

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 5th July, 2007

The House met at 2.30 p.m.

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

PRAYERS

QUESTIONS BY PRIVATE NOTICE

EVICION OF OLD WOMAN FROM PLOT
No.2114/OLJOROROK SALIENT

(Eng. Muriuki) to ask the Minister for Lands the following Question by Private Notice.

(a) Is the Minister aware that an elderly lady who was residing on Plot No. Nyandarua/OlJOROROK Salient/2114 was evicted on Thursday, 14th June, 2007 and is now living as a destitute?

(b) Could the Minister confirm the true ownership of the plot as the life of this elderly lady is in danger?

The Temporary Deputy Speaker (Mr. Khamasi): Eng. Muriuki is not available. This Question is deferred to next Tuesday.

(Question deferred)

EMPLOYMENT OF DRIVERS BY KRA

(Mr. Bett) to ask the Minister for Finance the following Question by Private Notice.

(a) Could the Minister confirm that the Kenya Revenue Authority employed 60 people as drivers in May, 2007?

(b) Could the Minister further confirm that those employed are qualified drivers and that they are not currently being trained as such at the expense of KRA?

(c) If the answer to "b" above is in the affirmative, could the Minister table copies of their driving licences?

Mr. Bett: Mr. Temporary Deputy Speaker, Sir, I had requested that this Question be brought here today to give me a chance to look at the list which was tabled yesterday by the Minister for Finance. I have looked at the list and I am satisfied that the ages of the drivers as registered in the Motor Vehicle Department are in order. I also looked at the tribal set-up and noted that it is better than it is at the level of senior managers.

Thank you.

So, I do not intend to ask the Question. I withdraw the Question.

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Question does not belong to Mr. Bett any more.

The Temporary Deputy Speaker (Mr. Khamasi): Order! I have not closed any supplementary questions to that Question. He is the Questioner and he says that he is satisfied. If there is any hon. Member in the House who wants to ask a supplementary question, he is free to do so.

Mr. Angwenyi, do you have a question?

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, could I have a copy of the written reply so that I can develop my supplementary question?

(Laughter)

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Angwenyi, if you were interested, you would have seen the hon. Member who would have given you a copy of the answer and also a copy of what was tabled here in the House.

Let us move to Ordinary Questions.

ORAL ANSWERS TO QUESTIONS

Question No.284

INCREASE IN CASES OF CERVICAL CANCER

The Temporary Deputy Speaker (Mr. Khamasi): Is Prof. Mango not in the House?
The Question is dropped.

(Question dropped)

Question No.122

CRITERIA FOR PROMOTION OF POLICE OFFICERS

Mr. C. Kilonzo asked the Minister of State for Administration and National Security:-

- (a) what the criteria for promotion of officers in the police force is; and,
- (b) whether he is aware that there are officers who have served for over ten years and have not received any promotion.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Temporary Deputy Speaker, Sir, I beg to reply on behalf of the Minister of State for Administration and National Security.

(a) The criteria for promotion of officers in the police force is contained in the Force Standing Orders Cap.24(9). Promotion of officers is a continuous process where serving officers are selected for promotion on the basis of their qualifications, experience and to some extent seniority. In certain ranks, promotions depend upon satisfactory completion of promotional courses. However, at times, qualifications, proven merit and suitability for an existing vacancy will be given greater weight than seniority.

- (b) I am aware that there are officers who have served for over ten years without receiving

any promotion. However, there are various reasons where an officer may stay in one rank for many years. These include:

(i) Poor disciplinary record - this refers to indiscipline of an individual officer in the force. On this ground, an indisciplined officer may stay in one rank for a longer period than is usually the case. This usually happens to give the officer time to reform.

(ii) Failing to pass the requisite police examination which individual officers are subjected to as part of the scheme of service. These include inspectorate examinations, gazetted officers examinations, English literacy examinations and technical officer examinations.

(iii) Failing to sit and pass the requisite technical examination for officers in technical fields like mechanics and telecommunication technicians, would also stagnate the officers in the same rank for a very long period of time.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, this situation is unfortunate because currently there are university graduates in the police force. Likewise, there are police officers who have sat and passed these examinations and have good conduct. Despite this, they have not been able to get promotions and, as a result, their morale is very low. What is the Government doing to ensure that promotion in the police force is done in a proper way so that if an officer is qualified he gets promoted?

Mr. Awori: Mr. Temporary Deputy Speaker, Sir, the Headquarters Promotions and Selections Board sits at a particular time to review promotions. As I said earlier, there are examinations for various ranks. In the establishment, there is a requisite number of inspectors, chief inspectors and officers in every rank. So, whenever there is a vacancy, then the process of promotion takes place. I am quite satisfied that the process is quite good.

Mr. K. Kilonzo: Mr. Temporary Deputy Speaker, Sir, in view of the fact that there are so many officers who have done these interviews and have passed could, the Vice-President and Minister for Home Affairs confirm whether the force will ensure that these people are promoted as soon as possible without discrimination?

Mr. Awori: Mr. Temporary Deputy Speaker, Sir, once an officer has gone through the interview and is found to be capable of being promoted to a higher rank, provided there is a vacancy in that higher rank, he or she will obviously be promoted. Whenever there are no vacancies, then they stay in their current positions until there are vacancies.

Mr. Kombe: Mr. Temporary Deputy Speaker, Sir, the morale of the police force is really down because most police officers are serving in hardship areas, but they hardly get a promotion or hardship allowance. What is the Ministry doing to ensure that officers in hardship areas are paid hardship allowance?

Mr. Awori: Mr. Temporary Deputy Speaker, Sir, hardship allowance is standard for areas where it is warranted. If there is any case whereby the hon. Member is aware that there is a police officer serving in a hardship area and is not receiving hardship allowance, I would be happy to receive the details so that we can ensure that the matter is dealt with.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I said earlier that there police officers who are graduates and others who are not but are of good conduct. Some of them have been very lucky to survive even in cases where they were shot and they have passed their exams. You will find that one of the criteria used in promotion is when the Ministers push for those promotions. What is the Government doing to ensure that officers who are qualified, and have good conduct, are promoted? If the vacancies are few, then they should be increased so that we can have more inspectors, corporals and sergeants just like in the army. This problem is not prevalent in the army and the airforce, but only in the police force.

Mr. Awori: Mr. Temporary Deputy Speaker, Sir, the circumstances the hon. Member is describing could have happened before. In this particular administration, this is no longer the case.

Merit is always the key.

The Temporary Deputy Speaker (Mr. Khamasi): Next Question by Prof. Oniang'o!

Question No.185

LACK OF COMPUTERIZED RECORD
SYSTEMS IN PUBLIC UNIVERSITIES

Prof. Oniang'o asked the Minister for Education:-

(a) if he is aware that there are no computerized record systems in all public universities in Kenya;

(b) if he is further aware that university students end up being awarded wrong grades due to lost records; and,

(c) what urgent steps he is going to take to ensure that all public universities introduce computerized recording systems in order to improve on their accuracy and efficiency.

The Assistant Minister for Education (Mrs. Mugo): Mr. Temporary Deputy Speaker, Sir, I talked with the hon. Member and we agreed to defer this Question to next week.

Prof. Oniang'o: Mr. Temporary Deputy Speaker, Sir, the written answer that I have is inadequate, and if they are getting more time, could they do a little more research and give me a better answer?

The Temporary Deputy Speaker (Mr. Khamasi): I believe that is why she has said that she wants to give you an answer later.

Prof. Oniang'o: Mr. Temporary Deputy Speaker, Sir, that is not the reason I was given.

The Temporary Deputy Speaker (Mr. Khamasi): Order! Next Question!

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

The Temporary Deputy Speaker (Mr. Khamasi): About the same Question?

Mr. Angwenyi: About the same subject, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Khamasi): When I have already made a ruling?

Mr. Angwenyi: Yes, but it will not challenge your ruling, Mr. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Mr. Khamasi): Yes, what is it, Mr. Angwenyi?

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, are you aware that in the last few days, the Assistant Minister concerned has not been willing to answer Questions in this House? Could you, please, ask her the reasons for boycotting to answer Questions in this House?

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Angwenyi! You want to introduce another Question on the Order Paper that is non-existent. I will not deal with that because all the Questions which Ministers have been asked here have been answered. That is what the House requires.

(Question deferred)

Next Question by the Member for South Mugirango!

Question No.340

IMPLEMENTATION OF GOK/FRENCH
PHASE II POWER PROJECT

IN SOUTH MUGIRANGO

The Temporary Deputy Speaker (Mr. Khamasi): The Member for South Mugirango is not in. The Question is, therefore, dropped!

(Question dropped)

Next Question by Member for Ijara!

Question No.312

HARASSMENT OF KENYAN SOMALIS
BY TANZANIAN IMMIGRATION OFFICERS

Mr. M.Y. Haji asked the Minister of State for Immigration and Registration of Persons:-

(a) if he is aware that Kenyans of Somali descent visiting Tanzania are frequently subjected to arrest and detention, particularly over the past six months;

(b) if he is further aware that the Immigration Department in Tanzania imposes the words "*persona non grata*" on the passports of the arrested Kenyans making it impossible for such person(s) to travel on the same passport; and,

(c) what steps he is taking to stop these arrests.

The Minister of State for Immigration and Registration of Persons (Mr. Konchella): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The Ministry does not have any record of any Kenyans of Somali descent arrested and detained in Tanzania over the past six months. However, the Ministry welcomes any information regarding specific cases indicating their names, passport numbers, date of arrest, the reasons for their arrest and the prisons within the Republic of Tanzania where such Kenyans may have been held in order to pursue the cases with the relevant Tanzanian authorities.

(b) The Ministry has not come across any Kenyan passport that has been imposed the words "*person non grata*" by the Tanzanian authorities.

(c) The Ministry respects the sovereignty of the State of Tanzania and respects her decision in effecting lawful arrests emanating from unjustified breaches of Tanzanian laws.

Mr. M.Y. Haji: Mr. Temporary Deputy Speaker, Sir, I would like the Speaker, this House and the nation to take note of the fact that the information being given is totally false and untrue because I have two letters that I wrote to the Ministry.

The first letter is dated 26th May, 2006. The other one is dated 8th December, 2006. I copied these letters to the Minister for East African Community who acknowledged receiving them. I have given out the names, passport numbers and photocopies of all the passports. Is the Minister really in order to lie to the nation on an issue like this one?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, the word "lie" is unparliamentary. So, I beg the hon. Member to withdraw that remark.

Mr. Temporary Deputy Speaker, Sir, as the Minister of State for Immigration and Registration of Persons, I have no idea and I have not received any information. I am willing to take any action, if the hon. Member can give me the information. I do not have that information.

Mr. Mwandawiro: Bw. Naibu Spika wa Muda, pasipoti ya Kenya ni lazima iheshimiwe na ichukuliwe kwa uzito unaofaa bila kujali ni mtu gani ambaye anaibeba. Wasomali ni Wakenya. Ikiwa Msomali wa Kenya ambaye ana pasipoti ya Kenya akienda Tanzania anakamatwa na Serikali

haiwezi kumlinda, lazima Serikali ichukue msimamo. Je, Waziri anachukua hatua gani ili kuhakikisha kwamba Jamhuri ya Tanzania inahesimu pasipoti ya Kenya, iwe imebebwa na Msomali au mtu gani? Hatutaki watu wetu wabaguliwe na hali hatuwabagui Watanzania ambao wako katika nchi yetu.

Mr. Konchella: Bw. Naibu Spika wa Muda, nchi ya Tanzania ina haki kulingana na sheria yake kuhakikisha kwamba wale wanaovunja sheria wanaadhibiwa kulingana na sheria ya nchi hiyo. Siyo jukumu la Jamhuri ya Kenya kuieleza nchi jirani kufanya jinsi tunavyofikiria. Ikiwa kuna Mkenya ambaye amefanya makosa katika nchi yoyote ile duniani, tukipata habari hizo kwa muda unaofaa, bila shaka tutahakikisha kwamba hasumbuliwi na mtu yeyote kwa sababu ana haki ya kuchungwa na kusaidiwa kwa lolote na nchi yake.

Mr. Khamisi: Mr. Temporary Deputy Speaker, Sir, I am sure the Minister knows that Tanzania has been very hostile to Kenyan nationals. Given the fact that we are talking about the East African Community (EAC), is it not proper that this Government should know how many of its citizens are being mistreated by a neighbouring country like Tanzania?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, if the hon. Member has any information, he should direct it to the Ministry of Foreign Affairs and the Ministry of East African Community so that the matter can be handled at that level. Then after that, if there is any immigration matter that we will need to tackle as a nation, it can be forwarded to me for action. But, as of now, the Tanzanian Government and the Kenyan Government are brothers and sisters. We are working as a nation and we see no reason why any of us should harass any of our citizens within the EAC. Of course, as we go to the EAC in the next few years, the doors are going to be opened for each and everyone of us to live together with others in any of our neighbouring countries. So, as a Government, and particularly Parliament, we should encourage co-operation with our neighbouring States so that our people can live together in peace.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, in most cases, the Minister has admitted that he is not aware. Which means that there is nothing much happening in that Ministry. What has happened, if the Minister wants to know, is that immigration officers on the Kenyan side have started harassing Tanzanians who cross over to Kenya. That is why, yesterday, Tanzanians demonstrated for allegedly being harassed by the Kenyan police and immigration officers. What is the Minister doing to ensure that he liaises with his counterpart so that Kenyans and Tanzanians are not harassed by immigration officers from both countries?

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, as I said earlier on, I cannot act on what I do not know. Those Kenyans should write to the Ministry explaining exactly what the problem is and we will take it up. However, I cannot act on hearsay or what has not come in writing to us.

The Temporary Deputy Speaker (Mr. Khamasi): Ask your last question!

Mr. M.Y. Haji: Mr. Temporary Deputy Speaker, Sir, this should not be the last question because I am not satisfied. The Minister has said that he is not aware and yet I have record here. I have the photocopies of the passports, which I want to table. Let him go and find out from his officers and then come and answer the Question because it has not been satisfactorily answered!

(Mr. M.Y. Haji laid the documents on the Table)

The Temporary Deputy Speaker (Mr. Khamasi): I am inclined to allow what hon. M.Y. Haji is asking for. If it is ascertained that actually the Minister for East African Community acknowledged receipt of those letters and no action has been taken--- I will give the Minister the opportunity to study them and come up with an answer next week. However, we need, first of all, to confirm

whether the documents are correct.

Next Question!

Question No.393

UPGRADING OF SABAKI-MARAFA-
BARICHO ROAD

Mr. Kombe asked the Minister for Roads and Public Works when the Sabaki-Marafa-Baricho Road will be upgraded to bitumen level.

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

Sabaki-Marafa-Baricho Road, D553, is under the Malindi District Roads Committee and the committee should be requested to give it priority in its programme for tarmacking. The committee continues, for the time being, to maintain the road to remain at motorable standards.

Mr. Kombe: Mr. Temporary Deputy Speaker, Sir, last August, after His Excellency the President opened the Mombasa International Show, he visited Malindi, and at Shada Grounds, I requested that the road be tarmacked. His Excellency the President promised that the road would be worked on. So, I expected that this road would be factored in this year's Budget.

What is the Minister doing to make sure that this road is upgraded to bitumen standard? Motorists are suffering.

Mr. Nyachae: Mr. Temporary Deputy Speaker, Sir, first, I am not aware of the undertaking by His Excellency the President that this road, which is Class "D", would be tarmacked. I am not aware that he ordered that the road be tarmacked. The Office of the President has not communicated with me about it.

Secondly, there are procedures which must be followed. There are Class "C" roads in the country and which deserve tarmacking before you get to Class "D" roads. Therefore, there are procedures to be followed in addition to any directives we get from the Head of State, or the Government. For now, we have not received any directives.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, if I heard the Minister correctly, he has said that roads, especially Class "C" onwards, should actually be tarmacked. Is he aware that we have been waiting for Road C19; Kendu Bay-Mbita-Sindo Road, to be tarmacked for the last 40 years and it has never been tarmacked?

Mr. Nyachae: Mr. Temporary Deputy Speaker, Sir, I know what the hon. Member is talking about. This is a road from Homa Bay to Mbita. The previous Government promised to tarmack this road and surveyors went there, but nothing happened. Now, we have started a fresh exercise for that particular road. The hon. Member knows that when I addressed a *baraza* in his area, I announced that we have assigned the road to a consultant. Until the consultant finishes his work, we cannot go to tender because we do not even know the estimates.

Mr. Weya: Mr. Temporary Deputy Speaker, Sir, recently, the Ministry of Roads and Public Works spent Kshs37 million to design roads C28 and C29 in Siaya District. The Minister has clearly said that, immediately after the designs, they go to tender.

Could the Minister tell us why that particular road, on which the Government has already spent Kshs37 million, has not been tendered?

Mr. Nyachae: Mr. Temporary Deputy Speaker, Sir, I said that there are procedures to be followed. I never used the word "immediately". The hon. Member is putting some words in my mouth. My mouth cannot accept his words!

However, I would only respond to the issue of the procedures. The moment the design has

been completed, then there are other procedures. One of the procedures is to use the estimates to link with the Treasury and request for funds. When the funds are available, or we get the signals that funds are going to be available, we go to the tendering stage. The hon. Member should be grateful that we have done some designs and, therefore, we are in the process of looking for money.

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, I agree with what the able Minister for Roads and Public Works is saying. You have heard him say that Road C19 has been assigned to a consultant. If Road C19 has already been assigned to a consultant, when is the Minister expecting to get the report from the consultancy firm? I am asking this question because we had been told that even Road C18 had been assigned to a consultant even before hon. Nyachae went to that Ministry. How much money has so far been allocated for Road C18? That is the route hon. Ojode uses to go home!

An hon. Member: Who is Ojode?

Mr. Ojode: The Government!

Mr. Nyachae: Mr. Temporary Deputy Speaker, Sir, the hon. Member is talking about Road C18; Rodi Kopany. I remember it because I am working on it. But I have to get the money, my friend! You approve the Budget here and make more noise, I get the allocation and then I do the roads!

Mr. Mwandawiro: Bw. Naibu Spika wa Muda, Mbunge wa Magarini ameeleza kwamba wakati Mhe. Rais alipozuru sehemu yake, aliahidi kwamba hii barabara itawekwa lami. Waziri amemjibu na akasema kwamba halifahamu jambo hilo.

Je, Waziri anaweza kwenda kuuliza ili afahamu jambo hilo na akifahamu atekeleze vile Rais aliagiza?

Mr. Nyachae: Bw. Naibu Spika wa Muda, hawa waheshimiwa wanamwekelea Rais maneno kwa mdomo wake. Mimi niko na kanda za huo mkutano. Rais alienda hata Wundanyi na alisema: "Hizi barabara zote ambazo mnauliza, zitaangaliwa na zitatengenezwa". Hiyo ni kumaanisha nini?

(Laughter)

Mr. Kombe: Mr. Temporary Deputy Speaker, Sir, you have heard the Minister say that we are putting words into His Excellency's mouth. That is not true! On 4th January this year, I requested His Excellency the President to assist in, at least, the murraming of Road D555. After two weeks, works on this road started. If the Minister is not aware of His Excellency's directive, why did he start work on Road D555? This was, again, another directive from His Excellency.

What plans does the Minister have for Road D553, which is currently impassable?

Mr. Nyachae: Mr. Temporary Deputy Speaker, Sir, it is true that we are murraming the road which the hon. Member requested the President to be murramed. As I speak, we have made available Kshs2,526,737. When we exhaust that money, you had better raise another Question and I will respond to it.

Mr. Kombe: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to say that he has allocated Kshs2.5 million for the murraming of this road, when he knows very well that it costs Kshs1.5 million to murram a kilometre of a road?

Mr. Nyachae: Mr. Temporary Deputy Speaker, Sir, let us be clear about what our role is, as hon. Members. Hon. Members are members of District Roads Committees. I have allocated what has come from the District Roads Committee.

Could the hon. Member go back to his District Roads Committee, revise their estimates and let us have them? We will do the job. We are here to work!

The Temporary Deputy Speaker (Mr. Khamasi): Order, hon. Members! I had said that

we are going to revisit the Question by the hon. Member for Ijara after looking at the documents which he had tabled. We have looked at the documents and they are admissible. The Minister has requested to have a look at them and come back with the answer on Thursday, next week.

Question No.312

HARASSMENT OF KENYAN SOMALIS BY
TANZANIAN IMMIGRATION OFFICERS

(Question deferred)

Question No.395

NON-PAYMENT OF ALLOWANCES
TO ELDERS INVOLVED IN
LAND ARBITRATION

Mr. Weya, on behalf of **Dr. Oburu**, asked the Minister for Lands:-

(a) whether he could confirm that elders arbitrating in land disputes in Bondo Constituency have not been reimbursed transport and lunch allowances amounting to Kshs428,300 and sitting allowance amounting to Kshs815,500 dating back to 2004; and,

(b) what measures he is taking to pay the outstanding allowances and ensure that future claims are settled promptly.

The Assistant Minister for Lands (Mr. Kamama): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am aware that members of the Land Dispute Tribunal in Bondo District have not been paid all their allowances for the period 2004 to 2007.

(b) My Ministry is seeking additional funds from the Treasury to pay the arrears.

Mr. Weya: Mr. Temporary Deputy Speaker, Sir, I would like to thank the Assistant Minister for an honest answer. It is unfortunate that, for three years, these old members of the society keep on going to Bondo and Siaya land offices to adjudicate land issues. The people who purchase land pay a lot of money.

Could the Assistant Minister tell the House how much money has been allocated this financial year to pay these senior citizens their dues?

Mr. Kamama: Mr. Temporary Deputy Speaker, Sir, the problem of payment of allowances to Land Dispute Tribunal members applies across the country. All districts are having this problem. I want to inform the hon. Member that, in the last three years, Siaya District has received about Kshs1,031,200.

In 2003/2004, Siaya District got Kshs229,453 and in 2004/2005, the same district got Kshs88,560. During the last financial year, the same district got Kshs550,000. The total amount is about Kshs1,031,200. This year alone, we have allocated about Kshs252,000. The amount will not actually assist our members because we have been given insufficient funds.

However, we are trying to come up with a policy to ameliorate this problem. We are introducing a policy that will provide payment to members on the basis of cases heard and determined and not on the basis of attendance. This problem is actually disturbing us. This is happening all over the country. Meanwhile, we are still asking for money from the Treasury to address this problem.

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I brought to this House a similar Question at the beginning of this year. Just a few days ago, the Minister for Finance presented to this House the Budget for this financial year. You know that people in so many areas of this country have no title deeds, because there are so many cases which need to be dealt with. The Assistant Minister has said that the committee members have not been paid. How does he expect these cases to be determined for citizens to get their title deeds, if he is not doing anything about the payments? Last time I was given the same answer being given to this Questioner now; that they are seeking for money. From where is he going to get the additional money when the Budget has already been read?

Mr. Kamama: Mr. Temporary Deputy Speaker, Sir, with regard to the first question, I want to confirm to the hon. Member that we are doing something. It is not that we are not paying the committee members some allowances. We are paying the allowances but the amounts are not sufficient. The Questioner was actually a Minister for Planning and National Development in the previous regime, and he knows what the Medium-Term Expenditure Framework (MTEF) is all about. We have about six resource envelopes. In our Ministry, we are under the Ministry of Agriculture. So, whatever we are given is what we will always give to our committees. We will not give what we do not have, but we will keep on trying to persuade the Treasury to give us some funds. So, I want to confirm to hon. Members that this problem is prevalent throughout the country, and that we will address it once we get sufficient funds.

Mr. Muriithi: Mr. Temporary Deputy Speaker, Sir, first of all, this Assistant Minister owes me an apology because, while talking about this Question last time, I told him that the Nyeri Town Constituency Land Tribunal members had not been paid their sitting allowances. He told this House that, that Question was neither here nor there. Is the Question now here? My District Land Tribunal has not been paid a total of Kshs165,000. Every time he speaks, he tells us: "I am going back to the Treasury". How far is the Treasury from this House? We want an answer today! He is telling us that they will be formulating a policy. We are on our way home! When is the policy coming? We are just about to go for elections!

Mr. Kamama: Mr. Temporary Deputy Speaker, Sir, first, I must say that a policy is never pegged on a parliamentary term. Once formulated, a policy can be implemented for even 50 years. So, that is for the information of my good friend, Mr. Muriithi.

I have been giving this answer consistently because we have to be honest in this House. I gave the same answer to Mr. Ndambuki. Today, I am giving the same answer, because I am honest. We will try to persuade the Treasury to improve on the amounts being given to members of these committees. I hope that the Treasury will respond positively. So, we will keep on pursuing the matter until we succeed.

Mr. Omamba: Mr. Temporary Deputy Speaker, Sir, I asked that question about seeking for the money. For how long is he going to wait to receive the money from the Treasury? That is mere cheating!

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order, Mr. Omamba! Use parliamentary language!

Mr. Omamba: Mr. Temporary Deputy Speaker, Sir, he has a very sweet job. May I say that members of the District Land Tribunal in my area have stayed there for the whole of last year up to date without getting any allowances? How does he expect these people to go and deal with cases? Could he tell us when those people will get their allowances? We are fed up with the word "seeking".

Mr. Kamama: Mr. Temporary Deputy Speaker, Sir, I am very sure that Migori District, where Mr. Omamba comes from, was allocated a substantial amount of money to cater for the allowances of the members of these committees. I am not sure of the figure because I did not check

it, but I will advise Mr. Omamba to get in touch with our land officers in Migori District, or refer to the Estimates, so that he can keep himself abreast with the money that has been allocated to the District Land Tribunal in that district.

Mr. Owino: On a point of order, Mr. Temporary Deputy Speaker, Sir. I come from Migori District. The amount that the Assistant Minister is talking about was the arrears that the committee members were supposed to have been given in 2005. That is the money that was received. Last year, and the whole of this year, no money has been received. Is he in order to mislead the House by telling us what is not correct?

Mr. Kamama: Mr. Temporary Deputy Speaker, Sir, I cannot mislead the House. I want to confirm that, apart from the new districts that were created the other day, all the other districts with District Land Boards and District Land Tribunals have been allocated some money. I want the hon. Members to go back to the Estimates, or get in touch with our officers in Migori District.

Mr. Mukiri: Mr. Temporary Deputy Speaker, Sir, District Land Tribunals were established because it was alleged that the courts were corrupt, and that they were aiding the rich people in handling land issues. What is now happening is that all the decisions that the land tribunals are making are being challenged in court. So, we end up going back to the courts. In view of the fact that the land tribunals have failed, given that after they make decisions, those decisions are overturned by the High Court, could the Assistant Minister consider abolishing these tribunals, so that we can go back to the old procedure?

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order, Mr. Mukiri! You are asking a completely different Question. Surely, you cannot expect the Assistant Minister to answer that one. We are asking supplementary questions to the Question before the House. What you are introducing is a completely different Question. It cannot be admissible.

Mr. Mukiri: Mr. Temporary Deputy Speaker, Sir, I have not asked my question! What I am saying is, in view of the fact that it has been shown that the Government is not able to pay these people, and given the fact that if those people are not paid, they are bound to be corrupted, could the Assistant Minister consider reverting to the old procedure? Corruption has now gone into the land tribunals because the Ministry is not paying the people who sit in those tribunals their allowances.

The Temporary Deputy Speaker (Mr. Khamasi): That is what I have told you. Mr. Assistant Minister, the concern here is that members of the land tribunals, all over the country, are not being paid their allowances. So, hon. Members want you to tell them to what extent you would pay, even if you cannot pay everything. That is the concern, and it is all over.

Mr. Kamama: Mr. Temporary Deputy Speaker, Sir, I stated, at the very outset that, the amount allocated to us by the Treasury is not sufficient. We are not satisfied with their claims, but we have managed to pay them, at least, some substantial amount of money.

Arising from the many claims that we get from them, we have come up with a policy that will make sure that members of those committees are paid on the basis of the cases that they have heard and determined, and not on the basis of attendance. Normally, those claims are paid on the basis of attendance. A member can attend about ten hearings, but only one case is determined. We want to compare the two and make sure that we come up with realistic policies that will satisfy everybody. **Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, the Assistant Minister is embarrassing the House. What he is telling the House is that the Treasury has not given them money. As far as we are concerned, the Treasury and the Ministry are one and the same thing. They serve the same Government. We should not be told that this Ministry has not done "A", "B", "C" and "D" and yet, it is the same Government. This Government is now demanding to sell people's property for non-payment of taxes. They are failing to pay the people, who have already rendered services, their dues. Before they procure new services, they must be able to pay people who have

already rendered services to the Government.

Mr. Ojode: Put your question!

Mr. Kamama: Put it now!

The Temporary Deputy Speaker (Mr. Khamasi): Order! Messrs. Ojode and Kamama, it is only the Chair who can--- Mr. Raila, could you now ask your question?

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, could you, please, warn the Assistant Minister that he must be respectful to the House?

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Raila! Could you now ask your question?

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I am asking the question on behalf of the people who are suffering after rendering their services to this Government, which is completely inconsiderate! Could he assure the House that he will try to allocate money in the Supplementary Estimates, to ensure that all the people who are owed dues by this Government are paid before they consider selling people's property for non-payment of taxes?

The Temporary Deputy Speaker (Mr. Khamasi): Very well! Mr. Kamama, could you say that Supplementary Estimates will be enough to pay all those bills?

Mr. Kamama: Mr. Temporary Deputy Speaker, Sir, first of all, I want to confirm to the hon. Member that I am not embarrassing the House or anybody else. I am stating facts as they are.

On the issue of including those pending bills in the Supplementary Estimates, we will pursue that matter.

The Temporary Deputy Speaker (Mr. Khamasi): Last question!

Mr. Angwenyi: I will ask the last question!

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Angwenyi!

Last question, Mr. Weya!

Mr. Weya: Mr. Temporary Deputy Speaker, Sir, the Government collects a lot of revenue from land fees from Kenyan citizens. Those people held 207 sittings. The Assistant Minister is telling us that he has a mere Kshs200,000, out of the Kshs1.3 million that is owed to those people. The Government has got a surplus of Kshs4.1 billion from revenue collected by the Kenya Revenue Authority (KRA). Could he take some of that money and pay all those people who have been sitting in those boards and rendering services to the Government?

Mr. Kamama: Mr. Temporary Deputy Speaker, Sir, I have said that, that problem is prevalent. We will address that issue considering that it is a national matter. We will approach it from a national perspective.

Lastly, on the issue of the amount that was raised by KRA, that is not my business. The Budget has its own circle. We will know how that money will be used next year.

The Temporary Deputy Speaker (Mr. Khamasi): Next Order!

COMMUNICATION FROM THE CHAIR

DEFERMENT OF COMMITTEE STAGE:
LABOUR RELATIONS BILL
AND OCCUPATIONAL SAFETY BILL

The Temporary Deputy Speaker (Mr. Khamasi): Order, hon. Members! Stay put!

Hon. Members, you will appreciate that the Committee of the whole House is dealing with two Bills - the Labour Relations Bill and the Occupational Safety and Health Bill. Those of you

who are regular here will appreciate that these two Bills came here in succession. In fact, they were led by the Labour Institutions Bill, and these two Bills are related to that. To date, we have not dealt with the Labour Institutions Bill. That, effectively, means that we cannot deal with these Bills in the Committee Stage until the Labour Institutions Bill has been disposed of. These Bills are, therefore, deferred until we deal with the Labour Institutions Bill.

Next Order!

BILLS

Second Reading

THE MEDIA BILL

*(The Minister for Information and
Communications on 3.7.2007)*

*(Resumption of Debate
interrupted on 4.7.2007)*

The Temporary Deputy Speaker (Mr. Khamasi): This is resumption of Debate. Mr. Muiruri, you were on the Floor! You have got 22 minutes to finalise your contribution.

The Assistant Minister for Agriculture (Mr. Muiruri): Mr. Temporary Deputy Speaker, Sir, I fully support this Bill because of some very important reasons. It seeks to establish the Media Council of Kenya (MCK), the Media Advisory Board (MAB) and the Complaints Committee.

Mr. Temporary Deputy Speaker, Sir, for many years in this country, the media has never been properly regulated. But with the establishment of MCK, MAB and Complaints Committee, we will have some sort of order in journalism. What we have now is irresponsible journalism. You may find a story in the media slurring leaders and hon. Members of this House. The slur would go to the extent of discussing hon. Members of this House and important personalities. The same story is read by their families. The effect of it is very bad! Sometimes, it has even broken families! So, with the establishment of MCK--- What is contained in Section 5 of the Bill is very important. It will make recommendations on the employment criteria of journalists. To me, that means that MCK will vet journalists, get their education backgrounds and ensure that we have proper journalists collecting news in the field.

Mr. Temporary Deputy Speaker, Sir, what we have now is sometimes very annoying. It is a pity that some of our journalists fall at the pockets of politicians. The politicians use journalists to fight their political enemies from the other end. I strongly believe that with the enactment of this Bill, this will not continue.

Mr. Temporary Deputy Speaker, Sir, I would like to mention something about the gutter press. For a long time, it has been used to slur people in a manner that is inhuman. With the enactment of this Media Bill, I have no doubt, whatsoever, that the question of gutter press would be a matter of the past.

Mr. Temporary Deputy Speaker, Sir, on the Code of Conduct for the Practice of Journalism, the provisions are very clear. Part (a) says:-

"The fundamental objective of a journalist is to write a fair, accurate and an unbiased story on matters of public interest. All sides of the story shall be reported whenever possible. Comments should be obtained from anyone who is mentioned in an unfavourable context."

This provision is very important to me. On many occasions, we find that a negative story on an institution or an individual is reported by the media. However, they do not even bother to get comments from the other end. So, you will find the story is one-sided and biased. In spite of this fact, the story is already out there and it is with the public who digest it as a true story when it is not. Again, when you try to get corrections, it is normally too late to do so. The message is already received at the other end.

Mr. Temporary Deputy Speaker, Sir, this Bill is the best for this country. In this House, every day we have a Question on killings. Sometimes people are killed innocently. I would even urge the Minister of State for Administration and National Security to establish an Independent Police Complaints Commission within the police force. At the moment, if a police officer commits a crime or kills somebody wrongly, we find that it is the same police force that investigates the matter. We will find that the Officer Commanding Police Division (OCPD) would like to cover his Officer Commanding Station (OCS) or police officers because it is all within itself.

This Bill now opens up the media to ensure fairness. This Bill is the best for this country. It goes ahead and gives independence of the media. It protects the public itself, media owners and journalists.

With those few remarks, I beg to support.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I stand to oppose this Bill very strongly. Yesterday, I mentioned the reasons I oppose this Bill.

Mr. Temporary Deputy Speaker, Sir, I said that one of the reasons is that this Bill violates Section 79 of our Constitution which guarantees freedom of expression. It is completely incomprehensible that, in this day and age, when this country is opening up its democratic space, a Government finds it necessary to bring such a Bill before this House. The freedom of expression is guaranteed by the Constitution. However, we have had a situation where that freedom was trampled upon by the Government for many years since Independence. The freedom that we enjoy today did not just come about because somebody wished it like in the Bible that; "In the beginning, there was the word and the word was God and the word was also with God."

Mr. Temporary Deputy Speaker, Sir, many Kenyans lost their lives in the process of the struggle to liberate this country to open up its democratic space. A number of journalists have also suffered as a result of restriction of the freedom of expression. I remember Mr. George Githii and Mr. Philip Ochieng' with his remark about the national ship and the consequences. I also remember Mr. Bedan Mbugua of *Beyond* who went to prison merely because of writing that there was rigging of elections during the queue-voting process of 1988. I also remember Messrs. Pius Nyamora, Gitobu Imanyara and Omoro Amina. The list of journalists who have suffered because of restriction of freedom of expression is very long! This is the reason I feel very strongly against the fact that the Government should now want to legitimise restrictions and oppression.

Mr. Temporary Deputy Speaker, Sir, if passed and put into the hands of a Government, this Bill can sanction the raiding of media houses like what we saw, the other day, in *The Standard* newspaper premises in Likoni Road and the Kenya Television Network (KTN) station. It will spell doom to the independence of the media in this country!

Mr. Temporary Deputy Speaker, Sir, why was it necessary for *Mamlukis* to be hired to lead a raid on the KTN and *The Standard* premises? We are told that somebody said: "We need this thing, so that we legitimise what we did to *The Standard* newspapers premises." Do we make a law just to deal with a particular newspaper group? Today, it is *The Standard*. Tomorrow, it will be *Daily Nation* and the next day, it will be the *Kenya Times*, or the Royal Media House! All right-thinking hon. Members of Parliament should not allow this to happen. We know the consequences of allowing an over-zealous Government such far-reaching powers.

Mr. Temporary Deputy Speaker, Sir, the modern way of dealing with the media is to allow

for self-regulation. That is how established democracies operate all over the world. How does it hurt this Government? Somebody said that journalists behave irresponsibly. There are laws to deal with journalists who behave irresponsibly!

If somebody is scandalised, there is the law of libel which is available. It is not as if there is no legal redress open to people who are aggrieved. So many media houses have been taken to court. There are people who have been scandalised. Why is it necessary for us to introduce another set of laws to deal with the same things? Defamation is actually actionable in court. There are laws to deal with defamation. Why do they want to define who a journalist is? That should be left to the media industry itself. It should recognise who is a journalist and who is not a journalist. Why should the Government take it upon itself today and try to define who a journalist is? It has even written a code of conduct for journalists and yet, we expect that there should be freedom of expression.

Regarding the code of conduct for journalists, there should be accuracy and fairness in the practice of journalism. The fundamental objective of a journalist is to write a fair, accurate and an advanced story on matters of public interest. All sides of the story shall be reported whenever possible. Comments should be obtained from anyone who is mentioned in an unfavourable context. This is trying to tell the journalists how to write a story. Why should the Government want to tell journalists how to write their stories? What should be the content of a story? Before you write it, you must also go and ask somebody who is unfavourably mentioned in the story, so that he is aware!

Mr. Temporary Deputy Speaker, Sir, if this law is allowed to pass, we will never be able to get to the root of the Goldenberg scandal. That would mean that Sarah Elderkin, before she wrote that story, would have had to go and ask Mr. Pattni if he agrees that the story should be written. She would have contacted all the other people who are mentioned adversely in that story. That is completely unreasonable! The Bill says that whenever a story that is inaccurate, misleading or distorted has been published or broadcast, it should be corrected promptly "Correction should present the correct information and should not re-state the error except when clarity demands". So, if you are correcting a story, you are even being told how it should be corrected. Why? So long as the correction satisfies the aggrieved party, why should it be the business of the Government to tell the media house how to do the correction? It is none of the business of the Government!

Mr. Temporary Deputy Speaker, Sir, this Government is becoming petty. There are so many important Bills that this Government should bring to this House. This is not one of them. Why should we waste the time of this august House discussing issues which are so trivial, when there are so many important Bills desiring to be discussed and approved by this House?.

Let me quote the Bill:-

"An apology shall be published or broadcast whenever appropriate in such manner as the Council may specify".

It is now the Council which will now want to specify to the media houses how to broadcast an apology. How ridiculous can we be? There is so much intolerance exhibited in this particular Bill. If we were to publish this Bill in any other country that practises proper media freedom, people will just laugh at you.

One time, I remember there was a problem between the former President and three American journalists. Those three American journalists had written an adverse story about the then ethnic clashes. The story was in the *Washington Post*. The other one was in the *New York Times* and the *Newsweek Magazine*. Those journalists were deported from the country. It took the intervention of the former American President, Jimmy Carter, who came here and talked to the then President. The President, of course, complained to him how the Government had been slandered in those articles that had been written. He complained about how the Government had

been cast in a very bad light. Former President Jimmy Carter offered free advice. He said:-

"When I was the President, the American Press used to write very adverse stories. It is actually the purpose of the media to write very adverse stories about the leadership. What we do in my country is that you hope that, one day, they will write a positive story about you".

So, I would like to invite this Government to learn a lesson from Jimmy Carter's experience. As I speak here, my relationship with the media is that of "love-hate". Today, they will write a good story about you. Tomorrow, they will write adversely about you. That is what we must learn to live with. It should not be that because somebody has written a story I do not like, we must go and make a full law because of that!

Mr. Temporary Deputy Speaker, Sir, Clause 40, on page 750, says:-

"The Minister may, after consultation with the Council, make regulations generally for the better carrying into effect the provisions of this Act".

What does that mean? We are giving the Minister the discretion to go and write some other regulations by saying:-

"---for the better carrying into effect the provisions of this Act".

He will make regulations! But we do not know what kind of regulations he will come up with. This kind of blanket permission gives the Minister too much discretionary powers to go and write other laws. That is very dangerous, indeed! I would really like to urge my colleagues that, if they want to protect the freedom of the Press, which a free and democratic society requires, it is incumbent upon Members of this House to reject this Bill. This Bill must be rejected because we cast ourselves as people who are so intolerant and people who want to sanction impunity, where my wife will be allowed to go and raid the Nation Media House at midnight, hold the staff there at ransom and, when the reporters come to take a photograph, she slaps them knowing very well that nothing will happen! The victim has no redress! That is because when the victim goes to court, the Government takes over the case and enters a *nolle prosequi*. Is that the kind of society we want to develop? Some Members may not know the kind of pain that many people went through, in order to fight for the democratisation of this country. Therefore, they can so casually take it--- I mean they can come here and talk the way they are talking, to try to reverse those gains. It is so important to some of us to protect the right of Kenyans and continue to open up the democratic space in this country. That is the reason why I would like to appeal to hon. Members of this House--- The time has come to tell the Government here that the Government does not own Kenyans! The Government of the day is there today and tomorrow, it may not be there. Those who sitting on the other side may be sitting on this other side tomorrow. It is, therefore, important that we all act together as patriotic Kenyans to protect the interests of our people.

With those few remarks, I beg to strongly oppose this Bill.

Prof. Anyang'-Nyong'o: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to contribute to the Media Bill, 2007. I would like to follow in the footsteps of my colleague, Mr. Raila, and make certain remarks about this Bill.

This Bill comes at an extremely important time in our history. If you remember well, yesterday on the Order Paper, there was also a proposal by the Minister for Information and Communications to bring an amendment to the Communications Commission of Kenya (CCK) Act. I believe that the Bill that was read for the First Time yesterday ought to be read in tandem with this Bill. In the final analysis, they handle more or less the same issues, in the same area of regulation. I think the House should make laws that are, somehow, coherent, and do not, in the final analysis, contradict each other. The House should be in a position to possess information that will make us good lawmakers. I would plead with the Minister to hold his horse a bit and make sure that, that Bill, having been read for the First Time, goes before the necessary Departmental

Committee together with this Bill. This will ensure that they are read in tandem, so that the Minister can consult the various stakeholders in the media. This will get us the concurrence and understanding of all the stakeholders on the two Bills, rather than lock horns unnecessarily. Mr. Temporary Deputy Speaker, Sir, I would, therefore, like to plead with the Minister to do that. To me, the two Bills are so close to each other that they ought to be read in tandem. Their contents should not, in any way, contradict each other when they are made into law. All of us should be at par in understanding what is going on, so that the Minister is not, in any way, suspected of or accused of any surreptitious submission of Bills to this House which ought to be seen together. That is my first submission regarding this Bill.

My second submission regarding this Bill is what we discussed yesterday when Mr. M. Kilonzo raised the issue of constitutionality of the Bill with regard to Section 79 of the Constitution. My humble submission to the Minister is that, rather than make instant decisions on the constitutionality of the Bill and eventually face protracted struggles in court over that matter, I would rather that the issue be properly disposed of before the Committee of this House responsible for information and communication. We should have exhaustive discussions with the Attorney-General on the constitutionality of the Bill before this House is rail loaded into passing a Bill which could easily make us lock horns in the courts on its constitutionality. That is my humble submission as a lawmaker, and somebody who is interested in ensuring that a proper regulatory framework is established in this country for purposes of managing and regulating the media. I, for one, would not say that there should not be a regulatory framework. But we should have a regulatory framework which does not make the Government overly intrusive into the media world, especially in view of Section 79 of the Constitution.

Mr. Temporary Deputy Speaker, Sir, there are certain principles that we need to observe in a democratic polity. First and foremost, in the area of freedom, individual and personal; the freedom of peoples and communities, the freedom of thinking and conscience and the freedom of association. Any nation that wants to build a democratic society and polity must be prepared to pay the price for democracy. The price for democracy is what we, in public life, always pay when we want to defend the freedom of expression and information, when we know that, that freedom can be used adversely against us.

On many occasions, the freedom of expression and information has been used adversely against me, and very painfully so. I remember in 2003 in February - I cannot quite remember the date but I think it was 11th February, 2003 - when, as a Minister for Planning and National Development, I organised the first stakeholders' meeting in Mombasa to discuss a draft for the Economic Recovery Strategy (ERS), which has been a big success in this country. I had been working flat out for three days without eating properly. I actually left my office in the Ministry of Planning and National Development, at the Treasury, at 10 O'clock to drive straight to the airport and go to Mombasa for that meeting, having not had lunch. I had to eat a sandwich in the aeroplane and when I got to Mombasa, rather than eat a proper meal, I only had some soup and a bottle of beer. That was where my problem started, because I should have had a proper diet after working so hard. So, the next day during the meeting, Mr. Andrew Mulei, who was sitting next me, after realising that I was not myself, advised me to take a glass of cold orange juice, which made matters worse. Having not been a good medical person, I did that and the end result was that when I went to address the audience, I puked rather than speak. I had to be rushed to a dispensary and be given first aid to come back to life and continue with the work that had taken us to Mombasa. Eventually, I read in the "gutter Press" that: "Prof. Anyang'-Nyong'o had been taken suddenly ill in Mombasa. He is suffering from a strange disease". They even suggested that I was suffering from HIV/AIDS. That was an extremely painful matter to my family, and very many people advised me to take that matter to the court. However, I decided that, that was the price, as a public figure, that I had to pay

for serving the people of Kenya. I did not feel it was necessary to take the "gutter Press" to the courts and assert my rights.

Mr. Temporary Deputy Speaker, Sir, what we need to do is for the Fourth Estate to rise up to its responsibility of self-regulation and civility. Culture and civilisation are things that cannot be legislated about. They are things that should be learnt and lived up to. The struggle that we must engage in, in this country, is to build a political character of civility and responsibility, beginning, particularly, with the Fourth Estate which must enjoy and exercise the freedom of information and expression. So, being a public figures, sometimes the defence of that freedom can be very painful to us. We are those who have to suffer some of the adverse effects of that freedom. However, it is no licence to use that suffering to make an adverse law that will impinge on democracy.

Mr. Temporary Deputy Speaker, Sir, so, the next thing that we should learn in paying the price for democracy is the old age liberal principle that says, "That government is best that governs least". Our Constitution says that this country is a country of equality, and without any discrimination against sex, race, colour or age. That principle is very important, and must be defended at all costs. The same Constitution gives us the freedom of association and expression. Those are the cardinal principles of building a democratic society. This means that a government which will promote and defend that principle, is a government that is best because it governs least. When I read this Bill, it goes contrary to the principle that "That government is best that governs least". It takes the Government right into the newsrooms. The Government should tread very carefully! If I was the Minister for Information and Communications, I would end this Bill at Clause 7. I would establish a regulatory agency and give it the powers to establish its own conduct for its members. I would also charge it with coming up with by-laws and codes of conduct that it will enforce. If it does not, then the Government can visit it with reprimand.

However, when the Government takes it upon itself to go into the details of trying to legislate for it what it will do, this, I think is intrusion. I really think it is intrusion. So, to me, the Bill is okay up to Clause 7. After that, it enters into a lot of problems. If you read the Bill carefully after Clause 7, it begins entering into the realm of poor drafting and contradictions.

Mr. Temporary Deputy Speaker, Sir, as I said, Mr. Temporary Deputy Speaker, Sir, one example that I picked up, which will always be a problem, is on page 754, the Third Schedule called the "Code of Conduct for the Practice of Journalism, Accuracy and Fairness." I will read it for the Minister for Information and Communications, whom I have a great deal of respect for, one, because he was my student and a very good student at that. Secondly, he is my colleague in Parliament, among other things. Thirdly, I campaigned for him to come to this House and I am glad he came.

I would like to read the two clauses on page 754 so that---

The Minister of State for Administration and National Security (Mr. Michuki): *Nani huyo?*

Prof. Anyang'-Nyong'o: Your son-in-law!

(Laughter)

It states as follows:-

"(a) The fundamental objective of a journalist is to write a fair, accurate and an unbiased story on matters of public interest. All sides of the story shall be reported, wherever possible. Comments should be obtained from anyone who is mentioned in unfavourable context."

This is the kind of issue that you do not put into law, because its interpretation can be very subjective. Who, for God's sake, is going to sit in a higher pedestal, as a Government officer, and

say, "This story that I read today has these qualities?" That is absolutely subjective! It is something that we should not put into law. We should leave it to the self-regulation of the people practising that profession. Let me give you an example. Supposing we had a law here with reference to doctors, which would say that a good heart surgery is one which will begin at 2.00 p.m. and end at 3.00 p.m. and the doctor should make sure that the heart begins beating at 3.02 p.m. How would this be determined? This kind of law-making is extremely dangerous. It is better if we erred on the side of being a good Government rather than erred on the side of being an intrusive Government.

I would like to make another principle which I will illustrate by reading Clause (b). The principle I would like to advance to the Minister says; it is better to err on the side of caution than to err on the side of speed that may lead us to atrocities of burying our democratic gains. Let me read part (b), to illustrate what I am saying. It says:-

"Whenever it is recognised that an inaccurate, misleading, or distorted story has been published or broadcast, it should be corrected promptly. Corrections should present the correct information and should not restate the error except when clarity demands."

Mr. Temporary Deputy Speaker, Sir, I will give you a very good example of this. We, as politicians - and we really suffer from this - give a written Press conference, questions are asked and we reply. My dear friend, hon. Michuki, has quite often spoken about this. I have seen him on television getting very, very annoyed about this. We all suffer from this. We give a written Press conference and then we answer questions, but the following day when we read the story - by the way, you are trying to correct an earlier story - the story will begin; "On Thursday, the Minister for--" However, on Friday, they repeat the story before they bring the corrections that you made yesterday. Even in those corrections, there is a high likelihood that there may be a mistake. Supposing we tried to apply this law, do you realise that we would have many cases invading whichever board is doing this and they will be permanently engaged in dealing with this particular law? I know that we suffer, but we have to pay a price for democracy. If, indeed, we are going to put this law in our law books, let me admit that whether it is a council, a special court or whatever, will be permanently sitting with politicians, Ministers, Assistant Ministers, and whoever goes before it, they will quote from the law books, "whenever it is recognised---" By the way, we have not said who is recognising. "It is recognising," this is very general. They will quote: "Whenever it is recognised that an inaccurate, misleading or distorted story has been published or broadcast, it should be corrected promptly. Corrections should present the correct information and should not restate the error except when clarity demands."

Let me give another example, Mr. Temporary Deputy Speaker, Sir. On Monday and Tuesday this week, I was driving from home coming to work and I was listening to Kiss FM. There is a young man called Ken Ouko and Caroline Mutoko, who were talking on the Talk Show on the Kiss FM. Both on Monday and Tuesday, I heard things, which, quite honestly, should not be aired on our FM stations because they create some of the prejudices that stop us from building our nation. The discussion between these two people was about the presidential candidates in the Orange Democratic Movement (ODM). In the two mornings running, they were talking about hon. Raila Odinga. Let me give you an example of one of the conversations from Ken Ouko. He asked Caroline Mutoko: "Supposing hon. Raila Odinga is elected as the President of Kenya, and then Senator Obama is elected in the USA as the President, will Luos let us live in this country? Or shall we come to town in three-piece suits?" These are the kind of ethnic prejudices and slurs which are extremely dangerous to broadcast on national stations.

Another time, Mr. Temporary Deputy Speaker, Sir, in a similar talk show, I heard, again, people say; "I will admit to you that the only good Kikuyu is a dead Kikuyu. In order to find out whether the Kikuyu is dead, drop a shilling and see if he will wake up to pick the shilling."

Mr. Temporary Deputy Speaker, Sir, it may be good to talk about these things in bars in low tones, but when we raise them to the level of talk shows in FM stations, they really destroy our nation. The answer, however, does not lie in over-regulation. The answer lies in a culture of civility that can only be promoted through a good political culture and education but not in legislation. What should have happened on that day is that I should have gone to court and read to the court this section; "whenever it is recognised - and it was recognised by Prof. Anyang'-Nyong'o, - that an inaccurate, misleading or distorted story had been published or broadcast, it should be corrected promptly." In other words, I should have taken up the phone, called Caroline Mutoko and Ken Ouko, and asked them to correct what they had said because it is not true. This is not practical. I am just talking about the practicality of trying to legislate against freedom of expression and the price we have to pay for freedom of expression. The cure does not lie in lawmaking. The cure lies in our political culture, a culture of civility, which is something that will take us time to do in this country, but we have to do it because as democrats, we must invest in a democratic political culture in our nation. I would like to appeal to the Minister that, let us not rush because we have vitriol in our stomachs because of irresponsible journalism and legislate drastic measures that will curtail democracy. Let us invest, perhaps, in a much more pain-free and difficult process of building a good political culture and a democracy that will make journalists civil! They have to be civil to be good democrats and good citizens. Let us not think that law will cure this process or this problem. Law will not cure this problem. Development, democracy, a good political culture, men and women of civility will cure the problem. And I do submit to this House that our responsibility is not to err on the side of speed but to err on the side of caution. We will be cautious and we will think that we are making a mistake, but it is better to err on the side of caution than to err on the side of speed that will, in fact, drive us to a precipice of burying the democratic gains that we have so far painfully brought to this country.

Mr. Temporary Deputy Speaker, Sir, hon. Wamwere knows, because I have read his book, how much pain it took some of us to bring democracy in this country. Personal pain, family pain, the pain of communities to bring democracy in this country. We will be the last in this House to sit here and pass a law that will kill democracy---

The Minister for Water and Irrigation (Mr. Katuku): Who?

Prof. Anyang'-Nyong'o: Mr. Wamwere and I. The two of us will be the last in this House to pass a law that will kill democracy in this House, whether we are on the other side or this side of the House because we know where we are coming from. We know where we are coming from, having worked so hard and paid such a high price to bring democracy to this country. We must fight for it! I have lost a brother because of this and I am not prepared to lose more brothers in the Fourth Estate because a bad law is being made in this House. So, I plead with the other side; let us err on the side of caution than err on the side of speed that will drive us to a precipice of denying them democracy for which we have paid so dearly in the Republic of Kenya.

With these few remarks, I beg to oppose.

Mr. Kagwima: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to also say a few words regarding this Bill. This Bill, as I understand it, does not mean to suffocate or gag the Press. We need some regulation so that we can operate within some framework. The media is an important tool to either progress a country or destroy it.

Mr. Temporary Deputy Speaker, Sir, it is important because what you report, even if you correct the following day, is what the people say is the truth. And if what you think you say is the truth is not the truth, we can end up in some catastrophes. I want to give one example. A few months ago, the media, both print and electronic, gave a picture that the entire Meru community was at war and that about 23 homesteads had been set on fire. That sent not only the Meru region but the entire country into a state of panic. Some of us could not continue with proper Business in

the House. We decided to check on the truth of the matter. Hon. M'Mukindia raised this matter on the Floor of the House and the Minister responded. I was surprised when I went to the ground and the truth of the matter is that only two houses had been torched. I could not believe it! We tried to tell the media: "Can you, please, correct this," but they continued repeating the allegations. If you torch 23 homesteads where there are more than 100 people, that is enough to ignite a war. You know, when you report that, you are asking the other community to come and fight for their people! And this is what we are doing as a media.

Mr. Temporary Deputy Speaker, Sir, I think it is high time the media and all of us started becoming responsible for what we say, print and put up as announcements. If anything, we are worried because, probably, it is a new thing to us in the country. After some time, this thing will settle down. The media will be more responsible than they have been in the past and then we will have a good society. When you open a page in the print media and you read that this happened, you will take for sure that is the truth and that becomes the truth, and then you can act on it. But if you have to wait for one or two days and you know we are talking of news, then the thing is not news any more!

So, Mr. Temporary Deputy Speaker, Sir, I think it is important that we have a regulation to ensure that whatever we give to the public is correct and we ensure that we are responsible people. If anything, the more truth we give as information, the more we are respected, especially those in the world of journalism.

Mr. Temporary Deputy Speaker, Sir, I expected that those involved in the media, that is, the owners and operators would seek some time, and I hope they have sought audience with the Minister or with the people involved so that this Bill is--- The media has been given a chance to give input so that what we are talking here is something which is generally agreed upon, for the benefit of all of us as a country. But I understand that there are other few people from the world of media who are going around lobbying against the Bill. Why would you do that? Why would that be done when we have an established office and the officers in that Ministry would listen, take your input and put it in the Bill so that it is all inclusive?

Mr. Temporary Deputy Speaker, Sir, we have an Assistant Minister in the House. I am hoping that he and the Minister have given the media operators a chance to contribute to the Bill because it is important. If you are setting a law that affects me or somebody else, you are required to give these people a hearing. Otherwise, if that has not been done--- I think communication requires to be done quite quickly, probably before we finish with it so that people are at peace and they can feel that they are part and parcel of the Bill. I think it is important to involve the people that will be affected by the law that we are talking of enacting.

Mr. Temporary Deputy Speaker, Sir, even other countries, for example, civilized countries like Sweden have this kind of law in place and people there are comfortable. As long as we respect each other's position, I think there is nothing wrong in setting this into law.

Mr. Temporary Deputy Speaker, Sir, as much as we want to respect those in the world of journalism and the media, it is also important to respect the rights of other people. I have listened--- I sat here listening very, very carefully to Prof. Anyang'-Nyong'o. You know, he went to pains to explain what he went through in Mombasa. He is not alone! There are so many others who have gone through that kind of experience. I think it is important that we respect the rights of other people and where you are talking of passing information that may affect families or individuals' positions in the society, it is important that we do the correct reporting.

Mr. Temporary Deputy Speaker, Sir, this is the year of elections. If, by mistake, you place in the media some misleading information about a particular candidate from a given constituency, even if you correct so many times, the chances of that candidate being elected may be affected very, very adversely just because of carrying out a story. So, that is why this law is necessary. I

have no quarrel with the freedom of expression, but then we also require the rights of those other people to be protected. We require that accurate reporting.

Mr. Temporary Deputy Speaker, Sir, it is my hope that this Bill has been brought to the House for the purposes of entrenching the freedom of expression. As a country, we have gained a great deal. We have come a long way in giving freedom of expression but we require some responsibility so that we can protect lives and security of our country. I hope that when we give the country this law, it will not be misused or used against the media. I am sure that, that is not the intention of the Government because what purpose does it serve when you suppress your own media?

I am proud to look at what we have achieved in terms of electronic and print media, and also employment and other economic gains that we have made by allowing more operators than we had in the past. We should not reverse that. If anything, we want to encourage it so that we develop in that field like we are doing in other fields. We have more room for competition. With competition, then we are entitled to high levels of reporting, including trade, economy and so on. The media can be very educative if it is properly utilised. I want to stop here.

With those few remarks, I support the Bill.

Mr. Ochilo-Ayacko: Mr. Temporary Deputy Speaker, Sir, thank you for giving me an opportunity to make my contribution. I want to say that I subscribe to absolute freedom on matters of speech. I want to invite the other side of the House to look at what great democracies like the United States of America (USA) have done, particularly, when they crafted an article in the constitution that precluded the Congress from enacting any legislation that would abridge the freedom of speech.

Human beings being primates, have a unique quality and behaviour. The behaviour or quality they enjoy in exception or exclusion to other beings, is their ability to communicate and express whatever they desire to. Any attempt by any individual human being or otherwise, to regulate that kind of expression, would negate the wholeness of human beings. If you have had occasion to read what Thomas Jefferson together with John Adams wrote regarding the freedom of press when they were crafting that specific proviso of the USA Constitution, the prescription they gave to injuries that people would suffer from any behaviour or expression that is offensive was, mass education of the society that would lead to what the able Prof. Anyang'-Nyong'o described as the correct culture.

Mr. Temporary Deputy Speaker, Sir, I want to say that I was born after Kenya got Independence and I have been around. I have also heard this Government say that there is economic growth to the tune of 6.2 per cent and that, this growth and our being around has been without this Bill. So, I do not understand what has suffered the Government the urgency to bring this kind of Bill. Kenyans have talked in the past and have blamed the KANU Administration of being repressive and dictatorial. Among the score-cards that KANU as a Government had, was that they never attempted to stifle the press. So, I do not understand a Government; an Administration that came on board on its pretext or proposition that it would protect freedom, how so late and so early in this century, a legislation of this kind would be relevant.

Mr. Temporary Deputy Speaker, Sir, I believe that a free press is important to the society, particularly, when members of the society want to have an opportunity to make informed choices. I believe that a free press is important to society particularly when that society is desirous towards moving to nationhood. I believe that a free press is an investment that we should hurry to invest in, in abundance. If we want to complain that our media houses and our Press is bad, then let us look ourselves directly in the media and ask; a Press is a private organization and nobody is obligated to read or hear what is written or said in the Press. It is us who buy the kind of stuff that is written or published by the Press.

A lot of the gutter information that repulses us so much and we complain about; it is us, who buy the same when it is shoved down the windows of our cars as we drive in Nairobi. As long as it is not offensive to us individually we buy it, but when it is written about any of us, we feel so vexed and annoyed and we blame the media. The point that I am trying to make is that the Media has clientele who are the public. As long as the public is buying the sexy or violent stories, then the journalists will continue writing what the public would wish to buy and that would enhance the circulation of the same media houses. So, what is important is to have a society that is civilized enough to distinguish what it so desires and not punish the people who write what we want to read.

Mr. Temporary Deputy Speaker, Sir, if it is pornography, I think it is the same society that is promoting it by buying circulations that are offensive to certain people. So, the most important thing to do is, as we embark on mass education, the way free and compulsory primary education is doing and the way free secondary education will do when it sets in, we will have an informed society that will choose what it will want to buy and will decline what it does not want to read.

The time multi-partyism came to visit us in 1990 and thereafter, there were several publications like *Society* and others which are no longer on the streets. I think they died by natural attrition because they were no longer being purchased by people who by that particular time were stifled by freedom. Those publications are no longer there. Sensational stories that were necessary at that particular time, to push the Government of the day to open more space are no longer available. So, as the society develops, it is able to consume what it wants in the quality, style and fashion that it so desires.

So, this Bill, in itself, is presupposing that, perhaps, the current administration is ahead of society in what---

Mr. Sambu: On a point of order, Mr. Temporary Deputy Speaker, Sir. I sat here throughout the Second Reading of this Bill and what has been going on. In my view, hon. Members on both sides of the House are repeating what has already been said. Would I be in order to request that the Mover be now called upon to reply?

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Sambu, you are right. I have also been around and I have been listening to the debate. Really, I do not see many new ideas coming up. But all the same, I will be kind to Mr. Ochilo-Ayacko.

Finish your contribution and then I will ask the Minister to reply.

Mr. Ochilo-Ayacko: Thank you very much, Mr. Temporary Deputy Speaker, Sir. I would like to say that I hold freedom as dear to me. If it was not for the freedom that we enjoy; be it freedom of speech or expression, some of us would not be enjoying the privilege that we have in this House.

Mr. Temporary Deputy Speaker, Sir, what is being proposed by the administration of the day is that we need to have a professional Press and professionalism in journalism. That is all on board. But I want to say that professionalism is only assessed and measured against the panel that is constituted by professionals. So, in this Bill, there is a suggestion that the hand of Government should be involved in this regulation. We know that the interest of every Government is to defend itself against competition from those who are opposed to the ideas of the day. Any provision in this Bill that enjoins or empowers the Minister to have a say, would dilute that professionalism and just go, to a large extent, to interfere with the freedom that has been responsible for the development that we have achieved up to now.

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

*[The Temporary Deputy Speaker
(Mr. M'Mukindia) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, if the Press must be regulated in any way, that regulation must be done by the Press itself or by the standards it sets. It also must be done by the readers who are free to decline to read, listen to or watch anything that they regard as offensive.

I know that a free Press is also capable of injuring people. In the Penal Code, there are certain provisions that you can invoke if you go to court, against libelous publication. If you are libelled, it can be criminal and you are afforded an avenue through which you can seek redress, both in criminal and civil proceedings. That would balance the injury or redress what an individual is seeking, as against the right to know by the entire nation, in respect of public matters. If we have such legislation in place, and knowing very well that the Press is one of the pillars that we have in terms of our support for democracy, then, it would be very important for hon. Members of Parliament who believe in freedom, to make sure that this kind of Bill does not have the sanctions that are contained in it.

I am sure that the Press is well-aware that the public is complaining against certain injuries that it has visited on people. The Press is also aware that through the support it gets from the public by way of advertisement, readership, listenership and so on, it should be as professional as possible. It should also be able to regulate itself and be part and parcel of the development of this country.

Mr. Temporary Deputy Speaker, Sir, in conclusion, I want to say that I am extremely reluctant to support any attempt to regulate the Press and freedom of expression. If individual injuries are suffered, I believe that the courts are available to redress such. If the failure is in the court, that can be addressed or redressed without legislating.

Thank you, very much.

The Temporary Deputy Speaker (Mr. M'Mukindia): Mr. Assistant Minister, you can now reply.

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Spika wa Muda, naomba kujibu. Kwanza nataka kuwashukuru waheshimiwa Wabunge wote waliochangia mjadala kuhusu Mswada huu. Tulisikiza kwa makini maoni yao yote. Tutakapoingia katika Kamati ya Bunge nzima, ni matumaini yangu ya kwamba Wabunge wataleta maoni yao kama marekebisho, ili tuweze kuboresha sheria hii.

Bw. Naibu Spika wa Muda, kuna mengine ambayo yalisemwa kwa nia ya kuwafurahisha waandishi wa habari. Ni vigumu sana kuyajibu hayo kwa sababu hayawezi kujibika. Wabunge hao walikuwa wanajua kwamba wamepoteza mjadala. Kitu ambacho walikuwa na haja nacho ni kuwajulisha waandishi wa habari kwamba wako upande mmoja. Lakini sote tuko upande mmoja.

Bw. Naibu Spika wa Muda, katika kuuandaa Mswada huu, Wizara ingependa kulijulisha Bunge kwamba tulijumuisha maoni na mapendekezo ya washikadau wote. Mhe. Bi. Ndung'u alipokuwa akichangia mjadala juu ya Mswada huu, alionyesha hofu na kutaka kujua kama tumepata maoni kutoka kwa wamiliki wa vyombo vya habari. Ningependa kulijulisha Bunge kwamba ni kweli tumekuwa na mikutano na semina kadhaa na wamiliki wa vyombo vya habari. Wametoa mapendekezo yao ambayo tutayaleta tukiingia kwenye kipindi kingine cha mjadala kuhusu Mswada huu. Wakati Bunge litakapokaa ili kupokea mapendekezo, mojawapo ya mapendekezo ambayo yataletwa yametoka kwa wamiliki wa vyombo vya habari. Kwa hivyo, haileweki ni kwa nini kwa upande mmoja wamiliki wa vyombo vya habari wanatuletea mapendekezo na kwa upande mwingine, wanaendelea kuonyesha hofu kwamba sheria hii inaundwa ili kuwakandamiza.

Bw. Naibu Spika wa Muda, jambo ambalo tunafanya si geni. Kama alivyosema Waziri, ni

jambo ambalo limefanyika katika nchi zingine. Watu wamekuwa wakiandika sheria kama hii, kwa sababu wanataka kuimarisha demokrasia wala sio kuibomoa. Ni lazima Kenya iende na wakati. Nchi zingine zinafanya yale ambayo yatasaidia demokrasia. Kwa hivyo, sisi pia ni lazima tufanye vivyo hivyo. Hatuwezi kubaki pahali pamoja hadi nyumba yetu ibomoke ndipo tuanze kulia.

Sheria hii hailengi kuvunja demokrasia. Lengo lake kubwa ni kuhifadhi demokrasia kwa kulinda masilahi ya wote. Maana ya demokrasia sio kuhifadhi maslahi ya wachache tu bali ya kila mtu. Hilo ndilo lengo kubwa la Mswada huu.

Bw. Naibu Spika wa Muda, lengo la kwanza la Mswada huu wa vyombo vya habari ni kuhifadhi uhuru wa habari. Ukisoma Mswada huu, utaona kipengee kinachosema hivyo. Lakini wakati tunahifadhi uhuru wa habari, lazima tuhakikishe ya kwamba uhuru huo hautumiwi kuhujumu maslahi ya watu wengine. Ni lazima kila mmoja katika nchi yetu awajibike katika kutumia uhuru. Vyombo vya habari ndivyo vya kwanza kudai ya kwamba kila mtu lazima awajibike. Kwa hivyo, vile wanavyotaka watu wengine wawajibike, ni lazima nao pia wakubali kuajibika.

Bw. Naibu Spika wa Muda, hakuna mtu, hata Mheshimiwa Rais, aliyepewa na Katiba haki au uhuru usiokuwa na mipaka. Hapa tunaambiwa ya kwamba vyombo vya habari vinastahili uhuru usiokuwa na mipaka. Wanadai ya kwamba tusipofanya hivyo, tunavunja Katiba ya nchi hii. Katiba inawekea kila mtu mipaka ya kutekeleza haki na uhuru. Kama nilivyosema jana, mtu haruhusiwi na Katiba kwenda katika majengo ya sinema na kusema moto na ilhali hakuna moto. Jambo kama hilo linaweza kuwafanya watu wauane bure wakikimbilia usalama wao. Mtu wa aina hiyo atakuwa amevunja sheria na Katiba pia. Kwa hivyo, Katiba yetu imeweka mipaka. Mswada huu pia hauvunji haki za wanahabari hata kidogo. Kwa kusema kweli, lengo ni kuhifadhi haki hizo. Katiba yetu haipi vyombo vya habari au mtu yeyote uhuru wa kuingilia haki za mtu mwingine.

Bw. Naibu Spika wa Muda, jana tuliambiwa na mhe. M. Kilonzo ya kwamba lengo la Mswada huu ni kuvunja haki za Katiba za vyombo vya habari. Na pia akasema ya kwamba ili tusiwavunje haki zao za kikatiba, basi waruhusiwe kuandika na kusema chochote. Hilo haliwezekani. Katiba haimpi mtu yeyote uhuru na uwezo huo wa kuvurugia wengine maslahi na haki. Ni kweli Katiba inahifadhi haki ya kila mtu katika nchi hii. Lakini haimpi mtu uhuru wa kusema na kuandika chochote anachofikiria.

Bw. Naibu Spika wa Muda, ni maoni yetu ya kwamba vyombo vya habari vinadai uhuru ambao hauna mipaka. Tunaweza kusema ya kwamba wanachotafuta ni udikteta. Tunakumbuka vizuri ya kwamba vyombo vya habari vimekuwa katika mstari wa mbele vikisema ya kwamba Serikali lazima isiwe ya kidikteta. Ni lazima Bunge hili lisiwe na nguvu za kidikteta. Ni lazima mahakama yasiwe na udikteta. Hicho ndicho tunachouliza vyombo vya habari pia, visiwe na nguvu za kidikteta. Vyombo hivi vina nguvu na uwezo mwingi. Ikiwa uwezo huo utatumiwa vibaya, basi nchi hii itapata hasara kubwa sana.

Bw. Naibu Spika wa Muda, pia kufuata maadili ya uwandishi sikuvunja Katiba. Jana, nilishangaa sana kusikia ya kwamba hata kutafuta tafsiri ya mwanahabari kuhusu jambo fulani utakuwa unaivunja sheria. Hilo haliwezekani. Mswada huu hauruhusu vyombo vya habari kushambuliwa na mtu yeyote. Baadhi ya waheshimiwa Wabunge jana walizungumza kama kwamba Mswada huu unatoa kibali cha vyombo hivyo kushambuliwa. Yeyote ambaye amesoma vizuri Mswada huu na hataki kupotosha maana yake, atakubaliana nami hakuna jambo kama hilo. Kwa hivyo, vyombo hivi havina haja kuwa na hofu kwa sababu Mswada huu unavilinda na kuvitetea.

Bw. Naibu Spika wa Muda, tumeleta Mswada huu kwa sababu vyombo hivi vimeshindwa kujidhibiti chini ya Baraza la Wanahabari. Sisi katika Wizara mara nyingi tunawauliza: "Kwa nini vyombo vya habari havijidhibiti?" Baraza la Wanahabari hudai kuwa wameshindwa kuvidhibiti vyombo hivi kwa sababu hawana sheria. Wanataka sheria ambayo itawapa meno. Lengo la

Mswada huu ni kulipa Baraza la Wanahabari meno ili iweze kudhibiti vyombo hivi. Hata kama wengine wetu wanasema vyombo hivi vinaweza kujidhibiti vyenyewe, jambo hili haliwezekani kama hakuna sheria ambayo itasaidia Baraza la Wanahabari kuweza kuchukua hatua dhidi ya yeyote ambaye anavunja maadili au atakosa kufanya kazi inavyotakikana.

Bw. Naibu Spika wa Muda, kuna ushahidi chungu nzima ya kwamba vyombo hivi vilishindwa kujidhibiti. Kuna mambo mengi yanayoweza kusemwa lakini la muhimu zaidi ni kwamba vyombo hivi haviwezi kuhurusiwa kuchochea ukabila na chuki katika nchi.

QUORUM

Mr. Omingo: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is an extremely crucial Bill and the Assistant Minister is responding. However, we do not have quorum.

The Temporary Deputy Speaker (Mr. M'Mukindia): Yes, we do not have a quorum. Ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, hon. Members! We now have a quorum.

Proceed, Mr. Wamwere!

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Spika wa Muda, sitaongea sana. Lakini katika kukamilisha jibu, ninataka kusema kwamba hakuna yeyote ambaye anaweza kupewa uwezo wa kubomoa demokrasia katika nchi. Wakati mwingine, jambo hili linawezekana wakati ambapo vyombo vya habari vinapewa uhuru zaidi wa kutetea kitu kama ukabila. Jambo hili lilifanyika huko Rwanda na Somalia. Itakuwa ni makosa makubwa ikiwa nchi hii, badala ya kufaidika na uzoefu wa nchi nyingine, itarudia makosa yayo hayo ya kupatia vyombo vya habari uwezo wa kuvuruga nchi.

Bw. Naibu Spika wa Muda, kwa hayo machache, naomba kujibu.

(Question put and agreed to)

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

Second Reading

THE TOBACCO CONTROL BILL

The Assistant Minister for Health (Dr. Kibunguchy): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Tobacco Control Bill be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir, the Tobacco Control Bill began its journey in Kenya with the initial draft in November, 1995. Successive Parliaments have not disposed of it and I am sure that this current House will do this honourable country a duty---

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. M'Mukindia): What is your point of order, Mr. Wetangula?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, if my memory serves me right, we debated this Bill and I am the one who seconded it.

The Temporary Deputy Speaker (Mr. M'Mukindia): Which Bill?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): This Tobacco Control Bill! How come it is on the Floor again? I seconded the Bill here.

(Loud consultations)

We did not go through the whole process?

The Assistant Minister for Health (Dr. Kibunguchy): Mr. Temporary Deputy Speaker, Sir, yes, it is true that we read this Bill and Mr. Wetangula seconded it, but that was during the last Session and we did not go to the Committee of the Whole House.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): I now understand.

The Assistant Minister for Health (Mr. Kibunguchy): Mr. Temporary Deputy Speaker, Sir, the object and purpose of the Tobacco Control Bill is to provide a legal framework for the control of production, manufacture, sale, labelling, advertising, promotion, sponsorship, use and exposure to tobacco smoke and its products. The reasons for this include the following:-

(i) To protect the health of the individual and the public in general.

(ii) To shield the public from misleading and deceptive inducement to use tobacco which then leads to dependency.

(iii) To protect the health of persons under the age of 18 years by preventing their exposure to tobacco or access to tobacco products.

(iv) To inform, educate and communicate to the public the harmful health, environmental, economic and social consequences of growing, handling, exposure and use of tobacco.

(v) To protect and promote the rights of non-smokers to live in a smoke-free environment.

(vi) To protect and promote the interest of tobacco growers by progressively phasing out tobacco growing and providing alternative crops.

(vii) To promote rehabilitation and cessation programmes for consumers of tobacco.

Mr. Temporary Deputy Speaker, Sir, the Ministry of Health has been consulting widely over the years and this current Bill is a product of consensus. The principle of this Bill enables us to meet our obligation under international law and more importantly, strengthen our hand to protect *wananchi* from effects of exposure to tobacco and its products. I would like to say that this Bill is a very good one.

The Government of Kenya signed and ratified the Framework Convention on Tobacco Control (FCTC) in June, 2004. The philosophy contained in the articles of this Treaty is captured in the Tobacco Control Bill. This allows Kenya to discharge her obligations and rights under international law. The Treaty sets the minimum allowable standards for national regulation and our efforts to domesticate the Treaty should, therefore, not go below this minimum standards set by the FCTC. This Bill does not go below the minimum standards. The Treaty also gives deadlines to member states who have ratified it to follow. Kenya is required to enact this law before the end of 2007.

Mr. Temporary Deputy Speaker, Sir, this Bill has new thinking and proposes to address the problems of tobacco from the angle of solid knowledge and action that we know will give results. The highlights of the Bill include the following:-

First, the Bill uses international standards in defining the different words and phrases used within it. Let me add that these definitions took up to six years to negotiate at the global arena under the auspices of the World Health Organisation (WHO).

Second, the Bill sets up the Tobacco Control Board and with it a Tobacco Control Fund. These will ensure that a dedicated budget is available to meet the objectives of this Bill and an independent body will focus tobacco control activities for maximum benefit. Membership of this Board is anchored on the principle of "Pro-Public Health."

Third, it also legislates for public education in the dangers of tobacco. This will include specific studies in the school curricula. This will ensure that the public receives the correct information and in a timely fashion. We expect that any decision being made regarding tobacco production and use will, therefore, be based on true and correct information. This is the first in our region and, as usual, Kenya is setting the pace for others to follow.

Fourth, we are also proposing that taxation of tobacco and its products should contribute to the objectives of this Bill. Indeed, increasing taxation on tobacco products has the effect of increasing Government revenue while reducing consumption. This is a win-win situation for all of us.

Fifth, inclusion of farmers: This is a very important constituency whose rights and health concerns have been largely ignored by the tobacco industry. In this Bill, their health shall be protected and policy on alternative cropping shall be promoted. Those who wish to replace tobacco shall also be assisted. The fact is that most farmers would rather they did not plant tobacco because they have experienced, first hand, a negative health, environmental and economic effect of growing tobacco. This is also a first one in this region.

Sixth, it outlaws the sale of tobacco and its products to and by the minors. Children, when exposed to tobacco and its products early in life, stand the danger of getting addicted and thus growing up imprisoned by nicotine. In the process, the longer they are exposed to tobacco and its poisonous chemicals, the higher their chances of dying prematurely. The fact is that if you start smoking early, you get sick sooner and you may, therefore, die much earlier than a non-smoking colleague. Our children need our protection and this Bill provides it in adequate measures.

Seventh, the Bill provides guidelines on the sale of tobacco only in packets of, at least, ten sticks. This serves to restrict access by minors and the youth, and protects the very poor from unfair exposure to tobacco products. If we reduce this possibility, then we will get sick less often and spend less on health care.

Eighth, it legislates for prominent and factual warning signs on all packets and packages of tobacco products. This ensures that a clearer and focused message is sent to the smoking and non-smoking public at large. The 30 per cent in front and 50 per cent at the back requirement for the size of this warning is within the minimum limits of the FCTC.

Ninth, the Bill completely bans advertising, promotion and sponsorship, as this is an avenue used to misinform, especially the youth. These three concepts cannot be separated in action. So, the only way to protect our youth from undue and manipulative influence is to protect them from all forms of advertising and promotion. It is also in keeping with the treaty that Kenya ratified.

Tenth, it separates smokers from non-smokers by setting up clearly marked smoking areas. This principle here is to separate tobacco smoke from the majority of Kenyans, who are non-smokers.

Eleventh, the Bill also provides a comfortable transition period of nine months. This is to recognise the fact that many players will require time to conform to the new framework and guidelines.

Mr. Temporary Deputy Speaker, Sir, this Bill is designed to promote health, and is not meant to be a punitive measure to those who smoke or use other tobacco products. The problem in Kenya is increasing tobacco use, with its increasing health, environmental and societal costs. The facts as they stand today are as follows:-

(1) The health consequences of tobacco and exposure to tobacco smoke are many and serious. This Bill addresses those consequences by legislating for clear warning signs on packets and packages that include: (a) smoking harms people next to you; (b) tobacco use kills; (c) tobacco harms your unborn baby; (d) tobacco use causes cancer; (e) tobacco use causes heart disease; (f) tobacco use causes lung disease; (g) tobacco use is addictive; (h) these products can cause gum disease and tooth loss; this includes smokeless tobacco products; (i) this product can cause mouth cancer; this is also the same for smokeless tobacco products; (j) this product is not a safe alternative to cigarettes; this, again, is the same for smokeless tobacco products; (k) tobacco use causes impotence; (l) tobacco use causes miscarriage; (m) tobacco use causes infertility in women, and (n) tobacco use causes mental retardation in children.

(2) Thirteen per cent of our primary school children smoke. This translates to about one million children below the age of 15 years already "imprisoned" in the jail of nicotine. Those children need our protection.

(3) The rate at which young girls are taking up this habit is now almost the same as that of boys. This means that the number of women smoking will increase exponentially, and with it come some very unpleasant negative health effects, including unintended abortions, infertility, underweight children and still births. This is the reality of the use of tobacco products to our reproductive health.

(4) Forty-two per cent of students in secondary schools and colleges smoke. To make matters worse, one out of every five of this group are girls.

(5) Fifty-seven per cent of students in our universities smoke, yet these are the young men and women who, shortly, will form the backbone of Kenya's leadership in different professional fields. The future of this nation is in very shaky hands.

(6) The good news is that the majority of Kenyans do not smoke. Only 2 per cent of women smoke, and 32 per cent of men smoke. In general, therefore, 22 per cent of the people living in Kenya smoke. Unfortunately, they are smoking over seven billion sticks of cigarettes that are sold in this country annually.

(7) The health costs related to treating illnesses and diseases caused by exposure to tobacco are increasing every year as the number of smoking people in Kenya increases. The health sector, both public and private, spends over Kshs18 billion annually, treating these diseases, while the revenue from the tobacco industry is about Kshs5.5 billion only.

Mr. Temporary Deputy Speaker, Sir, this is only the cost of treatment. We have not yet factored in the cost of absenteeism from work, the cost of looking after the sick by their relatives and friends, social support, missed opportunities and other long-term effects. It does not include environmental costs, including fires caused by cigarette busts, cutting down of trees to cure tobacco, pollution of water sources by the chemicals used in tobacco farming, especially at the nurseries, damage to the soil and infertility of the soil after planting of tobacco, and the effect that the smoke from curing has on the air around the tobacco farms.

This does not include the damage caused to the future of our children who are being pulled out of school to tend to the tobacco plant and the curing process. It, certainly, does not include the cost of the new Ministry of Health's initiative to set up clinics that will help current smokers quit the habit. For each shilling we receive from the tobacco industry, we lose three shillings. The cost of sustaining this habit is huge. This has, in effect, led to the greater poverty levels in tobacco growing areas and for smokers, too.

Mr. Temporary Deputy Speaker, Sir, it has now become necessary to establish a comprehensive legal framework, which will provide a solid basis for effective control of tobacco and its products in Kenya. The Tobacco Control Bill, 2007 is such a vehicle. We have a responsibility to this nation to protect its health and wealth. This Bill has been in this House for far

too long, and I call upon fellow hon. Members to give it the close attention it deserves. Tobacco comes in many forms, shapes and colours. All these forms are harmful to the health. Tobacco kills over five million people every year worldwide, both smokers and non-smokers. Let us protect our children and place public health above individual and foreign private costs.

Mr. Temporary Deputy Speaker, Sir, in that regard, I am tabling the Tobacco Control Bill for Second Reading. I look forward to an informed debate and eventual passing of this Bill by Parliament.

Finally, I thank all those who have contributed positively to the realisation of this Bill. Let us pass it and honour the pain and suffering of the many tobacco farmers, users and families who continue to endure the exposure to tobacco and its products.

Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg to move and request Mr. Wamwere to second this Bill.

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Spika wa Muda, naomba kuunga mkono Mswada huu wa sheria ya tumbaku. Kama alivyosema Waziri Msaidizi mwenzangu, hii ni hatua kubwa sana. Labda ni ya kwanza katika kaya hii yetu. Natumaini ya kwamba Wabunge wote, hasa Maj. Madoka, wataona haja ya kuunga mkono Mswada huu.

Bw. Naibu Spika wa Muda, natumaini ya kwamba watu wetu wataweza kujua ya kwamba hakuna uungwana au uustarabu katika uvutaji wa sigara. Wengi wa wale ambao wanavuta sigara, hasa vijana, wavulana na wasichana wachanga, wanavuta sigara kwa sababu wanataka kuonekana kama waangwana wa aina ya kipekee. Ni rahisi sana vijana kushawishika kuvuta sigara ili waonekane "wamefika". Jambo hilo linafanyika kwa sababu vijana wetu hawajui hasara za kuvuta sigara.

Bw. Naibu Spika wa Muda, kuna picha moja ambayo nimekuwa nikiiona katika majumba fulani. Picha hiyo inaonyesha magonjwa ambayo yanaletwa na uvutaji wa sigara. Mtu akiitazama picha hiyo, anatahika na kuogopa mara moja! Nimekuwa nikiwaza ni kwa nini picha hiyo haiwezi kusambazwa katika sehemu zote katika nchi hii, ili watu wakiiona waelewe vizuri hasara za kuvuta sigara. Utaona mapafu yamelika, mikono imeoza, meno iliisha zamani na hakuna mtu! Sijui ikiwa Wizara ya Afya inaweza kusambaza picha hiyo kila mahali, ili watu waone na waelewe. Wakati mwingine, watu wanaelewa picha zaidi ya maandiko au matamshi. Kinachosemwa na picha hiyo ni kwamba, hakuna cha kufaidi kwa kuvuta sigara. Ni magonjwa na hasara tupu!

Bw. Naibu Spika wa Muda, sigara ni sumu. Ningeulizwa, tungechukua hatua kali kabisa, hata ya kupiga marufuku uvutaji wa sigara. Ikiwa sigara ni sumu, kwa nini turuhusu watu wetu watumie sumu, eti kwa sababu ya zile pesa zinazopatikana kutokana na kilimo na biashara ya kuzalisha sumu? Sumu ni kitu cha kupigwa marufuku. Siyo kitu cha kubembelezwa. Isitoshe, ukiangalia hasara, na nimeelezwa na mtaalam mmoja--- Hasara ambayo nchi inapata kwa kugaramia matibabu ya wagojwa wa uvutaji sigara - wenye saratani, vifua vikuu na khadhalika--- Pesa ambazo zinatumika kuwatibu ni nyingi kuliko zile zinazopatikana kutokana na kilimo na biashara husika. Kama hivyo ndivyo kulivyo, ni kwa nini tuendele na jambo hilo? Ni kwa nini tusifanye hesabu na kama gharama ya kutibu magonjwa inazidi faida inayopatikana kutoka kilimo na biashara hiyo, jawabu ni kupiga marufuku uvutaji wa sigara na kuachana na mambo hayo!

Bw. Naibu Spika wa Muda, ukiangalia, utaona ya kwamba nchi zingine zimefanya vile nimesema. Utakuta nchi zilizoendelea--- Sidhani zinalima tumbako tena. Uvutaji wa sigara umepunguka kwa kiasi kikubwa hivi kwamba kampuni ambazo zinafanya biashara ya sigara zimehamia katika nchi zinazoendelea. Zimehama Ulaya na Marekani. Kampuni hizo zimekuja huku. Huku ndiko tumbaku inalimwa na ndiko sigara zinatengenezewa. Ukiona mzungu ameachana na jambo, ni afadhali uonyeke mapema. Kama biashara hiyo ingekuwa na faida, mzungu hangeiwachia nchi zinazoendelea. Lakini ameelewa ya kwamba hasara ndiyo kubwa na

ameachana na kazi hiyo. Amewaachia wajinga. Unajua wajinga ndio waliwao. Mswahili alisema. Lazima tujifunze kutoka kwao. Ndio walianzisha mambo hayo na wameachana nayo. Sijui ni kwani nini tuendele. Eti kwa sababu sisi ni maskini sana, chochote ambacho kinaweza kuajiri watu kazi, hata kama kazi hizo hazina faida kubwa, bado tunakishikilia.

Bw. Naibu Spika wa Muda, nilishangaa wakati Bw. Kimunya alisema kwamba sigara ambazo zinavutwa na wananchi wa kawaida zisiwekewe kodi. Hiyo ni kumaliza watu! Ningeulizwa, sigara zote zingewekewa kodi kwa kiasi ambacho watu hawangeweza kuzinunua. Lakini sasa, kuwaachia maskini hohe hahe sigara zao--- Hata mtu akipata shida kidogo au kuumwa na kichwa, anakimbilila sigara. Hao watu wataisha! Wataisha kabisa kwa sababu watavuta sigara, watajaa kifua kikuu, wataliwa na saratani, watagonjeka na washindwe kusomesha watoto wao na mwishowe, watakufa! Kile kilichofanywa na Bw. Kimunya katika Bajeti kitaitea nchi hii hasara kubwa. Labda, hasara hiyo haitaoneka wakati huu. Itaonekana baada ya miaka kama mitano hivi. Wakati huo ndiyo tutaanza kutibu magonjwa ya wananchi wa kawaida yanayotokana na uvutaji wa sigara. Sijui ikiwa wananchi walifurahia kwa sababu sigara zao hazikuwekewa kodi. Wangekuwa wajuzi, wangejua ya kwamba walikuwa wanasukumiwa sumu. Sio kwamba walikuwa wanapakwa mafuta. Hakuna jambo jema pale! Ni hasara tupu na ni makosa yaliyofanyika! Lakini, tuachane na yaliyopita na tugange yajayo. Sijui tutayagangaje kwa sababu hasara yaja! Itakuja ikiwa hasara kubwa.

Bw. Naibu Spika wa Muda, tumbaku ina ulevi ambao ni sawa au unakaribiana sana na ulevi wa mihadarati. Ukitaka kujua ya kwamba wanaovuta sigara wanalewa kama watumizi wa madawa hayo ya mihadarati, kwenda jela! Katika jela, kuna watu ambao watafanya chochote kupata sigara. Sigara ndizo pesa za jela. Ukiwa nazo, hakuna kitu huwezi kupata. Utapata wale *matrustee* - wale ambao wamekolea katika jela mpaka wamekuwa kama wafalme kiasi kwamba hakuna kitu hawawezi kuingiza katika jela--- Wale *matrustee* wakiwa na sigara zao, utakuta watu wanapanga laini wakati kunapeanwa nyama. Nyama inapeanwa vipande vidogo sana mara tatu kwa wiki. Vile nyama ni nadra, hakuna mtu ambaye hangetaka kula nyama hiyo. Lakini utakuta ya kwamba tamaa ya kuvuta sigara ni kubwa kuliko ile tamaa ya kula nyama. Unakuta watu wamepanga laini. Mtu anapewa sigara avute mara moja tu na kisha anairusha nyama yake kwenye bakuli. Mpaka unawahurumia watu hawa. Watu hawa hawapati nyama kwa miezi mingi na wakiipata wako tayari kuipeana kwa sababu ya kiu cha sigara.

Bw. Naibu Spika wa Muda, nilikutana na mtu mmoja pale gerezeni ambaye alikuwa akipata maziwa kwa sababu ya ugonjwa wa kifua kikuu. Lakini maziwa yale ambayo yangemsaidia kuponyesha ugonjwa huo, aliyapeana ili apate sigara. Muuzaji sigara alipata maziwa kwa kubadilishana na sigara. Huyu mtu mwingine aliachana na dawa na akaendelea kuvuta sigara. Tulimwambia akiendelea na tabia hiyo atakufa. Akatuambia, "kwani uhai wangu ni wenu? Nyinyi mnajali nini? Pilipili isiokuwa mdomoni mwako inakuwashia nini?" Na unajua, hatukukaa wiki tatu, mtu huyo akafa. Katika jela watu wengi wemekufa na wengi wameharibiwa maisha yao kwa sababu ya sigara. Inaonekana kama ni vigumu na haiwezekani kusimamisha biashara ya sigara katika jela. Kama mhe. Makamu wa Rais angekuwa hapa, ningemuuliza kama amefaulu kukomesha uvutaji wa sigara katika jela.

Bw. Naibu Spika wa Muda, sijui kama umesikia tatizo la ushoga. Tatizo hili katika jela zetu linachochewa na uvutaji wa sigara. Walevi wa sigara wako tayari kufanywa wake na waume wengine ili wapate sigara wavute. Hili ni jambo la uchungu sana. Hebu waza; kwa bahati mbaya kijana wako akafungwe jela kwa sababu amefanya kosa dogo sana halafu miaka miwili baadaye, huyo kijana wako anaachiliwa akiwa shoga. Utalia machozi! Hili si jambo ambalo linalotokea kwa wachache. Ni jambo linalotokea kwa wengi. Ni lazima kutafutwe njia ya kuhakikisha sigara haziingii katika jela au wasimamizi wa jela wafanye vile wakoloni walivyofanya. Wakoloni waliruhusu watu wavute sigara. Sigara zilikuwa zinauzwa katika duka za jela. Kwa vile ilikuwa

rahisi kuzipata, ilikuwa ni vigumu kumfanya yeyote ajigeuze mwanamke au mwanaume ili aweze kupata sigara kutoka kwa mwingine. Ni muhimu kwa sisi kuwafikiria vizuri wale watu ambao kwa bahati mbaya wameingia katika jela. Tufikirie ni kitu gani kinaweza kuhakikisha kwamba ulevi huu wa sigara haitumiwi kuharibia wengine maisha kabisa katika magereza. Aidha, watu waruhusiwe kuvuta sigara kama vile siku hizi wanaruhusiwa kuona runinga na vitu vingine; hata kutembelewa na wake zao.

Bw. Naibu Spika wa Mda, hili ni jambo moja ninaloliunga mkono sana. Mtu aliyewekwa jela aruhusiwe kutembelewa na mwenzake. Kama ni bibi, aruhusiwe kukutana na mume wake. Kama ni mume, aruhusiwe kukutana na bibi yake. Hii ni kwa sababu lengo la kifungo si kuharibu nyumba, ni kurekebisha mtu. Lakini kama utatoka jela ukute bibi yako alikimbia kwa sababu muda huo wote hamuruhusiwi kukutana naye, mwenye kuadhibiwa ni mfungwa wala si wale wako nje. Lakini bibi anakuwa amefungwa wakati anakatazwa kuonana na bwana wake au hata kupata watoto. Kwa hivyo, waliofungwa, waadhibiwe wao lakini nyumba zao zihifadhiwe kwa namna moja au nyingine. Hii ni imani yangu. Na wale ambao hawajaingia katika jela wakaonja maisha ya huko, basi waombe sana wasiingie! Kule ni kubaya. Lakini ni vizuri wakati mwingine kwa sababu kunaelimisha mtu. Kunakufanya uelewe ya kwamba hata mfungwa bado ni binadamu. Si vizuri kumunyima haki zake mwenyewe pamoja na haki za familia yake. Ni lazima kuwe na tofauti kati ya familia na mfungwa. Tusiwaadhibu watoto na bibi yake. Jambo hilo halifai.

Bw. Naibu Spika wa Muda, tunapofikiria namna ya kumaliza au kupunguza uvutaji wa sigara, ni lazima tujue kwamba kuna wale ambao wanategemea kilimo cha tumbaku. Kuna wale ambao wanategemea biashara za tumbaku. Hawa watatusikia tunaongea lugha mbaya tukisema kwamba tunataka kumaliza kilimo na biashara hii kama hatujawatafutia kazi nyingine. Kama tutasema wasiajiriwe kazi na makampuni ya kuuza sigara, lazima tutafute mbinu au namna ya kuwatafutia ajira tofauti. Tusipofanya hivyo, tutakuwa tunakosa. Sijui kama kwa Bw. Ojaamong wanalima tumbaku. Lakini ninatumai ataelewa tunatoka wapi. Hatusemi watu wako wasiendelee kulima, tunachosema ni kwamba watafutia kazi nyingine. Kuna mambo mengi ambayo yanaweza kufanya watu wapate riziki badala ya kulima au kufanya biashara ya tumbaku.

Bw. Naibu Spika wa Muda, nikimaliza, ningetaka kupongeza Baraza la Mji wa Nakuru kwa kuwa mji wa kwanza kupiga marufuku uvutaji wa sigara katika maeneo yanayotumiwa na umma. Katika ofisi za Serikali, maeneo ya hospitali na shule, wamesema ukipatikana ukivuta sigara, utaonyeshwa kilicho mfanya punda asimee pembe.

Bw. Naibu Spika wa Muda, kitendo hiki cha Baraza la Mji wa Nakuru kinastahili kuigwa na miji mingine, na hasa jiji la Nairobi. Tumefikia uamuzi kwamba sigara ni mbaya, inaletea watu madhara. Kwa nini basi turuhusu watu wanapovuta sigara walazimishe wengine kuvuta sigara hiyo? Unapovuta sigara palipo na watu wengine, pale pakaingia mtu ambaye hataki kuhusiana na sigara, utakuwa unamvutisha sigara hiyo kupitia kwa moshi unaopuliza. Nimesikia wataalamu wanasema wakati mwingine, kwa kukaa tu palipo wavutaji sigara, utajikuta kwamba umevuta sigara kiasi cha asilimia 50 au 60.

Kule Uropa, utakuta kwamba kuna sehemu katika mikahawa ambayo imetengewa wavutaji na nyingine ambayo imetengewa wasiovuta. Ukiingia sehemu ambayo imetengewa wavutaji, mara moja unaugua homa. Hii ni kwa sababu moshi ulioko pale ni wa ajabu. Ukiingia pale kwa bahati mbaya, inakuwa umelazimishwa kuvuta sigara bila kupenda. Dawa ni kuhakikisha ya kwamba popote pale palipotengewa watumizi wa umma, pasiruhusiwe uvutaji wa sigara. Sisi watu wa Nakuru tumeongoza nchi hii kwa mambo mengi, lakini wakati wa kugawa kwa rasilimali na makazi, tunasahaulika. Ni ajabu kwa ni Mji wa Nakuru ambapo hatuna Mawaziri, DCs, PCs, PSs, wakurugenzi wa makampuni na mabalozi. Tunataka ubaguzi huu uishe!

Bw. Naibu Spika wa Muda, nikiongea juu ya Waziri, siongei juu ya Waziri nusu! Naongea juu ya Waziri mkamilifu. Waziri ambaye anaweza kufanya mambo muhimu. Si mtu wa kutumwa

hapa na pale, au kuja hapa Bungeni kuyajibu maswali au kumwakilisha Waziri katika jambo fulani. Tunataka Waziri kamili! Tunataka kuwa Mawaziri wakamilifu kwa sababu tunatosha. Sasa, tunaongoza katika kupigana vita na tumbaku. Tuliongoza katika kuchagua Serikali hii. Hakuna wilaya ambayo ina watu wengi katika nchi hii kuliko wilaya ya Nakuru. Lakini, unakuta ya kwamba wakati wa kugawa rasilimali, tunatengwa. Tunatengwa eti kwa sababu sisi siyo kutoka kabila hili. Tunachosema ni kwamba sijui ni kitu gani kinangojewa. Wakaazi wenye wako *diaspora* ni walipa kodi kama watu wa sehemu nyingine katika nchi hii. Mhe. G.G. Karikui hapa anatosha kuwa Waziri. Ijapokuwa alikuwa Waziri kwa muda mrefu sana. Nadhani sasa ingekuwa ni wakati wa kuwaachia watu kama sisi. Lakini tunachosema ni kwamba, hata kama hatutakalia viti hivyo, tunyimwe kwa sababu hatuna sifa, na siyo kwa sababu tunatoka Nakuru.

Kuna wengi ambao wametunukiwa nyadhifa kubwa sana, na ni wavutaji wakubwa wa sigara. Tunauliza nchi ifuate nyayo za Nakuru katika kupiga marafuku uvutaji wa sigara. Hivyo, hivyo, tunauliza ya kwamba watu wa Nakuru, Laikipa na wakaazi wa Mkoa wa Bonde la Ufa ambao hawahesabiwi kama wakaazi wa pale--- Hatupati rasilimali zilizotengewa mikoa mingine kama vile Mkoa wa Kati. Hatupati kile ambacho kimetengewa wakazi wa Bonde La Ufa. Tunataka na sisi itambulike ya kwamba--- Ieleweke kwamba sisi ni raia sawa na wengine. Tunatoa kodi sawa. Hakuna kitu ambacho kimefanyika katika nchi hii ambacho sisi hatukufanya. Kuwa hivyo, wakati wa kugawa rasilimali na makazi makubwa, ni lazima sisi tupewe haki yetu.

Bw. Naibu Spika wa Muda, kwa hayo machache, naomba kuunga mkono.

(Question proposed)

Prof. Oniang'o: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to support this Bill. I would like to congratulate the Nakuru Town Mayor for banning smoking in public places. The Mayor used his powers in the by-laws. I have not understood why other mayors and heads of townships have not done the same. We recall that when the Minister for Health banned tobacco smoking in public places, there was hue and cry, especially by those who promote tobacco production, tobacco processing and those who actually benefit from tobacco in this country. The reasons at that time were that they were not ready. They were taken unawares and it was just too abrupt. But Kenyans should, in fact, become a laughing stock. That is because when you go to the rest of the world, and I believe that is where Kenya fits, and not necessarily on this Continent--- We are very strategic as a country. You find that people come here. Tourists come and enjoy smoking in public places in Kenya because we allow them to do so. We are aware that most of the people who suffer from the effects of tobacco are passive smokers - those who do not smoke! I am happy that the Minister has gone ahead and highlighted the dangers of smoking. We have been told that the passive smokers, in fact, suffer more from tobacco effects than the smokers themselves. Just imagine a smoker. I have never smoked. That is one thing that I did not do during my youth. But I am aware that as you smoke, you blow away the smoke to other people. You do not even inhale. We are aware that, in fact, in planes in other countries, there used to be a section for smokers. But you do not have that any more. Not even on long haul flights. Those who smoke have to find a different way of coping with the nicotine levels that go low in their bodies. The World Health Organisation (WHO), a world body that ensures that we have good health, has ruled that nicotine is not good for our health. It is incumbent upon us, as the Government and leaders of the people, to make sure that our people are aware of the dangers of smoking.

Mr. Temporary Deputy Speaker, Sir, recently, I saw a packet of cigarettes in the Netherlands. It has a big warning that, in fact, tobacco smoking will lead to miscarriage, infertility and cardiovascular diseases. If we allow smoking here the way we do, it means that we do not care for Kenya as a nation. Our people will not be healthy enough to actually promote the development

of this nation. They will not be healthy enough to enjoy life itself.

I am also aware that when the Minister actually increased the taxation on tobacco--- I guess that was his own way of dealing with the problem. Really, it does not make sense at all! In the next door, that is Uganda and Tanzania, the same has not been taken care of. There is going to be free trade with tobacco and cigarettes coming here. It will not really do anything. So, we have to make sure that in public places, we safeguard the health of Kenyans who actually do not smoke. I hope that once we pass it here, we shall carry it beyond here and take it to the East African Legislative Assembly. Kenya actually needs to take the lead, show an example and try to erase the embarrassment that we caused ourselves when we delayed taking our legislators there. So, it needs a regional approach to make sure that, so long as we continue to interact freely, that is actually taken care of, just the same way as the European Union (EU) takes care of its problems.

Mr. Temporary Deputy Speaker, Sir, we are aware that Kenyans now are really not big smokers. But the few who do it smoke a lot. The few who smoke have a negative impact on the majority of Kenyans who actually do not smoke. We are also aware that the few who smoke incur a big bill on the health sector in this country. We have been told the effects of smoking. It causes cardiovascular diseases. We have been told the effects of it on fertility. We have been told the effects of it on chest problems. So, we have to make sure that we actually safeguard the health of our people. A chain smoker takes up a lot of money which can be used by the poor people. Money which should have gone to support families goes to smoking.

I am also aware that people who smoke begin to look 50 years old when they are even 25 years old. You can just begin to see the effects of nicotine. One could even say: "Look! We are a democratic country. It is my constitutional right. I can do whatever I want with my body and health." But what happens in case of nicotine? Unlike other anti-social behaviours like too much drinking, once you smoke, instead of it affecting you--- I just want to reiterate that, instead of it affecting you personally--- You cannot just say it is my body. It is in fact, affecting other people more. I am happy to see that this is going to be a phased programme. Unlike what might have happened before; people were complaining that they might lose their jobs. What will farmers do with what they have in the field? It is going to be phased, so that people have time. We will have farmers going into other farming enterprises. Smokers will begin to go through rehabilitation. They can then look at their health and see, in fact, that, that kind of behaviour is not good for them.

Mr. Temporary Deputy Speaker, Sir, I just want to support that and say that the issue of advertising - bringing companies here to support sports. Because we are so poor, we just welcome them with open hands. We do not realise that, that is going to be a hoodwinker to our people who are poor. It is going to do a lot of harm to our youth. As a Government and people, we have to put a stop to that.

With those few remarks, I beg to support.

Mr. Muturi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to say a few words about this very important Bill.

I may begin by saying that I was once a smoker, but I stopped the habit voluntarily. But I think, even as we contribute to this Bill, we should appreciate that it is not going to curb the habit of smoking. We can say whatever we feel about the harmful effects of smoking, but I can assure you that I do not anticipate, in our lifetime, that we are going to see a country called Kenya, that has no smokers. Certainly not in our lifetime! I do not think it is going to be possible. However, what I support is the effort, or attempt, being made through this Bill to ensure that those who choose to smoke have sufficient warning of the full effects of the habit they are going to engage in. Also, an attempt is being made to ensure that those who do not smoke, or do not partake of the habit, are not exposed to the harmful effects of the habit.

I welcome the move that is now being made into law, that nobody will sell cigarettes, or

tobacco products, to people under the age of 18. That is a welcome move. It has already happened in very many countries in the world and we were lagging behind by not putting it into law. I think that when finally this Bill is passed, it is important that the Ministry goes round the country, educating our traders; those small traders with kiosks, because there are heavy penalties proposed in this Bill. Of course, we, as a country, submit to the maxim that ignorance of the law is no defence.

Mr. Temporary Deputy Speaker, Sir, the mere fact that we will pass this Bill, we are speaking about the harmful effects of smoking, and we are saying that the law will say that you should not sell cigarettes, or any tobacco products, to people under the age of 18, is not going to permeate to every corner of the Republic overnight. Therefore, I just want to caution that there will be great need for a serious and ambitious public campaign, similar to the civic education that was carried out a few years ago during the attempt to do what was then called "a comprehensive constitutional review". I say this because, again, people should not merely be punished for engaging in what they may perceive to be legitimate business. I know that to the ordinary Kenyan, it is considered discourteous to ask somebody to produce their identity card merely to prove their age. Therein, lies the catch.

Quite a number of business people could find themselves in jail, or paying heavy fines, because they felt they wanted to be good and courteous. They do not want to ask somebody--- You will see that somebody will just argue that: "When I looked at him or her, she or he appeared to me mature enough." However, somebody somewhere, who may want to fix them, will come and say: "No, my daughter or son is 17 years old! That is a fellow who has sold to him that packet of cigarettes." So, I just want to urge that there should be a very serious campaign to educate our people about the full implications of this law.

Mr. Temporary Deputy Speaker, Sir, in my constituency, we grow tobacco. However, I am one person who cannot stand here and pretend to have seen any serious benefits. It is true that tobacco companies rake in billions of shillings, year in, year out, but what goes to the farmer is peanuts. What I am saying is that you can travel the breadth and width of this country in all tobacco growing areas, and what you will see is abject poverty. Go to Malakisi, in the constituency of Mr. Ojaamong. I happen to have worked in those areas; they grow a lot of tobacco, but if you just go to the villages, you cannot believe what those tobacco companies claim every year to be their profits. You will wonder: How come they are raking in so much in profit yet there is nothing on the ground?

There is a disconnect between what the companies are earning and what the farmers are earning. It is the same if you go to Kehancha in Kuria; it is poverty and yet those are areas that have traditionally, and for many decades, been known to be tobacco-growing. If you go to Kitui, it is the same thing. Even in Mitunguu area in Meru South District and in my area. All those areas are similar in one thing; poverty. So, one wonders, in as much we are told that tobacco farming is an economic engagement, there is no co-relation between what we hear, year in, year out, being reported by tobacco companies and what goes down to the farmers.

Therefore, the reason I am saying this is because I cautioned that we are not saying that by enacting this law Kenya will suddenly transform itself into a non-smoking country. Never! We will be cheating ourselves. Indeed, Kenya is small in terms of cigarette consumption. The people who smoke in this country are so few, compared to the major smoking powers, that we are actually insignificant. The reason I welcome this Bill is because it is making an attempt at ensuring that those who are not in the habit, are protected, and those in the habit are fully made aware that the habit they are engaging in is injurious to their health; it is harmful. We need to be also realistic as we seek to control. I do not know whether we are going to control or minimise when we talk about cigarettes being imported into the country and insist that every tobacco product in the country

should have a warning label, in both English and Swahili, which is provided for under Clause 21(2)(a). It states as follows:-

"Every package containing a tobacco product shall-

(a) have at least two warning labels of the same health messages, in both English and Kiswahili, comprising of not less than 30 per cent of the total surface area of the front panel and 50 per cent of the total surface area of the rear panel, and both located on the lower portion of the package directly underneath the cellophane or other clear wrapping;"

Mr. Temporary Deputy Speaker, Sir, since we are not banning the importation of cigarettes, are we, therefore, going to say that if the cigarettes are coming from China, the Chinese must begin to learn Kiswahili, or if the products are coming from Egypt, the Egyptians must learn Kiswahili? I am wondering about the practicality of this clause. It is good that we have these warnings, but I think the Kiswahili bit should be limited to what is manufactured locally. That is the point I am making because I do not know how that will be administered. It will be very difficult. There are some cigarette brands that are not manufactured in Kenya, yet it is the right of those who choose to smoke or consume tobacco products to do so. I agree that they should be warned of the dangers inherent in the habit. However, we are making it difficult for importers to sell. If we import cigarettes that have only a label written in English, saying that cigarette smoking is dangerous or injurious to your health, or a similar warning like the one Prof. Oniang'o talked about, and there is no similar warning in Kiswahili, yet failing to give that warning is a crime, what should we make of the person who imports those brands of cigarettes? Are we saying that the importer should repackage those products? This, to me, does not seem to be very practical in terms of business. Surely, from the business point of view, that is impracticable.

Mr. Temporary Deputy Speaker, Sir, we all want to be proud of our languages. In fact, I am sure that hon. Mwenje would want the warning to be in Kikuyu. However, a person who comes from Nyanza may not understand what it is all about. Another person may want the warning to be written in Dholuo. The hon. Minister, Dr. Kibunguchy, may want it written in Kibukusu. It is only him and I who would understand the warning when we read it. We should not make it impossible for the business people to operate because we are not banning the use of tobacco. Since all we are doing is to control its use, let us make it also possible for the business people to operate.

Mr. Temporary Deputy Speaker, Sir, there is another issue which is contained in the same Clause 21(6). This is very important, and I want the Assistant Minister to listen. On the same point of doing things in a manner that is going to be efficient, there is a requirement in Clause 21(6) which is going to be impracticable. I want the Assistant Minister to listen to this. It says:-

"Every manufacturer, or importer, shall provide inside every package, in the prescribed form and manner, a leaflet that displays the information required by regulations about the tobacco product and its emissions and about the health hazards and health effects arising from the use of the product and its emissions."

We must also face facts. Majority of the people who smoke, consume brands such as Sportsman or another one called *Sina Mpenzi* or, in short, SM. These are the brands of cigarettes which are smoked by a majority of poor Kenyans. When the seller or the kiosk owner, who is dispensing, is asked by the smokers to sell to them one stick of cigarette, he is forced to open just a small bit on the packet and remove one stick of the products and sell it to the poor Kenyans. What is the rationale of labelling the small package which is inside? If the intention of labelling was to inform the smoker that the product he or she is going to consume is harmful, but it is put inside--- I am sure the Assistant Minister for Health, Dr. Kibunguchy, who moved this Bill, is a smoker. I know he knows how the Sportsman and the SM brands of cigarettes are packaged.

(Laughter)

The Assistant Minister for Health (Dr. Kibunguchy): On a point of order, Mr. Temporary Deputy Speaker, Sir. I have two issues I would like to inform my friend, Mr. Muturi. One, once we pass this Bill, no cigarettes will be sold in sticks. They will all be sold in packets. That is one thing. Nobody is going to sell cigarettes in sticks. We have made it very clear in that Bill. Secondly, I would like to say that we have had a lot of representation from the industry and we will remove that aspect of an insert during the Committee Stage.

Mr. Muturi: Thank you, Mr. Temporary Deputy Speaker, Sir. My business was, merely, to point out. I have just picked this Bill as I walked in here and I am happy that what I noticed is something that the Assistant Minister has been addressed on.

The small brands like SM, Sportsman, and some other small ones like Horseman, Rooster, Nyota and Kali are the ones smoked by a majority of Kenyans.

The Temporary Deputy Speaker (Mr. Poghisio): You seem to be an expert of these brands!

Mr. Muturi: The information the Minister has given me is extremely dangerous. We are now telling those Kenyans that they must stop smoking. Otherwise, if they must do it, they must have money to buy a whole packet. I cannot see anything that could be further from reality than that. It is like telling Kenyans that they must take only spirits, brandies and whiskies and that they should not take Tuskers--- What is the green one called?

An hon. Member: It is called Tusker Malt.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, that is like asking Kenyans to take Tusker Malt and White Cap because they are expected to graduate to that class. I think this is an issue that--- Because, again, what is going to happen is that, as much as the Minister agrees that they are going to remove the necessity for that labelling inside the packet, I see them falling into trouble in enforcing. Let us not make a law which we will have difficulties in enforcing. If we are not going to have that labelling, I am happy about that because I thought it was going to be very difficult. Indeed, even if it is not because of the sale of sticks, once the people who smoke those packs of cigarettes buy them, it has the warning on top in both Kiswahili and English, particularly for the locally manufactured brands. He has seen! All they do is to remove the stick and they proceed to light the cigarette. Of course, you can see that there will not have been any time for them to see the label. They will actually see the label when they have finished smoking. That is when, on occasion, they may find it necessary to open the packet and see what was contained in it. I am happy that the Minister has said they are going to remove that aspect. But again--- Because we do not want to--- You know, let us not try to--- Because---

The Temporary Deputy Speaker (Mr. Poghisio): The Minister wants to remove it? He cannot do it unilaterally. So, it still has to come back in the form of an amendment. So, you cannot begin to say that he is going to remove it!

Mr. Muturi: No, Mr. Temporary Deputy Speaker, Sir. He has said that, in fact, because of the presentations made, they are considering that, that aspect would be introduced for amendments or deletion at Committee Stage. What I would want to assure you is that I will, because of the practicality, be supporting that move. I would imagine that, perhaps, the Departmental Committee concerned has also looked at that aspect purely on the basis of practicality.

Mr. Temporary Deputy Speaker, Sir, the other aspect I wanted to raise is the issue raised by Clause 26 of Part V dealing with promotions. It says:-

(1) No person shall-

"(a) advertise tobacco or a tobacco product by means of organising, promoting or sponsoring a sporting, cultural, artistic, recreational, educational or entertainment

programme, event or activity; or

(b) promote a tobacco product at any sporting, cultural, artistic, recreational, educational or entertainment programme, event or activity; or

(c) advertise tobacco or a tobacco product by means of organising, promoting or sponsoring trade fairs, exhibitions, shows or any other events".

Mr. Temporary Deputy Speaker, Sir, my quarrel with this provision is one: Some of the tobacco companies are involved in sponsorship of a number of these type of activities from which now they are being banned. I am wondering; is there anything wrong if a tobacco company that is known by a particular name sponsors an event without promoting any specific tobacco product? Just to avoid a situation whereby--- You see, I said from the beginning that I come from a tobacco-growing area. Some of the tobacco companies would merely put a signboard giving the names of their company and do not say anything else. They are not promoting any particular brands or tobacco product. We have seen them; they have even helped us construct health facilities and what they have done is put up a signboard saying: "Sponsored by this or the other company". They are not, in any way, promoting any form of smoking or tobacco consumption or any particular tobacco products. I am wondering whether this is not also too restrictive. I believe that those are some of the issues which we should address during the Committee Stage.

Finally, Mr. Temporary Deputy Speaker, Sir, I have a small issue with regard to a ban on the requirement in Clause 14(3) of Part IV which says:-

"Every packet or package of tobacco for export from Kenya shall bear the statement "Manufactured in Kenya for export only".

I think we need to be told what mischief is sought to be corrected by this requirement. This country, by agreement of several international companies, is home to many of those companies. They do their manufacturing here in Kenya by licence. The people to whom they export--- I believe it is possible for the Government to be able to control to ensure what is supposed to be exported is exported to leave the country. But there are other companies and countries in various parts of the world that have chosen Kenya as a place where they will do their manufacturing. But the cigarettes which are manufactured here are exported outside Kenya. They could be called Rothmans, you know the home of Rothmans; it could be Dunhill or any other brand. But the moment you start saying--- Because, you know, we must be realistic. We are a third world country! The moment we begin saying, "manufactured in Kenya for export only", I can assure you that, by that requirement, we will see a drop in the export of those locally manufactured cigarette brands which were being manufactured here purely because Kenya was chosen as the best location within this region. It is not just Africa, actually, I am aware that this happens--- Kenya happens to be the headquarters to a huge region. I think that purely for purposes of saving Kenyan jobs, because this is not consumption--- This has nothing to do with the consumption of tobacco. But if we can be the people to manufacture and, say, to source others who want to go and consume, eh! If it is giving Kenyans jobs, I think we need to be selfish a bit in this regard because we are not going to stop people in other parts of the world from smoking! But if they want Kenya to manufacture cigarettes and take it to them, I think we should allow that because it is going to give Kenyans some livelihood.

With those few remarks, I beg to support.

Mr. Wamunyinyi: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill.

Mr. Temporary Deputy Speaker, Sir, this Bill will definitely ban smoking in all areas. I am sure hon. Muturi will be affected because he is one of those who smoke in many places. I also come from a tobacco growing area and some of my constituents also grow it.

Mr. Temporary Deputy Speaker, Sir, before I come to that, I will first make a comment on

one of the issues in this Bill, particularly in respect to the Clause on the prohibited smoking areas. If you look at Clause 33 from Subclause (1), where it says:-

"No person shall smoke in any public place."

Subclause (2) states:-

"Without prejudice to the generality of Subsection (1), no person shall smoke in---"

The areas are listed there and they include, the offices, the workplaces, including corridors, lounges, eating areas, reception areas, lifts, escalators, foyers, stairways, toilets, laundries, amenity areas and such places. That is only part (a) alone. If you have not looked at section (b), it lists them as, court buildings, factories, cinema halls, video halls and so on. Part (e) lists, hospitals and restaurants, hotels, children's homes and so on.

If you look at part (h), there is some interest. It lists residential houses. In my dwelling house, where I reside; why should you be prevented from smoking from your own residential house? That is your house, where you live. Why should you be prevented from smoking while there? You can drink or do what you like from that house.

The Temporary Deputy Speaker (Mr. Poghisio): But you have to read the whole thing, Mr. Wamunyinyi!

Mr. Wamunyinyi: Mr. Temporary Deputy Speaker, Sir, I was just coming to that. Subsection 8 talks about my own dwelling house. Why do you stop me from smoking there? At the end, parts (q) and (r) name; stadia, sports and recreational facilities, public buildings, *et cetera*. If you look at that list of all those prohibited areas--- and then finally they say, "except designated areas." Which are those areas? Unless you want to tell us that smoking is not allowed completely. If you go by the list of prohibited areas, it means that you cannot smoke anywhere.

We need to re-look at this because if we go by this, it is an attempt to ban smoking altogether. It is not only Mr. Muturi and Dr. Kibunguchy who smoke. Many other people enjoy smoking and they even smoke cigarettes without filters. There is *Kali Kubwa* and *Crescent*. This is something which is addictive. That is why they find it difficult to stop smoking. I used to smoke and, therefore, I am talking from experience. I smoked for about 15 years but then I stopped. The process was very difficult. I am sure J.B. has been trying to stop, but he has failed. Cigarette smoking is highly addictive.

The Temporary Deputy Speaker (Mr. Poghisio): Who is J.B. in this House?

Mr. Wamunyinyi: Mr. Temporary Deputy Speaker, Sir, we need to move along with the rest of the society when we want to address these issues. We cannot do it in isolation. Certain steps will have to be taken to see that people are encouraged to stop smoking. Even my brother-in-law who is walking in now is a chain-smoker.

(Mr. Ndwiga walked in amid laughter)

Mr. Temporary Deputy Speaker, Sir, it is very difficult to stop. The point that I am trying to put across is that we need to be very fair and look at the issues broadly. If we want people to change and change the smoking culture, let us do it in a good manner. If you ban it, it will affect very many people. This is indirectly banning smoking. This is in essence, what is provided for in this Section 33.

I want to state that I agree with the spirit of this Bill because smoking is harmful. What worries me is that a man who is supposed to treat and help the people suffering as a result of smoking, who is supposed to ask them to stop, for example, a medical doctor, smokes.

Mr. Muturi: The Mover!

Mr. Wamunyinyi: Yes, the Mover of the Bill is a smoker. It is so contradictory. While I can understand---

The Assistant Minister for Health (Dr. Kibunguchy): On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to point out something. My friend is totally out of order. First, this Bill does not ban smoking. Secondly, everybody has a choice to either smoke or not. I am sure my friend, Mr. Wamunyinyi knows very well the saying that: "Do as I say, not as I do." I am sure he is very conversant about that. So, all of us will choose the way we are going to die and nobody has a right to restrict somebody to choose the way they want to die.

The Temporary Deputy Speaker (Mr. Poghisio): I am not sure that was a point of order. What did you just do, Dr. Kibunguchy? You made a contribution in the middle of another person's contribution! There was no point of order.

The Assistant Minister for Health (Dr. Kibunguchy): I started by saying that he is totally out of order to say that doctors should not smoke. That is what he said.

The Temporary Deputy Speaker (Mr. Poghisio): Order! That is not being out of order. That may be a statement which you do not agree with but it is not being out of order.

Mr. Wamunyinyi: Mr. Temporary Deputy Speaker, Sir, it is only the Speaker who has the power to decide whether I am out of order and not any other hon. Member.

The point that I am saying is that people look at doctors as people who are supposed to set a good example. If you confirm that it is really harmful and you are telling your patients who have signs of suffering from some disease related to smoking and you are advising them to stop smoking but they see you smoking, how do you want those patients to feel? For example, if teachers in schools want to discourage students from smoking, but they move around with cigarettes in---

The Temporary Deputy Speaker (Mr. Poghisio): I think you are putting too much pressure on the Mover of this Motion.

Mr. Wamunyinyi: Mr. Temporary Deputy Speaker, Sir, I am just trying to explain the point. I am now talking about teachers. There is some provision on advertising which I also want to mention. For example, if you look at Sportsman which is a registered brand name, the youth and the people who participate in sports usually think that Sportsman is good for a sportsman or for someone participating in sports. Look at the one which Mr. Muturi smokes; Embassy. It says: The smooth way to go places. It is smooth all the way. That is the kind of advert you will find on Embassy. I am sure the hon. Minister also smokes that one and Benson and Hedges. That it is smooth all the way. I do not know which way and how smooth.

The Minister for Co-operative Development and Marketing (Mr. Ndwiga): On a point of order, Mr. Temporary Deputy Speaker, Sir. Are you satisfied that there is relevance in what the hon. Member is talking about? I think he is totally out of order, because there is no relevance at all between this Bill and what he is talking about.

The Temporary Deputy Speaker (Mr. Poghisio): Unfortunately, he is reading from this script. I can see him holding this document.

Mr. Wamunyinyi: *Bw. Waziri* should look at this Bill. The advertising that I am talking about is contained in this Bill. There is information and lifestyle advertising, and ingredients also.

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Wamunyinyi, I think it is the issue of attaching of specific names to these things that---

Mr. Wamunyinyi: Mr. Temporary Deputy Speaker, Sir, I will stop attaching names.

But the point that I am raising is: For example, Clause 2, defines lifestyle advertising as: Advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, sensuality, recreation, excitement, vitality, risk or daring. For example, do you not find the word "sportsman" on cigarettes appealing to a principled sportsman? It dictates that if you want to enjoy all through, you should take it smooth all the way? As I said, the kind of advertisements that are used need to be re-looked into, because

having had the opportunity to puff, I understand what I am talking about.

Mr. Temporary Deputy Speaker, Sir, turning to cigarette production, that is where now the people who I represent are involved. It involves growing tobacco in areas where a lot of chemicals are used during spraying. However, the farmers who are involved are never advised or given anything to protect themselves with. Some of the chemicals are hazardous. The health of some farmers has been affected and some have even died.

More important, is the fact that the farmers have been exploited by these tobacco companies, which do not pay any attention to what they go through. They are paid peanuts! None of those farmers who have been involved in the growing of tobacco, since its introduction in Kenya, can claim to have become rich from tobacco farming. All of them have remained poor. Most of them have died very poor. This does not only apply to the people of Bungoma and Teso districts. I believe it also applies even to the people of Mbeere and some parts of Ukambani, because I know that some tobacco is grown there. All those farmers have been exploited. Companies like British American Tobacco (BAT) and others have made money from the farmers' sweat.

Mr. Temporary Deputy Speaker, Sir, roasting of the leaves before they are transported to factories involves a process. It is picked from the farm and roasted. What does roasting involve? The farmers have to cut down trees and make firewood. This has serious and direct implications on the environment. These farmers have not been participating adequately in planting trees, but they are leading in cutting them down. I have expressed this to BAT. On the slopes of Mount Elgon, parts of Bungoma and Teso districts, trees have been cut down by these tobacco farmers. Now, they have nowhere to get the trees to roast their tobacco.

Mr. Temporary Deputy Speaker, Sir, so, apart from exploiting the farmers, these companies are dealing a major blow to the environment by cutting our trees. Our rivers are drying up as a result of this tobacco business. If the farmers were earning some money we could understand that we could double our efforts towards planting more trees. This is not the case. We should call upon those tobacco farmers to stop destroying the environment because they cannot change their lifestyles. If you go to Teso District and some sections of Bungoma District, like in the Malakisi area, you will notice that most of them still live in grass-thatched houses. They cannot afford to build houses with iron sheets.

Mr. Temporary Deputy Speaker, Sir, apart from addressing the effect of the injuries caused by smoking, I think the bigger issue is the continuous exploitation of the farmers. The companies continue to make profits while disregarding their social corporate responsibility. They do not support the farmers in their respective areas by planting trees. They do not support even the construction of schools in those areas.

Mr. Temporary Deputy Speaker, Sir, for this reason, I think we should continue to appeal to our farmers to diversify and avoid growing tobacco. They should get into coffee, tea, sugar-cane, maize and other types of farming. Through this way, as we are talking of controlling smoking in public places, we will also be dealing with it at the production level. If those who are growing tobacco stop doing so, I know that those big businessmen will import it because as you are aware, those who smoke cigarettes will always look for them. They will even import them if the businessmen cannot do so. However, if the farmers leave tobacco growing, it will help us so much and our people will also benefit through uplifting of their lifestyles.

Mr. Temporary Deputy Speaker, Sir, there are various areas in this Bill which also---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Wamunyinyi! Hon.

Members, hon. Wamunyinyi will have ten minutes when debate continues on this Bill. It is time for the interruption of business. The house is, therefore, adjourned until Tuesday, 10th July, 2007, at 2.30 p.m.

The House rose at 6.30 p.m.