

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 6th September, 2007

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Kenya-China Parliamentary Group visit to China from 5th to 12th July, 2007.

(By Mr. Musila)

Annual Report and Accounts of Kenya Maritime Authority for the 18 months ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Kenya Ports Authority for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Finance
(Mr. Kenneth) on behalf of the
Minister for Transport)*

Annual Report and Accounts of the Sports Stadia Management Board for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Sports Stadia Management Board for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Sports Stadia Management Board for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Finance
(Mr. Kenneth) on behalf of the Minister
for Gender, Sports, Culture and
Social Services)*

Annual Report and Accounts of Telkom Kenya Limited for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Finance
(Mr. Kenneth) on behalf of the Minister
for Information and Communications)*

Annual Report on the abstracts of Accounts of the Town Council of Othaya for the year ended 30th June, 2005, and the certificate thereon by the controller and Auditor-General.

Annual Report on the abstracts of Accounts of the Municipal Council of Thika for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

Annual Report on the abstracts of Accounts of the Town Council of Mwingi for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Finance
(Mr. Kenneth) on behalf of the Minister
for Local Government)*

Annual Report and Accounts of the Kenya Medical Training College for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Finance
(Mr. Kenneth) on behalf of the
Minister for Health)*

Report of the 50th Session of the Executive Committee of the African Parliamentary Union held from 26th to 27th May, 2007, in Khartoum, Sudan.

(By Mr. M'Mukindia)

Report of the Departmental Committee on Administration, National Security and Local Authorities on the visit to Mt. Elgon area between 17th and 19th April, 2007.

(By Mr. Kajembe)

Mr. Speaker: Next Order!

NOTICES OF MOTIONS

ADOPTION OF REPORT ON 50TH SESSION OF APU EXECUTIVE COMMITTEE

Mr. M'Mukindia: Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, this House adopts the Report of the 50th Session of the Executive Committee of the African Parliamentary Union held on 26th to 27th May, 2007, in Khartoum, Sudan, laid on the Table of the House on Thursday, 6th September 2007.

ADOPTION OF COMMITTEE REPORT ON VISIT TO MT. ELGON

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

THAT, this House adopts the Report of the Departmental Committee on Administration, National Security and Local Authorities on the visit to Mt. Elgon

area laid on the Table of the House on 6th September, 2007.

Mr. Speaker: Thank you.

Next Order!

QUESTIONS BY PRIVATE NOTICE

KILLING OF MR. FRANCIS LORIKAI LETOOLE BY POLICE

Mr. Lesrima: Mr. Speaker, Sir, I beg to ask the Minister of State for Administration and National Security the following Question by Private Notice.

(a) Is the Minister aware that Mr. Francis Lorikai Letoole, a watchman working at International Christian Centre premises near General Motors in Embakasi area, was gunned down by police officers on 6th August, 2007, at about 8.30 p.m?

(b) What action has the Minister taken to apprehend the culprits and bring them to book?

(c) What further steps is the Minister taking to compensate the family of the deceased?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker Sir, I would like to seek the indulgence of the House to answer this Question next week because I did not get the necessary information to answer it today.

Mr. Speaker: What is your reaction, Mr. Lesrima?

Mr. Lesrima: Mr. Speaker, Sir, we held consultations with the Assistant Minister. As long as the Question will be answered on Tuesday, then I am satisfied with that. This incident took place a month ago. So, I believe that by Tuesday, the Assistant Minister will have an answer.

Mr. Speaker: Is that okay with you?

Mr. Lesrima: Mr. Speaker, Sir, Tuesday is okay with me.

Mr. Speaker: Very well! That Question is deferred to Tuesday.

(Question deferred)

Let us move on to the next Question by the hon. Member for Eldoret East!

AWARD OF CONTRACT FOR PHASE II OF
RURAL TELECOMMUNICATIONS PROJECT

Mr. Kipchumba: Mr. Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Could the Minister confirm that the Government is in the process of awarding a contract for services under Phase II of the Kenya Rural Telecommunications Development Project through single-sourcing?

(b) What is the cost of the project?

(c) Why was the project not subjected to competitive bidding?

(d) What is the status of Phase I of the project?

The Minister for Information and Communications (Mr. Kagwe): Mr. Speaker, Sir, I beg to reply.

(a) The Government has already awarded the contract for services under Phase II of Kenya Rural Telecommunications Development Project to Huawei Technologies of China. This is not a new project but an expansion of an existing project (Phase I) based on an already signed memorandum of understanding between the Government of the Peoples Republic of China and the Kenya Government.

(b) The detailed technical discussion of the scope of the project is under discussion between Huawei and the Ministry, through Telkom (K) Ltd. who are the implementing agency of this project. The original Rural Telecommunication Development Project had been estimated to cost US\$64 million based on a detailed survey by Telkom (K) Ltd. However, the Chinese Government approved US\$48 million. The exact amount for Phase II will be established on completion of the technical negotiations between Telkom (K) and Huawei Technologies of China. The agreed cost will then be subjected to approval by the Chinese Government.

(c) The project is not subject to competitive bidding as it is an expansion of an existing project and does not require to undergo another procurement process. It was a single project that was split into two phases as Exim Bank wanted to review the progress of Phase I before making original additional commitment.

The original Rural Project, as it has been said, was to cost US\$64 million and the approved amount was US\$48 million.

In 2005, as part of Telkom (K) Limited, restructuring exercise, the Government commissioned the PKF Consultants to study the status of the company's network and its limitations to service delivery. The technical aspect of this consultancy was carried out by Alcatel of France. One of the main findings that this consultancy clearly brought out was the serious problem associated with multiple vendors in the network. To avoid these problems, the industry best practice is to select a strategic supplier for each sub-system in the network. The two mobile operators in Kenya, indeed, have done the same with one selecting Ericson and the other one selecting Siemens.

Further, for CDMA Systems, the interface between Base Station Controller (BSC) and the Base Transceiver Station (BTS) is proprietary to the vendors and hence introduction of a new vendor in the network would require these systems to be duplicated, hence making it more expensive. Further, the same would have to be done for the Intelligent Network (IN)

platform that provides the value-added services, as the existing one is also from Huawei Technologies of China. Consequently, due to these issues, it is neither necessary nor prudent to tender for expansion of an existing system.

Finally, the current practice in the industry is to adopt a procurement policy based on Total Cost Ownership (TCO), as we call it, of the network that takes into account of the operating costs instead of just the initial capital expenditure alone.

(d) Phase I of this project involved the procurement of 107 BTSs covering approximately one-third of the population centres in rural areas. Currently, 57 out of the 107 base stations are already in service. The remaining base stations should be in service within the next six months. Phase II will cover two-thirds of the remaining rural population centres.

Mr. Kipchumba: Thank you, Mr. Speaker, Sir. Indeed, the Minister should have done the right by giving me a written answer. I am very disadvantaged by the long answer he has read, while I do not have a copy.

(Mr. Kagwe handed over a copy of the written answer to Mr. Kipchumba)

Nonetheless, the Minister has, clearly, said that he is not aware of the cost of the two projects. How do you make a contractual arrangement or sign a contract when you are not aware of its cost? I have, with me, documents written by the Permanent Secretary, Mr. Kinyua, requesting the Huawei Technologies of China to allow for competitive bidding. If, indeed, that was one project, why would the PS request the Chinese to allow the Government to go for competitive bidding? These are separate units. One is for equipment and the other is for networking. The Minister cannot, therefore, tell us that this is one project.

Mr. Kagwe: Mr. Speaker, Sir, it is the same project. Indeed, Phase I of the project was the construction of the 107 base stations. Phase II of the project is on the construction of a further 140 base stations. This is the same project, using the same Intelligent Network (IN) platform and combining the same technology.

The letter from the Treasury, which the hon. Member is referring to, asking us to continue with the project has the correct information. Subsequent to that letter, had he followed the same source whoever gave him that letter, they should have given him another letter from the Ministry and from technical experts from Telkom (K) Limited explaining to the Treasury why it is necessary to continue with the same vendor instead of adopting a multi-vendor system.

Mr. Weya: Mr. Speaker, Sir, recently, individuals were even terminating networks into their systems, for example, a company called Global International Life House. Is the Minister aware that the termination of international calls is being done illegally because people are just bringing in equipment into this country?

Mr. Kagwe: Mr. Speaker, Sir, what hon. Weya is asking is a slightly different issue. If this House recalls, in 2003/2004, there was, indeed, a raid at Lonrho House of the Data Global Company and persons were arrested as a result of the international illegal terminations. The way to defeat the illegal terminations was basically the licensing of international gateways that made it business unwise to continue international illegal terminations. The House will recall that, that happened. The House will recall the members who were there at that time and those who got arrested and those who got released.

Mr. Keter: Mr. Speaker, Sir, the Minister has clearly said that it is very expensive to use the Base Transceiver Station (BTS). I want him to know that for you to have a very effective inter-connection or interfacing, you do not need to use a BTS. You need to use BSC to BSC or BSC to MSC. So, the monopoly by Huawei should not be allowed. This is a network expansion.

Why can the Ministry not tender these projects, so that we can have other regionalised vendors doing the job?

Mr. Kagwe: Mr. Speaker, Sir, I have already explained the issue. It is not correct to say that you can interface everything. Mr. Keter, who used to work for Telkom Kenya, should know very well that, for example, the platform on which you are using ADSL and the platform on which you are using BAS are all Huawei platforms. Mr. Keter is also aware that you cannot use two different IN platforms.

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, you have heard the Minister say that this is the same project. He has also said that the authority given by the Treasury was that the project should be competitively bid for. He has talked of some other letter that is not before the House. What is the content of this letter?

What are the reasons that are contained in this other letter, that made the Government change its position from what it had initially agreed to, namely, competitive bidding? It is very clear in the letter from the Treasury that competitive bidding would promote transparency in this project. How, then, is transparency captured if the tender has been awarded through single-sourcing?

Mr. Kagwe: Mr. Speaker, Sir, I have already explained, and I hope that the hon. Member is going to listen as I repeat this. I have explained that, indeed, the Treasury wrote a letter to us asking us whether we should go for competitive bidding on this project between the two Chinese companies. However, Telkom Kenya explained to the Treasury and upon the explanation, the Treasury approved that we continue with the same vendor. The reason being what I have simply explained just now; that it was the same project and it would be imprudent and difficult to have one vendor implementing Phase I and another vendor implementing Phase II. That is precisely the reason why we are doing so. Having a different Chinese company implementing this, would be a problem.

Mr. Speaker, Sir, we are aware that Chinese companies fight brutal wars when it comes to business and they are generally known for going for the jugular. Nonetheless, we must also be prudent in our thinking and also implement what is in the best interest of our country.

Mr. Kipchumba: Mr. Speaker, Sir, you have heard the Minister clearly say that the tender has been awarded without necessarily establishing the cost. He has not answered this Question. How do you award a contract to a company without first establishing the cost of the project? If, indeed, these projects are different, why would it not have been prudent to tender it under one contract? Why separate the project into two?

Mr. Kagwe: Mr. Speaker, Sir, Phase I of this project was split into two for two reasons. First, it was found prudent by Exim Bank that Phase I should be implemented, then measure its performance and see the implementation process before we approve Phase II.

On the second question about the money, as I said, the aid amount was US\$48 million. The current project in Phase I cost US\$24 million. Consequently, as I speak, the approved amount is US\$24 million. However, it would be unwise for me to state a figure here that is on an ongoing negotiation and give ourselves away, when we could easily get less than what I will state here.

ORAL ANSWERS TO QUESTIONS

Question No.143

SHORTAGE OF TEACHERS IN ASAL AREAS

Mr. Lekuton asked the Minister for Education:-

(a) whether he is aware that in spite of the nearly 100 per cent increase in the general enrolment of pupils in primary schools since 2003, the number of teachers, especially in drought-stricken areas has remained unchanged; and,

(b) what he is doing to address the situation.

The Assistant Minister for Education (Mrs. Mugo): Mr. Speaker, Sir, first of all, I would like to state that this Question was on the Order Paper yesterday. There was another Question by the same hon. Member and the officer who prepared the answers had mixed them up.

So, yesterday, we did not have the correct answer to the Question. I was disappointed by the FM radio stations which insinuated that I could not answer the Question correctly. I want to thank the *Daily Nation* for putting the matter correctly, that it was the wrong answer. I would like to appeal to the Press to tell the people the truth. However, now I have the correct answer.

Mr. Speaker, Sir, I beg to reply.

(a) I am aware that there has been a substantial increase in the general enrolment of pupils in primary schools in the whole country, which is approximately 30 per cent, as a result of the introduction of the Free Primary Education Programme in 2003. Although the number of teachers has remained the same throughout the country due to the freezing of employment, the Ministry has been replacing those who leave the service through natural attrition, for example, retirement, death, resignation and dismissals.

(b) The Ministry has embarked on a number of measures to address the under-staffing situation as follows:-

(i) Replacement of teachers who exit the profession through natural attrition.

(ii) Newly-employed teachers are required to serve for five mandatory years before they request for transfer.

(iii) Balancing of teachers is continuously done to transfer excess teachers from over-staffed areas to the under-staffed ones.

(iv) The Government is exploring ways of getting more funds to recruit additional teachers.

Mr. Lekuton: Mr. Speaker, Sir, in 2003, when free primary education was introduced by the Government, it targeted the poor people. Specifically in my case, it was an incredibly noble idea by the Government to try and create equal opportunities for everybody. In my constituency, there has been a 97 per cent increase in girls' enrolment and 57 per cent in boys'. Pupils have flocked to schools from all the villages across the board. Due to the current drought, we are having totally unmanageable classes.

(Loud consultations)

Mrs. Mugo: On a point of order, Mr. Speaker, Sir. I cannot hear the hon. Member's question. Maybe the hon. Members can consult a bit silently. I cannot hear what the hon. Member is saying!

Mr. Speaker: Order, hon. Members! Mrs. Mugo, I am looking at you because you are disrupting the House! So, you must stop disrupting the House!

Proceed now!

Mr. Lekuton: Mr. Speaker, Sir, as I have said, the introduction of the free primary education in 2003 targeted the poor. Specifically, in my case, it was an extremely noble idea by the Government to try and create equal opportunities for all.

With 97 per cent increase in girls' enrolment and 57 per cent in boys' enrolment in my constituency, pupils have flocked to all schools. There has been demand for more schools and we have built about 20 new schools with the CDF funds. There seems to be a lot of problems. For example, large classes are unmanageable. As a result of the huge number of pupils under one teacher, there have been serious discipline issues which create a breeding ground for other issues. There is also a big disconnect between the pupils and the teachers. There is no relationship between the teachers and their pupils because when you have one teacher teaching

100 pupils, he cannot be able to give special attention to the pupils in all the subjects. This results in low quality education.

Mr. Speaker: Mr. Lekuton, now you are debating! What is your question?

Mr. Lekuton: Mr. Speaker, Sir, what is the Government doing? The Assistant Minister has said that they have put some measures in place to improve the situation. What are the ways that the Assistant Minister is looking at to increase the number of teachers in our primary schools?

Mrs. Mugo: Mr. Speaker, Sir, we are holding discussions all the time with the Ministry of Finance because we would like to get more funds to be able to recruit more teachers other than just replace those who leave the service through natural attrition. At the moment, we have been balancing the teachers. There are some areas which had more teachers than others and we have balanced them. This is a continuous process. However, I would like to add that we also carry out regular re-training of our teachers through seminars, on how to handle a little larger classes. It is not lost to us that the need is there and we are working all the time on the possibility of recruiting more teachers. Now that the economy has improved a great deal, we hope that the Treasury will give us more money during the next Budget.

Mr. Karaba: Mr. Speaker, Sir, the Assistant Minister has told us that she is aware that there has been a rapid increase in primary school enrolment. That increase will end up in secondary schools.

What advanced plans does the Ministry have to make sure that it puts in place more secondary school physical facilities, so that those who graduate from primary schools to secondary schools will still continue with quality education?

Mrs. Mugo: Mr. Speaker, Sir, there is new infrastructure that is going on in all the districts. We have different programmes, especially the one that is funded by the Africa Development Bank for new infrastructure. In this programme, we are improving the existing schools and, in other areas, we are constructing new schools. More so, we are encouraging the construction of more day secondary schools, and particularly in areas where primary schools have excess land, they should construct more classes to absorb the pupils graduating under the Free Primary Education Programme.

I know that many constituencies are constructing new secondary schools through the CDF to cater for the pupils who complete their primary education. We have different programmes for each area.

Prof. Oniang'o: Mr. Speaker, Sir, the Question was on too many pupils and too few teachers. The situation does not seem to be changing. Could the Ministry consider a policy change where they can use retired teachers, who retire very early, and also the Form Four leavers who are just sitting at home with no jobs? They can work as volunteers.

Mrs. Mugo: Mr. Speaker, Sir, the question is not whether qualified teachers are available. It is about the funds. There are enough trained teachers who can be absorbed in these schools. As I said, we are looking for extra funds to recruit more teachers. However, there is room for those who would want to volunteer and we encourage them.

Mr. Arungah: Mr. Speaker, Sir, it is an open secret that there is a concentration of teachers in urban areas as opposed to the villages. What measures is the Ministry putting in place to rationalise the position? Teachers who are over-concentrated in urban areas should be encouraged to go back to the villages even if this means giving them some kind of incentive.

Mrs. Mugo: Mr. Speaker, Sir, first of all, it is not correct that there is a concentration of teachers in urban areas. Dagoretti Constituency has a shortage of over 100 teachers and it is in the city.

Mr. Speaker, Sir, it is true that many teachers are in urban areas because they are couples. Their husbands or wives may be working in the City. It is, therefore, not always possible to move them elsewhere. However, during the balancing exercise, we do not take more

new teachers for Nairobi. The new intakes are taken to rural areas.

Mr. Lesrima: Mr. Speaker, Sir, during the recent admission of teachers to teacher-training colleges, it was very clear that, in some places, including mine, which neighbours Mr. Lekuton, very few locals were admitted. It is very necessary to have local teachers to teach lower classes. What is the Government doing to ensure that these remote Arid and Semi-Arid Lands (ASALs) have teachers admitted to teacher-training colleges? In other words, could the Ministry apply affirmative action in the intake into teachers training colleges, so that we do not have shortages in the future? Teachers from high potential areas may have problems teaching in those remote areas because they are very young people.

Mrs. Mugo: Mr. Speaker, Sir, affirmative action is in place. Whereas the cut-off grade for admission into teacher-training colleges is grade C+, but in the ASAL region, we consider C plain. Since we recruit at district level, it is possible to give the locals the first priority. We are looking into the question if you are not getting enough teachers from those areas.

Mr. Lekuton: Mr. Speaker, Sir, I would like to ask the Assistant Minister if she has studied other countries and seen how they have done with their free primary education programme. I hear that Tanzania has a perfect example of a two-shift system.

Mr. Speaker: The Assistant Minister seems not to have got you, Mr. Lekuton!

Mrs. Mugo: Mr. Speaker, Sir, I think his English is too American! I have problems hearing him!

(Laughter)

Mr. Lekuton: Mr. Speaker, Sir, I thank the Assistant Minister for the compliment. That is actually Rendille English.

(Applause)

Mr. Speaker, Sir, has the Ministry explored other possibilities? Have they looked at what other countries have done it? From my knowledge, I understand that Tanzania has done this very well with a two-shift system.

Mrs. Mugo: Mr. Speaker, Sir, I think we are much better. We are willing to learn from others and compare, but Kenya is doing a lot better in the region.

Mr. Speaker: Very good! Next Question by the hon. Member for Rongo Constituency!

Question No.134

GOVERNMENT EXPENDITURE ON CASE OF
EALA MEMBERS NOMINATION

Mr. Ochilo-Ayacko asked the Attorney-General:-

(a) who those who represented the Government of Kenya in the case filed by hon. Prof. Anyang'-Nyong'o and others at the East African Court, on the nomination of Members to the East African Legislative Assembly were; and,

(b) how much money the lawyers were paid and on what basis.

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

(a) The Government of Kenya was represented by myself, Mr. Wanjuki Muchemi, Solicitor-General, Ms. Muthoni Kimani, Deputy Solicitor-General, Mr. Anthony Ombwayo, Principal State Counsel and a private advocate Mr. Gibson Kamau Kuria.

(b) The legal fees payable to the private lawyer are yet to be paid.

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, the Attorney-General is aware that this matter is concluded and we already have Members of the East African Legislative Assembly (EALA).

Part "b" of the Question, asked how much money was paid to the lawyers. The Attorney-General reckons that they are yet to be paid. How much will be paid to the private lawyers now that the matter has been concluded?

Mr. Wako: Mr. Speaker, Sir, the Question was "how much has been paid". However, the amount has not been paid.

An hon. Member: How much will be paid?

Mr. Wako: Mr. Speaker, Sir, as to how much will be paid, it is still under discussion with the said lawyers. However, in calculating the amount to be paid, we shall take into account the importance and gravity of the case, the nature and complexity on the dispute on law and practice, the amount of time expended in researching, preparing and hearing of the case.

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, the Attorney-General is an outstanding lawyer. The Solicitor-General is also an outstanding lawyer. Why was it necessary to hire some other lawyers on this matter when the Attorney-General was there in person? Other very senior lawyers were also representing the Government. Was it not for the reason that it was to provide fees for these other lawyers?

Mr. Wako: Mr. Speaker, Sir, the Attorney-General, the head of the legal profession in this country, led the pack. However, the Attorney-General has many other duties to perform. Although I was there at the beginning of the sessions, the court kindly permitted and excused me from further attendance. Therefore, the matter was handled by these other lawyers.

Mr. Muite: Mr. Speaker, Sir, I believe what the House wants to know is the amount of money likely to be paid. The Attorney-General says it has not been paid yet. He has already listed the things they will take into account when deciding how much to pay. Could he give a figure to this House as to how much they are likely to pay these lawyers?

Mr. Wako: Mr. Speaker, Sir, they have not been paid! The case has been concluded. From that, you can infer the matter is under negotiations. In other words, we have not yet agreed on the amount to be paid. I would not want prejudice my discussions by telling this House how much it is.

Mr. Speaker: Final question, Mr. Ochilo-Ayacko!

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, the Attorney-General pays legal fees using Government money. Could he be kind enough to the people's representatives by telling us what the Government is offering? This is people's money. What is your offer that is the subject matter of negotiations and what are they asking? We do not want to hear at the close of this House that you were paying Kshs100 million in a matter that you were the one who argued as the Attorney-General and other people were earning fees!

(Applause)

Mr. Wako: Mr. Speaker, Sir, if the question is asked in six months' time, I will give this House the exact amount the Government has agreed and paid.

Mr. Speaker: Next Question!

Question No.462

COUNTRYWIDE SHORTAGE OF AGRICULTURAL
EXTENSION OFFICERS

Mr. Owino asked the Minister for Agriculture:-

- (a) whether he is aware that there is a serious shortage of agricultural extension workers in the country; and,
- (b) what immediate plans the Ministry has to alleviate the shortage.

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

(a) I am aware that there is a shortage of agricultural extension workers in the country.

(b) My Ministry is taking the following measures among others to address the problem:

(i) We sought authority from the Treasury and DPM and recruited 300 graduates in the year 2005 after a lapse of ten years;

(ii) We, as a Ministry, sought and obtained authority to employ a further 344 graduates;

(iii) We are seeking further authority to employ 600 diploma holders and 92 agricultural engineers;

(iv) We have provided additional transport and other logistics to enhance extension services delivery reach to districts.

Mr. Owino: Mr. Speaker, Sir, I thank the Assistant Minister for that answer. We all know that agriculture is the mainstay of this country. If proper attention is not given to the sector, our economy may not grow as fast as we expect. In my own district, we have four constituencies. There is only one extension worker. How many extension workers are supposed to be in one district?

Mr. Kaindi: Mr. Speaker, Sir, the very bare minimum, given the logistical problems that we have, are four workers. Two workers are at the headquarters and others distributed up to the divisional level. I have a complete schedule of the officers in each district and constituency. I can table the list, so that the hon. Members can know who is serving them within their respective areas.

Mr. Owino: Mr. Speaker, Sir, I am still a worried man because, when I was a small boy, I used to see these people coming to talk to my father almost every week. We used to harvest big maize cobs. These days the size of the maize cobs has reduced to less than half of what it used to be. If the Assistant Minister is concerned about the agricultural industry in this country, is he going to have as many agricultural extension workers as we should have in every constituency, so that our farmers are informed of the recent and modern techniques?

Mr. Kaindi: Mr. Speaker, Sir, I share the concern of the hon. Member that we do not have enough agricultural extension workers. It is not because we are lacking trained agricultural officers, but it is due to the unavailability of funds from the Treasury to meet the target that we are proposing as a Ministry. If you look at the FAO parameter, they say one extension worker per 400 farmers. In this country, we have one extension worker for 1,250 farmers. That is a drop in the ocean. We are doing what we, as a Ministry, can to try and incorporate other service providers to help us cope with this challenge. At this point, I wish to lay on the table a schedule of the workers as distributed within the constituencies.

(Mr. Kaindi laid the document on the Table)

Mr. Karaba: Mr. Speaker, Sir, Kenya is a very important agricultural country and that is why we have to depend on it. We earn a lot of money in foreign exchange from various crops. One of these crops is coffee. However, we have lost a lot of money due to corruption in high offices, particularly the Coffee Board of Kenya (CBK) and the Kenya Planters Corporative Union (KPCU). Is the Ministry going to consider attaching the extension officers, particularly to coffee farmers?

Mr. Kaindi: Mr. Speaker, Sir, we, as a Ministry, are adopting a holistic approach to take care of all crops, be they coffee or cotton. We want them to get the service they deserve from our officers.

Mr. Omondi: Mr. Speaker, Sir, the role of extension workers in crop and animal husbandry is overwhelming. What is the Government policy as regards the recruitment of these extension workers?

Mr. Kaindi: Mr. Speaker, Sir, with availability of money, we are willing to ensure that each farmer is served. At the moment, the policy is to ensure that if we are provided with the necessary funds, we will recruit between 300 to 600 extension workers per year to try and meet this gap.

Mr. Owino: Mr. Speaker, Sir, since you have given me three chances, I have exhausted my questions.

Thank you.

Mr. Speaker: Next Question.

Question No.402

NON-ISSUANCE OF TITLE DEEDS TO
RESIDENTS OF MIWANI DIVISION

Mr. Speaker: Is the Member for Muhoroni not here? The Question is dropped!

(Question dropped)

Question No.449

REHABILITATION OF KAPSOIT-SONDU ROAD

Mr. Keter asked the Minister for Roads and Public Works what plans he has to rehabilitate Kapsoit-Sondu Road whose condition has greatly deteriorated.

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

My Ministry has plans to carry out pavement repairs on Kapsoit-Sondu Road in the 2007/2008 Financial Year. An amount of Kshs4 million has been issued to the District Works Officer, Kericho District, for the maintenance of the road. The length of the road is 34 kilometres and falls within Kericho District. It is classified as C225 and was constructed to bitumen standards in the 2001/2002 Financial Year.

Mr. Keter: Mr. Speaker, Sir, my Question was concerning Kapsoit-Sondu Road. The Assistant Minister has clearly said that in this financial year, this road has been given Kshs4 million, but I know Kshs2 million has been set aside for pavement. I did not ask how much has been set aside for pavement. The road itself is impassable. This is a very important road connecting Rift Valley Province to Nyanza Province. The section in Awasi is also impassable. Could he consider additional funding to this road because Kshs4 million is not enough?

Mr. Sasura: Mr. Speaker, Sir, I share the concern of the hon. Member, but once the funds are availed, the road will be done to that standard.

Mr. Boit: Mr. Speaker, Sir, I think the Assistant Minister is joking when he says that the Ministry will look for funds. Is he aware that there is no road in the whole of western Kenya, particularly in Rift Valley and Nyanza Provinces? This Government is famous for bribing people with districts and everything. The Western Alliance will not give them votes if the roads in the region are impassable. There was a beautiful road between Nakuru and---

Mr. Speaker: Mr. Boit, are you trading roads for votes?

(Laughter)

Mr. Boit: Mr. Speaker, Sir, it is a character of these people! I was saying that there was a beautiful road between Eldama Ravine and Eldoret. Now there is no road; it is past tense! This

is because lorries and buses have deviated from the Molo Road towards Nakuru. It used to take one and a half hours to reach Eldoret using that road, but now it takes half a day. Is the Assistant Minister aware of these conditions which we are being subjected to because of failure of the Government to take care of the needs of the people of Rift Valley?

Mr. Sasura: Mr. Speaker, Sir, the Government does not provide services just to ask for votes. It is the responsibility of the Government to provide the service with or without the votes. My Ministry is aware that the heavy traffic to Kisumu has been deviating to Kapsoit-Sondu Road on account of the current condition of the Sondu-Ahero Road which will also be repaired separately under the Fuel Levy Fund. We all understand that the roads have been in poor state for a very long time. The current Government is doing a lot to put the roads in good condition.

Mr. Bett: Mr. Speaker, Sir, I do note that the Assistant Minister has agreed that the Sondu-Kapsoit Road has deteriorated because of the bad condition of the road between Kericho, Awasi and Kisumu. What plans does the Ministry have to reconstruct the road running from Kericho, Awasi to Kisumu to reduce the load on this road which was not meant for heavy vehicles?

Mr. Sasura: Mr. Speaker, Sir, the amount allocated to this road is enough to repair it. Once the road is repaired, it will be able to take on the traffic which is currently in place.

Mr. Bett: On a point of order, Mr. Speaker, Sir. The Assistant Minister has said that the money allocated for the Kericho-Awasi-Kisumu Road is adequate. How much money is that?

Mr. Sasura: Mr. Speaker, Sir, that amount is in the Printed Estimates. The Question is about Kapsoit-Sondu Road. If the hon. Member would like to ask about a different road, he can put the Question and it will be answered accordingly.

Mr. S.C. Koech: Mr. Speaker, Sir, could the Assistant Minister tell us which policy the Ministry has for the roads they have already contracted? How are they being supervised and when will they be started? So many roads have been given contracts and they are not being done.

Mr. Sasura: Mr. Speaker, Sir, we have enough personnel to do inspection of all the roads that have been contracted. Wherever the roads have been started, inspectors are on the ground to see to it that they are done according to the specifications given in the contract. The roads which have not been started will be done as soon as all the procedures have been put in place.

Mr. Keter: Mr. Speaker, Sir, I would like the assurance of the Assistant Minister as to when the work will start on this road.

Mr. Sasura: Mr. Speaker, Sir, the funds have already been disbursed to the District Works Officer, Kericho District, for the maintenance of the road. Once the funds are received there, the work will start as soon as possible.

Mr. Speaker: Very well. That is the end of Question Time.

POINT OF ORDER

REPAIR OF ELDORET-MOSORIOT -KAPSABET ROAD

Mr. Sambu: Mr. Speaker, Sir, I rise on a point of order to seek a Ministerial Statement and help from the Ministry of Roads and Public Works. Because of the heavy rains - and we thank God for the rains - the whole of Mosop is virtually cut off from Eldoret and Mosoriot. The section of road between Mosoriot and Kabiyeet has been washed away. I want to request the Minister to send contractors to put gravel on the sections which have been made impassable by the rains. Our sick people cannot get to hospitals. The hospitals in the area are Moi Referral and Teaching Hospital, Kapsabet Hospital and Mosoriot Hospital which have become inaccessible

to our people. I would like the Minister to move with speed, send contractors to put gravel on the sections of the road which are bad, on the Mosoriot-Chepterwai Road that is D289 and Road D288 that is Eldoret-Kipkaren Road. The third section is Lelmokwo-Mosoriot Road. They are not long sections, but it has become difficult for vehicles to pass there and people have become more or less marooned. When can he issue the Statement? In the meanwhile, I ask him to send people to the ground to do the work.

Thank you.

The Assistant Minister for Roads and Public Works (Mr. Sasura): Mr. Speaker, Sir, we will give the Ministerial Statement on Thursday, next week.

Mr. Kamotho: Mr. Speaker, Sir, yesterday afternoon the Assistant Minister, Office of the President, Mr. Munya, was to issue a Ministerial Statement which I had asked for. Since we ran out of time because it was a Supply Day, he promised that he would do so, today.

Mr. Speaker: Mr. Munya, are you ready?

MINISTERIAL STATEMENT

POLICE BRUTALITY AT KIRIA-INI TRADING CENTRE

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, on 22nd August, 2007, the MP for Mathioya Constituency, Mr. Kamotho requested for a Ministerial Statement on police brutality at Kiria-ini Trading Centre of Keru Location, Murang'a District. On 17th August, 2007, members of the public reported that there were heightened *Mungiki* activities within Kiria-ini Trading Centre by people believed to be sect adherents. In this operation, 14 suspected members of the sect were arrested and taken before the Senior Resident Magistrate, Kangema. They were bonded to keep the peace for one year by the court.

Following more complaints from members of the public on *Mungiki* activities, another operation was conducted on Saturday, 18th August, 2007, on the main trading centres in the division. During the operation, a total of 46 suspects were arrested. This day being a Saturday the officer in charge released 28 suspects on cash bail. Eight were cleared and released. The rest were taken to court for failing to raise the requisite cash bail. Of the ten who appeared in court, seven of them pleaded guilty and were sentenced. However, three pleaded not guilty and the cases are pending before court.

Mr. Speaker, Sir, of the 28 who were released on cash bail, only ten appeared before court and were sentenced accordingly. However, 18 of them jumped bail and their cash bail was forfeited to the State and warrants of arrest are in force.

On 19th August, 2007, the Assistant Chief of Kiria-ini Sub-Location reported that a body of an unknown person was found by members of the public in a water-logged area 2.5 kilometres away from the area the police undertook the operation. This body had no visible injuries and was suspected to have drowned due to heavy rains in the area. The deceased's body is in Murang'a District Hospital Mortuary, waiting for postmortem. The police operation was a normal one; to arrest and prosecute criminals and in no way was it intended to brutalise the inhabitants of Kiria-ini Trading Centre or its surroundings.

Mr. Speaker, Sir, it is within the police powers to release suspects on cash bail provided they appear before court. The allegations that the police released the suspects after receiving Kshs1,000 from each suspect is not true. In fact, warrants of arrest are out to have the suspects apprehended and brought before court. The operations were carried out in a professional manner. There is no way the police could have used excessive force on Kenyans.

Mr. Speaker, Sir, finally, I would like to assure hon. Members that our police will continue to uphold the rule of law as incidents of misuse of police power will not be tolerated.

The Government is also committed to eradicating corruption not only within the police force, but in the entire Public Service.

Mr. Kamotho: Mr. Speaker, Sir, I would like to thank the Assistant Minister for the answer. However, is he aware that that Ministerial Statement is full of falsehoods? The truth is that the man who was found dead had been beaten by the police. He was beaten and then thrown into the Land Rover. When the police discovered that the man was badly beaten, they threw him out of the Land Rover and left him for dead!

Mr. Speaker, Sir, while I support the police effort to fight crime, I do not support unnecessary harassment of people in the name of *Mungiki*, which in some places is imaginary. This is because there is no way you can identify a young man, even schoolboys, as *Mungiki* or not.

Mr. Speaker: Do you know that you are now debating, Mr. Kamotho?

Mr. Kamotho: Mr. Speaker, Sir, what are the police doing to ensure that whatever they do, they do it with maximum justice and fairness?

Mr. Mwandawiro: Bw. Spika, kuna madai kwamba katika Mkoa wa Kati na mitaa ya mabanda hapa Nairobi, vijana wengi wanaishi kwa hofu sana. Wanahofia kukamatwa na kufungwa na hata kuuawa na polisi wakati wowote ule. Hata kuna madai kwamba vijana wengi wanatoroka kutoka sehemu za Mkoa wa Kati na kwenda pahali pengine. Je, Waziri Msaidizi anaweza kuhakikishia Bunge hili kwamba hakuna ugandamizaji wa vijana na wananchi kwa jumla katika Mkoa wa Kati na mitaa ya mabanda huku Nairobi kwa kuwasingizia kuwa na uhusiano na kundi haramu la *Mungiki*?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, hon. Kamotho claims that the person was beaten by the police and left for dead. However, the report we have is that he could have drowned. Since the body is in the mortuary awaiting post-mortem, I think it will be useful for the hon. Member to wait until it is done. The post-mortems will indicate whether the man was either beaten to death or it was a normal death out of drowning. We could then pick the case from there. If the post-mortem indicates that this person was actually beaten to death, then we will take action.

Mr. Speaker, Sir, the police do not harass people; rather they investigate crime. When they have evidence, they follow those leads. In those particular incidents that I referred to, some of the suspects, when they were taken to court, pleaded guilty on their own volition. Others were bonded to keep the peace. So, there is no unnecessary operation. Whenever the police anticipate that crime could be committed, it is always useful for them to intervene before it is committed. If it is committed, it is even worse. You can see that in all the cases, majority of them have been bonded to keep the peace, while others have cases pending. So, there is no unnecessary harassment because the police have been following the law.

As for Mr. Mwandawiro, the answer is the same---

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

Mr. Speaker: Order, Mr. Munya! What is your point of order?

Mr. Omondi: Mr. Speaker, Sir, is the Assistant Minister in order to mislead this House and to try to avoid the concerns expressed by hon. Mwandawiro? It is a known fact that many youths in Nairobi have been arrested from their residences, locked up in police cells and eventually found dead. I know of Messrs. Badi and "Big Fish", both of whom come from Embakasi. The Assistant Minister should, therefore, come clean and tell us what has become of these gentlemen.

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, that was not a point of order! It was just another expression of concern.

Mr. Speaker, Sir, the specific incidents we have talked about here, in fact, in one of the incidents, out of the 18 who were arrested, eight of them were cleared and released. Four of them were found to be students and they were released. So, if the police were basically

harassing people, they would not have released anyone of them. So, there is this general misconception that the police are harassing people. If you look at most of these incidents, there is always some evidence that some criminal somewhere is trying to commit crime. If the complainant can give a specific incident which they want us to investigate, we will do so. We are not going to follow up general accusations that are not based on any evidence.

COMMUNICATION FROM THE CHAIR

DISALLOWANCE OF FRESH AMENDMENTS DURING COMMITTEE STAGE OF BILL

Mr. Speaker: That matter is now over!

Order, hon. Members! As you realise, we are now going to the next Order, which is the Committee of the whole House on the Statute Law (Miscellaneous Amendments) Bill. I had previously said and directed that only matters appearing on the Order Paper will be dealt with in the Committee of the whole House, but that does not preclude amendments to the existing amendments that have been listed. So, you can actually amend an amendment that is already listed on the Order Paper, but you cannot bring a fresh one. So, let us understand that. Do not attempt to bring a fresh amendment to the Table because the Clerks-at-the-Table have my instructions not to accept that.

Secondly, I will ask our Principal Legal Counsel to be at the Table during the Committee Stage to assist the Chair and hon. Members, if there will be any need for legal advice to the Chair and hon. Members. Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order of Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

Mr. J.M. Mutiso: On a point of order, Mr. Temporary Deputy Chairman, Sir.

(Loud consultations)

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! We are doing some consultations! So, please, bear with us!

(Mr. J.M. Mutiso stood up in his place)

Yes, Mr. J.M. Mutiso?

Mr. J.M. Mutiso: On a point of order, Mr. Temporary Deputy Chairman, Sir. I do not want to appear as if I am challenging the wisdom of the Speaker, but with regard to the Principal

Legal Counsel, I want to know whether--- We are transacting business of the House and, apparently, hon. Members who are supposed to be sitting inside the Chamber, and even the Clerks-at-the-Table, are supposed to be sworn-in. I just want to know whether the Chief Legal Counsel has taken the oath to transact business on the Floor.

The Temporary Deputy Chairman (Mr. M'Mukindia): Very well! We are still consulting on that one!

The Minister for Water and Irrigation (Mr. Katuku): On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Minister! Let me rule on this matter first. We will hold on until we do more consultations to ensure that what has been raised is actually correct. It may as well be a valid point. In the meantime, I shall ask our Principal Legal Counsel to withdraw from the Chamber until we sort out that point that the hon. Member has raised.

(Mr. Nyegenye withdrew from the Chamber)

Mr. Katuku, were you raising a point of order?

The Minister for Water and Irrigation (Mr. Katuku): Mr. Temporary Deputy Chairman, Sir, I wanted to raise a matter on the same issue, but since you have given direction, I will wait for your ruling.

The Temporary Deputy Chairman (Mr. M'Mukindia): Yes, let us make more consultations to ensure that we do the right thing.

(Loud consultations)

Very well! Hon. Members, those consultations confirm that any member of staff can be picked by the Speaker to act as a Clerk-at-the-Table, if he so wishes. It is up to the Office of the Speaker to decide. Therefore, I will ask our Principal Legal Counsel to come back at the Table.

Hon. Members: Where is he?

The Temporary Deputy Chairman (Mr. M'Mukindia): No, I actually asked him to withdraw until we finish the consultations, which was the right thing to do.

(Mr. Nyegenye resumed his seat at the Table)

That matter is now settled and I will now call upon the Attorney-General to move the Bill.

Mr. Bifwoli: On a point of order, Mr. Temporary Deputy Chairman, Sir. If our Principal Legal Counsel is now a Clerk-at-the-Table, he should be in the Clerk's gown like the rest!

The Temporary Deputy Speaker (Mr. M'Mukindia): That is not necessary!

THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL

(Clause 2 agreed to)

Clause 3

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 3 and substituting therefor the following new clause-

3. The amendments specified in the Schedule in relation to-
Commencement of
various provisions

- (a) the National Assembly and Presidential Elections Act,
Cap. 5. shall be deemed to have come into operation on 9th
January, 2003;
- (b) section 58A of the Advocates Act, shall come into operation
Cap. 16 on such date as the Attorney-General may, by notice in
the Gazette, appoint;
- (c) the Traffic Act, shall come into operation on such date as
Cap. 403 the Minister responsible for transport may, by notice in
the Gazette, appoint.

Mr. Temporary Deputy Chairman, Sir, Clause 3 (a) and (b) are, in fact, already in the Bill. The new one is the Traffic Act. It is a new section that we are proposing and which the Minister has to appoint a date when it should become operational. So, the entire Clause 3 relates to the various sections that we are going to amend and giving powers to some of the sections; powers either to the Minister or the Attorney-General as to when they will become operational. The National Assembly and Presidential Elections Act is already there and if we pass it, it will become operational on 9th January, 2003.

(Question of the amendment proposed)

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

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

(Clause 3 as amended agreed to)

*(The Revision of the Laws Act,
(Cap.1) agreed to)*

The National Assembly and Presidential Election Act (Cap. 7)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Clause relating to the National Assembly and Presidential Elections Act be amended by deleting the amendments proposed to the National Assembly and Presidential Elections Act (Cap.7) and substituting therefor the following new amendment-

s.20(1) Insert the following new paragraph in the proviso
in proper numerical sequence-

The National
Assembly and
Presidential Elections Act

(Cap.7).

(iv) where after due diligence it is not possible to effect service under paragraphs (a) and

(b), the presentation may be effected by its publication in the Gazette and in one English and one Kiswahili and local daily newspaper with the highest national circulation in each case.

Mr. Temporary Deputy Chairman, Sir, the whole purpose of this amendment is as follows. Although it was proposed to do away with serving the election petition, it is thought that it is wiser that the petition be served, but that a provision be made that where due diligence fails, it can be effected by publication in the two dailies; one in Kiswahili and one in English and also in the official Kenya Gazette.

(Question of the amendment proposed)

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

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

(Schedule as amended agreed to)

The Temporary Deputy Chairman (Mr. M'Mukindia): Mr. Keter, you do have an amendment under the National Assembly and Presidential Elections Act. Is Mr. Keter here? He is not here!

Mr. Muturi, you had a similar amendment?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the National Assembly and Presidential Elections Act be amended by inserting the following new amendment in proper numerical sequence:-

s.17 Insert the following new subsections immediately after subsection (5):

(6) The concurrence referred to in Subsection (5) shall be communicated in writing to the Speaker of the National Assembly by recognised leader of the political party concerned, naming all members of the party in respect of whom there is concurrence, and the Speaker shall, in writing, notify the Chief Justice accordingly before such members are sworn-in as Ministers.

(7) Any Member of the National Assembly who, having been elected into the National Assembly through the support or as a supporter of a political party, accepts an appointment as a Minister in contravention of Subsection (5) of this section, shall be deemed to have resigned from that party.

Mr. Temporary Deputy Chairman, Sir, my objective is quite clear. I believe that it is in keeping with some of the provisions which are intended to be included in the Political Parties Bill pending before this House.

I beg to move.

(Question of the further amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to oppose this amendment.

An hon. Member: Why!

The Attorney-General (Mr. Wako): It is proposed that if any member having been elected

into the National Assembly through the support or as a supporter of a political party, accepts an appointment as a Minister in contravention of subsection (2) of this section, shall be deemed to have resigned from the party. I am opposing the "deeming" provision. That is, "shall be deemed to have resigned from the political party". This is because Section 40 of our Constitution does not provide for a deeming provision. "Deeming" is a very critical word. It may be recalled that, in this House, there is a deeming provision that as soon as the Leader of Government Business has laid some names on the Table, they shall be deemed to have been elected in accordance with the East African Treaty.

This "deeming" provision went up to the Court of Justice of East Africa and they ruled that there is no section of the Treaty that provides for "deeming" elections. It is either an election or not. Here, you have either resigned or not. Therefore, "deeming" cannot come into operation. It will be *ultra vires* to Section 40 of the Act because Section 40 of the Constitution says that you either resign or not. There is no question of "deeming".

Regarding the issue of writing to the Chief Justice, the fact of the matter is; this is an Executive function and the appointments are done by the President and under the Promissory Oath Act. The Ministers and Assistant Ministers are sworn-in before the President and the Chief Justice has nothing to do with the swearing-in of Ministers, the way he may do with the swearing-in of some commissioners or directors, appointed or elected under some State Corporations Act and so on. On both those grounds, I oppose this amendment.

Mr. M. Kilonzo: Mr. Temporary Deputy Chairman, Sir, I beg to support this amendment. The history of our country in the recent times demonstrates that the time to assert internal political parties discipline has come. I think, my learned friend, the Senior Counsel, has forgotten that since 1992, under Section 1(a) of the Constitution, there is supposed to be a democratic multiparty State. The experience that the Official Opposition has suffered in the last four and a half years is that, it has been raided by the Government so much that it has been diluted beyond recognition.

I think it is unfair for the Attorney-General to assert that merely because Section 40 does not appear to be authorising "deeming" then, therefore, Sections 16 and 17 of the Constitution, can be allowed, yet again, to undermine Section 1(a) of the Constitution. I want to say this: The strength of this country is going to vest in the discipline that is automatically expected of political parties. I differ with him completely on the fact that the Chief Justice has no role to play and yet he is the one who swears-in these Ministers. The fact of the matter is that this amendment is long overdue. It is an amendment that has been debated by the Inter-Party Committee on Essential Reforms. I humbly request that this amendment be accepted and we insert it in the law under Section 17 in order to protect Section 16 of the Constitution so that multiparty democracy can thrive.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I wish to agree with the Attorney-General and the reasoning about the amendment contravening Section 40 of the Constitution. I think that this is a matter that can better come during the final stage of the Political Parties Bill. I am urging my colleague on the other side to reconsider the amendment.

I beg to oppose.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I think the amendment merely seeks to explain the consequences of failing to get the concurrence of the party. We have had it that you must get the concurrence of the party before you can nominate a Member of a party which is not the governing party into your Cabinet. But it has been ignored. I think the gist or the thrust of the amendment is to give seats through to the concurrence. If you do not get the concurrence, then what happens? That is what my friend is trying to bring out, and I think it is in order that we make sure that we do not make law which is impossible. We made laws here under the IPPG and said

that if the Government wants to nominate a Member who is not a Member of Government, then they must get the concurrence of the party. It has been ignored, people have gone to courts and the courts have not given us direction.

Now, today, we are saying: Please, explain to us what "concurrence" means and what will happen if it is not obtained". We are saying that if you do not obtain it, but somebody decides to accept the appointment, then he loses the Membership of the party that nominated him. That is the only way in which to protect multiparty democracy. We have said it before. We are either a multiparty democracy or we are not. We cannot have a situation where we are sometimes a multiparty democracy and at other times a no-party democracy.

I beg to support the amendment.

The Temporary Deputy Chairman (Mr. M'Mukindia): Let me give a chance to Mr. Muite and one more person.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, if you look at Section 16 of the current Constitution, you will see in the marginal note the year 1997. This note came in after the Inter-Parties Parliament Group (IPPG) talks, when Section 16 was amended to say that, subject to any written law, the President can appoint Ministers and Assistant Ministers from amongst Members of Parliament. The written law to which Section 16 was made subject is the National Assembly and Presidential Elections Act. In 1997, after the IPPG consensus, the words "concurrence of the party" were put in the National Assembly and Presidential Elections Act.

The objective of the amendment by the Member for Siakago is to bring to an end "cannibalization" of the Opposition in this House, so that if the Member for Kikuyu becomes the President tomorrow, and his party does not get a majority of Members in this House, he will need to negotiate a structured coalition with a party. That is the only way in which we can strengthen multiparty democracy, and strengthen parties as platforms for advancing democratisation. This is a noble amendment, and it is not right to be told to wait for the passage of the Political Parties Bill.

We debated the Political Parties Bill during its Second Reading Stage. It is awaiting its Third Reading, but it has not been brought here. We do not know when it is going to be brought here. So, let us support this amendment. Even those of us on the Government side of the House need this amendment, because we do not know what the forthcoming elections will bring forth. There is no violation of Section 40 of the Constitution at all. What this amendment is saying is that if you accept an appointment without your party concurring in writing, then you go back for a by-election. You will lose your seat automatically by operation of law.

I beg to support.

*(Several hon. Members stood
up in their places)*

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! We need to make our observations short.

Mr. Kimunya, make it short, please!

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to oppose this amendment although I believe that we all agree with the spirit of the amendment. This is a matter which is already included in the Political Parties Bill. In view of some of the constitutional issues that have been raised, I would like to remind this House that, last week, we made a decision to postpone the debate until issues have been agreed upon.

So, I would urge that, because this is a fundamental issue, we allow some time and get to discuss it within the Committees and bring it next week as we discuss the Political Parties Bill, so that we are very clear. Let us not pass something when we have doubts about its constitutionality,

for example in terms of bringing the Chief Justice into this matter when this is not a matter for that, and not knowing that at the end of the day, we are here to legislate for the future. On that basis, I would urge that we re-look into this matter within the context of the Political Parties Bill, where this matter ideally rests.

The Temporary Deputy Chairman (Mr. M'Mukindia): You will make it short, Mr. Omingo!

Mr. Omingo: Thank you, Mr. Temporary Deputy Chairman, Sir. When it comes to the issue of integrity, and as principled people, we have found that some of us do not know whether we are birds, animals or mammals. That is why this amendment is quite appropriate in terms of containing political nomadism and nurturing multiparty democracy. People must not cheat voters by kind of giving them a body signal and then when they come to the House, they just "cohabit" with other people, who never gave them the mandate to represent them here.

I beg to support.

Hon. Members: Put the Question!

The Temporary Deputy Chairman (Mr. M'Mukindia): Hon. Members, let us deal with this matter. Enough arguments have been advanced. What has come out of those arguments is whether this is the right place to handle the matter. The issue of constitutionality, to my mind, does not arise because, after all, we have the Political Parties Bill, which proposes more or less the same thing. Therefore, that is not an issue as far as constitutionalism is concerned. So, what I am saying is that this amendment is properly before the House.

On that basis, I shall put the Question.

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

*(The National Assembly and Presidential
Election Act (Cap 7) agreed to)*

Schedule

The Temporary Deputy Chairman (Mr. M'Mukindia): Hon. Members, we are going backwards a bit. We had skipped the Schedule.

(Schedule agreed to)

The Temporary Deputy Chairman (Mr. M'Mukindia): Hon. Members, I wish to bring it to your notice that the amendment that was posted on the Order Paper by Mr. Keter has been dropped, because he was not here to move it.

*(Proposed amendment to the National Assembly and Presidential Elections
Act by Mr. Keter dropped)*

The Temporary Deputy Chairman (Mr. M'Mukindia): Hon. Members, there is a notice by Mr. Muite of his intention to move amendments to the Judicature Act.

The Judicature Act (Cap. 8)

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, you will notice from the Report that the Departmental Committee on Administration of Justice and Legal Affairs laid on the Table of the House on 17th July, 2007 that we proposed amendments to the Judicature Act to increase the number of the Judges of the High Court to 75, and that of the Court of Appeal to 15. The Attorney-General himself had proposed that the number of the High Court Judges be stepped up from 50 to 70, and that of the Court of Appeal, from 11 to 14.

When the Bill was committed to the Committee, we invited views as to the criteria. We asked for information; on what basis would the Committee have agreed to the proposal to increase the number of High Court Judges to 70, and not to 60 or to 80? We received information, including statistics, on the ratio of judges to members of the public, and the Committee, instead of recommending to increase the number of High Court Judges to be 70, recommended 75. For the Court of Appeal, we recommended to increase the number to 15 Judges, instead of the 14 Judges recommended by the Attorney-General.

However, there was a very fundamental proviso, which was that the Judicial Service Commission, pursuant to its powers under Sections 61 and 62 of the Constitution, would consult widely, including consulting the Council of the Law Society of Kenya, and that their advice to the President would take into account professional competence of the regional diversity of the Kenyan people and they get high equity.

In the view of the Committee, this is absolutely fundamental. Why? This is because memories are still fresh on the recent debacle relating to the failure to swear three judges after they had gone to State House.

(Applause)

Mr. Temporary Deputy Chairman, Sir, memories are still fresh on the failure to appoint Dr. Rotich after this House---

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Muite! I think you are losing me. We are on page 7, the Judicature Act, Cap.8. That is the amendment you are supposed to move and I think you are moving to matters that are not properly before the House. Please restrict yourself to what we have on the Order Paper.

Mr. Muite: The Committee is withdrawing the amendment which it had proposed. I was giving the reasons why we are withdrawing it. We are doing so because the proviso has been deleted; it is not on the Order Paper and it is not part of the amendment. So, for that reason, if we are not going to take into account the matters that were factored into that proviso, the Committee does not feel able. This independence of the Judicial Service Commission (JSC) is a fiction in this country. We do not want the Judiciary to be packed with incompetent people, who are hand-picked without any measure of verification. It is better to stay the way we are until there is a new Constitution where there will be provisions for verification and vetting of Judges by the House.

So, we, as a Committee, are withdrawing the amendment we had proposed.

(Proposed amendment withdrawn)

The Temporary Deputy Chairman (Mr. M'Mukindia): Since hon. Muite has withdrawn his proposed amendment, I will put the question on the provision of the Bill relating to the Judicature Act.

(The Judicature Act agreed to)

Mr. Sungu: On a point of order, Mr. Temporary Deputy Chairman, Sir. I heard you very well propose the Question and then you proceed to put it to the vote. We had not talked on it! As you were putting the Question---

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Sungu! The person who has brought this amendment to the Floor of the House has dropped it himself. Did you not hear that? Mr. Muite has dropped the amendment, and so that was the end of the matter.

Mr. M. Kilonzo: On a point of order, Mr. Temporary Deputy Chairman, Sir, with utmost respect to the Chair, even when my learned friend, who is a Senior Counsel, Mr. Muite, Chair of the Committee, says that he is dropping the amendment, I believe that this matter is on the Floor of the House. Would I be in order to say that we are entitled, as it the property of the House, to be given an opportunity to comment on the withdrawal and reasons advanced?

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. M. Kilonzo!

Ms. Abdalla: Yes!

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Ms. Abdalla! That is not the way to conduct the business of this House. You know very well that if the matter is no longer before the House, how can you then go on and discuss it? It does not make sense to discuss something that is unreal. That is what it means. Therefore, Mr. Muite, the matter is ended. Please, if you have---

*(Messrs. Muite and Ochilo-Ayacko
stood up in their places)*

Order, Messrs. Muite and Ochilo-Ayacko! We shall move to the next clause!

(Mr. Sungu stood up in his place)

Order, Mr. Sungu!

Mr. Cheboi: On a point of order, Mr. Temporary Deputy Chairman, Sir. You should guide us properly! You should confirm to us that what you have just dropped is the Committee's amendment, so that, therefore, we are going to proceed and discuss the amendment as proposed in the Bill. We have not discussed that and there should be no shortcuts on this! We cannot vote before we even know what we are voting about! So, there is no way we are going to accept shortcuts on this one. We must discuss this one!

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Cheboi!

(Mr. Sambu consulted loudly)

Order, Mr. Sambu! I think the problem is that people are not listening to themselves!

(Mr. Sambu continued consulting loudly)

Order, Mr. Sambu! You are still not listening, and you are going to come up and ask: "Why was it dropped?"

(Mr. Sambu continued consulting loudly)

Order, Mr. Sambu! I think I will throw you out! Please, do not speak to the Chair! I will be able to talk to the other person on the other side on your behalf.

Mr. Muite is the Mover of this amendment. He stood up---

(Mr. Syongo stood up in his place)

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Syongo! Do you know what I am going to say? You are already standing up!

Mr. Muite explained himself at length, and it is very unfortunate that hon. Members were not listening to what he was saying. He was very clear in his mind and he stated, if I understood him correctly, that, indeed, the amendments he would have wanted to bring to this Bill were more than what there is here. If those amendments are not included, he, therefore, was dropping the amendments as proposed on the Order Paper. Therefore, I proceeded to accept that dropping of the amendments. That was done away with.

Mr. Cheboi, that is gone; so, if you wish to discuss the Bill as it is--- We have already voted on it!

(Loud consultations)

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Chairman, Sir. Whatever is on the Order Paper cannot be withdrawn by one person! It belongs to the House; so, you put the Question for us to decide whether we want it to be withdrawn or not. Once you have disposed of that, we will move on to what is in the Bill.

The Temporary Deputy Chairman (Mr. M'Mukindia): Mr. Angwenyi, you are wrong there! The Mover of the amendment is the one responsible. If he wishes to withdraw an amendment, he does so. That is it!

Mr. Sambu: On a point of order, Mr. Temporary Deputy Chairman, Sir. Mr. Muite was moving it as the Chairman of a Committee. The Committee is the property of the House. It is not Mr. Muite's! Usually, the amendments from Departmental Committees cannot be moved by the Departmental Committee. No! It is moved by the Chairman of the Departmental Committee, and I know that they won.

(Several hon. Members stood up in their places)

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! Let me rule on what Mr. Sambu has said. One person at a time, please!

Hon. Members, you have the Order Paper. In whose name is this amendment?

Hon. Members: Mr. Muite's!

The Temporary Deputy Chairman (Mr. M'Mukindia): That settles your question, Mr. Sambu!

Mr. Maore!

(Mr. Muite stood up in his place)

Order, Mr. Muite! Let me deal with the objections one by one!

Mr. Maore: On a point of order, Mr. Temporary Deputy Chairman, Sir. I totally concur that when an hon. Member has withdrawn a proposed amendment, it cannot be transferred to the House generally. Now, the issue is that we are pleading for your judgement to--- Now that we have left the amendment which has been dropped after you had proposed the Question for us to go to the Judicature Act, then the amendment has been withdrawn. The next move was that the Chair moved

that this one becomes part of the Bill before an hon. Member or two could actually have intervened and interrogated the Attorney-General as to say why he is moving this one as it is now. That is what happens!

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! Let us understand one another!

(Mr. Syongo stood up in his place)

Order, Mr. Syongo! I think what hon. Members on this side are saying is that they were not listening when Mr. Muite was explaining why he dropped his---

(Loud consultations)

That is exactly what has happened! Also, you were not paying attention when I put the Question!

Mr. Sungu: You should have proposed it!

The Temporary Deputy Chairman (Mr. M'Mukindia): It was proposed, of course. Obviously!

Mr. Syongo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I think I am on the Floor! I think Mr. Maore is asking you to consider his plea. But even as you consider this plea, there might have been an oversight on exactly the reason why Mr. Muite withdrew the amendment. The fundamental reason is so serious that I think we need to pay some attention to it, which is that the amendment, as it is on the Order Paper, is a misrepresentation. The amendment which Mr. Muite moved, on behalf of the Committee, had a proviso. What is appearing on the Order Paper is a misrepresentation, because it is not the complete amendment which had been proposed by the Committee. So, the question that we should ask, and I am pleading with you to consider it, is that when a Committee of this House has deliberated on an issue, tabled its proposals and submitted its amendments, who then has the audacity to change it and misrepresent it on the Order Paper?

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

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Muite! I think what hon. Syongo is explaining is exactly what hon. Muite explained; that, without the proviso, he sees no need to go ahead with this amendment!

(Several hon. Members stood up in their places)

No! Order! Just a minute! If that is the case, it means that some of us were not paying attention to what hon. Muite was saying. That is exactly what he said! This matter was considered by the Speaker, himself, and he ruled it not in tandem with our Constitution. You can question that. That is up to you, hon. Members. But that was the decision by the Speaker and, therefore, if you do not accept it--- Hon. Muite did not accept this amendment and he, quite correctly, withdrew it. He will try to bring it up in another way on another day.

(Several hon. Members stood up in their places)

Order! Order! Order! Order! Let me give hon. Muite an opportunity to speak again.

Mr. Muite: Thank you, Mr. Temporary Deputy Chairman, Sir. I have no quarrel with your

ruling and I withdrew the amendment. I am not seeking to resurrect it. But the point is this: Our amendment was, in fact, improving on the numbers that were proposed by the amendments by the Attorney-General. So, when my amendment fell by the wayside because it has been withdrawn, it is the right of this House to debate the amendments proposed by the Attorney-General and decide on whether this House will agree to the number of judges being increased from 50 to 70!

Hon. Members: Yes!

Mr. Muite: And for the Court of Appeal Judges to be increased from 11 to 14. That is what we want to debate; the amendment by the Attorney-General! Hon. M. Kilonzo was on his feet when Mr. Temporary Deputy Chairman proceeded, without any debate, to sort of close the debate--

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Muite!

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, we are pleading with you to you allow the House to debate the amendment by the Attorney-General and either agree to amend the Judicature Act by increasing the number of judges to 70, or decline to do so.

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Muite! This is totally unprocedural and you know it! We are at the Committee Stage. This Bill has moved from the First Reading, Second Reading and now, we are at the Committee Stage! All those things you are trying to say now, you should have said them then!

Mr. Angwenyi: We want to vote!

The Temporary Deputy Chairman (Mr. M'Mukindia): And to repeat it again and to make it absolutely clear, I thank Mr. Muite for agreeing with me that he actually withdrew the amendment. Indeed, there is nothing to debate on because there is no amendment! The Bill stands as it was published by the Attorney-General! It is as simple as that!

Mr. Sungu: On a point or order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Sungu! Let us move on to the next clause. The matter has ended! Let us go on!

(Applause)

Mr. Sungu: On a point or order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Sungu!

The Advocates Act (Cap. 16)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Advocates Act be amended-

(i) by deleting the proposed amendments to Section 10 and substituting therefor the following new amendments-

s.10. Delete paragraph (d) and substitute therefor the following new paragraph -

(d) such other person, being a public officer or an officer in a public corporation, as the Attorney-General may, by notice in the Gazette, specify.

Provided that the officers referred to in this section shall not be entitled to charge fees for so acting.

(ii) by inserting the following new amendment in proper numerical sequence -

s.13(1)(b)(i) Delete the words "one year" and substitute therefor the words "eighteen months".

Mr. Temporary Deputy Chairman, Sir, there is already an existing amendment, but after

discussions with the Chairman of the Departmental Committee, we accommodated each other on that issue because both of us are advocates. In fact, we are Senior Counsels. There are only three of us in this House, I think. We agreed, on the phraseology now, which is really to the effect that--- I added, at the behest of the Committee:

(d) such other person, being a public officer.

This is the existing one. I added:

"Or an officer in a public corporation"

The Committee had also stated about the local authorities, but that is already there under the existing law. But it was not specified. The Committee had also proposed a proviso which I agreed to. A proviso that those officers will not be entitled to charge a fee for so acting. Those are advocates who are employed either by local authorities, statutory corporations and so on. When they work there, they should not be entitled to charge a fee like advocates in the private sector. I agreed to that. Mr. Temporary Deputy Chairman, Sir, I beg to move.

(Question of the amendment proposed)

Ms. Ndung'u: Thank you, Mr. Temporary Deputy Chairman, Sir. I would like to propose some amendments to the proposal, as found on the Order Paper on page 7.

Mr. Temporary Deputy Chairman, Sir, it is really important for the Council of the Law Society of Kenya to have the mandate on all matters relating to---

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Ms. Ndung'u! Let us make sure we get exactly where we are. We are on page 2, The Attorney-General has moved an amendment on the Advocates Act, Cap.16.

Mr. Sungu: We have to move one amendment! There are two amendments---

The Temporary Deputy Chairman (Mr. M'Mukindia): Order! You should move one amendment at a time! The amendment which was moved is on page 2 of the Order Paper. After that, we shall dispose of hon. Muite's amendment. So, let us do the Attorney-General's amendment first. It is on page 7.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, could I give some guidance? My guidance is that, as far as Section 10 is concerned, it is really the section as agreed with the Committee. But then, there is another amendment to the Advocates Act, to Section 13 which, in effect, is increasing the pupillage from one year to eighteen months. We did not agree on that amendment. I think we need a decision on whether we can deal with one first and then deal with Section 13. There are two amendments under the Advocates Act proposed by me; one under Section 10 and another one under Section 13.

The Temporary Deputy Chairman (Mr. M'Mukindia): That is okay. I think we shall dispose of the Attorney-General's proposals. One is on Section 10, which is on page 2, and the other one is on Section 13 on page 3.

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

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

The Temporary Deputy Chairman (Mr. M'Mukindia): Now, hon. Muite, you had some amendments on the same Advocates Act, Cap.16 on page 7?

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, Ms. Ndung'u is moving it.

Ms. Ndung'u: Thank you, Mr. Temporary Deputy Chairman, Sir. I am moving the amendment on behalf of the Committee.

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Advocates Act be amended -

(a) by deleting the proposed amendment to Section 25(3) and substituting therefor the following -

Delete and substitute therefor the following new subsection-

"(3) The Council of the Society shall make representations or submit a recommendation to the Registrar with respect to any application made under this section, and any such representations or recommendations shall be taken into account by the Registrar and shall be absolutely privileged".

(b) By inserting the following amendment in proper numerical sequence:-

s.81 Insert the following Subsection immediately after Subsection (2)-

"(3) No rule made under this section shall require an advocate who is a member of the National Assembly or the Speaker and who holds a practising certificate to undergo continuing legal education during his tenure as such member or as the Speaker".

Mr. Temporary Deputy Chairman, Sir, it is proposed to allow the Council of the Law Society of Kenya to have the mandate on matters relating to giving practising certificates for advocates, and the Registrar only to have administrative powers. Further, our amendments are also proposing to exempt Members of Parliament who are advocates, as well as the Speaker, from the requirement of the Law Society to keep on attending seminars because actually, what we do here in this House is to make laws. Therefore, we spend our time making laws and, therefore, we should not be required to go for those seminars in order to get our certificates. That is the rationale for these amendments.

(Question of the further amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I just want to say that I accept this proposal. Are you happy?

(Laughter)

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

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

(The Advocates Act (Cap. 16) as amended agreed to)

The Law Society of Kenya Act (Cap.18)

The Attorney General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Schedule to the Bill be amended-

(d) in the provisions relating to the Law Society of Kenya Act-

(i) by deleting the words "or have at any time previously been" appearing in paragraph (i) of the proviso to the proposed subsection 13(4);

(ii) by deleting the proposed Section 19A.

This amendment came from the Council of the Law Society of Kenya (LSK). Basically, the effect of it is to ensure that persons who stand for chairmanship and vice-chairmanship of the Council of the LSK are from the current sitting members of the Council, and not somebody, say, who was the chairman ten years ago deciding overnight that he also wants to come back and vie. Otherwise, there will be no continuity. There will be disturbance in the smooth flow of the activities of the LSK. So, it is a proposal from the Council of the LSK, which I accept.

(Question of the amendment proposed)

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

*(The Law Society of Kenya Act
(Cap. 18) as amended agreed to)*

The Limitation of Actions Act (Cap.22)

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Limitation of Actions Act be amended by deleting the proposed Subsection(2).

Mr. Temporary Deputy Chairman, Sir, we got very worried about the requirement that a law should apply retroactively. The Constitution gives us guidance on this. In criminal matters, you cannot apply the law retroactively, but in civil matters you can do so. We would have preferred the court to be guided by the Constitution instead of us putting this very dangerous clause in the Limitation of Actions Act. That is the rationale of this amendment.

(Question of the amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, the Mover has correctly stated what the law is, which is, that the Constitution that we have permits retroactive legislation except where that legislation will create new offences. The Limitation of Actions Act does not apply to criminal offences, Penal Code and so on. It just applies to civil matters which the Constitution permits this House to enact retroactively. So, we cannot be opposed on the grounds that it is unconstitutional. The amendment is very constitutional.

Therefore, I oppose the amendment.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I want to state that even during the Second Reading of this Bill, I indicated that I think there is some mischief in the proposed amendment. Why is it proposed that a public officer will be held liable for things that happened during his or her charge? For instance, this proposal says that somebody like the Attorney-General here can be fished from his retirement 15 years down the road and brought to court and told: "You are responsible for this and, therefore, you should pay." This is unfair and it should not be allowed.

I second the amendment.

Mr. M. Kilonzo: Mr. Temporary Deputy Chairman, Sir, this is one of those very few and unusual amendments that are extremely dangerous. If you look at it, part "k" says:-

"Actions, including actions claiming equitable relief, in which recovery or compensation in respect of the loss of or damage to any public property is sought," and it is being applied retrospectively."

I would like to caution those of my colleagues across the aisle that this will touch them more than ever before. If you have abused a Government motor vehicle and you have been in retirement for 20 years, this law can be applied to come and catch you. Do not accept this law. It is unconstitutional and unwarranted. There is no need to insert it, because the Government is always awake. The wonderful Attorney-General and Ministers who understand the law ought to be able to move with time.

Mr. Temporary Deputy Chairman, Sir, I beg to support.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. The proposal in the law, as has been ably stated, only covers civil cases. What the law simply says is this: That the statutes of limitation will not apply to civil cases. It is not everybody who will be followed. If you have looted public funds, then you cannot waive the Statutes of Limitation. Today, people are being prosecuted for crimes that they committed more than six years ago. But even if you successfully prove those prosecutions, you may be unable to recover the property. Kenyans are asking about the Kshs150 billion which some people unjustly enriched themselves with from the public coffers. The law is saying "so long as the money relates to public coffers" and not other civil debts; *mali ya umma*, if I may put it that way. This is to enable the State to recover from those who loot from the public. Nobody is exempted. So, let us not instil fear in people. It means that the case will have to be proved against that person. It is not a case of one just being made to pay before proof is made. So, this Parliament ought to decide whether we are for the recovery of public funds or we are standing for those who have unjustly enriched themselves.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I would like to oppose that amendment and, for the first time, agree with hon. Karua. The reason is very simple; I cannot stand criminals and looters. Cases relating to the Goldenberg and Anglo Leasing scandals are still on. If we put a limitation, we will never recover this money. Recently, it was reported in the Press that these fellows have taken billions of money from Kenyans and they will get away with it.

Let us oppose that amendment in good faith so that the public will have a chance to recover any money stolen from them. The Memorandum of Objects and Reasons under this Bill states that the Bill proposes to amend the Limitations of Actions Act to exclude suits for recovery of compensation with aspect of damage or loss of any public property for purposes of the Act. Nothing could be nobler than that.

Thank you.

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

*(The Limitation of Actions Act
Cap. 22) agreed to)*

(The Chattels Transfer Act agreed to)

The Penal Code (Cap. 63)

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the provisions relating to the Penal Code be amended-

(a) in the amendment to Section 77, by deleting the proposed amendment to sub-section (1);

(b) by deleting the proposed new Section 102A and substituting therefor the following penalties:-

102A. A person convicted of an offence under sections 99, 100, 101 or 102 of this Part shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.

(c) in the proposed amendment to Section 127 by deleting the proposed subsections (2) and (3) and substituting therefor the following-

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.

(d) in the proposed amendment to section 331 by deleting the proposed subsections (2) and (3) and substituting therefor the following-

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.

(e) by deleting the proposed amendment to section 182.

Mr. Temporary Deputy Chairman, Sir, I would like to propose the above amendments to the proposals being brought by the Attorney-General to Section 77(3). On the Order Paper, it is written as Section 77(1). That is a typographical error. It should be Section 77(3). This particular Section talks about subversive activities. The proposal by the Attorney-General wants to introduce, as subversive activities, things that are intended or calculated to incite feelings of contempt, hatred, hostility, violence or discrimination among the different ethnic communities, religions or races in Kenya.

The principle of what the Attorney-General is trying to propose is well understood. We must---

(Loud consultations)

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! There is a very important issue that Ms. Ndung'u is trying to raise. It is wise for us to listen!

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, the proposal by the Attorney-General is obviously trying to talk about hate-speech. I would like to draw the attention of hon. Members to the Section as it currently reads. The proposal which is being made by the Attorney-General is to replace Sub-section 77(3)(e), which already contains a proviso on hate-speech. It also has a provision to protect those who are well-intentioned and well-meaning. In other words, the proposal by the Attorney-General wishes to take away the proviso that protects those who are sincere in their freedom of speech. Therefore, the proposal is suspicious. It is not necessary. I would like to urge the hon. Members to support this amendment to ensure the deletion of the proposed new Sub-section 3.

The Temporary Deputy Chairman (Mr. M'Mukindia): I wish to now propose---

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I am---

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Sungu! The question has not even been proposed!

(Question of the amendment proposed)

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, allow me to apologise for being up too soon. The other time, you put the Question without recognising me.

I would like to support that amendment by the Committee through Ms. Ndung'u. In the

Memorandum of Objects and Reasons as given by the Attorney-General, the proposed amendments by the Attorney-General criminalise hate-speech by labelling it as subversion. When I hear the word "subversion" in any law, I get allergic. Some of us in this country have suffered when people in power used every excuse whatsoever to put people in prison for subversion. This could be a way of taking us back to the past, when people used to be detained without trial!

I beg to support that amendment.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I support the amendment, but for different reasons. There is already a proviso in the current Penal Code that protects those people who make certain statements which may be truthful or honest, but may irritate or disturb you. But still, are honest and straightforward. But as it is now, if I was to say somebody is a fool, and we are in a public rally, I will be jailed for ten years and be fined Kshs1 million. If I irritate or disturb somebody--- If I say something a little obscene like the four letter words, I may be jailed for ten years and fined Kshs1 million. Why did the Attorney-General find it necessary to remove the proviso that, otherwise, protected honest debate and utterances? I support this view because it may be used to terrorise people in the Opposition! They will take us back to those days of the Nyayo Chambers!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I want to oppose the amendment and urge hon. Members to very carefully read what is intended to be deleted. With your indulgence, a clause is intended to be deleted and a new paragraph added to make it an offence to use words intended to incite feelings of contempt, hatred, hostility, violence or discrimination, not against one person, but among the different ethnic communities in Kenya. It is, therefore, protecting communities so that, when I want to fight one person, I do not insult or incite hatred of an entire community. If you wish to fight me, you then do not incite hatred among the entire community that I come from. You deal with me as a person.

If we agree to delete this amendment, then we are being oblivious of what is happening. There are dangers of hate-speech. It is calculated to incite hatred among ethnic communities. Even though hon. Members had a trip to Rwanda, we are forgetting what hate-speech did to that country. I urge hon. Members to reject the amendment.

Mr. M. Kilonzo: Mr. Temporary Deputy Chairman, Sir, I beg to support the amendment. One of the main reasons for this is: If you look at the words "contempt, hatred and hostility", it will occur to this House that those are words that are always personalised. They are rarely ever used objectively. It is often that when you use words that somebody thinks that they are intended to put him or her in contempt, the other person who is speaking thinks that he or she is merely joking. Sometimes, people become so intense that they think they are hated, when they are actually not. That applies equally to communities. This amendment is going to expose our country to the danger that the Attorney-General thinks that he is going to eliminate, because there will be extensive misunderstanding between the communities. There is sufficient legislation in this country to protect communities. The Constitution already says clearly that you cannot discriminate any person on account of gender, ethnicity or otherwise. This amendment is superfluous. It is merely trying to be used particularly during an election year, to be able to pinpoint people particularly those in the Opposition, for purposes of prosecution.

I beg to support the amendment.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I am surprised that this House should actually be deleting an amendment that is meant to bring some credit to our laws, and to protect the communities from a few individuals whose passion is to incite other people to rise above those communities. I believe that, as Ms. Karua mentioned, if we read what is being proposed, against what is existing within the law, it is actually a paraphrasing of what is already contained within the law and making it more clear. It is against inciting people to hostility, inciting people to violence and discrimination against communities. Against the background of what is happening in Mt. Elgon District - communities being incited against one

another - against what happened in Rwanda, I am surprised that this House would actually be wanting to delete something that is helping this country in terms of moving forward, and ensuring that no Kenyan shall stand out there and incite one community against another.

I beg to oppose the amendment.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, the proposed amendment by the Attorney-General is seeking to remove this clear provision - a proviso in the law. It reads as follows:-

"Provided that the provisions of this paragraph do not extend to comments or criticisms made in good faith and with a view to the removal of any causes of hatred or enmity between races or communities."

Mr. Temporary Deputy Chairman, Sir, that is what they are seeking to be removed. They are seeking to replace it with what? It says:

"Any person who uses words, gestures and actions that annoy, alarm or abuse a person".

It is not about a community.

So, Mr. Temporary Deputy Chairman, Sir, we are being misled that this is going to protect communities. It is targeting individuals. It says again:

"Any person who insults, taunts or challenges a person in a manner likely to offend--"

Another one reads:

"Any person who uses obscene or profane language to intimidate a person".

So, it is not about any community. I am reading the amendment as contained in the Statute Law (Miscellaneous Amendments) Bill which is what the hon. Ms. Ndung'u is saying we should delete.

The Minister for Finance (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Member in order to mislead this House about a different amendment and yet we are discussing a very specific amendment to Section 77(3)?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, hon. Kimunya is trying to go into an area that he is fairly--- What this proposal seeks to do is to remove this proviso which I have read out.

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Muturi! Are you reading from the same script as everybody else? Are you referring to the same Bill? Apparently, the proviso seems to be different from what the Minister has said.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I am still right to say that the proposed amendment seeks to delete this proviso and that is why we are saying: "No, this proviso should remain as it is in the Penal Code Act".

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, it is quite clear that the proposed amendments, both my amendment and the amendment of hon. Ndung'u, are specific referring to Paragraph "e". Now, as has been stated, the proposed amendment is to make issues even clearer because the way it reads now, the current law is calculated to promote feelings of hatred and enmity. That is all. It is very vague. What is hatred? What is enmity? These are very vague notions which are so vague that they have permitted the abuse of this paragraph which the hon. Members are complaining about. The complaints that are emanating from both sides of the House are complaints about misuse of this particular section because of the vagueness of what is "hostility" and "enmity". Therefore, what the proposed amendment is trying to do is to clarify issues. We are not talking just enmity; but we are talking about violence. We are talking about hostility. We are not talking about just a community. What is a community? We are dealing with something more specific and that is an ethnic community. Let us call a spade a spade. So, this section is actually clarifying and making it clear, so that it is not subject to any abuse.

Mr. Temporary Deputy Chairman, Sir, comments have been made on the issue of the

existing proviso. Clearly, the existing proviso is superfluous. If the intentions are good, then it cannot be inciting. The case cannot be proved in court because the first issue that has to be proved in court, if this House enacts this, is this intention which is calculated. That has to be proved completely before the court of law. If the intention is noble, in good faith and, in actual fact, to revoke the hostilities, then how can you ever be successfully prosecuted?

So, I oppose the amendment by hon. Ms. Ndung'u.

(Applause)

The Temporary Deputy Chairman (Mr. M'Mukindia): Hon. Members, for avoidance of doubt, Section 77, Paragraph 3(e), comes under "A" of the proposed amendment, but further down there is "b", "c", "d" and "e" which are other amendments. Hon. Muturi, can we dispose of the whole matter or we do one at a time?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, let us do them one at a time.

The Temporary Deputy Chairman (Mr. M'Mukindia): I think I will give hon. ole Ntimama a chance to just say one word and then I will put the Question.

Mr. ole Ntimama: Thank you, Mr. Temporary Deputy Chairman, Sir. I want to support the amendment. I am saying this because I think Parliament must be very careful when it passes or amends some of these laws because Kenya is one of the most unequal countries in the world.

(Applause)

When you talk about communities, we know very well that certain communities have been oppressed, suppressed and humiliated by other communities. I want to say that this is going to muzzle the rights of the people who speak against those ills that certain communities are perpetrating on others. If we now come to Parliament and use a law to give those groups powers to oppress and definitely to muzzle the rights of the people who speak for their rights, then we are wrong. The whole world today is about people's rights, individuals' rights and communities' rights. These are the things that we want to muzzle here and kill everything. If Parliament does that, some people will say: "Oh, you are stepping on me, please, leave me alone. I am also a human being", and then you will say: "Co-operate, I am going to step on you further". That is exactly what this amendment is saying. I know it is actually aimed at certain people and communities and it is oppressive.

(Applause)

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

Hon. Members: Division! Division!

The Temporary Deputy Chairman (Mr. M'Mukindia): Very well! Ring the Division Bell!

*(The Division Bell was rung)
(Loud consultations)*

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! Order! Order! Order! We are now ready for the Division. Let us resume our seats, please. Members, please resume your seats! Order, Mr. Kimathi, Ms. Abdalla and the Attorney-General. Please, resume your seats! We are ready for the Division. Mrs. Chelaite, please resume your seat. Let us now

proceed with the business of Division.

The Tellers are as follows: For the Ayes, we have Mr. Twaha and Mr. Keter. For the Noes, we have Mr. Wambora and Mr Ahenda. The Noes are to my left; the Ayes are to my right. Hold on, for those who wish to abstain, please record your names with the Clerk-at-the-Table.

The Question that we are considering is with regard to the Penal Code, (Cap. 63). It reads:-
THAT, the provisions relating to the Penal Code be amended:-

(a) in the amendment to Section 77, by deleting the proposed amendment to Subsection 3.

That is in the Bill brought by the Attorney-General.

You may now proceed to vote.

DIVISION

(Question put and the House Divided)

(Question carried by 48 votes to 41)

AYES: Ms. Abdalla, Messrs. Ahenda, Bett, Bifwoli, Cheboi, Chepkitony, Ivuti, Kajwang, Keter, Khamisi, Khaniri, Dr. Kibunguchy, Messrs. Kilonzo C., Kilonzo M., Kipchumba, Koech S.C., Koros, Kosgey, Ligale, Maj. Madoka, Messrs. Omingo, Maitha M.M, Marende, Masanya, Muite, Muturi, Capt. Nakitare, Mr. Ndolo, Ms. Ndung'u, Messrs. Ochilo-Ayacko, ole Ntimama, Nyagah J., Eng. Nyamunga, Dr. Oburu, Messrs. Ogur, Ojaamong, Ojode, Omondi, Archbishop Ondiek, Messrs. Oparanya, Samoei, Sambu, Dr. Shaban, Messrs. Sirma, Sungu, Syongo, Were, Wetangula.

Tellers for Ayes: Messrs. Keter and Twaha.

NOES: Mr. Awori, Mrs. Chelaite, Messrs. Githae, Kagwe, Kaindi, Kamama, Kamanda, Karaba, Kariuki, Ms. Karua, Messrs. Karume, Katuku, Kimathi, Kimunya, Koech J.K., Kombo, Kombe, Konchella, Kuria, Prof Maathai, Messrs. Maore, Miriti, Mohamed A.C., Muchiri, Mrs. Mugo, Messrs. Muiruri, Munya, Muriithi, Muriungi, Murungi, Ms. Mwau, Messrs. Mwenje, Mwiraria, Ndwiga, Nyagah N., Onyancha, Serut, Sasura, Twaha, Wambora and Dr. Wekesa.

Tellers for Noes: Messrs. Wambora and Ahenda.

ABSTENTIONS: Ms. Mbarire

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Penal Code be amended by:-

b) deleting the proposed new Section 102A and substituting therefor the following penalties: 102 A. A person convicted of an offence under Sections 99, 100, 101 or 102 of this Part shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.

The new Section 102A as proposed by the Attorney-General is to spell out the penalties for persons who are convicted for the offences---

(Loud consultations)

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! There is, again, a very important amendment being moved. Please, let us listen.

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, the proposals by the Attorney-General in the new Section 102A are intended to spell out penalties for persons convicted for the offences of abuse of office. Currently, the penalties are considered very low because the offences are considered misdemeanours. In the Departmental Committee on the Administration of Justice and Legal Affairs, we agreed with the Attorney-General that these offences should become felonies. But our proposal is that we disagree with him about the penalties. The Attorney-General is

proposing as penalty a fine or a jail sentence which, lies very well with the Committee. What we disagree with is that he is proposing an additional fine, so that if a person is convicted, not only does he face a jail sentence but he also pays two fines. We find this to be double jeopardy, unconstitutional and, therefore, we have re-worded it, so that the amendment states that the person convicted of abuse of office shall be liable to a fine not exceeding Kshs1 million, or imprisonment not exceeding ten years or both. We had done away with the additional fine. That is the rationale for this amendment.

(Question of the amendment proposed)

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I wanted to support the proposed amendment because, really, if you have fined somebody, jailed him or done both, and then you put an additional fine, that is an additional burden. That would mean that it is now persecution and not prosecution. But we also have other provisions of the law under which you can recover corruptly acquired property. So, we do not have to bring it here. I think this thing called "additional fine" sounds very oppressive.

I support.

An hon. Member: Dictatorial!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I just want to explain the purpose of this amendment. First of all, you will notice that what we have just approved in Sections 99 to 101--- All those offences come under what we call "abuse of office"! You know what abuse of office is all about. Some of them also come under what we call "offences against public authority"! They all involve offences that affect public funds adversely. Where you have stolen or, through your actions, the public has lost money and, in some instances actually, you have received the money and it is in your pockets. This House has already passed similar offences under the Anti-Corruption and Economic Crimes Act which, under Section 48 of the Act, the additional monetary fines are provided for. They are deliberately punitive because they are focused on the amount you may have pocketed so that, at the end of the day, you do not get any benefit out of what you may have pocketed, or out of what you may have caused the public to lose.

The offence of abuse of office appears both under the Penal Code and also under the Anti-Corruption and Economic Crimes Act. There are many other offences of that nature which also appear under both Acts. Now, the whole purpose of what is described as "additional fines" under the Anti-Corruption and Economic Crimes Act is to harmonise so that, whether you are charged under the Penal Code or under the Anti-Corruption and Economic Crimes Act, at least, you face the same penalties. So, that is the intention and purpose of these amendments. It is very technical in nature, but it is the harmonisation of our laws.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the view that the Clause is oppressive. One must stop to consider how oppressive looting public funds is. It causes death when people cannot get drugs in hospitals; when people cannot get essential services. It literally kills the economy and it causes extreme hardship, including death to the people of a country. So, the message being given by the second penalty is that corruption or economic crimes will not be tolerated.

Mr. Temporary Deputy Chairman, Sir, I want to give an example. If a person has been charged with an economic crime where he or she has looted Kshs1 billion and he is fined Kshs1 million, that does not really make sense. You can go to jail for a short period, pay Kshs1 million and then come out to enjoy the looted wealth. But since the rationale is to put double the amount that you corruptly received or unjustly enriched yourself, it is a message that it does not pay to abuse public office.

Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment.

Mr. M. Kilonzo: Mr. Temporary Deputy Chairman, Sir, I believe the hon. Attorney-

General, and my good friend, the learned Minister, have mis-apprehended the objection we are raising in supporting this amendment.

Mr. Temporary Deputy Chairman, Sir, as you will very well know, countries like, for example, the United States of America (USA), on laws of racketeering, go even further and order that proceeds of organised crime or racketeering can, in fact, be forfeited to the state. What we are opposing is the uncertainty in punishment law. These two clauses, "a" and "b", are creating that uncertainty. All that we are saying is that the words "an additional mandatory fine" creates uncertainty, particularly when an advocate is advising an accused person. It creates one of the biggest problems in International Human Rights Law; that is, cruel and unjust punishment, where it appears that one single offence is carrying two sentences. In fact, if you look at "a" and "b", it is almost three or four sentences. We are not opposed to people who have looted being punished. We are not opposed to the country creating a punishing law against abuse of office, although, as the country is well aware, the Government has been unable to convict anybody of those offences because of the way it has been drafted. We want to stop this honourable Chamber from making a law that will be shot down for creating uncertainty and for creating cruel and unjust punishment.

Mr. Temporary Deputy Chairman, Sir, I beg to support the amendment.

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

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

The Temporary Deputy Chairman (Mr. M'Mukindia): Ms. Ndung'u has amendments on page 8.

(Loud consultations)

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! Order, hon. Members!

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, may I seek your guidance?

The Temporary Deputy Chairman (Mr. M'Mukindia): Proceed!

(Ms. Ndung'u consulted the Temporary Deputy Chairman)

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions of the Penal Code be amended-

c) in the proposed amendment to Section 127 by deleting the proposed Sub-Sections (2) and (3) and substituting therefor the following-

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.

d) in the proposed amendment to section 331 by deleting the proposed subsections (2) and (3) and substituting therefor the following-

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.

Mr. Temporary Deputy Chairman, Sir, the proposed amendments are to Sections 127 and 331. Again, the amendment that the Committee is proposing is because there is an additional fine. So, the same reasons that I had talked about in the new Section 102(A) are the same rationale for our amendments in Sections 127 and 331. There are additional fines which, we believe, are unconstitutional.

(Question of the amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, this amendment is basically the same amendment that the House has just decided on. But I just want to take this opportunity to make it clear that the additional fine is really quantifiable. It is not vague as has been stated, because under "a," it states that the fine shall be equal to two times the amount of the benefit or loss which has been incurred. So, a definite amount is there. If the loss is Kshs1,000, it will be Kshs2,000 and if the loss is Kshs2 million, it will be Kshs4 million, and so on. But, basically, it is the same argument.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment for the reason that I find it very difficult to sympathise with predators to public coffers. My sympathy must be with the public and the poor who are further impoverished, and unto whom death is caused by unjust enrichment of a few. This is in the intention of the law as proposed by the Attorney-General.

I beg to oppose.

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

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

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, on behalf of the Committee on Administration of Justice and Legal Affairs, I beg to move:-

THAT, the provisions relating to the Penal Code be amended-
(e) by deleting the proposed amendment to Section 182

Mr. Temporary Deputy Chairman, Sir, I would like to read the original Section 182 to the hon. Members so that they can understand the amendment.

Section 182 for idle and disorderly persons. It says:-

"Where one is a common prostitute, a beggar, a person who is causing a breach of peace or a person who is committing an indecent act, a person who solicits for immoral purposes, all those persons are deemed to be idle and disorderly and are guilty of a misdemeanour and imprisonment---"

Mr. Temporary Deputy Chairman, Sir, the Attorney-General is proposing to include, as idle and disorderly persons, any person:-

- (i) "uses words, gestures and actions that annoy, alarm or abuse a person;
- (ii) insults, taunts or challenges a person in a manner likely to offend;
- (iii) uses obscene or profane language to intimidate a person; and,
- (iv) disturbs or irritates, especially by continued and repeated acts."

We became very concerned mainly because the circumstances are not clear. For example, will this apply to family members who are having a family detach? Will it apply to hon. Members as we lobby one another and, perhaps, annoy one another? Therefore, I think that this particular

proposal is really not well placed.

I move that we delete this proposal by the Attorney-General.

*(Question of the amendment
proposed)*

Mr. M. Kilonzo: Mr. Temporary Deputy Chairman, Sir, thank you for allowing me to rise in support of the amendment.

I will give one example and, please, forgive me. I have said in this House that when an hon. Member or even Minister either walks in or stands up to speak, you hear some other hon. Members hissing in a peculiar manner.

An hon. Member: Sssssh!

Mr. M. Kilonzo: Exactly! I would like to say that if that happens, the hon. Member will be committing an offence under this amendment.

Mr. Temporary Deputy Chairman, Sir, I beg to support and suggest that we delete this proposed amendment because it is not only unfair but, in fact, a bad law.

Thank you.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, what bothers me is why we had to define an "idle and disorderly" person in this manner. This is because an idle and disorderly person has already been defined as a prostitute, a beggar and so on. Now, they want to expand the definition of an idle and disorderly person to include anybody who gestures, disturbs, irritates and alarms another person! What are these things?

I beg to support.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, this amendment was brought here to cause the Members of Parliament to smile a bit.

I support the amendment.

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

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Section 170 be deleted. Mr. Temporary Deputy Chairman, Sir, I took the opportunity to go through this Bill to seek to expunge from our laws some obnoxious provision in the laws. My amendment is seeking to delete Section 170 of the Penal Code, which provides as follows:-

"Any person who wilfully and by fraud causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief is guilty of a felony and is liable to imprisonment for a term of ten years."

An hon. Member: Ehhh!

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

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Abdalla! Hon. Members, I want to direct this to hon. Abdalla: The hon. Member has not completed moving the amendment. Therefore, you do not know what he is likely to say at the end. Do not predetermine what he is likely to say. Listen and I will give you time to comment on whatever he is going to say.

Hon. Muturi, please, continue!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I think it is important that we delete this section from our laws because, as we can see, it actually kind of discriminates against men as

the only ones who are capable of deceiving women. Also, it actually places women in a class of their own; that they are the only ones who are capable of being deceived and made to believe that they are lawfully married. It is for that reason that I think our laws should not have this kind of obnoxious sections.

I beg to move.

Ms. Abdalla: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is it in order for the hon. Member to use the Floor of this House to legislate on issues that he has not declared his interest in?

Hon. Members: Aaahhh!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I do not know what interest I need to declare on this issue! It is just a bad law, which we want to remove!

Hon. Members: You are a man!

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! I believe matters that relate to men and women are of interest to all of us!

(Question of the amendment proposed)

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, I stand to oppose this amendment. But I would like, as I am opposing, to request hon. Members to look at my proposed amendment which may be coming after this one. It is contained on page 11 of the Order Paper. I agree with the hon. Member for Siakago Constituency that this particular Section does discriminate against men. It is true that this law has been in our books for a long time. It is important that laws in this country apply both to women and men equally.

Mr. Temporary Deputy Chairman, Sir, the reason I want to oppose this amendment is because this Section of the law is about fraud. Fraud is a very serious thing whether it is between men and women or employers and employees. Therefore, let us not wish away the fact that, we will want to do away with the offence of fraud. What is important is for us to amend this Section, so that we also state that any woman who commits fraud by causing a man to believe that she wants to marry him and forces the man in those circumstances to have sex with her, she should also be guilty of a felony.

Mr. Temporary Deputy Chairman, Sir, this is a very serious issue in terms of family values--

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Hon. Members: *Wacha hayo maneno!*

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! Please, let us listen to Ms. Ndung'u!

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, we all know that we have cases of couples that come together in a come-we-stay arrangement. They live together on the promise of marriage and have children. After that, the family breaks apart. Eventually, both partners suffer. I want to appeal to hon. Members, therefore---

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

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Cheboi! Allow Ms. Ndung'u to finish! We should not try to curtail people's---

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

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! While we are all enjoying the light-heartedness of this debate, we ought to give hon. Members a chance to say their piece. We do not have to agree with them. But let them say their piece!

Please, continue, Ms. Ndung'u!

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, the situation as it is, there is a problem with our marriage laws. The Government has said that it is going to bring those marriage laws. But until those Bills come to Parliament for us to discuss, it is important for us to retain this

law. It is this law that guides our values in society and provides for our family values. I want to appeal to hon. Members, therefore, to oppose the deletion as proposed by Mr. Muturi, and accept an amendment that will make men and women equally responsible for the offence of fraud.

I beg to oppose.

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! I want to bring to the attention of the hon. Members that, indeed, Ms. Ndung'u has an amendment appearing on the Order Paper. Therefore, perhaps, we should wait until we finish with Mr. Muturi's amendment.

Let us hear from the Attorney-General!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose complete deletion. But I want to put on notice that I will be supporting Ms. Ndung'u's amendment for the following reasons:-

Initially, this clause, although it has not been used for many years, was meant to protect young girls from being lured by sugar daddies--- People like us who are sitting around here!

(Laughter)

This was protecting them from being deceived: "That I have lawfully married you", whereas you may be having somebody in your constituency who is your lawful wife. But the society has changed. Now, young boys are being lured by sugar mummies. They can also be deceived and so on. So, Ms. Ndung'u's amendment, which is now restoring the balance, is the right thing to do.

So, I oppose this amendment, but I will be supporting Ms. Ndung'u's amendment.

Mr. Cheboi: Mr. Temporary Deputy Chairman, Sir, from the outset, I support the amendment by my friend, Mr. Muturi. On the issue of the amendment that has, particularly, been proposed by Ms. Ndung'u, she talks about a come-we-stay marriage. That means those are two people who are defrauding each other. It is come-we-stay, and not a come-you-stay! It is clear that she has actually lost the intention of her own amendment.

Whereas I support Mr. Muturi's amendment, I totally oppose the one by Ms. Ndung'u because it involves two people defrauding each other! She has said it herself!

(Applause)

The Temporary Deputy Chairman (Mr. M'Mukindia): Yes, Mr. Githae!

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

The Temporary Deputy Chairman (Mr. M'Mukindia): What is your point of order? Mr. Githae, let us hear Mr. Wetangula's point of order.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, we are getting mixed up on procedure. Mr. Muturi has moved an amendment. We have not disposed it off. But we are arguing as if we are dealing with both his amendment and Ms. Ndung'u's amendment. Yet, when you put the question, we are not going to vote on them together. We need to dispose of Mr. Muturi's amendment and then move on to the one by Ms. Ndung'u.

The Temporary Deputy Chairman (Mr. M'Mukindia): Mr. Wetangula, that is exactly what we are doing!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): No! No!

The Temporary Deputy Chairman (Mr. M'Mukindia): Do not say no! If you are the one who is confused, the other hon. Members may not be confused!

(Applause)

The truth of the matter is: What is properly before the House is Mr. Muturi's amendment. I gave Ms. Ndung'u a chance to make a contribution. I think she took advantage of that. Let us hear from Mr. Githae!

The Assistant Minister for Transport (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I want to be one of the few hon. Members who oppose Mr. Muturi's amendment for the following reasons:-

One, let us look at the statistics. How many women have defrauded men?

Mr. Cheboi: Njoki!

(Laughter)

The Assistant Minister for Transport (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, there is an hon. Member who is imputing improper motives on another hon. Member. What I am saying is: Let us be practical. If you look at the statistics, this is not practical. I have yet to come across a man who has been misled that he is married by a woman. It is not possible!

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Githae! Please, address the Chair!

The Assistant Minister for Transport (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, what I am saying is: Let us oppose Mr. Muturi's amendment, so that we can move on to the one by Ms. Ndung'u. I have yet to come across--- I would like an hon. Member to confirm to me whether there is a male hon. Member who has been misled to believe that he is married by a woman, when he is not married.

The Temporary Deputy Chairman (Mr. M'Mukindia): Let us hear from a lady. Yes, Mrs. Mugo!

Mr. Muite: On a point of order, Mr. Temporary Deputy Chairman, Sir. As you can see from the clock, it is already 6.00 p.m. We normally adjourn at 6.30 p.m. We are still quite some distance from considering all the amendments that are on the Order Paper, particularly considering that we may have to go to Division again. Would I be in order to, perhaps, request the Leader of Government Business to move that we extend the hours of sitting? We want to finish this business! We can only finish if we extend the hours!

(Applause)

The Temporary Deputy Chairman (Mr. M'Mukindia): Hon. Members, I have heard what Mr. Muite has said. But I think the Attorney-General is in charge. If he wishes to move that proposal, he can do so. He is the one in charge of the Bill after all!

Proceed, Mrs. Mugo!

The Assistant Minister for Education (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I want to strongly oppose this amendment. I would appeal to the hon. Members to treat this matter seriously. I do not believe it is a laughing matter. More often than not, we have seen very many cases where women are defrauded. Most of them, would be these hon. Members' daughters. We know the majority of poor people in this country are women. Most of the time they are defrauded to believe that they are married. The man will do it intentionally and take advantage of the poverty of that woman.

Mr. Temporary Deputy Chairman, Sir, another point is that men are more educated than women and they take advantage of women. I would oppose this amendment very strongly. I would also strongly support hon. Ndungu's proposed amendment.

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

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, I want to say that there was a point of order that was raised by Mr. Muite about whether we shall be extending time and we have not heard the answer.

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Ndung'u! I referred that matter to the Attorney-General since he is in charge.

Ms. Ndung'u: Okay, Mr. Temporary Deputy Chairman, Sir. I think in view of the mood of the House, I am saddened that if I move my amendment, it will fail. However, I want to say that I think that we need to revisit this issue another time.

Hon. Members: Which issue!

Mr. Khamasi: On a point of order, Mr. Temporary Deputy Chairman, Sir. In view of what has just transpired by Mr. Muturi having moved that amendment to scrap off a bad law from our books, it means, therefore, the amendment that hon. Ndung'u wants to propose is null and void because it is no longer there.

The Temporary Deputy Chairman (Mr. M'Mukindia): Okay, that is true, but she has not moved it. Let her move it and then we make a decision.

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

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Sungu! Let us hear what hon. Ndung'u has to say!

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, may I make a correction because I did consult the Clerk's office and the Speaker when I was wording this amendment and I knew about hon. Muturi's amendment? I think to give justice to the Kenyans who would want to know the outcome of how we really think about these issues, I think I will proceed to move the amendment.

Mr. Sungu: On a point of order, Mr. Temporary Deputy Chairman, Sir. With due respect to the Chair, may I draw your attention to Standing Order No.106(3). It says:

"No amendment shall be moved which is inconsistent with any part of the Bill already agreed or any decision already made by the Committee, and the Chairman may at any time during the discussion of a proposed amendment--".

Therefore, it is not right for her to do so.

The Temporary Deputy Chairman (Mr. M'Mukindia): It is not! I have already said we shall allow hon. Ndung'u since proper notice was given to move her amendment. I shall then make a ruling as to how to move forward.

Proceed, hon. Ms. Ndung'u!

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

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Ojode!

Proceed, hon. Ms. Ndung'u!

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, just to put all hon. Members at ease, my consultations with the Speaker and the Clerk's office did envisage that even though hon. Muturi's amendment would be carried, that the phrasing of mine would be allowed and we can proceed.

I beg to move:-

THAT, Section 170 be substituted with the following:-

Any person who wilfully and by fraud causes another person who is not lawfully married to him/her to believe that such person is lawfully married to him/her and to cohabit or have sexual intercourse with him or her in that belief is guilty of a felony and is liable to imprisonment for ten years.

Mr. Temporary Deputy Chairman, Sir, I have already given my reasons that this is about fraud. We cannot wish away fraud if it is between male and female relationships. Until our laws on marriage are revised by this Parliament, I think it is in the best interest to retain this particular

clause. I beg to move.

(Loud consultations)

The Temporary Deputy Chairman (Mr. M'Mukindia): Hon. Members, I shall have to remove one or two hon. Members out of this House because they are becoming disorderly. They are not bothering to listen. Hon. Members, and as we know, while there are procedures, I think the ultimate important thing is to allow hon. Members to freely express their views. Let us try not to use procedures to muzzle people's opinions. That is wrong.

(Question of the further amendment proposed)

The Assistant Minister for Transport (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I stand here to support the amendment proposed by hon. Ndung'u. We must take cognisance of the fact that fraud can be committed by either sex. Therefore, it is important that we are not seen to be discriminating against any gender. Her amendment is basically giving the same punitive rights to both males and females. Nobody should have sexual relations while cheating another. We must be very clear on what their intentions are. We must pass this law, so that we also safeguard both the young girls and young boys from the sugar daddies and sugar mummies.

I, therefore, support the amendment.

Mr. Ojode: Mr. Temporary Deputy Chairman, Sir, this is a primitive form of bigamy. Let the law be very specific. What hon. Ndung'u is trying to do is to take us back to the days, before independent. We cannot allow something like this to happen to Kenyans now.

I beg to oppose.

Mr. Bifwoli: Mr. Temporary Deputy Chairman, Sir, I am opposing this amendment because of two reasons. One, she has moved an amendment for nothing that is existing. We deleted the law and how can she amend what we have erased? We amend what is existing. Secondly, when two adults live together "carelessly" for one year or ten years, why must we rule them? Animals are there in the world to stay together and procreate. So, let the human beings stay the way they want. Why should we regulate people who want to stay together?

(Laughter)

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, I stand here to oppose the amendment by Ms. Njoki Ndung'u. I believe the delicate matter between a man and woman should not be legislated at micro level. We should provide for both gender. But we should not go into the details. Proving or disapproving this proposal in court would be a gigantic task.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to support and say this: Fraud normally occurs where there is unequal bargaining power, where you take your constituent, a young girl or a young boy and then pretend that you are looking for a job for them. Then, finally, you lie to them that you have now married them and you cohabit with them. In either situation, you are preying on somebody who is in a lesser position. This can happen in office situation, where you coerce your secretary and tell them that you are marrying them. But ten years later, just to protect our children--- The time it will be your daughter or your son, you will remember this law. Let us stop trivialising this very serious issue. Let us consider it. It is not meant for people who have equal bargaining power. It is where you are preying. You are acting as predator on somebody who needs protection of the law, even though he or she is an adult.

I beg to support.

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, first of all, I want to point that there is nothing inconsistent with the procedure or the steps that hon. Ndung'u has taken with our decision to delete that Section. That is because the opening remarks are very clear: "Delete and substitute"!

Mr. Temporary Deputy Chairman, Sir, having said so, I want to bring something to the attention of hon. Members of this House. I come from an area where fishing is the main occupation. It is a multi-billion shilling business. It is carried out by very youthful young men. In the majority of cases, you have very sophisticated women from more sophisticated areas of the country. They come to the beaches. They persuade those young men that they are single and cohabit with them for three, four to five years. During that time, the young men toil and give them money. Then suddenly, one day, the women go away with all the wealth, leaving those young men completely despondent and demoralised.

I want to appeal to this House--- This is not something that we should take lightly, nor should we consider it as a theoretical consideration. It is a practical thing. If hon. Kajwang is here, he would agree with me. It is happening today in Suba and Busia districts in every single day.

Mr. Temporary Deputy Chairman, Sir, I beg to support that amendment.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, there is a limit as to how far the law can get into the bedroom. It is good to leave some of these matters to normal, social human behaviour. For example, are you aware of any man anywhere in the world who can only have sex with a woman if he believes that this is his wife? They do it. They do not have to believe that this is a wife!

Mr. Temporary Deputy Chairman, Sir, this law is too far intrusive. We are being told that it is to protect young girls. Where is age mentioned in this law? I would argue that we vote against the proposed amendment by my friend, Ms. Ndung'u.

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

*(Several hon. Members stood
up in their places)*

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! Please, settle down. A few Members rose, but they did not raise the requisite number of 20. Therefore, we will not go into Division.

The Assistant Minister for Transport (Mr. Githae): Mr. Temporary Deputy Chairman---

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, Mr. Githae! That is the nature of debate. As you know, we have made several amendments to the Penal Code Cap.63.

*(The Penal Code (Cap. 63)
as amended agreed to)*

The Criminal Procedure Code (Cap. 75)

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Criminal Procedure Code be amended by inserting the following new amendment:

s.7(1)(b) Insert at the end thereof the words "or under Sexual Offences Act".

Mr. Temporary Deputy Chairman, Sir, you know that the Sexual Offences Act is a new criminal law. For a long time, the Criminal Procedure Code has only referred to the Penal Code. This particular amendment has come at the request of judges, magistrates and police officers so as to assist them in terms of prosecution, *et cetera*. It is not a substantive amendment. It is a

procedural one.

With those few remarks, I beg to move.

(Question of the amendment proposed)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to support.

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

*(The Criminal Procedure Code
(Cap. 63) as amended agreed to)*

(The Evidence Act (Cap. 80) agreed to)

The Housing Act (Cap. 117)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Housing Act (Cap.117) be amended by deleting the expression "twenty-one days' notice" and substituting therefor the expression "ninety day's notice."

Initially, we had proposed 21 days for the local authorities to put their houses in order, before the National Housing Corporation could take over the property. But 21 days might be too short. Therefore, we are now proposing 90 days. I can say that this a joint amendment with the Committee.

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

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

*(The Housing Act (Cap. 117)
as amended agreed to)*

*(The Public Trustee Act
Cap.168) agreed to)*

*(The Service Commissions Act
(Cap.185) agreed to)*

*(The Education Act
(Cap.211) agreed to)*

*(The Kenya National Library
Services Board Act)*

(Cap.225) agreed to)

*(The Land Adjudication Act
(Cap.284) agreed to)*

*(The Cotton Act (Cap.335)
agreed to)*

*(The Kenya Tourist Development
Corporation Act
(Cap.382) agreed to)*

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Chairman, Sir. We are proceeding very well. The mood in the House is good for discussing these various amendments, some of which, although may appear minor, are very important. We do not want to rush them through. We want people to discuss them exhaustively as we move on. It is now 6.25 p.m.

Therefore, I beg to move, under Standing Order No.107, that this Committee does report progress to the House and seeks leave to sit another day.

(Question proposed)

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I agree with the Attorney-General's earlier remarks---

Hon. Members: Aah!

Mr. Syongo: Be patient!

The Temporary Deputy Chairman (Mr. M'Mukindia): Order! Order, hon. Members! Surely, you must allow people to say their piece. You do not have to agree with them, but allow them to say their piece.

Proceed, Mr. Syongo!

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I agree with the spirit of the Attorney-General. The mood of the House is good, and we are progressing well. However, in the circumstances, it would be unadvisable for us to break this mood. So, I am suggesting that we proceed. I, therefore, suggest that we extend the sitting.

An hon. Member: That is what he is doing! Do you not know the procedure?

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg your indulgence. Could we have guidance on this issue?

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! In fact, the Attorney-General did not propose that we extend the sitting. He only proposed that we do report progress to the House. In any case, if there will be no extension of the sitting, at 6.30 p.m. we will, automatically, report progress to the House and seek leave to sit again on another day, in which case we will come back into the Committee when we meet next Tuesday.

Capt. Nakitare: Mr. Temporary Deputy Chairman, Sir, from what I see, hon. Members are not tired and we would like to request the Attorney-General to ask for extension of sitting time. We can sit here up to midnight provided we exhaust all these amendments in the Statute Law (Miscellaneous Amendments) Bill.

(Applause)

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members!

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, I am sure hon. Members have taken time to go through the proposed amendments in this Bill. If we are to start talking about another day, the human mind cannot keep everything in it. We still have to do a lot of work. Can the Attorney-General be persuaded that we report progress to the House and then seek the leave of the House to proceed when our minds are still fresh about the amendments?

Hon. Members: Yeah!

(Applause)

The Temporary Deputy Chairman (Mr. M'Mukindia): Order, hon. Members! We shall proceed because no such proposal has been made to the House. Therefore, we shall proceed! We are in Committee; so, we will continue until our time is over.

(Loud consultations)

Order, hon. Members! Indeed, there is some clarification. Let me explain first. Procedurally, we, as a Committee, ought not to adjourn. Only the main House can adjourn; so, we need to go back to the main House to report progress and then while there, the House can give us more time. It is up to the House to decide. So, technically, this is the Committee of the whole House and, therefore, we have to report to the main House.

(Question, that the Committee doth report progress, put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

PROGRESS REPORTED

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Mr. M'Mukindia: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the whole House is considering the Statute Law (Miscellaneous Amendments) Bill, and has instructed me to report progress and seek leave to sit another day.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister, Office of the President (Mr. Munya) seconded.

(Question put and agreed to)

Hon. Members: Today!

Mr. Deputy Speaker: I said exactly to "sit again", meaning another day!

Hon. Members: No! Today! Tuesday!

ADJOURNMENT

Mr. Deputy Speaker: Order! What is today? What is Tuesday?

*(Several hon. Members stood
up in their places)*

Order, hon. Members! We have to be familiar with the rules. The rules are very clear that the Committee reports progress and seeks leave to sit again. That was the matter that I put to Question. There is no question of extending the sitting. It is a matter of sitting again on another day.

Hon. Members, it is now time for the interruption of business. The House, therefore, is adjourned until Tuesday, 11th September, 2007, at 2.30 p.m.

The House rose at 6.30 p.m.