistant Minister is not telling the truth, that this employee was fined. He is using information from outsiders, and yet in his answer he is saying that he got the information from his field officers. Is he not misleading the House?

Mr. ole Ntutu: Mr. Speaker, Sir, I would like to inform the hon. Member that the field officers are part of the Government, and as a Ministry, we rely on their information.

Question No.502

FUNDING OF KIAUMBI WATER PROJECT

Ms. Karua asked the Minister for Water Development:-

- (a) whether he is aware that funds voted in the 1997/98 budget for Kiaumbi Water Project have never reached the beneficiaries; and,
- (b) what he is doing to ensure that the funds reach the beneficiaries.

Mr. Speaker: Is anybody here from the Ministry of Water Development? We will leave that Question until the end. Let us move on to the next Question.

Question No.129

ALLOCATION OF FUEL LEVY FUND

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

- (a) how much money was set aside from the Fuel Levy Fund for maintenance and gravelling of roads in 1999/2000, 2000/2001 and 2001/2002 financial years; and,
- (b) whether he could table the breakdown of the allocations per province and district.

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

(a) The total amount of money from the Fuel Levy Fund which was set aside for maintenance and gravelling of the roads in the 1999/2000, 2000/2001 and 2001/2002 financial years was as follows:-

1999/2000 - Kshs6,051,150,902

2000/2001 - Kshs8,448,878,405

2001/2002 - Kshs7,170,844,643

- (b) I have got a very long list and I beg to lay it on the Table because I cannot read it.

(Eng. Rotich laid the list on the Table)

Dr. Kulundu: On a point of order, Mr. Speaker, Sir. That is very important information and I know the districts could be very many. Could the Assistant Minister give the breakdown per province?

Mr. Speaker: He was asked to table! Read the Question! The Question asked him to table a breakdown and he has done that!

Mr. Sungu: Mr. Speaker, Sir, unfortunately, other Members would be disadvantaged because they do not have the list that I have. The list is long and very comprehensive. But my question is: I note that in the year 2001/2002, Nakuru District got Kshs417,399,541, as opposed to Samburu District which got only Kshs24,493,193, and Suba District which got Kshs12,864,318. What are the reasons for those discrepancies? Is there fairness in those allocations?

Eng. Rotich: Mr. Speaker, Sir, a lot of that money went towards rehabilitation of paved roads. If you look at the places that he has mentioned, we do not have many paved roads. So, that money went to gravelling of the roads. If you look at the districts that we have, the length of paved roads are very long. For example, in Nakuru, we have the main road to Uganda passing through there. That is what they call the Northern Corridor.

Dr. Oburu: Mr. Speaker, Sir, I would like the Assistant Minister to confirm or deny that the allocations which are listed in his document which he has just laid on the Table exclude the districts where prominent members of the "Rainbow Alliance" come from; namely, Mwingi, Kajiado and districts in Luo-Nyanza? Could he confirm or deny that they have been removed from the list by the Permanent Secretary?

Eng. Rotich: Mr. Speaker, Sir, that is not correct. The list contains Kajiado under Rift Valley Province and under Eastern Province, we have Mwingi District on the list.

Mr. Muchiri: Mr. Speaker, Sir, could the Assistant Minister tell this House how much money was allocated to Nairobi Province?

Eng. Rotich: Mr. Speaker, Sir, I do not have the figure, but we sent it to the Nairobi City Council. At that time, we did not have the District Roads Committees (DRCs). But I could get the figure that was sent to the Nairobi City Council.

Mr. Kiunjuri: Mr. Speaker, Sir, we know that this financial year, they are supposed to release the funds to the DRCs. Knowing that there are so many projects going on and elections are nearby, we know that this Government will use this opportunity to misuse the money and take it to the "project" for campaigning. Already, they are spending Kshs50 million a week and they are not explaining to us from where they are getting that money. Could the Assistant Minister assure Kenyans that, that money will be released to the DRCs and we will have a say in the use of that money?

Eng. Rotich: Mr. Speaker, Sir, I wish to confirm that Kshs2 million will be in every constituency next week. In fact, the cheques have been dispatched. The Kshs2 million is the first issue per constituency in this financial year.

Mr. N. Nyagah: Mr. Speaker, Sir, I am quite surprised by the Assistant Minister's answer. That is because part (b) of the Question is very explicit. It says: "Could the Minister table the breakdown of the allocations per province and district?" Nairobi happens to be both of those. Should he not have those figures that he can give to this House, as to what was given to the City Council, without having to make any further reference?

Mr. Sungu: Onapoint

of order, Mr. Speaker, Sir. The figures for Nairobi Province are on the last page. I do not know whether the Assistant Minister could see them!

Mr. Speaker: Do you have the last page?

Eng. Rotich: Mr. Speaker, Sir, it is true, and I am sorry! I did not see it. But the figure for Nairobi Province is on the last page. It is Kshs1 billion in the 2001/2002 financial year.

Mr. Maitha: Mr. Speaker, Sir, according to the list which has been tabled, Coast Province got Kshs482,629,180. My question to the Minister is: Is that money meant for the constituencies? What is involved? Will the whole amount be sent to the province? We are only getting money for the constituency and we do not know where the rest of the money goes!

Eng. Rotich: Mr. Speaker, Sir, the total amount includes the money for the constituencies. If you look at the 1999/2000 financial year, we did not have the Act in place. We started in the last financial year.

Mr. Sungu: Mr. Speaker, Sir, I still insist that there is discrimination on this matter because Rift Valley Province had over Kshs2 billion in the 2001/2002 financial year, whereas Western Province had only Kshs251 million. That is unfair. Could the Assistant Minister confirm that, that is discrimination on the basis of the fact that there are very powerful leaders from Rift Valley Province? Could he also identify which roads were constructed in Kisumu and Nyando districts?

Eng. Rotich: Mr. Speaker, Sir, could the hon. Member repeat the names of the last two districts? I did not hear them properly.

Mr. Sungu: Mr. Speaker, Sir, I said Kisumu and Nyando districts in the year 2001/2002.

Eng. Rotich: Mr. Speaker, Sir, I do not have the list here with me, but I can avail that information later.

Mr. Speaker: Next Question, Mr. Munyasia.

Question No.491

GRAVELLING OF CHWELE-LWAKHAKHA ROAD

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

- (a) whether he is aware that the road from Chwele Market through Namwela-Sirisia-Wamono-Lwakhakha, which the Government undertook to gravel about three years ago, was not completed and is now impassable;
- (b) how much money the contractor has been paid so far, for the work;
- (c) why work on that road stopped; and,
- (d) what measures he is taking to ensure that this important road linking Bungoma to Uganda is improved to all-weather standard.

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

(a) I am aware that the road from Chwele Market through Namwela-Sirisia-Wamono-Lwakhakha, which my Ministry undertook to gravel about three years ago, has not been completed to date. However, the information I have is that the road is passable.

(b) A total of Kshs8,852,346.90 has been paid to the contractor for the completed works.

(c) The work on the road did not stop, but the contractor slowed down when it was realised that some of the billed quantities had been exhausted due to the under-estimation of the same at the tendering stage.

(d) My Ministry has prepared a variation order covering the exhausted quantities and it is being processed through the normal Government procedures. As soon as it is finalised, the contractor will be issued with instructions to complete the remaining works.

Mr. Munyasia: Mr. Speaker, Sir, could the Assistant Minister tell us when this road was supposed to be completed? How long was it to take? Which are these completed works he is talking about? What part of the road has been completed?

Eng. Rotich: Mr. Speaker, Sir, I do not have the information on which parts have been completed now, but, I have the completion period which was 18 months from 1st March 1999. The time that has elapsed is about 26 months. So, the completion of this road has overshot by eight months.

Mr. Munyasia: Mr. Speaker, Sir, it seems as if the Assistant Minister did not prepare for this Question at all. He does not even know which parts of the road have been completed and he pretends to answer the Question. The truth is that the money that was supposed to be used on this road was used to build a private school in Bungoma. All of us know it. The balance of the money is being used to campaign for KANU. Maybe that is what he is now preparing to do. In his answer, the Assistant Minister said this road is passable. Could he tell us what type of vehicles can pass on this road because parts of the road, like at Namutokholo, are impassable? There is a bridge that broke down. Which vehicles can pass on this road?

Mr. Speaker: Eng. Rotich, did you get the name?

Eng. Rotich: No, Mr. Speaker, Sir.

Mr. Speaker: Mr. Munyasia, what was the name of the place?

Eng. Munyasia: Mr. Speaker, Sir, it is Namutokholo!

Eng. Rotich: Mr. Speaker, Sir, the information I have here is that, that road is passable. I am not in a position to say I visited it. Therefore, I cannot say with authority that it is passable. However, I am willing to go and inspect it with the hon. Member.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister's confession that he might have been misled by officers on the ground. Is he in order to mislead the House? Suppose he finds out that he was misled, what action will he take against the officer that made him mislead this House?

Mr. Speaker: Order! Mr. Ndicho, you are out of order on two accounts; first, that is not a point of order. Secondly, even if it was a question, it is speculative and it is not admissible.

Mr. Achola: On a point of order, Mr. Speaker, Sir. Mr. Munyasia has just made an allegation that the money that was supposed to be used on this road was used to build a private school. Would I be in order to ask Mr. Munyasia to substantiate the allegation?

Mr. Speaker: That is a valid point of order.

Mr. Munyasia: Mr. Speaker, Sir, there is a private school at Makutano. It is an annex of the Makini range of schools. That is the school on which the money for this road was spent by one Major Walupe and Grace Wakhungu.

Mr. Speaker: Very well. Next Question, Mr. Kanyauchi.

Hon. Members: No! No!

Mr. Speaker: But you are all happy!

Mr. Achola: Mr. Speaker, Sir, if that is the situation, what the Assistant Minister told the House is wrong.

Mr. Speaker: Eng. Rotich, is that okay with you? If the Assistant Minister seems to be happy with it, who am I to question it?

Eng. Rotich: Mr. Speaker, Sir, I am not aware that money that was supposed to be used on this road was used to build a private school. I am not aware of that allegation.

Mr. Speaker: Very well. Next Question, Mr. Kanyauchi.

Question No.499

REPAIR OF NYATIKE-MAGUNGA ROAD

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

(a) whether he is aware that the road between Nyatike Constituency and Magunga Divisional Headquarters and running through Ruma National Park has become impassable as a result of the 1997 *El Nino* rains and the rains of April, 2002.

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

(a) I am aware that some section of the road between Nyatike Constituency and Magunga Divisional Headquarters, running through Ruma National Park, has been rendered impassable.

(b) The Ministry has included the road in this year's work plan.

Mr. Kanyauchi: Mr. Speaker, Sir, I think it is a big shame for the Assistant Minister to stand up and without batting an eye, admit that, indeed, such an important road has been rendered impassable. Further, he only said that it has been included in this year's work plan without producing the work plan and without telling us how much money has been set aside to upgrade the road. The work plan is not a big deal. We are talking here about money and a road which is impassable. Where is the work plan and how much money do they intend to use to make sure that road is passable?

Eng. Rotich: Mr. Speaker, Sir, this road is under District Roads Committees (DRCs). It is classified as D210. According to the work plan of the DRC, it will cost Ksh1.5 million.

Mr. Ngure: Mr. Speaker, Sir, this road was damaged by the *El Nino* rains. We know funds to rehabilitate *El Nino*-damaged roads are handled from the Office of the President. Why is this Question being answered by the Assistant Minister for Roads and Public Works?

Eng. Rotich: Mr. Speaker, Sir, *El Nino*-damaged roads are not looked after by the Office of the President. It is the funding that came from the World Bank that is being handled by the Office of the President. All the roads that were approved to be rehabilitated under the *El Nino* Emergency Fund are now being rehabilitated. This road was not one of them.

Dr. Oburu: Mr. Speaker, Sir, the Assistant Minister says that there is an amount of Kshs1.5 million in the work plan. The question is not the work plan but the budget. How much money is there in the budget, not in the work plan?

Eng. Rotich: Mr. Speaker, Sir, this Kshs1.5 million is part of the Kshs5.5 million which will be released to the constituency.

Mr. Kanyauchi: Mr. Speaker, Sir, I think the Assistant Minister is not serious about this Question because he is talking of some money Kshs1.5 million as part of the Kshs5.5 million. But the issue here really is: When will practical works on this road begin? Does he have that in the so-called work plan? This road is very important because it runs through a national park. If tourists cannot access a national park, what is the use of having a national park? The park is inaccessible because the road is impassable. When will the work start on this road?

Eng. Rotich: Mr. Speaker, Sir, in fact, the work on this road can start as early as next week. The money will be there by Monday next week.

Mr. Speaker: Very well. Next Question, Mr. Kihoro.

Question No.503

PUBLICATION OF RISK ADVISORY GROUP REPORT

Mr. Kihoro asked the Attorney-General:-

(a) whether he could avail to the House a copy of the Report of the Risk Advisory Group Limited on Kenya's anti-corruption initiatives;

(b) what the findings of the advisory company were and when these findings will be implemented; and,

(c) what the qualifications of the main officers involved in the project were and what the costs, fees

and other charges incurred by the Government on the contract were.

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

(a) The Report of the Risk Advisory Group Limited on Kenya' anti-corruption initiatives was laid on the Table of this House on 8th May, 2002.

(b) Many findings were made, a summary of which is contained in the executive summary from page four to page eight of the report. I may take half an hour to read all that.

(c) The summary of the qualifications of the main officers of the team is as follows:-

(i) Mr. Stephen Kramer is a leading member of the English Criminal Bar and was appointed the Queen's Counsel in 1995 and is a former Chairman of the Criminal Bar Association.

(ii) Sir Humphrey Maud was a former Deputy Secretary General of the Commonwealth in charge of Economic and Social Affairs.

(iii) Mr. Anthony Albert Edward Milford was former Group Head of Corruption Prevention - Hong Kong's Independent Commission Against Corruption, and former Assistant Director, Directorate Against Corruption and Economic Crimes in Botswana.

(iv) Graham Edward Stockwell was a former Commander, Criminal Investigation Department, London Metropolitan Police, New Scotland Yard. He was a former Director of Operations, Independent Commission Against Corruption in Hong Kong. He was first Director of the Directorate Against Corruption and Economic Crimes in Botswana.

(v) Nigel V. Turnbull is a Chartered Accountant and a former Financial Director of the Rank Group. He produced the Turnbull Report for London's Stock Exchange and the Institute of Chartered Accountants of England and Wales.

(vii) William Waite, Chief Executive of the Risk Advisory Group and has a Master of Law Degree. He is a member of the Board of Directors for the European Chapter of the African Corporate Counsel Association and Editor, Financial Times Publication Managing Risk and Resolving Crisis.

The amount of money paid was £140,000 in respect of professional fees and £30,000 in respect of expenses.

Mr. Kihoro: Thank you, Mr. Speaker, Sir. I do thank the hon. Attorney-General for providing a very good answer to the Question. But I would also like to say that none of these officers is better qualified than I am. I have better qualifications than each one of these officers. The amount of money which has been spent on this Risk Report is a lot. I would like to point out that Kshs22,100,000 which translates to £170,000 is a lot of money which was spent and after reading the Report, I find that a lot of what they wrote has been plagiarized from the Parliamentary Select Committee Report, which only spent Kshs5 million. Could the hon. Attorney-General tell us exactly what has been implemented? In part "b" of his answer, he has said that the Report has been implemented. Could the Chair ask the Attorney-General to tell us exactly what has been implemented?

Mr. Wako: Mr. Speaker, Sir, at the time these people were hired, the conversion rate was not Kshs130 per sterling pound. In fact, the total amount is slightly above Kshs18 million. Many things have already been implemented. As I stated in the press statement which I issued regarding this particular Report when I made it public, I stated that a number of their recommendations for amendments to the Anti-Corruption Bill and the Public Officers Ethics Bill had already been incorporated in those Bills. I am glad to say that those Bills have already passed the Second Reading.

These officers also recommended that the amnesty issue be de-politicised in order to be resolved by Parliament. We have tried to de-politicise this issue and as the Chair is aware, Transparency International held a one-day meeting which was attended by many stakeholders. This meeting was on the issue of amnesty. The officers did recommend the review of the Attorney-General's Chambers, enhancement of resources and better terms and conditions of service. This is being looked into by the Government. They made similar recommendations regarding the Judiciary, the Commissioner of Police and the Commissioner of Prisons. This team also appealed to the Bretton Woods Institutions--- If I may read page eight of the executive summary, it says:-

"In our respective opinion, it would be entirely inappropriate for either the World Bank or the International Monetary Fund (IMF) to insist on the passing of the Corruption Control Bill and the Public Service Code of Ethics Bill by way of a conditionality."

These Bills should be passed, but not by way of a conditionality. This group made a number of administrative recommendations on strengthening of the Anti-Corruption Police Unit (ACPU), which have been implemented. The ACPU is now operating more efficiently than it was operating before this particular team came up with those recommendations. This team, if I may say so, was more focused on investigation of corruption and economic crimes. We were looking for the experts on the part of investigations, and they did make an impact, I believe, on the ACPU, which is now doing a very good job. A number of cases are being prosecuted to an extent where the Chief Justice has set up a special court to hear corruption cases.

Mr. Muchiri: Mr. Speaker, Sir, why did the Attorney-General or the representatives of the Kenya

Government think that they could not get officers or Kenyans who are more qualified than the people he has mentioned?

Mr. Wako: Mr. Speaker, Sir, I would like to admit that the Government has done a lot to put in place anti-corruption initiatives by setting up the ACPU and laws. The strategic plan against corruption had been discussed at the national stakeholders' forum at the School of Monetary Studies. So, these were the efforts which we were doing within the country. Some experts had advised us when we were doing that, but we had reached a level where whatever efforts we made were not being appreciated by the outside world. That is a fact. We required people from outside to come and look at what we were doing and tell us whether we were on the right track or not. I am glad to say that they said that we were on the right track.

Mr. Angwenyi: Thank you, Mr. Speaker, Sir. You have heard the Attorney-General say that we had to hire these people in order to look credible. In effect, what he is saying is that if we got five or six black people, painted them white and they produced the same report, we would have looked credible. Could the Attorney-General tell this House the material findings that these people came up with, which had not been contained in the Parliamentary Select Committee's Report to warrant the expenditure of Kshs22 million?

Mr. Wako: Mr. Speaker, Sir, they are many. One, of course, is to tell the Bretton Wood Institutions that Kenya is doing very well; it is on the right track and that they should not press us too hard. That did not come out of the Report of the Parliamentary Select Committee. The report of this Committee stated that the agency which would be set up to fight corruption would have both investigative and prosecutorial powers. We had tried to implement that, but the team came out very clearly to state that to have an agency with both investigative and prosecutorial powers is to establish a dictatorship. They stated that the prosecutorial powers must continue to remain in the hands of the Attorney-General. They also recommended that the agency to be set up must have effective investigative powers. That did not come out of the Parliamentary Select Committee. There are many other things which did not come out of the Parliamentary Select Committee. This team, agreed with many of the recommendations of the Parliamentary Select Committee, but stated clearly that it may not be appreciated by all of us. But they do state clearly the resources required to implement what was contained therein. For example, they stated that to investigate all the cases that have been mentioned in the Public Accounts Committee and Public Investments Committee Reports, as has been recommended, it will take more than 10 to 20 years, before they embark on the current cases that have to come out of these Reports.

Mr. Kihoro: Mr. Speaker, Sir, I find that the Parliamentary Select Committee's Report which was done in the year 2000, with all due respect by black Africans like me--- Of course, when I look at the list that has been read by the hon. Attorney-General, I find that the whole of it comprise white people. They are all white men and there is no single white woman! Could it be that the Attorney-General would not believe what is produced by Africans, and might tend to believe more of what is produced in Europe and America?

Mr. Wako: Mr. Speaker, Sir, as the hon. Member knows, the Attorney-General is a great pan-Africanist. He believes in the way the indigenous people do things. He also believes, and he has behaved, to show the rest of the world that we are also competing with it. In fact, we are far much better.

Let me point out that before these people were appointed, various firms were approached and these people produced the best plans, in our view. They had the best resources and the most experienced people to undertake the task. I am satisfied that we correctly did so, and as you can see, their report was very good. Although they were white people, their report was much more favourable to Kenya, particularly as regards the Bretton Woods Institutions.

Mr. Kihoro: On a point of order, Mr. Speaker, Sir. The Attorney-General did not address the points I raised about fascism, that has become an issue, after the Government has been inclined to accept a report written by white people; and do not accept that which has been written by hon. Members of this Parliament, all of them being black! Could the Attorney-General tell this House what reports have been written, after pressurising our report, and see whether it has the ability to revive the list of shame? Has he done so?

Mr. Wako: Mr. Speaker, Sir, I do not want to comment on that because this very House, when it was adopting that report, it removed those sections that referred to the list of shame.

Mr. Speaker: Very well. Mr. Kimeto's Question for the second time!

Question No.504

DISTRICT OFFICER FOR MUTARAKWA DIVISION

Mr. Speaker: Mr. Kimeto still not here? The Question is dropped!

(Question dropped)

Mr. Maitha's Question for the second time!

Mr. Maitha: Mr. Speaker, Sir, I must apologise for coming to the House three minutes late.

Question No.157

TERMINAL BENEFITS FOR MR. KITHI

Mr. Maitha asked the Minister for Labour:-

(a) whether he is aware that Fayaz Bakers and Confectioners of Mombasa has not paid terminal benefits to a former employee, Mr. Said Karisa Kithi;

(b) whether he is further aware that despite efforts made by labour officers, the employer has refused to settle the matter; and,

(c) what action he is taking to have Mr. Kithi paid his dues.

Mr. Speaker: Is there anybody here from the Ministry of Labour and Human Resource Development?

(Mr. Chanzu stood up, hesitantly, in his place)

It is as good as when you are late. The Question is deferred!

The Assistant Minister for Labour and Human Resource Development (Mr. Chanzu): Mr. Speaker, Sir--

Mr. Speaker: Where were you?

The Assistant Minister for Labour and Human Resource Development (Mr. Chanzu): I was here, Mr. Speaker, Sir.

Mr. Speaker: Then, why are you coming late?

The Assistant Minister for Labour and Human Resource Development (Mr. Chanzu): I was here, Mr. Speaker, Sir. We would like to request that this Question be deferred because the answer is not sufficient. We will have the answer ready by next week.

Mr. Speaker: That is what I was doing before you stopped me! Mr. Maitha, what is your reaction?

Mr. Maitha: Mr. Speaker, Sir, you see how the Government is very busy now campaigning instead of answering Questions. It is now four months since I sent this Question to the Ministry and, it is not good for the public to be held at ransom like this by the Assistant Minister. When will the Assistant Minister bring a sufficient answer to this House?

The Assistant Minister for Labour and Human Resource Development (Mr. Chanzu): The answer will be ready next week on Tuesday.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. Would I be in order to ask Mr. Maitha to declare his interest in this Question and say whether the guy in the name of Mr. Said Karisa Kithi, is ever related to him?

Mr. Speaker: Mr. Ndicho, the Question is not before the House yet!

Mr. Ndicho: By the time it will come before this House!

Mr. Maitha: On a point of order, Mr. Speaker, Sir. Mr. Ndicho should not be inquisitive about the Karisas. This is a Mijikenda name and you will find it everywhere. But, can he also declare his interest when he supports the "Project" and he has the same name like "Project"? Is he a relative of the "Project"?

Mr. Speaker: Order! Order, hon. Members! Yesterday, I said that hon. Members should refer to their colleagues in their names. I will not accept any derogatory names or titles in this House! May it be heard clearly!

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

Mr. Speaker: What is it?

Mr. Angwenyi: Mr. Speaker, Sir, is it wrong to ask a question in this House which touches on somebody whom you are related to?

Mr. Speaker: Order! Order, hon. Members! We have not come to that Question yet. The first thing, which I could even ask Mr. Ndicho, when the Question comes to the House, is whether he owns all the names called "Ndicho" in the world? Mr. Ndicho, there must be other Ndichos in the world who are totally unrelated to you!

Anyhow, shall we defer the Question to next week, all said and done.

(Question deferred)

Ms. Karua's Question for the second time.

Question No.502

FUNDING OF KIAUMBI WATER PROJECT

Ms. Karua asked the Minister for Water Development:-

(a) whether he is aware that funds voted in the 1997/98 budget for Kiaumbi Water Project have never reached the beneficiaries; and,

(b) what he is doing to ensure that the funds reach the beneficiaries.

The Assistant Minister for Environment and Natural Resources (Mr. Nooru): Mr. Speaker, Sir, I apologise for coming to the House late. However, I beg to reply.

(a) Yes, I am aware that the funds voted for Kiaumbi Water Project have not reached the intended beneficiaries.

(b) Because of the prevailing economic conditions in the country, my Ministry is unable to give a commitment on the funds for Kiaumbi Water Supply Project.

Ms. Karua: Mr. Speaker, Sir, the Assistant Minister having admitted that the funds were voted for that project by this Parliament, it means that the funds were available. The Assistant Minister is now talking about lack of liquidity. Could he tell this House where the voted funds went to, and also confirm whether the donor by the name IFAD, who was contributing funds for this project did give the Government the money? Where did the money go to?

Mr. Nooru: Mr. Speaker, Sir, this project has nothing to do with IFAD; it is only funded by the Ministry of Water Development and, it was in 1997/98 when we allocated Kshs5.5 million in the draft estimate. However, the money has not been received from Treasury because of the liquidity problem, as the funds were frozen by the Treasury that particular time.

Mr. Kibicho: Mr. Speaker, Sir, if there were no funds in the year 1997/99, why did the Ministry not make provision for that project in the following year, or even this year so that the project could be completed?

Mr. Nooru: Mr. Speaker, Sir, this was a self-help project which was initiated by the community in 1995. The Ministry was just asked to assist in terms of technical assistance and funding. However, the beneficiaries of the self-help project did not pursue the matter until we got the Question from the hon. Member.

Mr. Angwenyi: Mr. Speaker, Sir, it looks like I have got a job here. Could the Government hire me to teach these people public finance? When we vote funds in this House, those funds must be there! If they are not available, then the Supplementary Estimates should revise those estimates. These estimates were not revised! Where did those funds go? Could the Assistant Minister tell us where the funds went to?

Mr. Nooru: Mr. Speaker, Sir, obviously, Mr. Angwenyi must know that between 1997 and 1998, the economy was in a very critical situation. The Treasury issued circulars to Ministries and recalled all budgetary provisions for development. Subsequently, that was formalised by this House during its consideration of the Supplementary Estimates.

Ms. Karua: Mr. Speaker, Sir, it appears that the Assistant Minister is deliberately misleading the House. When I asked the Question, I attached a copy of the 1997/98 Budget, which clearly showed that the funds were coming from the International Fund for Agricultural Development (IFAD). The beneficiaries have found out from IFAD that the Government received the funds. The funds were released to the District Treasury, Kirinyaga, but they were not released to the beneficiaries. Now, the Assistant Minister is talking about the Government having been the only funding authority, and is claiming that IFAD was only offering technical assistance. The Assistant Minister does not appear to have done his homework. I have already forwarded the documents I have to IFAD. I would, therefore, like to table the documents next week, to show that the Assistant Minister is deliberately misleading the House, so that the House can appropriately deal with the issue. I believe that Ministers should take this House seriously. A Budget passed by this House must be implemented. Monies should not be embezzled with the connivance of the Ministry.

Mr. Speaker: Mr. Assistant Minister, what is your reaction?

Mr. Nooru: Mr. Speaker, Sir, I quite disagree with the gracious lady that I am misleading the House. I have accepted that the provision of the Kshs5.5 million was to come from the Ministry. The Ministry went further and issued Authority to Incur Expenditure (AIE) Reference No.5501B/98, for the period between July and December, 1997. Subsequently, we issued the second AIE for the period between January and June, 1998. However, after the District Water Engineer, Kirinyaga, floated the quotations, we went further and made a commitment to undertake the project. However, we did not receive Exchequer issues from the Treasury. Consequently, suppliers refused to honour our Local Purchase Orders, and the donor funds were frozen.

Mr. Keriri: On a point of order, Mr. Speaker, Sir. Either the Assistant Minister either did not understand what Ms. Karua has told him, or he is misleading the House. He has not addressed the very serious matter raised by

Ms. Karua, who said that the money came from a donor, IFAD, and that money appears to have been issued to some authority, who never passed over the money to the beneficiaries. At first, the Assistant Minister said that the Treasury did not release an Exchequer issue for the project. Subsequently, he said that an AIE was issued. Now, which is which? Would I be in order---

Mr. Speaker: Let us give the Assistant Minister time to find more about this issue and come back with an answer on Tuesday.

Mr. Keriri: That will be okay.

Mr. Speaker: Very well; next Order!

POINT OF ORDER

MISREPORTING OF HOUSE PROCEEDINGS BY THE PRESS

Mr. Mutahi: On a point of order, Mr. Speaker, Sir. Through you, I would like to kindly request the *Daily Nation* to correct its misreporting on my contribution yesterday to the Motion urging the Government to write off coffee societies loans, which we passed. My contribution is clearly recorded in the HANSARD of yesterday. I said that the reason as to why I supported the Motion was because we had borrowed Kshs20 million from the Co-operative Bank, but today, the Bank is demanding Kshs254,281,000 from us. However, in today's edition, the *Daily Nation* has quoted me as having said that Mukurweini Coffee Society Limited borrowed Kshs220 million from the Co-operative Bank of Kenya. Since morning, my constituents have been telephoning and asking me to explain when the society borrowed the Kshs220 million from the bank. What I said yesterday was that we borrowed Kshs20 million, and that the difference between the amount we had borrowed and that being demanded by the bank is Kshs220 million. I have a copy of yesterday's HANSARD with me here, and I would like that position corrected.

Mr. Speaker: Very well. I think we must all be sensitive to what hon. Members say here, so that we do not say what they did not say, and by so doing arm their potential political opponents. So, could the misreporting be corrected, so that what the hon. Member actually said is correctly reported?

Hon. Members, before we proceed to the next Order, I would like to inform you that there is a Supplementary Order Paper, on which we shall henceforth proceed. The Supplementary Order Paper contains proposed amendments by the Minister, which we received belatedly, to the Bill we are going to scrutinise in the Committee of the Whole House. I hope that the Supplementary Order Paper has been availed to each one of you. If they have not been availed to you, you can get a copy at the Bar.

So, let us proceed to the next Order.

BILLS

First Readings

THE KENYA LAW REFORM COMMISSION BILL

THE PRESIDENTIAL RETIREMENT BENEFITS BILL

THE PENSIONS (AMENDMENT) BILL

THE EQUALITY BILL

THE PUBLIC PROCUREMENT BILL

*(Orders for First Readings read - Read the First Time
- Ordered to be referred to the relevant
Departmental Committees)*

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE CIVIL AVIATION (AMENDMENT) BILL

Clause 2

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 (d) be amended by inserting the following new definition in proper alphabetical sequence-
"controlled area" means a controlled airspace extending upwards from a specified limit above the earth.

(Question of the amendment proposed)

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, could the Minister explain to the House the import of this amendment? Why is it necessary? What is he seeking to achieve? Why was it omitted before?

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, this is just to improve on the text of the Bill. If you look at page 646 of the Bill, the third paragraph from bottom, you will realise that we have defined the word "airways" as a designated controlled area or portion therefor established in the form of a corridor. This is in accordance with civil aviation definitions in other countries. We are trying to harmonise our definitions with definitions in other countries. We want to improve the Bill by having "the controlled area" properly defined so that it is consistent with definitions in other laws in countries which have established a more elaborate aviation law.

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

(Clause 2 as amended agreed to)

Clause 3

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 be amended in the proposed section 3B, by inserting the following subsection immediately after subsection (5).

(6) In the discharge of its responsibility for aviation safety and aviation security, the Authority shall co-ordinate its activities with other agencies of the Government, including the Kenya Airports Authority, the Department of Defence and the Police.

We are trying to broaden the functions of the proposed Civil Aviation Authority, and more specifically, facilitate within the law that where necessary, the Authority will play the co-ordinating role in collaboration with these other Government agencies.

(Question of the amendment proposed)

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, I want to raise the issue of security at the airport. On many occasions, we have seen cattle grazing near the run away at the airport. Why has the Minister not done anything about it? Would it not be necessary for him to provide against cattle grazing in the proposed amendments? This is a security risk for landing airplanes. We have raised this issue severally, but the Minister has never addressed it.

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, that is a valid point. In certain instances, we have seen animals grazing closer to the runway. That is, of course, a

danger. In this Civil Aviation Authority Bill, we are trying to give powers to the Authority, so that if one takes his cattle to the wrong, it can take action. There are provisions which will ensure that the Authority will enforce more effectively safety at the airport.

But for the time being, it is the Kenya Airports Authority, which is governed by a different Act, which should ensure that animals do not encroach on the runway. The KAA should ensure that this is adhered to.

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

(Clause 3 as amended agreed to)

Clause 4

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 be amended in the proposed section 4 -

(a) by deleting paragraph (1)(f) and substituting therefor the following new paragraph -

(f) "the Chief Executive Officer of the Kenya Tourist Board or his representative";

(b) in paragraph (1)(h) by deleting the word "two" and substituting therefor the word "three";

(c) in subsection (2) by deleting the words "civil aviation" appearing immediately after the word "to".

Mr. Temporary Deputy Chairman, Sir, after consulting with the relevant Departmental Committee, we felt that civil aviation plays a major role in the African tourism. After lengthy deliberations, the Committee felt that instead of having the Permanent Secretary, Ministry of Tourism and Information, the Chief Executive of the Kenya Tourist Board or his representative would play a more important role when it comes to deliberations on matters related to aviation. That is why that amendment has been proposed.

Mr. Temporary Deputy Chairman, Sir, on (b), the issue of deleting the word "two" and substituting therefor the word "three" is to facilitate the inclusion of more private sector members onto the board as opposed to the previous two, which was then making the board members, when fully constituted, being at par. However, what this means is that the private or the corporate sector will have more representation on the board.

Mr. Temporary Deputy Chairman, Sir, in (c), again, in consultation with the Departmental Committee, the feeling was that since the Chief Executive of the board is already an expert in civil aviation, it would be more appropriate if the Chairman can be a competent person within a different field and not necessarily in the field of civil aviation, because his job is really to chair the board and to provide a different perspective, but not necessarily to be an adviser on technical matters. So, this is why there is that adjustment, deleting the words "an expert in civil aviation" and letting it be that "he can be Chairman, but with vast experience from a different field."

(Question of the amendment proposed)

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

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

(Clause 4 as amended agreed to)

Clause 5

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended in the proposed section 5A (2) by deleting paragraph (v) and substituting therefor the following new paragraph -

(v) establish a school or schools for the purpose of offering instruction and training in matters related to the aviation industry.

Mr. Temporary Deputy Chairman, Sir, this is really an improvement on the original clause because the original clause was for the establishment of a school or schools for purposes of training employees of the Authority as may be necessary for the performance of functions of the Authority. So, what we are saying is that if we want to strengthen the aviation industry, we should not just train the employees alone. We should be able to have an institution that can train both employees and also other people interested in the aviation industry who may want to join the private sector.

(Question of the amendment proposed)

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, since the school will now be training students for the purpose of the general aviation and of the Authority, could the Minister tell us whether the school is going to expand and is whether the intake will increase? Since I know where the school as it happens to be in my constituency, is it going to be better maintained because even the road leading to the school is in a total mess at the moment; are you going to allocate more funds for the school to improve it?

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I can only say that, that will be part of the long-term programme because if the institution is able to generate more resources we would expect it to provide a very competent, well-equipped and staffed training institution to be able to take in a reasonable number of students than it may be doing at the moment. Naturally, we will try and endeavour to improve the facilities that impact on that, including the need to consider that particular road.

Mr. Maitha: Mr. Temporary Deputy Chairman, Sir, Mang'u High School is one of the high schools in the country that has a big interest in aviation. Could the Minister tell this House whether his Ministry intends to spread that "gospel" of aviation by at least introducing aviation subjects in schools since parents would like their children to become pilots?

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, let me just say that we do not expect the Authority to become a closed shop and we will ensure that there is a lot of liaison also with the Ministry of Education, Science and Technology on how there can be collaboration between that institution and the various schools, including Mang'u High School.

Mrs. Mugo: Mr. Temporary Deputy Chairman, Sir, could the Minister tell us whether the aviation school will also be able to take on the training of pilots, especially jet pilots for those big planes, because at the moment it costs a lot of money for our young people to be trained as pilots abroad?

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I share her sentiments and I know that even at the moment, pilots are being trained here, but some, of course, spend much more money when they go out. However, I can assure you that the curricula will be developed to really take into account the various market needs of this country.

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, Wilson Airport, for many years, has been regarded as the busiest airport the world over and that has been confirmed by very many people. If you go to Wilson Airport you will find very few Africans who man the aviation industry. My prayer would be that in this school there will be more concerted efforts in teaching our African brothers and sisters to take over that role so that in future, we can see many of our African children venturing into this field. I am asking this because I am an affected person. My son trained at the Wilson Airport and eventually left for the United States of America, and it is an expensive exercise. What efforts will the Ministry put in place to train our young Africans so that they can go and man the busiest airport in the world?

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I can only say that I have taken note of that, and in considering the admission rule or criteria, I think it will be important to take that specific issue into account.

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

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

(Clause 5 as amended agreed to)

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6 be amended-

(a) in the proposed Section 6G by deleting the words "Auditor-General (Corporations)" wherever they occur and substituting therefor the words "Controller and Auditor-General";

(b) in the proposed Section 6H -

(i) by deleting the words "Auditor-General (Corporations)" and substituting therefor the words "Controller and Auditor-General";

(ii) by deleting the words "six months" and substituting therefor the words "three months".

Mr. Temporary Deputy Chairman, Sir, this is a straightforward amendment. When the Bill was originally drafted, we had the institution of the Auditor-General (Corporations). But hon. Members will recall that amendments were made so that, that has now been merged to become one institution. So, we are making the corrective measures to be consistent with the new Bill.

The issue of six months is to ensure that the institution will always make sure that at the end of each financial year, within three months, they make available the statements of their income and expenditure to the Controller and Auditor-General for scrutiny.

(Question of the amendment proposed)

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

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

(Clause 6 as amended agreed to)

Clause 7

The Temporary Deputy Chairman (Mr. Kihoro): There are two amendments to Clause 7. There is one that has been proposed by the Minister, and another one by Mr. Muite.

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 7 be amended-

(a) by deleting the proposed Section 7B and substituting therefor the following new section-

Authorization to 7B. The Authority may authorise an

provide air organization to provide air navigation

navigation services for the use of an aerodrome

services subject to such conditions as may be set by the Authority.

(b) in the proposed Section 7H by deleting the words "one hundred and fifty thousand" appearing in subsection (4) and substituting therefor the words "two million";

(c) in the proposed Section 7J by inserting the words "upon the recommendation of the Authority" immediately after the words "Minister may".

Mr. Temporary Deputy Chairman, Sir, on part "(a)", we are only making a correction. On part "(b)", the position here is that the issue of safety in aircraft became very contentious when we were talking with the Departmental Committee. They strongly felt that because one wants to send a very strong message that anybody who would endanger the security of aircraft could face a very serious penalty, the Committee was of the strong view that the fine of Kshs150,000 which had been indicated was too little for anybody who would be endangering the security of people in an aircraft. Therefore, they strongly proposed that, that should be enhanced to read Kshs2 million.

On part "(c)", the idea here is that the Minister cannot act in isolation. The Minister may not be a technical person and, therefore, it is important that if he is providing or making any recommendation or gazetting something under this section, when it comes to exemption, it must be with the express advice or recommendation of the Authority, so that it is not a unilateral decision.

(Question of the amendment proposed)

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, on the proposed Section 7B, I would like to make the following points. One, is the Minister satisfied that the use of the term "an organization" is appropriate? The proposed amendment reads: "The Authority may authorise an organization---" The term "organization" is not defined in Clause 2. What is the Minister envisaging by the phrase "the Authority may authorise an organization"? Is it an individual or a company? What sort of organization is this that is going to be authorised? Is this not a very vague language? What are the envisaged qualifications for that organization that may be authorised to provide air navigation services? We are talking about a very sensitive issue.

Secondly, the entire basis for creating this new parastatal is, in fact, for it to provide these services. They are the ones who are supposed to recruit air traffic controllers and expert staff to provide all services relating to navigation. It is their employees. So, why do we create this Authority and then talk about the Authority having the power to authorise other bodies that are organizations without even defining what qualifications those others would have.

Mr. Temporary Deputy Chairman, Sir, I would like to oppose this proposed amendment and ask that the Authority be the one to provide the air navigation services and everything else that is required to be provided at our airports. This is a very major loophole that we are trying to create here; to give power to the Authority to authorise other amorphous organizations to provide air navigation services for our airports. At least, the original clause limited the Authority to authorising a particular aerodrome, be it Eldoret or Mombasa or the other one. We can allow a particular aerodrome to provide those services. But when you widen it and leave it open-ended, that anybody can be authorised by the Authority to provide air navigation services, this is quite dangerous for our airports. I would like to object to that.

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I do not know whether we may just be dealing a little bit with an issue of the language. What we are trying to seek here is that, for instance, we have close to 400 different airstrips scattered all over the country. One such example may be with the tourist outfits like Maasai Mara or Amboseli National Park which have different airstrips. Sometimes the Authority may not have enough people to man all those airstrips that are scattered all over. Through this particular clause, we would like to provide for a situation where, say in the case of the Kenya Wildlife Service, they can then seek authority from this particular institution. This will ensure that if there are some airstrips in specific areas, there are regulations which can then give authority to the Civil Aviation Authority to man that specific aerodrome.

Mr. Muite: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the Minister in order to mislead the House that the objective here relates to airstrips in Maasai Mara and the other places when we are talking about aerodromes? Is an airstrip in Mwea an aerodrome? We are talking about airports here and not airstrips.

The Temporary Deputy Chairman (Mr. Kihoro): Mr. Minister, an aerodrome is not an airstrip.

The Minister for Transport and Communications (Mr. Musalia): Mr. Temporary Deputy Chairman, Sir, I have just consulted the technical people here and they say they are comfortable with the proposition that hon. Paul Muite is suggesting. So, we can leave it as it was originally in the Bill. There are no hard feelings over this particular issue.

The Temporary Deputy Chairman (Mr. Kihoro): Mr. Minister, will you then withdraw the proposed amendment?

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I would like to be very clear that the only aspect of the amendment that we are withdrawing is the 7B(a) and not the smaller wording which had a correction where you say "authorization to provide air navigation services." In the Bill, there was the word "operator of".

The Temporary Deputy Chairman (Mr. Kihoro): Can you read what you are proposing to withdraw?

The Minister for Transport and Communications (Mr. Mudavadi): Therefore, I would like us to withdraw 7B which says:

"The Authority may authorise an organisation to provide air navigation services for the use of an aerodrome subject to such conditions as may be set by the Authority."

It will now read:

"The Authority may authorise an aerodrome to provide air navigation services for the use of such aerodromes and subject to such conditions that may be set by the Authority."

Mr. Muite: Just to assist the Minister, I believe he wishes to amend 7B in this Bill in so far as the marginal note now appearing in the proposed amendment is concerned. You ought to delete the words "air operator of and navigation services" and replace them with the words: "authorization to provide air navigation services".

The Temporary Deputy Chairman (Mr. Kihoro): So, Mr. Minister, do you have Clause 7B as it is in the proposed Bill?

The Minister for Transport and Communications (Mr. Mudavadi): It is as in the original Bill, but the

words in the margin will now appear as amended in the Order Paper.

Mr. Mwenje: While we agree with the Minister on Clause 7B, then it would mean therefore, that the sentence in (a) where we say "by deleting" is now meaningless. Can we now state that (a) does not therefore, exist because it refers to 7B?

The Temporary Deputy Chairman (Mr. Kihoro): No amendment arises out of A and the clause as proposed in the Bill.

Mr. Mwenje: I am saying that because A actually refers to 7B; therefore, it should also be deleted. The Minister should have started from there rather than going directly to 7B.

The Minister for Transport and Communications (Mr. Mudavadi): For purposes of clarity, we are saying that the proposed amendment in "a" has been withdrawn save for the correction in the margin, while the amendments in "b" and "c" remain as they are in the Order Paper.

(Question of the amendment put and agreed to)

The Temporary Deputy Chairman (Mr. Kihoro): There was a proposal to further amend Clause 7 by Mr. Muite.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, you will notice on page 692 that Clause---

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Chairman, Sir. Before Mr. Muite continues, the Chair did not rule whether the "ayes" or "noes" had it.

The Temporary Deputy Chairman (Mr. Kihoro): The "ayes" had it.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, on page 692 of the Bill, Clause 7(K) is like a transitional provision. It is transferring the assets and liabilities of the Ministry to the new parastatal. The Minister will remember that he presented this Bill to this House as a result of a go-slow strike.

The Temporary Deputy Chairman (Mr. Kihoro): Hon. Muite, can you move your amendment, please?

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, I beg to move that Clause 7 of the Bill be amended in Clause 7K (i) by adding a new Sub-Clause 5 to read as follows:-

"Upon commencement of this Act, all the staff, personnel and employees of the Department of Civil Aviation in the Ministry of Transport and Communications, as at 31st March, 2002, shall be deemed to become employees of the Authority."

The objective of this proposed amendment is that this House will recollect that the Minister tabled this Bill in this House following a go-slow strike by the air traffic controllers and other personnel who were providing navigation services because, for over 20 years, they had been pleading to be given a parastatal so that they can negotiate commensurate terms. Prior thereto, they were being treated as civil servants. So, you had this contradictory institution where messengers employed by the Kenya Airports Authority were earning more money than air traffic controllers. This does not happen in any other country except in Kenya. The air traffic controllers in other countries are paid salaries commensurate with the pilots, and yet we really have been grossly underpaying these very useful Kenyans who do a very sensitive job. Since the Minister responded to the go-slow strike by bringing the Bill which was the only issue about the go-slow strike, then, surely, he should be accommodating. These air traffic controllers have been without their salaries since April and they have got families. There was also a breach of the code of regulations for public servants. According to this code, no public servant should be dismissed unless and until they are convicted by a court of law. However, these air traffic controllers were dismissed before their cases were determined by the court. The code of regulations demand that any civil servant who is charged with a criminal offence be suspended on half-pay, pending the result of the court proceedings. If he is convicted, then you can sack him. But the director of the department of civil aviation proceeded to sack these officers and to charge them. In the event that the Minister may not be aware, they were actually acquitted by a court of law. Now, they are being reinstated one by one. Those who are being reinstated are being pressurised to disclose who the ring leaders for this go-slow strike were.

Mr. Temporary Deputy Chairman, Sir, so, there are many air-traffic controllers who have not been reinstated. If you are transferring the assets and liabilities, it is good to note that personnel is a very important asset. Let us reinstate them all; all those who were on the payroll as at 31st March. I plead with the Minister to be compassionate. Let us close this chapter - they were all acquitted - by reinstating them so that they can negotiate their new terms of engagement with the new parastatal. We are not even saying that we should pay them at this point in time, but we should reinstate them to their jobs.

The Temporary Deputy Chairman (Mr. Kihoro): Hon. Members, there is a further amendment to Clause 7. It reads out as follows:-

"THAT, Clause 7(k) (i) be amended by adding a new subclause 5 to read out as follows:

"Upon commencement of this Act, all the staff, personnel and employees of the department of the Civil Aviation in the Ministry of Transport and Communications as at 31st March, 2002, shall be deemed and become employees of the Authority."

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, what Mr. Muite has moved here is of paramount importance. You will recall that there was hullabaloo when these officers were sacked; they were arrested, taken to court and harassed. They were even kicked out of their own houses, in which they have been living in Embakasi. Todate, these officers are---

The Temporary Deputy Chairman (Mr. Kihoro): Order, Mr. Mwenje! It would be very important that you do not reopen the debate that we had some time ago. You try to be as precise as possible.

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, I am not reopening the debate; I am only complaining. I am explaining that these officers todote continue to suffer. The intention of this amendment is to make sure that these officers will now be taken back, even if--- This is because they would be taken back effective from the date of this Act. I hope the Minister understands that, that is in order to remove all the hullabaloo that has been going on, the suffering of the families of these officers who have been sacked all this time. The matter also went to court. The court, as Mr. Muite had put it, released them. None of them was found guilty. So, I want to appeal to the Minister that, if there is any problem that he would want to offload from the Ministry and from himself---

The Temporary Deputy Chairman (Mr. Kihoro): Order, Mr. Mwenje! Okay, I think you have made your point. Could we hear from the Minister?

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, it is very important that I explain this. We are discussing a serious matter, and the Minister cannot even hear us.

The Temporary Deputy Chairman (Mr. Kihoro): Mr. Mwenje, give him time!

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, I hope the Minister is hearing wherever he is; that, he needs to be compassionate and, on humanitarian grounds, allow this amendment to go through; he should not oppose it. I hope it will be seen that, at least, we are now getting somewhere as far as this issue is concerned.

The Temporary Deputy Chairman (Mr. Kihoro): Thank you, Mr. Mwenje. We must be careful not to reopen the debate that we had some time ago. Mr. N. Nyagah, could you please be very precise?

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, I want to be very brief and precise to the point. One, we got a very raw deal when these officers were under suspension. It was by Grace of God that there were no bad incidences in our airspace. We nearly went for help from the bigger East African group. My prayer, hope and wish to this Minister, who is very compassionate over this amendment, is that we want a Minister with a difference, who has feelings, who is better than the Minister for Education, Mr. Kosgey, and who cares for the people so that these people can go back to work.

The Temporary Deputy Chairman (Mr. Kihoro): Thank you, Mr. N. Nyagah.

Mrs. Mugo: Mr. Temporary Deputy Chairman, Sir, I would like to add very strong support to this amendment. If we are talking about the security of the customers, the biggest aspect is the human resource. By addressing the needs of the staff, there was no crime committed; it was their human rights. So, we are asking the Minister and everybody to support this amendment and for the Minister to reinstate these officers as a moral obligation and support them and even improve the security of the travellers in future.

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I would like just, first of all, to set the record straight on a couple of issues.

It is true that the members of the Civil Aviation Department went on strike because, amongst other things, they wanted this Bill. There is no dispute to that particular aspect. However, I would like to correct something; that, we did not bring the Bill purely because we wanted to avert the strike. In fact, we had a committee which was working with members of that Departmental Committee, and its membership included some of those who went on strike and they were part and parcel of the drafting of this Bill. So, I want to set this record straight; that, it was not triggered primarily just because of that. We had noble intentions all along, and we had made a definite decision and public commitment that we were going to bring this Bill to Parliament.

I would also just want hon. Members to know that since the strike took place and the process of hearing the appeals and reconsidering some of the cases started, we have so far reinstated about 180 members of staff through the procedure under the Public Service Commission and the Code of the Civil Service. There are pending cases for about 60 employees. It is true that some of those are being heard and may be reconsidered in accordance with the Civil Service rules. So, we feel that the inclusion of this particular Clause in the spirit of reconciliation may not be too bad.

(Applause)

However, I would like to seek some clarification as to whether it should appear as part of Clause 7 or whether it can then be incorporated under the transitional clauses which are on page 709. This is a matter of seeking clarification from the Chair as to which would be the neater way of handling this and what procedure we can use to deal with it.

The Temporary Deputy Chairman (Mr. Kihoro): Now that we are on Clause 7, I thought it can remain as it is.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, I agree that it is a matter of what is neater. It is better to have it in Clause 7. But I wish to thank the Minister for showing reconciliation.

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

(Clause 7 as amended agreed to)

Clause 8

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 be amended in the proposed Section 8(B) by deleting the word "may" appearing in Sub-section (i) and substituting thereof the words "shall at least once, every two calendar years, and may at such other time as he may consider desirable".

8(B) By deleting the words "may appoint" appearing in Sub-section (2) and substituting thereof the words "shall appoint independent".

Mr. Temporary Deputy Chairman, Sir, on Clause 8(B), what we are trying to do is to be able to enhance proper practices within the civil aviation and normally, this can be achieved as being proposed here, by ensuring that the Minister shall, every two years, be able to direct that a proper inspection audit be done with regard to the operations of the Civil Aviation Authority. We are also proposing that this be done by independent inspectors. Basically, what we are trying to do is that, an organization cannot always re-asses itself. We need to have a situation where, from time to time, basically over two years, we can have independent people coming in to do a test and check on the technical capacity and competence of the various personnel manning the facilities and providing various services, and also on the various equipment that may be installed. The idea here is to make sure that at every time, we are able to meet the relevant international standards, because once we fail in this area, apart from the element of the risk in terms of lives, we could also lose a lot of air business to other countries that may be introducing proper standards. We want to establish a mechanism where these independent people can come in.

Mr. Temporary Deputy Chairman, Sir, independent people also include our own people. It does not necessarily mean international people to come and inspect, because we believe that, in this country, we can also train a lot of good people in matters that relate to aviation and, indeed, there are several that are trained in matters that relate to aviation, and once they cease to be employees of the Civil Aviation Authority, they may set up their own practices, and on the basis of these private practices, and on this basis the Authority, can appoint them to be able to do an independent audit of the Authority from time to time.

(Question of the amendment proposed)

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, I am in full support of the proposed amendment, but would like to draw the attention of the Minister to the proposed amendment to Clause 8(B). The way it is worded currently, it gives the Minister a discretion to appoint independent auditors. Perhaps, it is desirable to leave it as a discretion, because it may be that the previous two years, the audit is according to standard, and also it may well be that you may have external expertise. But once you make it so watertight that they must be independent, you may have to spend money purely to technically comply with this requirement. Why do you not leave it the way it is, so that in the event that you do not have in-house necessary expertise, then you can go outside. If you have, then you do not tie your hands. Why do you want to tie your hands in Clause 8(b)? Just leave it discretionary. Let it be mandatory that you must hold it every two years, but in terms of who you instruct to carry out the audit, leave it discretionary.

Mr. Temporary Deputy Chairman, Sir, if the Minister, perhaps, wants to consult with his technical staff, he could do so. I saw all of them nodding in agreement with what I was saying.

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir,

I think this has been a very useful session. Frankly speaking, we preferred it as it was originally. But it was after our strong discussions with the House Departmental Committee, who were of the view at that time, that it must be mandatory, that we had conceded to this suggestion. If it is the wish of the House that we revert to the original Clause as it was, so may it be. We initially were of the opinion that it was a better position as opposed to the amendments we are proposing. So, I have no objection.

I concur with Mr. Muite that we can delete the mandatory aspect so that we revert to Clause 8(B) as it is in the Bill.

The Temporary Deputy Chairman (Mr. Kihoro): So, what are you proposing to be amended?

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I am proposing to delete Clause 8(B) which reads:-

"The Minister may appoint audit inspectors to carry out the assessment".

It should remain exactly as it is. I am withdrawing the entire Clause 8(b).

The Temporary Deputy Chairman (Mr. Kihoro): What about Clause 8(a)?

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, Clause 8(a) remains.

The Temporary Deputy Chairman (Mr. Kihoro): Could you then move the amendment?

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I, therefore, move to withdraw the amendment to Clause 8(b) and revert to the original position as indicated in the draft Bill. The amendment as shown on the Order Paper is being withdrawn so that we revert to the text in the Bill.

(The proposed amendment to 8(b) withdrawn)

The Temporary Deputy Chairman (Mr. Kihoro): Could you move the amendment in respect of Clause 8?

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 be amended in the proposed Section 8(b) by deleting the word "may" appearing in sub-section (i) and substituting thereof the words "shall at least once every two calendar years, and at such other times that he may consider desirable".

I am deleting Section 8(b).

(Question of the amendment proposed)

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

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

(Clause 8 as amended agreed to)

The Temporary Deputy Chairman (Mr. Kihoro): Mr. Minister, on page 705, there is another Clause 8. Is that Clause 8 or Clause 9? There are two clauses numbered eight.

*(Mr. Mudavadi, the Temporary Deputy Chairman
(Mr. Kihoro) and the Clerk-at-the Table consulted)*

Hon. Members, on page 705, what is entered as Clause 8 is wrongly numbered and it is now Clause 9.

(Clause 9 agreed to)

The Temporary Deputy Chairman (Mr. Kihoro): Hon. Members, on page 706, what is entered as Clause 9 is actually Clause 10.

(Clause 10 agreed to)

The Temporary Deputy Chairman (Mr. Kihoro): Hon. Members, on page 709, what is entered as Clause 10 is actually Clause 11.

(Clause 11 agreed to)

The Temporary Deputy Chairman (Mr. Kihoro): Hon. Members, what is entered as Clause 11 is actually Clause 12.

(Clause 12 agreed to)

The Temporary Deputy Chairman (Mr. Kihoro): Hon. Members, on page 714, what is entered as Clause 13 is actually Clause 14.

(Clause 14 agreed to)

The Temporary Deputy Chairman (Mr. Kihoro): Hon. Members, what is entered as Clause 14 is actually Clause 15.

(Clause 15 agreed to)

(First Schedule agreed to)

(Second Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Civil Aviation (Amendment) Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Speaker in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE CIVIL AVIATION (AMENDMENT) BILL

Mr. Kihoro: Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered the Civil Aviation (Amendment) Bill and approved the same with amendments.

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Roads and Public Works (Mr. W.C. Morogo) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Speaker, Sir, I beg to move that The Civil Aviation (Amendment) Bill be now read the Third Time.

The Attorney-General (Mr. Wako) seconded.

(Question proposed)

Mr. Mwenje: Mr. Speaker, Sir, since we have passed this Bill, I would like to appeal to the Minister to implement all these amendments because he listened to the sentiments expressed by hon. Members. It is my hope that Civil Aviation employees who were suspended will be reinstated and paid their dues immediately.

Mr. Muite: Mr. Speaker, Sir, I would like to commend the Minister for the initiative of bringing this Bill which we have passed so that the employees who render very sensitive and delicate services to the nation can now negotiate for better terms because they will be under a parastatal. Once the Minister has reinstated all the staff, I would recommend that he moves very fast to ensure that, as a nation, we do not again have this sort of situation where our airspace is threatened and becomes unsafe.

Therefore, could he set up a committee to look into comparable terms of service and negotiate now? He should give this parastatal the authority to negotiate a package for air traffic controllers and the other staff that is commensurate to their counterparts.

Mr. Speaker: Mr. Muite, you are now opening up debate!

Mr. Muite: Mr. Speaker, Sir, I am merely saying that, fol Minister should make sure that the nation, as a whole, and the employees of this new Authority in particular, get the benefits as expeditiously as possible.

(Question put and agreed to)

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

BILL

Second Reading

THE CRIMINAL LAW (AMENDMENT) BILL

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I would like to move that the Criminal Law (Amendment) Bill be now read a Second Time. As we all know, the criminal justice system is very much on the forefront of human rights concerns in any country. Where a human rights violation has occurred, it is always most likely that an agency in the administration of criminal justice system has to be involved. This may be the police force, the prisons department or any other law enforcement agency. Therefore, the Bill that I am now moving is a very important one.

Mr. Speaker, Sir, I would wish from the outset to say this Bill is concerned with urgent matters which will improve the hearing of criminal cases in the court. This has been long overdue. It is my intention, next year, God willing, to bring a more comprehensive Bill. This Bill arises out of some of the recommendations that were made in the report of the Task Force which I appointed on the reforms of Penal Laws and Procedures.

Therefore, I would like at the very outset to commend the members of that Task Force for the excellent job they did in bringing comprehensive recommendations to our criminal law and criminal procedure systems. That Task Force was chaired by Justice Bena Lutta, the first Solicitor-General of the Republic of Kenya, who then became the first African legal secretary to the then East African Common Services Organisation and the East African Community. I am glad that there is also sitting on the opposite Bench, the person who became the first African Director of Statistics in the East African Community, one David Mwiraria. So, Justice Bena Lutta who chaired this particular Task Force was one such person. He then went on to become the Vice-President of the East African Court of Appeal. Other members were Mr. J.F. Hamilton, senior partner then in Hamilton, Harrison and Matthews firm of Advocates, Mr. arap Maiyo, Prof. Jackson Ojwang', the head of the Faculty of Law, University of Nairobi, Mr. Byron Georgiadis, a well-known criminal lawyer, Dr. C. Okidi, a well-known and leading expert on environmental law, Mr. Bernard Chunga as he then was known, and is now hon. Justice Chunga, Mr. A. Kapila who defended Mzee Jomo Kenyatta during his trials in the earlier 1950s, Mr. Oketch Owiti, Dr. Florence Omondi Omusile, Mr. Ben Kubo, then Solicitor-General, Mr. Noah arap Too, then Director of Criminal Investigations, Mr. Amos Kimunya, an accountant, with Messrs. Ambani and Asiyema as joint-secretaries. There was also Dr. E. Gachuki.

Mr. Speaker, Sir, they made recommendations. I would like to state here and now that a number of those recommendations have already been implemented. For example, they recommended that we must have an Economic Crimes Bill. True, indeed, this House recently passed the Second Reading of the Economic Crimes Bill. They also recommended a separate Bill to deal with environmental crimes. Those recommendations have been taken care of in the Environmental Co-ordination and Management Act which has already been passed by this Parliament. They made a number of recommendations which are consideration and which will be reflected in a more comprehensive Criminal Law (Amendment) Bill which, God willing, I intend to bring next year.

The Bill before the House deals with urgent issues, but I will just go through them very briefly. I will also mention just briefly the type of laws I intend to bring shortly. First of all, this Bill, if enacted, abolishes the use of corporal punishment as a form of punishment under our Penal Code.

Mr. Speaker, Sir, as you are aware corporal punishment has been there since the colonial days. Now, the jurisprudence internationally is to regard corporal punishment as a punishment which is cruel, degrading, an insult to the human dignity and, therefore, something which ought not to be meted out to a human being. So, the proposal is to abolish corporal punishment throughout our penal system. It has been pointed out to me that by an oversight, we omitted one or two deletions but I will bring amendments at the Committee Stage to ensure that corporal punishment is totally not on our statute books.

This Bill also deals with sexual offences. There has been inconsistency in penalties for those people found guilty of sexual offences. For example, a person found guilty of defilement of a girl under 14 years can be sentenced to a maximum of 14 years imprisonment, while a person found guilty of rape of an adult can be sentenced to life imprisonment. The proposed amendment seeks to harmonise all the penalties so that those found guilty of any sexual offence can be sentenced to a maximum life imprisonment. It is also proposed that the court hearing a criminal case involving a sexual offence committed on a child of tender years can convict on the evidence of the child, if it is satisfied for reasons to be stated, that the child of tender years is telling the truth. The reason for this is that actually culprits do escape punishment because of the requirement of corroboration of the evidence of a child of tender years, and yet this is a type of offence which may happen without any independent corroboration. Therefore, if the court, on hearing that child, forms the opinion that it is telling the truth, it can convict on the evidence of that child alone. It is also proposed that in proceedings in cases relating to certain sexual offences, like defilement of minors and rape, they should be held in camera. This is to protect the identity and safeguard the privacy of the victims of those offences. All these progressive proposals are contained in this Bill.

Mr. Speaker, Sir, I now come to some of those provisions which will help expedite the hearing of criminal cases in court. It is proposed that the legal requirement which requires the Attorney-General to give his consent prior to prosecution in cases, for example, involving incest, subversion, corruption *et cetera* will not be required before the case proceeds in court. Cases have been delayed because of this requirement. Cases have delayed not because my office has delayed in bringing or giving the requisite consent, but they have delayed because of the time it takes for the investigation file to reach my office for consent. This is so much so that, for example, if an offence of either incest or corruption even involving Kshs20 happens in Lamu, Mombasa or Garissa, that file has to come through the processes within the police machinery to my office where it undergoes other processes. That takes time. It can take very many months and in the meantime somebody suffers. So, the removal of this requirement will also do away with the long time it takes for the files to be sent through various police stations all over the country to my office, or in some instances, to my provincial state counsels in those areas. For that, I am prepared to say that let there be no consent to help expedite the hearing of criminal cases.

It is also proposed that the requirement of having committal proceedings in murder cases should be done away with. Even as I speak here now, some people, and as you know in murder cases, cannot be given bail or anything of the sort. These people have to remain in custody until their cases are heard. That is provided for in our Constitution. As I speak here now, there are some people who have been in custody for many years awaiting the trial for murder. These people have been in police custody because the committal bundles are not ready. These bundles are not ready not because investigations are not complete, but they are not ready simply because the various police stations do not have office equipment necessary to prepare them. This is a fact. These offices still have very old manual typewriters whose ribbons are worn out and if there is any mistake it has to be rubbed using a rubber and the correction made. This makes the whole thing messy and they have to start again. So, that exercise continues. This is the case, and yet a committal bundle is supposed to be neat, bound together and an exhibit attached in a very nice way for study. So, the removal of committal bundles will mean that many murder cases will not take many years to be heard as is the case now. That is the reason why I said that this Bill is really an interim measure to deal with these urgent issues as I prepare to bring one which will touch on all the issues under the Criminal Law and procedures.

The other proposal in the Bill is the proposed repeal for the offences relating to logs and vagabonds from the Penal Code. Such offences are still on the Penal Code and we are now repealing them. We are now saying that time

has come when we must develop our jurisprudence and, therefore, the requirement to have resource to English Criminal Law as a basis of interpretation of a criminal law is also being done away with.

We are also concerned about human rights. There have been many complaints about torture on the part of law enforcement agencies; torture, which is meant to induce a confession from the suspect. This would form the basis of a conviction. It is true that we also have procedures where the suspect can allege in court that he has been tortured and the court is supposed to enquire into that. But at times, this has not been effective. At times, the suspect even fears to make a complaint before the magistrate because when he is before the magistrate, he is still under custody. Therefore, to make that complaint and then go back to the same people against whom he alleges torture can be a fearful thing, indeed. Therefore, it is only the very brave who normally bring this to the attention of the magistrate. The purpose and motivation of torture in most cases has been to extract a confession. Again, this means that the level of investigation of criminal cases goes down because the police officer or the investigator is more interested in getting a confession rather than getting independent evidence which would form the basis of the criminal case to be prosecuted. So, we are now doing away with confessions before a law enforcement officer. Such confessions will not now be, on the enactment of this Bill, admissible in a court of law. It is only a confession made in a court of law, which is open and everybody is there will be admissible but not a confession made before the law enforcement officers.

Mr. Speaker, Sir, this is not yet in the Bill, but I also intend to move some amendments at the Committee Stage which cannot wait until next year. I intend to bring an amendment on glue sniffing by street children. Let me make it very clear here that the culprit will not be so much the street child who is just a victim of the circumstance, but the culprit will be the person who distributes that glue to the street child.

Mr. Speaker, Sir, during the Committee Stage, I will bring amendments which will make it an offence for somebody to distribute and give street children glue for sniffing. If you read the reports of those who work with street children, they will tell you horrifying stories on the effect of glue sniffing on street children. The effect is such that it affects the mental capacity permanently and, therefore, it becomes even impossible for them to be rehabilitated because their mental thinking has been affected irreversibly. It also affects their age, they are now dying at a very young age, 14 years, 15 years, and so on; because of glue sniffing. Therefore, we must come down heavily on these people who, willingly, distributes glue to the street children in order to get money, or for monetary gains and so on. So, during the Committee Stage, I will bring an amendment to take care of that.

Mr. Speaker, Sir, I will also bring another amendment where, for example, in an assault case, if somebody assaults another person and, maybe, the victim loses an eye--- Currently now, after the criminal case, somebody is supposed to institute a civil case to claim damages from the assailant. During the Committee Stage I will bring an amendment which will enable the court hearing that criminal case, after it has found somebody guilty of assault, to be able to award damages to the victim. What we are trying to do is to balance the criminal justice system. All over the world, particularly in the Common Law System, the criminal justice system has weighted in favour of the accused person. But, it has ignored completely the interests of the victim. Now the movement, all over the world, for example, America, Europe and so on; is also to ensure that the interests of the victim are also taken into account in the criminal justice system. One way of doing this, as I have just said, is to ensure that the victim does not necessarily have to undergo another process again to claim damages, but the same court can be in a position to clear the problem once and for all.

Mr. Speaker, Sir, I will also bring an amendment so that the court can also have what they call "victim impact statements" which can assist the court to arrive at appropriate sentence in any particular situation. Not just the victim impact statements--- I am just indicating what I will bring during the Committee Stage so that hon. Members can be aware of it. The victim will make a statement which will assist the court in arriving at an appropriate sentence. That may include, not just how the victim feels about the issue, but if the victim would like to reconcile or whatever, with the accused person, that may also influence the type of sentence that is likely to be meted out on the assailant.

Mr. Speaker, Sir, I can tell this House that I have been receiving very interesting cases, particularly murder cases, and especially from the Somali community, where, if the victim and the suspect are, for example, cousins, or they come from different families, somehow, under the elder systems, those families can meet and reconcile; they can say how much one family should pay to the other family, and so on. Everything is written and they would say, "we do not want the case to continue". Now it is difficult for me to say, "the case cannot continue", because it has to continue under our laws. I can imagine, in that type of situation, such a system, if brought before the court, it will assist the court in arriving at an appropriate sentence, in a given situation where the two families, the victim and the suspect, have now reconciled completely, and they do not want to lose two members of their community because somebody has killed and, therefore, must be sentenced to whatever duration.

Mr. Speaker, Sir, during the Committee Stage, I will also be intending to bring another amendment to enhance, in certain circumstances, the offence of giving false information to the police. The offence of giving false information to the police has, up to now, been a very minor offence, which faces sentences up to one year, but

normally it is six months, or the accused is fined, and so on. Yet we do know, and it has happened, that as a result of false information given to the police, somebody can lose his life. Somebody calls the police and says, "my car has been carjacked, it is number XYZ, *et cetera*, and it has been seen heading towards such and such direction." The police can lay an ambush, and think that, that the occupants of that car are robbers ready to shoot, they shout at them, the occupants are okay, they do not know why the police are shouting, they are reluctant a bit, but in their reluctance, the police in their mind think that action shows that they have committed the offence and then they shoot, and somebody dies. All that happens as a result of deliberate false information given to the police. So, we are now saying that we must have a law, and I will bring it during the Committee Stage, which will say the following:-

"If you give false information to the police, knowing, or having reason to believe that the information will be acted upon, and somebody may be injured or may be killed in the process, and it is false information, you may also be guilty of that criminal offence of murder. If somebody is seriously injured, you may also be guilty of that offence of assault causing grievous harm."

I hope this will, perhaps, have the impact of stopping people who are likely to misuse the system of giving information to the police--- That information is supposed to help the police to investigate a genuine crime, it is not supposed to help the police assist you in whatever revengeful activities that you may have in mind. So, as I have said, the amendments are there and they are straightforward. I will bring those amendments forward during the Committee Stage and I hope that this House will pass these amendments. As I said, God willing, sometime next year, I will be bringing even more comprehensive amendments. But these amendments cannot wait until next year.

With these few remarks, I beg to move and call upon my colleague, the Deputy Leader of Government Business, hon. Mudavadi, to second the Bill.

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Speaker, Sir, I would like to second the Attorney-General's proposal of amendments to the Criminal Law (Amendment) Bill. At the very outset, I want to say that this is, indeed, something that is long overdue because Kenya has earned a very awkward name, particularly with the human rights organizations. Many of us receive letters, from time to time, from Amnesty International, complaining about specific cases of people who have been tortured in various prisons or law enforcement institutions in this country. Whether the allegations are usually correct or not, the fact of the matter is that, over the years we have received a lot of bashing from these particular institutions. It is now time we started setting the record straight, and the proposals that are contained in this Bill are one such important step in that direction.

Mr. Speaker, Sir, it also goes to point out one aspect which has been the Attorney-General's strong point; the issue of human rights, where he has played a very significant role, either as a mediator or sometimes acting as a special envoy of the Secretary-General of the United Nations; on matters that relate to the question of human rights. That is something which would indicate that position and the high regard the Attorney-General has earned over the years. I find the provisions very interesting, particularly the one requiring the Attorney-General's consent for prosecution.

Mr. Speaker, Sir, to some extent, over the years, the office of the Attorney-General has been wrongly accused of subverting the course of justice. Arguments have been advanced that the Attorney-General has deliberately refused to prosecute some cases, or to give consent for their prosecution. In reality, this has not been the case. The fact that the Attorney-General has come up with these proposed amendments to the law, shows that he is making it clear that all these accusations have been unfounded and misguided, and that he is now setting the record straight by saying that if, indeed, there is an offence that has been committed, and some examples have been given, then the aspect of the Attorney-General's consent should now not be a prerequisite for a matter to be taken to court.

This is a very important provision which I believe will send a very important message to the business and international communities, and to Kenyans generally, that the issue of hoping that they will find solace in the office of the Attorney-General, either through bureaucratic delays or other mischief, will now not be entertained and that offenders will face the necessary consequences. I also strongly support the proposal relating to confession. It is true that many people have been injured or seriously maimed - others have actually died - in the process of the police trying to extract confession from them. By eliminating this particular provision, the Attorney-General is doing something which Kenyans believe will put them in tandem with other nations which strictly observe the rule of law and human rights.

The Attorney-General has also proposed the harmonisation of sexual offenses. This, again, is a very positive move. As indicated in the Bill, particularly in the Memorandum of Objects and Reasons, the current law provides that a person who defiles a girl who is under 14 years old shall be sentenced to a maximum of 14 years, while a person who is found guilty of rape, where an adult is concerned, shall get life imprisonment. This kind of distortion in our law should be sorted out, so that the law is very clear. Both defilement and rape are vile acts but, obviously, the defilement of a child should also call for a very severe punishment. I also support the proposals on the hearing of cases relating to minors, or even rape cases. This is an important provision. As we all know, children or persons who go through this process in ordinary courts become stigmatised. If such a person is exposed to a lot of scrutiny and all the media

exposure, she can be devastated later on. One would like the trauma of an incident to be forgotten once justice is done.

Mr. Speaker, Sir, through this Bill, the Attorney-General intends to do away with the recourse to the English Criminal Law as the basis of the interpretation of our Criminal Law. This is a particularly interesting provision which, of course, lawyers will have to elaborate on. However, from a layman's point of view, I tend to believe that in some instances, our historical attachment to aspects of the English Law and our strict adherence to that law and its interpretation has, to a certain extent, subverted what might have been just situations for some individuals. So, the particular clause, by which the Attorney-General seeks to do away with that particular provision, provides for a broad scope of interpretation of the laws. This will enable our courts to dispense justice; consequently, Kenyans will appreciate that their rights will be upheld.

With regard to murder cases, the Attorney-General has spoken very well on the issue of committal bundles. That is a very important provision. As he said, we have had cases of people who have stayed for years in custody - some have even died in custody - before their cases were heard. Such people were held in custody as the investigating authorities fumbled and, maybe, were being influenced so as not to produce the relevant committal bundles on schedule in order to subvert the course of justice.

So, the provisions suggested in this Bill, together with those which the Attorney-General said he is likely to introduce at the Committee Stage, are very significant milestones in improving our laws and regulations, and also harmonising aspects relating to criminal procedure, the Penal Code, and other laws. I hope that as the House debates these interim proposals, the Attorney-General will work harder on more comprehensive proposals because, in reality, the country is now in the mood of enacting new laws, which are more dynamic and consistent with international practice, and which would make Kenya to be respected.

Mr. Speaker, Sir, we all know that one of the issues that is on the table is the proposal for a new constitutional debate. I do not intend to anticipate any debate on that at this stage. However, it is clear that the kind of amendments that are being put on the table now are very consistent with some of the provisions that have found their way into what is commonly known as the "Ghai Report". It is quite clear that had we had a more aggressive review of some of our laws, some of the issues, which are not necessarily of a constitutional nature, would have found their way into amendments of some of the laws and would have been non-issues in so far as the constitutional debate is concerned. Therefore, I urge hon. Members to support this Bill, so that we can improve our law on criminal matters.

With those few remarks, I beg to second.

(Question proposed)

Mr. Kihoro: Thank you, Mr. Speaker, Sir, for giving me an opportunity to contribute to this Bill. I want to say that the Attorney-General has come up with timely amendments to the law, especially the Penal Code. The amendments are very important and I believe that, eventually, the idea is to bring the provisions of the law in line with the Constitution, and hopefully, even preempt what will be contained in the Bill of Rights in the draft Constitution.

It is very important, that as civilisation progresses, we stop doing things that were accepted in the past as the only way of enforcing the law. It has been known for centuries that there could well have been trial by battle and trial by duel. I could have invited the Attorney-General to a duel if he challenged my being a gentleman. But these days, all that has been abolished. It is important, that as we progress and become civilised, some practices and sentences, which have been previously accepted, will be removed from our statutes. It is important that corporal punishment should be abolished and, maybe, the Attorney-General should go further and even abolish the death penalty. Through the death penalty, violence is meted out on a helpless individual. If the Attorney-General has found it proper and appropriate to abolish corporal punishment, it is also proper for him to consider abolishing the death penalty. Kenya ranks among very few nations which still see death penalty as a way of punishing an offender. Deprivation of life should be left to God, and no man should punish a possible offender to the extent of inflicting death. There are very many correctional ways in which a person can be corrected and punished. Any violence that is meted out on an individual as corporal punishment or death penalty should be considered by the Government for abolition.

Mr. Speaker, Sir, in this time and age when HIV/AIDS has become rampant, we should try as much as possible to discourage some of the offences that are committed, especially sexual offences. There is a proposed clause to remove the need for corroboration evidence, where an offence has been committed or has been proved by other evidence against a person. Corroboration evidence has always been a safeguard against an accused person, but I think the gravity of the situation is such that because of the nature of sexual offences, it might be necessary to move away from corroboration even where it may be necessary. I believe that only where it is absolutely necessary to convict, should there be conviction of an individual who is 14 years of age. It will be foolhardy in this time and age to continue demanding corroboration when, indeed, corroboration can be found in some other ways, for example, DNA and circumstantial evidence. It is important that we protect the innocent as much as possible. There are times when

corroboration becomes tedious and an avenue for perpetuation of offences.

The Attorney-General has also proposed to abolish committal proceedings in respect of murder trials. He has proposed that all hearings in respect of murder and attempted murder be held in the High Court. This is important because, in some situations, it has taken a long time before a person is taken through the committal proceedings, the trial bundles are prepared and he is tried in the High Court. I believe that what the Attorney-General has proposed to do is right and proper. There are cases where individuals have lived and made a home in prison. They have been "lost" in the penal institutions in this country. There is a person from Nyeri who lived in prison until prison became a home for him. There is also another person who lived in King'ong'o Prison from 1984, for nearly 18 years, as he waited for committal proceedings. Due to the nature of the offence, somebody can get "lost" in Kenya's prisons. So, it is important that the process of committal proceedings be held as quickly as possible in the High Court. We should remove the procedures that end up lengthening the criminal process and making a few unlucky people get "lost" in the penal institutions. That could have been an extreme case of somebody waiting for murder trial for 18 years. But I believe that people waiting in jail for an average of about four years is almost accepted before they are acquitted or convicted.

The Attorney-General should consider looking into the issue of holding inquests in situations where the offenders are known. Inquests have become almost a way of defeating the cause of justice. For example, in my constituency, a young petrol station attendant went to a police station at about 4.00 a.m. to report that there were people who wanted to rob the petrol station. When he reported the matter, a policeman went to the petrol station along with him, and told him that there was nobody who wanted to rob the petrol station. They decided to look at the backyard and see whether there could be somebody there. The young man went round one side and the policeman went round the other side and when they met in the darkness, the policeman shot the young man. He shot the same man who had gone for him from the police station. Subsequently, an inquest had to be held when there was such overwhelming evidence that the policeman killed the young man. There was no dispute about how the young man had died, and instead of taking the policeman to court and charging him with murder, an inquest file was opened and that became a way of defeating justice.

It is important that the Attorney-General clarifies when an inquest is necessary. According to the law, an inquest is only necessary when somebody dies in suspicious circumstances, most likely in the Government custody. That is when you want to get evidence to discover how that person died. But when the case is clear and the person who has committed the offence is known, why would you want to go through the process of an inquest? You can only do this if you want to protect somebody. One year after a murder is committed, you will find that nobody is taken to court and the whole matter dies out; this is what happened in the particular case that I have mentioned. It is important that the issue of holding an inquest is clarified. I know that there is a provision in the Criminal Procedure Code on what should happen and the circumstances under which that should happen. It is important that holding inquests does not become another way of failing to take action against known murderers, especially in cases involving policemen. Inquests have become so rampant and frequent that it is almost impossible to take a policeman to court for murder and have him convicted. The whole process is managed in such a way that it ends up protecting the perpetrator of murder and leaving the victim without any protection.

I know that the Attorney-General will look into these matters especially in respect of inquests, and see what can be done to stiffen the law.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I also find out that the hon. Attorney-General is proposing to abolish the offences that somebody is not taken to court for being a vagabond. Many times I know that many have been called rogues and vagabonds. Especially during the colonial period many Africans lived as rogues and vagabonds. Time is gone when we used to hold our people to be rogues and vagabonds. Maybe the hon. Attorney-General can also consider the question of the so-called squatters. The squatters too, in many ways, can be seen as vagabonds. They are people without a home except maybe the makeshift homes they have created on land they are squatting in. It is important that the law be tidied up especially in respect of squatting in this country where we have chronic landless people and that is where the law should not be used to criminalise people out of need. I know that the hon. Attorney-General can forward recommendations to the Government on the question of landlessness, squatting and homelessness. They are all aspects that make enforcement of the law in this country more difficult.

Mr. Temporary Deputy Speaker, Sir, glue sniffing is also another offence that needs a lot of punishment. The consequences of glue sniffing have been put very eloquently by the hon. Attorney-General, but it is very important.

Glue itself should be seen as a drug. Users of glue should be punished. Those people who provide glue to children irrespective of age, who sell, traffic and trade in it, should have serious action taken against them. If there is anybody who deserves to go to prison, it is the person who destroys the life of a young person, for example, a ten-year old boy or girl. It has become impossible to give any money to a young person coming to you maybe asking for bread because we know the money intended for bread will end up being money for buying glue and maybe you want to protect that young person from buying glue and in the end you will end up having a very genuine case of a hungry young person not even getting the money. I think this is something that I know the hon. Attorney-General will take very seriously. This is the question of abolishing glue sniffing. I know it especially comes from the cobblers. A lot of that glue is sold from there, but maybe investigations can be done to verify that. There are a few people who do it and the effect is very damaging.

Mr. Temporary Deputy Speaker, Sir, the question of compensation to people who have become victims of crime is also a very important matter to be considered when we do the amendments. This is because we know that there are very many people who have become victims of crime. What happens concerning all those people who have been killed in Kariobangi and Korogocho where 22 young people were killed? They just died without any compensation. There should be a provision for the Government to pay compensation to innocent people who are killed and their families left without a remedy. It is a very important thing to consider. A bread earner is the one who is killed. A young man of 24 years, with two young children, is killed and the young children are left without any bread earner and income. They cannot even get educated and it is very important that also the Government considers the question of setting up a kind of compensation scheme whereby people who have been deprived of their loved ones or people who have been seriously injured can be compensated.

Mr. Temporary Deputy Speaker, Sir, this is like the case which I know has come up very frequently of this young journalist who was thrown out through his window in his Buru Buru flat by a former bodyguard. That case has come up. I do understand the Attorney-General has agreed to pay some compensation, but there are many cases like that. I think the Attorney-General should try to hasten up that process in order to make it less painful to go through so that people who have genuinely become victims of crime can be given certain compensation because many of them are not covered at all by insurance schemes. That is also a measure of civilisation when we also deal with those who have suffered or whose loved ones have been killed. It is a mark of civilisation. It is a very important yardstick of how much we are coming of age and getting into the new millennium. Without that, it cannot just be life for those who are able to use strength, might and muscle. It has to be a civilised society where even the weak, disabled and less endowed can have an opportunity.

Mr. Temporary Deputy Speaker, Sir, because I can see the hon. Attorney-General is now paying a bit of attention to what I am saying, it is important to consider these criminal injuries compensation scheme whereby people who have been killed and have left behind loved ones or where somebody has been maimed or injured very badly might need even a wheelchair but cannot even raise money for that. It does not involve a lot of money. There is a lot of goodwill on the part of the Government to do something like that in order to attend to people who have no other means, alternatives and they have been visited by crime and they have nowhere else to go. So, it is food for thought for the Attorney-General.

Mr. Temporary Deputy Speaker, Sir, it is long time since also there was an amnesty for some petty offenders. I know the Attorney-General has come up with this scheme whereby an order can be made by magistrates to ensure that only people who really deserve to be in prison go to prison. However, he can actually have a halfway house between his own home and prison where he can lose a certain a measure of freedom without necessarily going to prison. I know that it is true that we have a legal progressive thinking Attorney-General who can also think about an amnesty. There are so many people who are hanging on in prison and these being the last maybe 85 days of President Moi's rule, one thing he can consider is whether he can give an amnesty to some of those people who really have committed petty offences. Let the President have a bit of goodwill from many of us by maybe having an amnesty on Moi Day. It is not very far. It is only maybe seven days away. Let his last Moi Day in power be the one where he can also say that: "I have released maybe 3,000 Kenyans who are in prison and who do not deserve to be in prison." That could be a gift that many of us will celebrate. Many of them have got two to three months to go.

Mr. Temporary Deputy Speaker, Sir, I would also like to say something about conditions in our prisons and that is why many Kenyans should not actually live in prison. The prison uniform which myself have worn previously for three years has been changed and it is a very good welcome measure. We must reflect this humanity in how we treat people who are in custody. I have seen the new uniform and it is quite acceptable. In the last two weeks I have been to King'ong'o prison and this is very true. I went there just to find out how King'ong'o is doing and find out how the inmates are living. I found that they are better fed this time round than they have been before. So, that is also a mark of civilisation that people who are in custody and who cannot fend for themselves must be properly clothed and well fed because they are in your custody and this is acceptable to man and God. So, the product of the hard labour of

the Attorney-General is now starting to show and also that of the Government that even prisoners are being shown a certain level of humanity which is very important.

Mr. Temporary Deputy Speaker, Sir, I would like to conclude my remarks by looking at certain forms of prosecutions which have come up from the police whereby you find police arrest a young man on a charge of being friendly to a lady. He gets prosecuted on a case of indecent assault and as soon as the person is in custody indecent assault turns very quickly into attempted rape and attempted rape very quickly leads the individual to imprisonment term of three years. I know that this is an evidential problem that could be in our courts where you escalate the charge against a young person who has no defence and at many times undefended and you find this person actually ending up on a charge that damages the record of the individual. I know there are very many cases like that where it starts up as a disagreement between man and woman and ends up being a case of attempted rape. I know that it is important that the magistrates get better education that there are things that are sometimes very serious and we do not want to use the law to victimise any Kenyan. We would only want to use the law to punish within humane terms any wrongdoer.

With these few remarks, I beg to support.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, some of the provisions of this Bill are commendable. There are, of course, some lacunas or omissions and I hope that the hon. Attorney-General will listen to the contributions so that during the Committee Stage, he can, perhaps, close some of these loopholes. But I am particularly impressed with the attempt to treat prisoners as human beings, because the deprivation of liberty is sufficient punishment. Prison conditions are not supposed to dehumanise a human being. One remains a human being even in prison. So, it should be correctional so that they are rehabilitated into society and not go to prison to make them even more hardened criminals. Jeffrey Archer, who is serving a four year jail term, is given weekends off to go and enjoy conjugal rights with his wife. Sexual instinct is part of any human being and that is why visitational rights by spouses are provided for in other countries. You allow the wife to go and visit the husband in prison over a weekend and vice-versa, and even where a wife is in prison. It is not a crime. These are some of the issues that we should look into, particularly the Lang'ata Women's Prison. He should talk to the women who have been there as his clients and truly, he needs to look into their conditions. They are dehumanised even during those special days in a woman's life in a month. They are not provided with toiletries. That dehumanises them. So, when we are looking into these things, we should treat a human being who is behind the bars with dignity. One is not being sent to prison in order for his dignity as a human being to be destroyed.

Mr. Temporary Deputy Speaker, Sir, one of the other shortcomings is that when the new constitutional dispensation is in place, I hope the restructuring of Parliament will also be looked into. When important Bills, like this one, just come up for debate without much notice, it is not fair. Some of us have just come this afternoon and we got the Order Paper to find that we are debating these important amendments. What is going to be debated by this House should be fixed months in advance and where any changes are going to be effected, we should be notified so that we prepare. I went through this months ago and I have got my notes in my office, but I did not know it was coming up today. So, I have got to talk from memory. This is where my friend, the Attorney-General with his very infectious smile, actually succeeds in sneaking in things and then he says this House approved them, because we have not been given adequate notice. For example, when you know about--

The Attorney-General (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. I notice quite rightly the hon. Member is complaining about lack of adequate time and I do agree with him. I would like to inform him that I was also just informed that this Bill was coming up for debate this afternoon. So, it applies equally to him and to me. Therefore, his comments about the restructuring of Parliament under the next constitutional dispensation is right.

Mr. Muite: I thank the Attorney-General. In fact, he required even more notice because he is the Mover of this Bill. The way we conduct our business should be transparent and we should have adequate notice so that both the Ministers and ourselves can adequately prepare. For example, if you look at page 122, Clause 10, the Attorney-General is seeking to bring an amendment to Section 96 of the Penal Code. The proposed amendment states that: "... it is amended by deleting the words "three years" and substituting therefor the words "five years". If you go to the particular offence in Section 96 of the Penal Code, you will find that it is the offence of incitement. Incitement here would mean even disobedience of the law or inciting the public. Once a sentence is enhanced from three years to five years, it ceases to be a misdemeanour and becomes a felony. These are fundamental amendments.

Ever since the repeal of the sedition laws, the Government, the police and the Office of the Attorney-General have discovered another political offence of choice called "incitement". Why does the Attorney-General want to enhance the sentence for incitement from three years to five years? These are the sort of things that would require adequate time so that hon. Members can address their minds to it and debate and decide whether or not they want to give that power to the Attorney-General. If you go through inventories, you will find that very many hon. Members from this side of the House are facing the offences or criminal charges of incitement. That is now the instrument of

oppression of the Opposition Members of Parliament. If you open your mouth to say something, the police will be after you, and the Attorney-General will have your file and he will advise them to proceed with prosecution. Any harmless thing we say can be construed to be incitement. I want to submit that it is actually an offence to the Kenyan people to be told that they can be incited. Who can be incited to do anything they do not want to do?

The offence of incitement presupposes that the Kenyan people are children, imbeciles or mentally retarded and that they do not think for themselves. It also presupposes that all they need is an Opposition Member of Parliament to say something to incite them. Kenyans are people with reason and endowed with their own brains. It is impossible to incite them. You might incite school-boys and girls. But how do you incite the public? Where is the social mischief that the Attorney-General feels is so serious or intense currently that the offence of incitement should now be enhanced from three years to five years? This is an insult to the Kenyan people. This is one offence that the Attorney-General should remove from the Statute books. If you say anything else that is, perhaps, contrary to public morality, you can be charged. But charging people that they have said this or that and some of the people who are supposed to be incited are police officers, that is not right. There is never any evidence that as a result of that incitement, people have committed any offence. This is an offence that the Attorney-General should delete.

The other comment I would like to make is on Clause 17 which is on page 123. Section 145 states:

"Any person who unlawfully and carnally knows any girl--"

Why does the Attorney-General want to stick to this archaic English? If you are amending the laws, you should modernise the language. You should use language that is in common parlance, that people understand. Let us not stick to old English that used to be in use hundreds of years ago. We should update language in the amendment of the laws. We should talk about sexual intercourse and language that is in use today. What is "carnal knowledge?" People do not talk about carnal knowledge these days. This was language that was appropriate during the Victorian days. You should update the use of the language.

Clause 19 seeks to amend Section 147 of the Penal Code for life imprisonment which is on page 149. If you look at page 149, particularly at Section 147 of the Penal Code which is proposed for amendment, you will see that all the offences there. It states:

"Any person who procures or attempts to procure a girl or woman to have unlawful carnal connection--"

This law is to do with prostitution. If you are amending this law, let the Attorney-General criminalise prostitution itself because it remains legal in this country. There is no offence in prostitution, but if you procure a woman to become a prostitute, you have committed an offence. If you are loitering for immoral purposes, you are committing an offence. We are going round in circles. Why do we not criminalise prostitution? When you criminalise it, have the balance right.

If you go to Makadara or Kibera law courts, you will find that it is women who are being charged with prostitution. They do not commit prostitution, procure or loiter on their own. It is a market of demand and supply. If there is no demand, there is no prostitution. These women do not commit prostitution amongst themselves. Men are also involved. You will never find men being arrested or being told to go and be checked by a doctor. If you go to Central Police Station now, you will find a group of women who have been locked up there and who will be inhumanly taken to Kenyatta National Hospital to be medically examined as to whether they are spreading venereal diseases. Where are the men that actually demand the services of prostitution?

Let us not enhance this sentencing while still skirting around the issue of prostitution. It is either legal or illegal. We should not just go criminalising the peripheral issues without touching on the actual issue. When you say it is a serious offence if you secure a woman to leave Kenya to become a prostitute outside Kenya; that is her decision. The donors and the World Bank lean very heavily on the Third World and they have been telling this Government that we must open up our market for manufactured goods. The world has become a global village. Open up everything. Let our prostitutes go and compete with their prostitutes in those countries. I am looking at the human element including our workers, not just the prostitutes.

The Temporary Deputy Speaker (Mr. Sungu): Mr. Muite, are you not promoting immorality by suggesting that?

Proceed.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, you know there are countries like Holland and Norway where prostitution is legalised. They are called commercial sex workers. They are not even called prostitutes. They use consumer friendly language. If it is legalised there, why do we want to make it an offence for a woman to go and do these things where they are actually legalised?

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Could the hon. Member disclose his interest in this matter of sexuality? He is an advocate and I am begging to wonder whether he has received instructions to register the Association of Prostitutes in Kenya and also to plead for the legalisation of

prostitution in Kenya along the line of what is going on in Scandinavian countries.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, we have not perhaps reached the stage where we can legalise prostitution here. I am pointing out the contradiction in the proposed amendment by the Attorney-General; that if you facilitate a prostitute to go out, you are committing an offence here and she is going out to engage in commercial sex work in a country where this act is legalised. I was not just talking about the prostitutes. I was mentioning prostitution because the sections here deal with immorality. I was pointing out the hypocrisy of the law as it is. The Attorney-General has not gone far enough. He is still skirting around the issues. Prostitution is not an offence. Why do you not make it an offence in this country? If you live on the earnings of prostitution, you are committing an offence, but if you indulge in prostitution, you have not committed an offence. These are the contradictions and hypocrisies we are talking about. It is not just commercial sex workers, I am also talking about street sweepers, messengers and drivers. I am saying this would be a good opportunity for this Government to negotiate, as a condition of opening up our markets, to demand, that human resource is a very important aspect of liberalisation. They should not just buy their cars, watches and what-have-you. Let our workers go there.

The other issue I would like to comment on - and here I would like to commend the Attorney-General - is this one of compensation to victims of criminal offences. When you are addressing this issue, when you bring your proposals, please also bring this other proposal which ensures that the accused person is very ably represented in court. In fact, before conviction the magistrate usually asks the accused person: "Do you have anything to say in mitigation, before I pass the sentence?" You will find either the accused person or through their lawyer giving a long narration of why they should not be given a custodial sentence in mitigation. I would urge the Attorney-General that it would be very humane during that process of sentence to give an opportunity to the victim or his relative in the case of murder, to be heard on the appropriate sentence. If the accused person is heard before sentence is passed, the victim or his relative should be accorded an opportunity in open court to also be heard because they are the victims.

You may find that some of them will say: "We are now satisfied that justice has been done and provided we get that compensation, we are not demanding that they should go to prison." They will feel relieved. They will externalise their pent-up feelings because they are normally ignored in court. When the magistrate is passing sentence the victim is ignored. The victim should be heard. When the accused is saying how he should be placed on probation among other things, no opportunity is accorded to the victims. This is an aspect that I would like the Attorney-General to look into so that people can feel that justice has been done.

In some States in the USA, relatives of victims of murder are actually given an opportunity to say whether somebody should go to the electric chair in those states where they still execute people like Texas. Some feel so angry with what was done to their relatives that they want to watch the execution. I think it is fair since they are the victims and are grown up members of the society. You will find that some will want their pound of flesh. Some will say: "An eye for an eye, an arm for an arm." Some victims would say that it should be "an arm for an arm." Others would be compassionate and they would feel that they do not want to press. So, let them also be heard so that magistrates can be guided objectively before they pass sentences.

Mr. Temporary Deputy Speaker, Sir, Clause No.58 talks about hearings *in camera*. It is on page 128. I would ask the Attorney-General to reconsider this because it says that subject to sub-clause 2--- The proviso reads out as follows:-

"---provided that the presiding judge or magistrate may order at any stage of the trial of any particular case that the public generally or any particular person shall not have access to or remain in the room or the building used by the court."

First and foremost, the Attorney-General should include some criteria. I mean, this is a blank cheque to the magistrate. Mr. Attorney-General, on what basis are you suggesting that the magistrate should hear the case *in camera* or exclude a particular person? Is it if they misbehaved or make it impossible for the trial to continue? Some guidelines should be given here.

The second point that I would like to make is that the Attorney-General should consider the extent to which this section offends the Constitution. This is because I believe that under section 77 of the Constitution, one of the subsections requires hearings to be in public. So, when you take away what the Constitution says through an Act of Parliament, are you not violating the Constitution? How do you harmonise this with the constitutional requirements that hearings should be in public? Clause 72, 193A on page 133, reads out as follows:-

"Notwithstanding the provisions of any other written law for the time being in force, the fact that any matter, an issue in any criminal proceedings is also directly or substantially an issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings."

This is a good provision, but I would commend that the Attorney-General considers adding the words "of itself." It should read out like this:-

"---the fact that the matter is also directly an issue, or substantially, shall not of itself be a ground for any stay."

This is because the Attorney-General will readily also concede the rule of the law. I know why the Attorney-General is forming these amendments; because there has been abuse of applications for stay and that sort of thing. But in fact, the position in law is that the public policy demands that the criminal proceedings should take precedence. To avoid conflicts, you cannot have a situation where somebody is convicted by a criminal court, where the burden of proof is much higher. Then, you have civil proceedings saying that he or she is not liable. That would bring the administration of justice into disrepute. That would bring conflicts that are unacceptable and make an idiot of the administration of justice. It is because of the demands of the public policy that where the same set of circumstances give rise to civil and criminal liabilities, it is the criminal proceedings that should take precedence. But I think with the little amendment that I am suggesting to the Attorney-General, then, perhaps, the issue can be taken care of. I am not sure of what the Attorney-General seeks to achieve through Clause 88. I suppose that he is taking away some rights of the accused persons.

When he comes to reply, I would like him to explain exactly what it is that he is seeking to achieve. It is on page 135, Clause 88. This is about statements that can be taken into evidence against an accused person. I am against any attempt to erode the safeguards of an accused person. So, I have read out what this section is proposing to amend, and I cannot quite make out what it is that he has in mind.

On Clause 91, this is a matter of great commendation to the Attorney-General. No other provision of the law has done more injustice than the so-called "confession statements" in police stations. Our police have forgotten how to investigate crime in this country. All they know is to extract confessions. That is truly so. I am sure the Attorney-General may have been watching this feature by the *Nation TV* of a little girl called Muema, who for 14 years was in prison custody. Why? Because the police shot dead her husband. Then, they went for her from her house and took her to Parklands police station. They told her to produce the AK 47 rifle that her husband was using to carry out robberies. She had no clue that her husband was a robber; she had not touched an AK 47 rifle. Unmentionable things were done to her. Right now, she is still receiving treatment from Mrs. Ling Kituyi for ruptured uterus. For 14 years, she was in custody without the case being heard. You see the tears on her eyes when she says that the Attorney-General's State Counsel, after seven years in custody, said that she should be released because there is no evidence. We must revisit this when somebody has got---(inaudible).

Mr. Omingo: Mr. Temporary Deputy Speaker, Sir, I wonder whether I can be allowed to talk from the Dispatch Box.

Mr. Temporary Deputy Speaker, Sir, however, thank you for giving me this chance to contribute to this Motion. I am a Member of the Committee on Administration of Justice and Legal Affairs. I need the protection from the Chair because I am being told that I cannot contribute from the Dispatch Box, but I am "rehearsing" to be a Minister next year.

The Temporary Deputy Speaker (Mr. Sungu): Order! Mr. Omingo, as far as I am concerned, nobody has raised the issue. But if, indeed, you are not entitled to contribute from the Dispatch Box, please, go to your usual place.

Mr. Omingo: Thank you.

(Mr. Omingo moved to the Back Bench)

Mr. Temporary Deputy Speaker, Sir, Mr. Ekirapa is envious of my position next year, and that is why he is worried about my---

The Assistant Minister for Trade and Industry (Mr. Ekirapa): What position is that?

Mr. Omingo: Mr. Temporary Deputy Speaker, Sir, it is a Cabinet Minister's position in the new Government. I am a Member of the Administration of Justice and Legal Affairs. I think I need to commend the Attorney-General for some bold moves that he has taken in introducing the Criminal Law (Amendment) Bill.

One such very bold move is that of removing the consent to prosecute. Kenyans have anguished in cells awaiting that consent from the Attorney-General. I think people suffer unduly, and when such kind of consent comes and a Kenyan is proved innocent, there is no provision whatsoever that this Kenyan or any of this offender is compensated for that kind of unlawful detention or prosecution. This is one thing that the Attorney-General is supposed to be commended for, and I believe that he has used his powers most appropriately in this regard.

Mr. Temporary Deputy Chairman, Sir, corporal punishment is the most barbaric way of punishing someone today. In this regard, I would like to commend the Attorney-General for taking this bold move to discipline in a corrective manner and not to destroy them. Corporal punishment is quite humiliating and can psychologically affect an individual. Even after being released from the cells after that kind of punishment, that human being may never be the same again.

Mr. Temporary Deputy Speaker, Sir, there is a clause that talks about defilement of a minor and that the evidence given by the child as indicated on page 14, would be conclusive evidence. I do not approve any man in his rightful senses engaging in rape. I intend to persuade the Attorney-General to guard children who could be doctored in stating certain facts, like tape recorders for the purpose of damaging an adult male who is purported to have raped a child. I am not condoning rape. In fact, if rape is proved, the sentence should be more severe than what the Attorney-General has suggested. The Attorney-General should come up with some stop gap measures. For example, the child could be taken through some psychological talk by a psychologist or a paediatrician to prove that the child was not tutored. So, that if the Judge is convinced, he could convict the man to life imprisonment.

Mr. Temporary Deputy Speaker, Sir, under punishments to be meted out by the courts, one of the punishments that the court is empowered to do, is detention. I would also like to persuade the Attorney-General to repeal this punishment that is prescribed under Cap.91 of the Laws of Kenya with regard to detention camps. This law is not supposed to be in our statutes today. It commenced in 1925, and I am suggesting that it is a primitive law to be in our statutory books today. In line with the amendments that the Attorney-General is trying to bring in the House under Section 24 state:-

"The following punishments may be inflicted by a court: Detention, under Detention Camp Act, Cap.91".

The Attorney-General should clear those kind of cobwebs which are in existence, because at one time, somebody may run amok. We know some people can run amok and start using this archaic law of detention camps. This is one of the punishments that the Attorney-General needs to amend or delete Section 24(c) as part of the punishments. It is also true that most of us are not quite ready to give our contributions, including the Chairman of the relevant departmental committee. This is simply because we have been ambushed in debating before we are given ample notice. Through the Chair, I am requesting that the availability of the offices at Continental House should be expedited, and if need be, give hon. Members research assistants. We are running up and down like mad dogs trying to nurse our constituents, and when we come here we are supposed to contribute to important Bills, and yet there was no notice whatsoever. We think it is not only unfair to us, but unfair to the people we represent. Sometimes very crucial issues skip our minds and are sneaked into law without us going through them very candidly. I would like to plead for that the Chair expedites the availability of those offices, that we have been accused of, having luxurious offices, and jacuzzis. I have not even enjoyed those facilities. We should be allowed to use those offices, even if it means for a month or two before we are sent home to seek fresh mandate.

Mr. Temporary Deputy Speaker, Sir, Clause 10 of this Bill on page 22 was addressed very well by Mr. Muite. We are enhancing penal punishment of minor offences and actually making it more of a capital offence. We intend to bring an amendment at the Committee Stage - I hope the Attorney-General is listening to this - that, instead of three years, it should be one year or less. Incitement crime, as hon. Muite said, is actually meant to target a few who are giving dissenting views. That is so amorphous that somebody can target you and say: "You are causing incitement!" What I need to tell my learned friends across there, including the Attorney-General, is that when you make such moves targeting the Opposition Members of Parliament, know ye therefore, all men, that the kind of grave you see your brother being buried in, you will surely partake of the same thing. So, that could be a possibility and Mr. Ekirapa could be on this side of the House. When you say incitement carries a punishment of five years, it is not fair because it can also be served to a Member of this House sitting on the Government side.

Mr. Temporary Deputy Speaker, Sir, on confessions, in the police cells - and some colleagues who have been there confess to us - most statements made and signed there are made under duress. Therefore, it is important because such kind of confessions could confine an innocent person who signs a confession in police cells under duress. He suffers a punishment that he actually does not deserve.

Mr. Temporary Deputy Speaker, Sir, I would like to address the issues in prison cells. I once visited the Lang'ata Women Prison. It is despicable when you see an adult woman dressed in those funny uniforms - not the recent uniforms - which are so tight that even walking is a problem. You degrade a human being and that is why I said that when one is released from those cells, the perception of that lady or man who underwent such kind of agony will never be the same again. He or she will never come to terms with real life. Therefore, we suggest that prison cells be made in such a way that those offenders are rehabilitated to become good citizens of this nation upon their release.

Mr. Temporary Deputy Speaker, Sir, we also know for a fact, that you do not cease to be a human being in police cells. Why we have homosexuals in police cells is because those people are denied basic human rights. I believe sex is one of them and that is why we have homosexuals in the prison cells. We have many HIV/AIDS cases and some of the inmates sell their rights for food. They sell their bodies for food. We have a sufficient budget for the prisons but, unfortunately, what happens is that the blue-eyed boys of the system actually pretend to supply grains to those prisons! What happens? A portion of that money is put into their pockets. I think it is only fair that the police officers are rehabilitated.

Mr. Temporary Deputy Speaker, Sir, a good example is that of Mr. Nelson Mandela, the former South African President. When he was in prison, he was able to access the outside world and know what was happening. He was even given a television set to watch. But here in Kenya, when you are convicted or sent to prison, you are condemned to be a lesser human being.

I commend the Commissioner of Prisons because he has improved prisoners' uniforms. I believe the Attorney-General has sufficient power to give guidelines on the minimum expectations of an inmate upon conviction. It is important that these basic rights are safeguarded.

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

Mr. Wambua: Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this opportunity to give my opinion on this important Bill.

First of all, I would urge the Attorney-General who is the Chief Government adviser, to take note of what we are saying because this affects our people. Nobody in this country can swear that before he dies will not go to prison. Before this law is implemented, I would urge that our police officers be rehabilitated. This is because there are some police officers who act as trainers of criminals in this country. In fact, they are more of criminals than the criminals themselves.

Mr. Temporary Deputy Speaker, Sir, I am a Member of the Departmental Committee on Defence and Foreign Relations. I believe the Prisons Department falls under this Committee. Recently, we were surprised to hear that some police officers organise and execute robberies in this country. This is a shame to this country. We do not know why this is happening. It used to happen many years ago. Recently, the police force stopped protecting policemen who are criminals themselves. In this case, I would urge the Attorney-General to make sure that some severe disciplinary actions are taken against police officers who engage themselves in criminal activities. We all know that they are trained with taxpayers' money. Though our economy is in shambles, we spend a lot of money to train police officers. It is a pity that they use their skills in criminal activities because they have weapons at their disposal. We read from the newspapers that most of the culprits arrested in connection with robberies are police officers. That is a shame to our country. The Government should take action against such officers. When the Government laments that it is not being given aid by donors, probably it is because these things are happening and no action is taken against the culprits. The Government must take action. I hope before the present Government leaves office, it will do something about criminal activities in this country. This is because we have seen many things happen. I do not see the reason why our prisons should be congested. As a Member of the Departmental Committee on Administration, National Security and Local Authorities, I have visited several prisons with other Members of the Committee. We were surprised to find a prison built to accommodate about 30 prisoners now accommodates more than 300 prisoners. What percentage is that? Why do we do that to our people? The fine which is paid by those who have been found committing crimes could be used by the Government, at least, to expand our prisons. In many countries, prisons are rehabilitation centres, but in our country, people are mistreated in prisons. I would be happy if one of our senior Ministers was imprisoned. He would be ashamed and surprised. If they cannot be comfortable in those prisons, why would they let any Kenyan go there? All of us are equal regardless of the position we hold in the society. All of us are all equal before God. You may be rich or hold a very senior position in the Government, but if you do not feel comfortable to be in our prisons, why do you allow our people to go there and do not care of what they undergo there?

Mr. Temporary Deputy Speaker, Sir, you have heard of prison officers who guard women prisons. The women prisoners get pregnant when they are in prison. I would like to point out that women prisoners are impregnated by male prison officers. Why is this allowed? Why do these prison officers not get their fellow women prison officers? It is shameful when such a thing happens. I would like to urge the Attorney-General to see to it that some of these things are rectified during this period because the Bill we are discussing in this House is for the welfare of our country. This is the Eighth Parliament since Independence. It should change many things. We would like our people to be comfortable in whichever position they hold the same way we would like to live comfortably, as hon. Members of Parliament.

I would also like to request the Attorney-General when he publishes such a Bill to take into account our police officers who, of course, work hard. Some people who are suspected to have committed a crime are punished severely than when they are found guilty and sent to prison. Why should this happen? When you are a suspect, you have not been found guilty of any offence. Why should we punish suspects? I wish this had taken another dimension. I wish some of our public officers or Ministers who have been suspected to have misused public funds are punished. So, why should we punish other suspects before they are found guilty? This is bad and unusual. Our Government, and probably, the Attorney-General should, at least---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Sungu): Order! Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until 8th October, at 2.30 p.m.

The House rose at 6.30 p.m.