

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 12th September, 2007

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### PAPER LAID

The following Paper was laid on the Table:-  
Report of the Departmental Committee on Finance, Planning and Trade on the Finance Bill, 2007.

*(By Dr. Oburu)*

### ORAL ANSWERS TO QUESTIONS

*Question No.086*

#### PROVISION OF TRACTORS TO KILIFI DISTRICT

**Mr. Khamisi** asked the Minister for Agriculture when he will send tractors to Kilifi District as promised during the field day at Kenya Agricultural Research Institute (KARI), Mtwapa, on 19th September, 2006.

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

My Ministry delivered two tractors to Kilifi District on 30th May, 2007 as promised during the field day at Kenya Agricultural Research Institute (KARI), Mtwapa, on 19th September, 2006.

**Mr. Khamisi:** Mr. Speaker, Sir, this Government has got a habit of giving promises that it does not intend to keep. The Assistant Minister said on that particular day that there were so many under-utilised tractors across the country and that he would take stock of those tractors, maintain them and send them to Coast Province, so that farmers would be able to use them. Is he now telling us that these two tractors are part of that consignment or are these different ones?

**Mr. Kaindi:** Mr. Speaker, Sir, we intend to keep our word. I want to assure the hon. Member that during this financial year, the Ministry has set aside Kshs20 million to repair some of the stalled and grounded machinery, including tractors, so that they can be distributed. I also want to confirm to the hon. Member that in the month of October we will send a further four tractors to Mariakani station.

**Capt. Nakitare:** Mr. Speaker, Sir, I would like to know from the Assistant Minister whether he is giving fish to farmers or he is teaching them how to fish. In which case, the Ministry of Agriculture promised to provide tractors to farmers. This is unaffordable and unsustainable for small-scale farming. What method will he use to make sure that these tractors are available at a

nominal and minimal cost?

**Mr. Kaindi:** Mr. Speaker, Sir, in the long run, my Ministry is exploring the possibilities of trying to assemble tractors here or inviting investors to team up with the Ministry to see whether we can not only assemble them here, but also see whether the cost of other services and equipment that are necessary for the tractors is brought down. My Ministry, through a loan from the Swedish Government, has procured more tractors. We intend to ensure that the money that is charged to the farmers is affordable. As a matter of fact, in some areas, we have had to reduce the cost from Kshs1,600 to Kshs1,200 to try and make this service affordable to the farmers.

**Mr. Ojaamong:** Mr. Speaker, Sir, the Assistant Minister says the Ministry has earmarked Kshs200 million for the purchase and repair of outdated equipment that they have. There is a KARI sub-station in my district. You will find quite a number of tractors and equipment which are outdated. Is it not worthwhile for the Ministry to buy new machines and do an audit of the KARI sub-stations to find out what they usually do because most of the staff there, are very idle?

**Mr. Kaindi:** Mr. Speaker, Sir, I want to make a correction that I said the Government has set aside Kshs20 million for the repair of machinery. However, the total budget is Kshs62 million for the purchase of new tractors and equipment. In fact, we are buying ten Crawlers at a cost Kshs214,000, low loaders and a few lorries, so that we can assist the farmers. I also want to assure the hon. Member that under the current Budget and the Budget that will come within 2007/2008, we have factored more money to ensure that our staff are able to create the necessary mobility to reach the farmers.

**Mr. Khamisi:** Mr. Speaker, Sir, Kilifi District is a very large district. We have very high potential areas. One of them, is Chonyi Division where there is a very high yield of maize every year. Those people actually need tractors. Could the Assistant Minister assure this House that these tractors that he intends to send will be equitably distributed and that special preference will be given to high potential areas of the district?

**Mr. Kaindi:** Mr. Speaker, Sir, it is in recognition of the potentiality of some of the areas in Coast Province that we are adding a further four tractors. We will be able to direct our officers to ensure that those tractors are not only decentralised, but that they are made available to the farmers as they need them.

*Question No.098*

UPGRADING OF KOCHOLYA  
HEALTH CENTRE

**Mr. Ojaamong** asked the Minister for Health:-

- (a) what plans the Ministry has to upgrade Kocholya Health Centre to a district hospital; and,
- (b) how much money has been earmarked for the construction of wards, theatre and staff houses for the health centre this financial year.

**The Assistant Minister for Health** (Dr. Machage): Mr. Speaker, Sir, I beg to reply.

(a) Kocholya Health Centre ceased to be a health centre on 4th June, 1999 when it was gazetted as a District Health Hospital for Teso District. The notice appeared in the Kenya Gazette of 2nd July, 1999 as Item No.3767.

(b) During the current Financial Year 2007/2008 Kshs3,100,558 is earmarked to be spent on the hospital for completion of the construction of a theatre and wards which were started in the Financial Year 2005/2006 and provision of specialised medical equipment for the hospital will also be considered for purchase.

**Mr. Ojaamong:** Mr. Speaker, Sir, for an institution to be upgraded from a dispensary to a health centre or a health centre to a district hospital, it has to meet certain conditions. Kocholya

Health Centre was gazetted in 1999 as a district hospital. What infrastructure was in place for it to qualify to be a district hospital other than a dispensary?

**Dr. Machage:** Mr. Speaker, Sir, the upgrading of the hospital was considered in view of the fact that Mt. Elgon was a district. However, not much was done until the Financial Year 2005/2006 when my Ministry pumped Kshs9.2 million and Kshs8.153 million last year. This year, Kshs3.1 million has been allocated.

**Mr. Ojaamong:** Mr. Speaker, Sir, currently, the Ministry has earmarked Kshs3 million for the completion of the works that we have there. The theatre will be non-functional. The wards and the theatre are not yet equipped and we do not have other facilities like a mortuary--- The Head of State will visit the hospital on 18th September. What special arrangements is the Ministry making to ensure that when the Head of State visits the institution, all those projects are complete and he is received well by the people of the area?

**Dr. Machage:** Mr. Speaker, Sir, it is evident that I have progressively funded the construction of these facilities in this hospital since 2005. I will only beg for patience from the hon. Member because this hospital is necessary to his people.

*Question No.466*

CHINA ROAD AND BRIDGE  
CORPORATION'S FAILURE TO HONOUR  
AGREEMENT WITH WORKERS UNION

**Mr. Mirugi** asked the Minister for Labour and Human Resource Development:-

(a) why the China Road and Bridge Corporation has refused to honour the agreement between it and the Kenya Building, Construction, Timber, Furniture and Allied Industries Employees' Union in respect of employees working on the Stem-Njoro junction highway under construction; and,

(b) what action he is taking to ensure that the employer honours that agreement.

**The Assistant Minister for Labour and Human Resource Development (Mr. Leshore):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware that there is a binding and functional Collective Bargaining Agreement (CBA) between the China Road and Bridge Corporation and the Kenya, Building, Construction, Timber, Furniture and Allied Industries Employees Union covering employees working on the Stem-Njoro Junction Highway under construction.

The CBA between the parties is valid for two years effective from August, 2006 to August 2008 and is applicable to all China Road and Bridge Corporation sites throughout the country, including Stem-Njoro Junction Road. The terms and conditions stipulated in the Collective Bargaining Agreement are being applied to the letter.

(b) Since no trade dispute has been reported by either party to the Collective Bargaining Agreement in line with Section 4 of the Trade Disputes Act, Cap. 234 Laws of Kenya, I cannot interfere with the agreement which was voluntarily entered into by the two parties.

**Mr. Mirugi:** Mr. Speaker, Sir, I would like to thank the Assistant Minister for that answer. My concern is that there have been several work stoppages at the site of this construction. The issue of contention is the Collective Bargaining Agreement.

Could the Assistant Minister, therefore, institute mechanisms for dispute resolution based on the information that he has brought to this House today? There must be a problem somewhere. The employees and the employer do not seem to agree on an appropriate wage. So, could he invoke the dispute resolution mechanisms and send labour officers to the ground to resolve this

dispute, so that we can avoid these work stoppages every now and then?

**Mr. Leshore:** Mr. Speaker, Sir, there exists a binding bargaining agreement duly signed by the parties on 1st September, 2006, and registered by the Industrial Court, thus making it legally binding to the parties. In conformity with the agreement, the Union has not complained of any failure by the employer to honour it, neither has the Union reported any trade dispute with regard to the same. Should there be a trade dispute, we expect the Union to report it to the Minister as provided in Section 4 of the Trade Disputes Act, Cap.234, Laws of Kenya.

**Capt. Nakitare:** Mr. Speaker, Sir, that is not a formidable answer from the Assistant Minister. Sometimes we accept gifts at our own detriment. I say so because the Chinese contractors are handling our local labour in a questionable way.

What steps is the Assistant Minister going to take to protect our local labourers against harassment by the so-called "gift developers" to Kenya from China, in Nakuru?

**Mr. Leshore:** Mr. Speaker, Sir, I do not understand the hon. Member clearly. However, there are laws governing any kind of agreement. Since no dispute has been reported, I am not taking any action.

**Mr. Mirugi:** Mr. Speaker, Sir, I want to thank the Assistant Minister for that answer. I have no further questions.

## COMMUNICATIONS FROM THE CHAIR

### RECOGNITION OF VISITING DELEGATION FROM THE PARLIAMENT OF NAMIBIA IN THE SPEAKER'S ROW

**Mr. Speaker:** Hon. Members, I wish to introduce to you and welcome this afternoon hon. Members visiting from the Parliament of Namibia, who are seated in the Speaker's Row. They are hon. Members representing two Committees. The first one is the Committee on Regional Development and Reports, which is represented by hon. Hilma Nicanor, MP, leader of the delegation; hon. Tuhafeni Shangheta, MP; hon. Ruth Nhinda, MP, and hon. Dorothy K. Kabula, MP. They are accompanied by Ms Mara Bessinger, the Committee Clerk. The Committee on Habitat is on its way to attend a Habitat meeting in Gigiri, Nairobi. They are the hon. T. Diergaardt, leader of the delegation; hon. L. Katomo, MP; hon. Mwalima, MP, and hon. Kavetu, MP. They are accompanied by Mr. A. Jafet, Clerk of Committee.

On the behalf of the House and on my own behalf, I would like to wish them a happy stay in Kenya.

Thank you.

### CORRECTION OF ERRONEOUS WORDING OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, CLAUSE 3(A)

Hon. Members, I wish to inform the House that during the consideration of the Statute Law (Miscellaneous Amendments) Bill, 2007, on Thursday, 6th September, 2007, at the Committee of the Whole House, the House approved Clause 3(a) which was erroneously written as follows:-

"3(a) The National Assembly and Presidential Elections Act shall be deemed to have come into operation on 9th January, 2003".

On detecting this error, I informed the hon. Attorney-General, who addressed me a letter, agreeing to this mistake. I, therefore, wish to further inform the House that I have corrected Clause 3(a) to read as follows:-

"3(a). The National Assembly Remuneration Act shall be deemed to have come into operation on 9th January, 2003".

Thank you.

Hon. Members, there is something that I want to check from the Standing Orders on a matter that has just come to my attention, which is likely to come up during the Committee of the Whole House.

In the Meantime, the Member for Kaiti wanted to request for a Ministerial Statement. Proceed, Mr. Ndambuki!

## POINTS OF ORDER

### TERMS AND CONDITIONS OF NEW TRADE CO-OPERATION REGIME

**Mr. Ndambuki:** On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Trade and Industry.

The current preferential and non-reciprocal trade regime on which the European Union (EU) and the African Caribbean Pacific (ACP) trade with each other, established under the COTONOU Agreement, 2000, is scheduled to expire at the end of 2007, when the World Trade Organisation (WTO) waiver, granted to give it legal status expires. I would like to know the following from the Minister.

I would like the Minister to tell the House whether Kenya has negotiated and signed a new trading co-operation regime and with which countries. Is the agreement going to be ready by the end of the year? Secondly, I would like to know whether the Minister is aware that, the EU has threatened ACP countries, Kenya included, with lower access to the EU market, if they fail to sign a new trade deal by the end of the year.

Mr. Speaker, Sir, thirdly, I would like the Minister to tell the House how he intends to protect the Kenyan market from being flooded with EU imports once a new regime is signed.

**The Assistant Minister for Trade and Industry (Mr. Miriti):** Mr. Speaker, Sir, we shall respond to that question on Tuesday, next week.

### PLANS TO REHABILITATE ELDORET- KISUMU ROAD C39

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. Last week, I requested the Minister for Roads and Public Works to issue a Statement here as to what he will do to help the people of Mosop and North Nandi in general, who cannot access the town of Eldoret and the main road, C39, which is the tarmac road from Eldoret to Kisumu, because of the heavy rains which have damaged most of the roads leading to the main road and to Eldoret Town. I hope that the Minister will issue the Statement today because this is more or less an emergency.

## COMMUNICATION FROM THE CHAIR

### OPERATIONALISATION OF THE PRIVATISATION ACT

**Mr. Speaker:** Very well! Yesterday, I requested the Deputy Leader of Government Business to let me know what steps were taken by the Minister for Finance in pursuance of an order I made from the Chair with regard to the operationalisation of the Privatisation Act. That is almost three weeks ago now. Is the Minister for Finance here?

Hon. Members, a few weeks ago, I directed the Minister for Finance to operationalise an Act of Parliament which was passed by this House two years ago. I said then, that unlike the

President, the Minister for Finance has no veto power. I also pointed out then, that even in the case of the President, when he refuses to assent to the Bill, he must send it to this House, stating the reasons for that refusal and this House can either agree with him or refuse to agree with him.

I cannot understand the position being taken by the Minister for Finance. It [**Mr. Speaker**] does appear to me that the Minister is contemptuous of the House, and I think, specifically more, of the Chair. I refuse to be held in contempt! I also refuse to think that any Minister or hon. Member can think that the Chair is toothless. I am empowered by this House to carry the dignity of this House and its authority, and that authority, I intend to exercise it fully. There are two options.

**Hon. Members:** Name him!

**Mr. Speaker:** Naming the Minister is a very minor sanction! I want him to feel the full weight of the House and of the Chair. I, therefore, direct that until the Minister recognises this House and the Chair, no business of that Ministry will be transacted by this House!

*(Applause)*

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Speaker, Sir, I am one of those who respect the Chair fully. I understand the feelings of hon. Members. However, the Ministry of Finance has very serious business in this House today. May I once again stretch your patience by allowing me to ensure that the---

**Hon. Members:** No! No!

**Mr. Speaker:** Order, hon. Members! You will also not yell in vain because whatever you say, the decision is finally mine. So, please, relax!

Proceed, Mr. Vice-President!

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Speaker, Sir, may I seek your indulgence by asking you to extend your patience and understanding and allow me to bring the Minister for Finance here to comply with your order?

Thank you.

**Hon. Members:** No! No!

**Mr. Speaker:** Your Excellency, when do you intend to do that? I do have immense respect for the Members of this House, particularly the Vice-President.

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Speaker, Sir, I am quite prepared to leave the Chamber now and look for the Minister and then bring him here. As we continue with the next order, I will bring him here.

**Mr. Sungu:** On a point of order, Mr. Speaker, Sir. I would like to applaud your order. I want to bring to your attention the fact that the Minister has not only defied this House and your orders, but has also gone out of this very House to declare to the Press that he will not comply with your order. Why did you not report him to the President?

*(Applause)*

Mr. Speaker, Sir, I, therefore, wish to urge you to maintain the dignity of this House and the superiority of Parliament and ensure that this Minister answers the Question.

*(Applause)*

**Mr. Muite:** Mr. Speaker, Sir, your ruling was as clear as clear can be, that the Act be operationalised. So, it is not explanations that are called for even if His Excellency the Vice-President brings the Minister here. The only way, in which the authority of this House and the Chair can be respected by the Minister, is by a special notice in the *Kenya Gazette* tomorrow, to operationalise that Act.

*(Applause)*

**Mr. Speaker:** Order, hon. Members! I think you are all saying what I have said and ultimately, anyway, whatever he does, he must also understand one simple legal fact - I stand to be corrected by the Attorney-General - Acts of Parliament are passed by this House. This House, in ordinary circumstances, puts an operational date. In very few circumstances, it gives the Minister that leeway as a privilege. This House can operationalise that Bill by a resolution. So, however far he runs, and however difficult he tries to be, that Bill, if it is the wish of this House, will be operational. Meanwhile, let me not be like the Minister. I will accede to the request by the Vice-President. He must come here tomorrow. Above that, there must be clear indications that he has obeyed the order of the Chair. So, my order stands suspended until tomorrow.

Thank you.

**Mr. Ojode:** On a point of order, Mr. Speaker, Sir. I do agree with your ruling, but the problem we are having from the Government side is that we have a *de facto* Leader of Government Business and a *de jure* Leader of Government Business. So, if the *de facto* one comes, she will overrule the *de jure* one. That is the problem. What do we do?

*(Laughter)*

**Mr. Speaker:** Order! Mr. Ojode, you have unlimited capacity to trivialise very important issues. This is not an issue that needs to be trivialised. You are totally out of order. You must remain completely quiet!

**Mr. N. Nyagah:** Mr. Speaker, Sir, whereas we understand the gravity of the matter at hand and the ruling that you have made, I have also been instructed by the Vice-President and the Minister for Home Affairs to look for the Minister for Finance. Secondly, since you have suspended your order until tomorrow and realising what is before the House, would I request you, with all humility, that as soon as the Minister for Finance steps in here, you interrupt whatever business will be going on in the House and make your ruling today and not tomorrow in view of what he is going to say?

**Mr. Speaker:** Chief Whip, you know we are now dealing with very strange times where the House is being told to await a Minister and yet he must be in the House at 2.30 p.m. Maybe, he does not take us seriously. Are you sure he takes us seriously?

**Mr. N. Nyagah:** Mr. Speaker, Sir, let me give the House a bit of very quick history.

**Hon. Members:** No! No!

**Mr. N. Nyagah:** Mr. Speaker, Sir, I am begging for your permission and not of those who are saying "no."

Mr. Speaker, Sir, because we understand the gravity of what is before the House, for the benefit of this country, I am reminded of one day, against the procedures of the House, where a Ministerial Statement was issued halfway and a Bill was passed at the same time and it was not in abnormal times. It is in view of that tradition, that I am asking you to use your own wisdom and see whether you can actually grant us our wish.

**Mr. Speaker:** Very well! I think that the Minister being absent, there is really nothing I can do, except to make business proceed. So, it is really up to you, on the Government side, since I have told you what I intend to do. There is no going back until my orders are obeyed. That is what I intend to do.

Next Order!

#### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

IN THE COMMITTEE

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

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

*(Resumption of Consideration  
interrupted on 6.9.2007)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! We will continue with the Statute Law (Miscellaneous Amendments) Bill from where we stopped last week. We stopped at the Kenya Tourist Development Corporation Act (Cap.382). If you look at your Bill, this is on page 1336. I hope every hon. Member is with us. We will start with the Traffic Act (Cap.403).

*The Traffic Act (Cap.403)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I need your guidance on this very Act. We had proposed the amendment as it appears on page 1336. Messrs. Ojode and Muturi have proposed amendments to that. We have also proposed a new Section 37. Do we deal with Section 37 now or we dispose of the amendments to Section 119(1) before we come to the new Section 37? That is because on Section 119(1), Mr. Ojode has proposed to delete it, which I am still opposed to. Mr. Muturi has proposed to amend the same, which I agree with. How do we go about it?

**Mr. Ojode:** On a point of order, Mr. Temporary Deputy Chairman, Sir. My amendment---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Ojode! The Attorney-General is asking for the direction of the Chair! Not yours!

Now, one hon. Member is asking for the deletion of the Section and the other is asking for an amendment only. If the amendment for deletion is carried out, then the proposed amendment does not arise! Do we do start with the amendment or the deletion?

**Hon. Members:** Deletion!

**The Temporary Deputy Chairman** (Mr. Khamasi): Okay! We will start with the deletion! I, therefore, ask Mr. Ojode to move his amendment!

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

THAT, the Traffic Act (Cap.403) S.119(1) after paragraph (n) be deleted.

The reasons why I am asking for the deletion of Section 119(1) are as follows:-

One, the alcoblow, which the Attorney-General wants to introduce will be subjected to abuse. First of all, it is not health-friendly. It is a health hazard. If you have one particular kit where you want each and every person to blow, we are going to be infected with tuberculosis. You are aware that there is a new strain of tuberculosis!

Secondly, I am asking for the deletion of this Section because the Attorney-General wants to copy the westerners. The westerners are organised. When they want you to blow in that kit, you are subjected to numerous kinds of exercises before you are asked to blow. One of them is that the police will ask you, after trailing you, that you have to count 100 backwards. Secondly, they will ask you to walk in a straight line. Thirdly, they will ask you if you are drunk. But the Attorney-General wants to copy the westerners without realising the implications. First of all, it will be subjected to extortion. Anybody who is coming from town after 9.00 p.m. will be subjected to alcoblow. That is not right! I am pleading with my colleagues that, in order for us not to have



extortioners; not to be infected with tuberculosis, let the Attorney-General, first of all, put some health-friendly mechanisms in place, in order for us to go for alcoblow.

Mr. Muturi will second my amendment!

**Hon. Members:** It is Mr. Owino to second!

**Mr. Owino:** Mr. Temporary Deputy Chairman, Sir, I support the amendment. I beg to second.

*(Question of the amendment proposed)*

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, allow me - and I ask for forgiveness from my good friend, Mr. Jode, to oppose this amendment. The reason why I oppose this amendment is: For the short time that we had alcoblow, there was sanity on our roads. Driving at night on our roads is a hazard because of the number of people who drive carelessly because of drunkenness. I would urge my friend, Mr. Ojode, to exercise reason and not side with the alcohol industry because we have to protect our people. The only solution is to make sure that this law is exercised within reasonable limits. We must assume that any law made, is made for reasonable people and not for unreasonable use!

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I strongly oppose this proposed amendment. Many people have died and others have been maimed. Some of them are paraplegic. We have widows and orphans not because they were drunk, but because the driver was driving under the influence of alcohol. There was an accident or he or she ran over them. Anything that this House can do to reduce road carnage, this House should stand up to it. We cannot deny an amendment here just because there could be some possible abuse of the law. We must assume that the law will be implemented in good faith. When that happens, we shall take action.

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I also stand to oppose this amendment. In the short time that the alcoblow was in place, there was an increase in family cohesion. There was a reduction in the number of accidents. It is sad to say that some of the hon. Members who are supporting this amendment are also people who have suffered from accidents that have taken place as a result of the alcoblow not being there.

Secondly, it is not just an issue of alcoblow. If the alcoblow has health hazards, other devices will be introduced if this amendment is in place.

With those remarks, I strongly oppose Mr. Ojode's amendment.

**Mr. Angwenyi:** Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment. We are concerned about road carnage in this country. One way of combating road carnage is to remove drunk drivers from our roads. I support the Government. It should re-introduce that blow--- What do you call it?

**Hon. Members:** Alcoblow!

**Mr. Angwenyi:** Yes! That alcoblow thing!

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

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Order! Order, he reserved his time to contribute.????

**Mr. Owino:** Mr. Temporary Deputy Chairman, Sir, we are all Kenyans. The accidents we are talking about are not only caused by people who are drunk. No! They are also caused by me when I am not drunk. Accidents are also caused by people who oversleep or do not sleep at all.

It is true that when someone blows into the alcoblow and he or she has tuberculosis, then

hon. Ligale blows into it, he can catch the tuberculosis. We have to look into this issue. This is the truth. I support this amendment because I know this is a health hazard.

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

**Mr. Muturi:** Thank you, Mr. Temporary Deputy Chairman, Sir, for giving me this opportunity to move my amendment. So that everybody understands, at page 1336 of the Bill, the Attorney- General's proposed amendment is that you insert the following paragraph after paragraph (na):-

"Measures for enforcing the provisions of sections 44(1) and 45, including the use of such devices as may be necessary or appropriate."

Mr. Temporary Deputy Chairman, Sir, my proposed amendment, which is to delete that and to replace it with my proposal, reads as follows:

Delete the proposed amendment and substitute in place thereof with the following new clause:-

"The Minister may make rules prescribing:-

(na) measures for enforcing the provisions of Sections 44(1) and 45 which shall include prescribed limits of alcohol and drugs concentration, provision of specimens for analysis, choice of the tests and the protection of persons under treatment."

Mr. Temporary Deputy Chairman, Sir, the reason why I have decided to be a bit more detailed is to make it possible for what hon. Ojode was fearing, that situations which are unhygienic may be obtained on ground without necessarily taking into account the protection of the health of the person being subjected to testing.

With those few remarks, I beg to move. I would like to ask hon. Keter to support the amendment.

*(Question of the amendment  
proposed)*

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, I would like to support the amendment by Mr. Muturi. What was proposed by the Attorney-General is something ambiguous. This amendment gives the Minister the power to make rules. That means that he can enforce the regulations which will govern the use of alcohol.

Mr. Temporary Deputy Chairman, Sir, we would like the law enforcement agencies to prescribe the limits of alcohol and drug concentration such that you, as a victim, can go to a doctor and have your concentration of alcohol checked.

Mr. Temporary Deputy Chairman, Sir, the prescribed limits of alcohol should be made available so that when you are taken to court, there is a report from the doctor showing the amount of alcohol you had taken to so that you can be charged for having gone beyond the limit.

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Chairman, Sir, at the outset, I had said that I support this amendment. However, I have a slight addition to make. The word "devices" should be added after the word "tests." We do not want to lose the issue of "devices," which is there. So, I support the amendment but we should add the words "choice of tests and devices" in the last paragraph and then we can all agree.

**Mr. Weya:** Mr. Temporary Deputy Chairman, Sir, as the world progresses, the technology will change with time. So, if we stick to one technology, we might get stuck. There are also ways of sampling through blood tests that help to identify the alcohol levels of an individual. So, I support this amendment.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, a further addition to that amendment by the Attorney-General appears to make it more clear. Are we now voting on the further amendment to the amendment or on Mr. Muturi's amendment? I think Mr. Muturi should accept it first.

**Mr. Muturi:** Mr. Temporary Deputy Chairman, Sir, I accept the amendment proposed by the Attorney-General.

**The Temporary Deputy Chairman** (Mr. Khamasi): First of all, let us dispose of the amendment to the amendment by the Attorney-General.

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

**The Assistant Minister for Foreign Affairs** (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Chairman, Sir. You have just put the Question without first proposing it. The Attorney-General simply moved an amendment to an amendment but there was no proposal to the question.

We support it but we want the procedure to be right. Even if we accept, you have to propose a Question.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! I think you are right, Mr. Wetangula. I agree with you about the procedure. First of all, we need to propose a question of the amendment to the amendment by the Attorney-General.

*(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  
be inserted, in place thereof,  
put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Khamasi): We will now go back to the main amendment by Mr. Muturi.

*(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)  
(Applause)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, we will now move on to the Transport and Licensing Act (Cap.404).

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Temporary Deputy Chairman, Sir. We had overlooked the proposed amendment to Section 37 of the Traffic Act, which I have to move before we move on to another Act. The amendment appears on page 513 of the Order Paper.

**The Temporary Deputy Chairman** (Mr. Khamasi): Did we not go through that amendment?

**The Attorney-General** (Mr. Wako): No, we did not. You earlier ruled that we deal with the amendment on page 119 and then we come back to the proposed amendment to Section 37 of

the Traffic Act.

**The Temporary Deputy Chairman** (Mr. Khamasi): That is insertion of a new clause, is it not?

**The Attorney-General** (Mr. Wako): Yes, to the Traffic Act, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Khamasi): We will dispose of this amendment, because it is part of the Traffic Act.

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

THAT, the Schedule to the Bill be amended-

(g) in the amendments relating to the Traffic Act, Cap.403, by inserting the following new amendments in proper numerical sequence-

Delete and substitute therefor the following new Section-

37(1) A driving licence shall be in the form of a computerized smart card made of plastic material containing a micro-processor-based chip, and a provisional licence shall be in the prescribed form, which shall be impressed with the official stamp of the issuing authority.

(3) The driving licence shall have-

(a) a front side, which shall contain the Personal Identification Number (PIN) and Identity Card Number, photograph, name, date of birth, sex, signature, and licence number of the licence holder, and the class of the vehicle to be driven or restricted; and

(b) a rear side, which shall contain the thumb print of the licence holder, the date of issue per class, the date of expiry per class, conditions and any other information, if any, and the signature and reference number of the issuing authority.

(3) The micro-processor-based chip shall contain features for micro-printing, image hosting, ultra-violet printing (logo), the national coat of arms, hologram, and both side lamination.

(4) The micro-processor-based chip shall contain the driver's name, biometric information, the photograph, signature, licence number, class of vehicle to be driven or restricted, the date of issue, the date of expiry, conditions or other information, if any, and the signature and reference number of the issuing authority.

I must say that this is a joint Clause with the Departmental Committee on Administration of Justice and Constitutional Affairs. We are agreed on this Clause.

*(Question of the amendment proposed)*

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, on behalf of the Departmental Committee on Administration of Justice and Legal Affairs, I would like to support the amendment by the Attorney-General. As you are aware, the current driving licences that we have in this country are susceptible to forgery. The Government loses revenue because there is no clear record of how to follow them up.

Mr. Temporary Deputy Chairman, Sir, lastly, if somebody is involved in an accident, all that they need to do is just to change the photograph on the driving licences that they have. So, this new amendment, in fact, should also be what the House should be adopting for Members of Parliament identity cards, because they are very archaic identity cards.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, the Attorney-General moved the amendment for inclusion of that new clause, but he did not explain what the inclusion of that clause implies. As we make laws, we need to understand from the Attorney-General, who is the

Mover, so that we know exactly what it is all about. The amendment is just talking about computerised smart card made of plastic material, containing a micro-processor.

We would like to know whether the current state of information technology in this country can support what is being proposed, noting that we are unable to even process terrorist-proof passports at the moment. Do we have the money with which to do it? Could the Attorney-General confirm to us that, in fact, this is actually possible, because we want to support it.

**The Minister for Transport** (Mr. Mwakwere): Mr. Temporary Deputy Chairman, Sir, technology is available from several firms, which can do this kind of work. The Automated Teller Machine (ATM) cards that we use in banks is an immediate example. With the specifications given, we all know that over and above the advantage of cutting down on forgeries, there is also the advantage of cutting down on accidents, because there will be no opportunity for people to forge driving licences.

Mr. Temporary Deputy Chairman, Sir, furthermore, drivers will have to be very careful, because this is a modality which will allow police officers, or other officers enforcing traffic laws, to endorse driving licences at any point in the country. In other words, it will bring about greater discipline. This is the type of driving licence being used in many countries in the world, including one of our neighbouring countries.

So, we should not be left behind to using a red cloth-covered booklet as a driving licence, which serves no purpose other than just carrying it around.

**Mr. Ojode:** Mr. Temporary Deputy Chairman, Sir, I want to support this amendment. The world over, wherever you go, be it in the Western countries or wherever, they have new technology. They have new driving licences, which are captured in their computers. The details of the driver are also captured within that particular licence.

There are those people who are opposing the adoption of this new technology, because they have never been outside the country, but I want to agree with the Attorney-General and the Minister, who is my friend, that we have to go to the digitization world.

I beg to support.

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Order, hon. Members! You have to vote on this one!

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

**The Temporary Deputy Chairman** (Mr. Khamasi): What is it?

**Mr. Weya:** Mr. Temporary Deputy Chairman, Sir, I would like to seek your direction on an issue, which, I think, is contentious. In most countries, people now do not mention the age of a person because it is discriminatory. All you have to say is "above 18" and the picture on the driving licence will clearly show whether the holder is male or female.

Mr. Temporary Deputy Chairman, Sir, so, I would urge the House to make that amendment, so that the age and sex on a driving licence does not matter.

**The Temporary Deputy Chairman** (Mr. Khamasi): That is not a point of order!

**Mr. Weya:** Can I move an amendment to that effect, Mr. Temporary Deputy Chairman, Sir?

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Weya, if you wanted to bring an amendment to that effect, you should have given notice to the House of your intention to do so during the Committee Stage. You have not done so. So, you cannot just stand and ask us to effect an amendment to the Bill.

*(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 Traffic Act (Cap.403) as amended agreed to)*

*The Transport Licensing Act*

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, we now move on to the Transport Licensing Act, Cap. 404.

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

THAT, the Transport Licensing Act be amended in Section 10(1) by deleting the words "until 31st December in the year in which it is issued, and substituting therefor the words "for one year from the date of issue".

*(Question of the amendment proposed)*

*(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 to)*

*(The Transport Licensing Act, Cap. 404 as amended agreed to)*

*The Constitutional Offices (Remuneration) Act*

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, we will now move on to the Constitutional Offices (Remuneration) Act (Cap.423). Mr. Ojode, you have posted a notice of your intention to move an amendment to this Act.

**Mr. Ojode:** Mr. Temporary Deputy Chairman, Sir, I do not know why the Attorney-General wants us to remove the name of the President from this law. Chapter 423 of the Constitutional Offices (Remuneration) Act, Cap.423, provides as follows:-

"The holders of the offices specified in the First Column of the Schedule shall be paid such allowances as may be determined, from time to time, by the President."

Mr. Temporary Deputy Chairman, Sir, the Attorney-General now wants us to remove the name of the President and leave this function to be exercised by an amorphous authority within the Office of the President, so that anybody within the Office of the President can, actually, dictate the allowances that holders of Constitutional Offices are going to be paid. That is wrong!

Why does the Attorney-General feel that the President can be left out, yet Cap.423 gives the President the leeway and authority to determine the allowances to be paid to holders of Constitutional Offices?

We want our President to work as was mandated by the people of Kenya and we cannot just allow that to be left to the Office of the President. The Office of the President even means a messenger can come and give any allowance to any person within the constitutional offices. So, I

beg to move that the name of the President must be there as proposed in the amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is seconding you?

**Mr. Ojode:** The seconder is here!

**Rev. Nyagudi** seconded.

*(Question of the amendment  
proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I do agree entirely with what Mr. Ojode has stated. I support this amendment because I as a constitutional office holder would not like the entry point in my scale to be determined by a mere officer in the Office of the President. It has to be determined by the President himself. So, I support.

*(Question, that the words to 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 Constitutional Offices  
(Remuneration) Act (Cap.423)  
as amended agreed to)*

*(The Insurance Act (Cap.487) agreed to)*

*(The East African Development Bank  
Act (Cap. 493A) agreed to)*

*(The Trade Marks Act (Cap.506)  
agreed to)*

*(Third Schedule agreed to)  
The Hire Purchase Act (Cap.507)*

**The Temporary Deputy Chairman** (Mr. Khamasi): I have received notice of amendment by Mr. Muite.

**Mr. Muite:** Mr. Temporary Deputy Speaker, Sir, Ms. Abdalla will be moving the amendment. She is already on her feet.

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

THAT, the provisions relating to the Hire Purchase Act be amended-

(a) In the proposed amendment to Section 3, by deleting the words "two million" and substituting therefor the words "four million";

(b) In the proposed amendment to Section 18(2) by deleting the expression "one hundred thousand" and substituting therefor the expression "two hundred thousand";

(c) In the proposed amendment to Section 33, by deleting the expression "fifty thousand" and substituting therefor the expression "one hundred thousand".

Mr. Temporary Deputy Chairman, Sir, this is as a result of the rising cost of living and inflation which means that the items that are worth Kshs2 million would not be the same as those worth Kshs4 million given that money has less value.

I beg to move.

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is seconding you?

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, the Hire Purchase Act is a legacy that the late Mr. J.M. Kariuki left for Kenya and it was intended to help Kenyans to acquire capital goods including machinery for setting up small businesses. Unfortunately, because of the rising costs the relevant threshold has moved substantially because of the cost of items.

Mr. Temporary Deputy Chairman, Sir, this amendment is essentially intended to make this Act still relevant as a facilitator to help Kenyans to acquire capital goods including starting small enterprises.

I, therefore, second.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I just want to say that for reasons very well put by both the mover and the seconder, I support.

*(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 Hire Purchase Act (Cap.507) as amended agreed to)*

*(The Export Processing Zones Act (Cap.517) agreed to)*

*The Non-Governmental Organizations Co-ordination Act (No.19 of 1990)*

*(Question proposed)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Is there any notice of amendment?

**Mr. Muite:** Yes, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Khamasi): No, we have not received anything from you, Mr. Muite.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I had submitted amendments at 11.15 a.m. I believe that the amendments should have been there before 12.00 p.m. But I was having a discussion with the Minister in charge, Mr. Shakombo and he told me that he had either raised the matter with the Leader of Government Business, that these amendments are not going to be moved. The reason is that there are very forceful and persuasive arguments by all the Non-Governmental Organizations (NGOs) which are registered under the Act opposing this amendment. I understood that---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Muite! Let us consult first



as to whether this notice was received or not.

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Muite, we want to refer this matter to the Speaker's Chamber for clarification. Indeed, it appears that you sent in your notice of amendment. All we do not have here is the Speaker's signature on it, to the effect that it should be moved. So, we are consulting.

**Mr. Muite:** Through you, Mr. Temporary Deputy Chairman, Sir, could I seek a clarification? The Minister in charge said that he had raised the matter with the Leader of Government Business. They agreed not to move this amendment relating to the Non-Governmental Organisations Co-ordination Act. Is that the position?

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is the Minister in charge of this?

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, it is Mr. Shakombo.

**The Temporary Deputy Chairman** (Mr. Khamasi): Is he here?

**Mr. Muite:** Mr. Temporary Deputy Speaker, Sir, he said he had raised the matter with the Leader of Government Business. He told me that the amendments are not to be moved.

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Temporary Deputy Chairman, Sir, Mr. Shakombo's Ministry is within the Vice-President's Office. I am quite sure that there has been no notice of amendment from Mr. Muite. Mr. Shakombo has not prepared anything on this. However, I know that there is a totally different Bill on NGOs.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, all the amendments we are seeking---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Muite! I am advised that, indeed, your notice was referred to the Chair and he declined. This is because of a ruling he made sometimes on Thursday, last week. It was ruled that reference must all be made to the amendment on the Order Paper and no new amendments---

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I wish to have the opportunity to contribute on the proposed amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): There is no amendment. Do you want to contribute on the amendment by the Attorney-General?

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, there is a clause---

Mr. Temporary Deputy Chairman, Sir, I would like to persuade hon. Members to vote against the amendment proposed by the Attorney-General to the Non-Governmental Organisations Co-ordination Act. When you look at all these amendments, the idea is to effect control of the NGO Council.

Mr. Temporary Deputy Chairman, Sir, at the moment, it is self-regulating. These proposed amendments are seeking to create a Government-dominated board and remove all the regulatory functions from the council. This is a voluntary council of all the NGOs registered under the Act and to vest them in the Government controlled board. These proposed amendments are analogous to what was thought to be done with the Media Bill; control, control, control!

Mr. Temporary Deputy Chairman, Sir, we would like the NGOs to continue being self-regulating under the Act. The NGO Council is elected by the member NGOs registered under the Act. This is what is thought to be reversed by the proposed amendments; to give the Minister and the Government absolute control of the NGOs. If these amendments go through, then we are going back to the dark days of control and repression. I plead with hon. Members that we reject and vote against these amendments.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I support the amendment as it appears in the Bill. This amendment is not to ensure that the Executive controls the Board. If anything, if you look at the current provision, it says:-

"Five members appointed by the Minister on the recommendation of the council of

NGOs will be represented on the Board".

We are not touching that paragraph under which the Board of NGOs recommends five people to be on the Board. If anything, we are reducing that paragraph where the Minister can, in his own discretion, appoint up to five people. We are now reducing it. He can appoint anybody. However, we are leaving intact the appointments made pursuant to the recommendations of the NGO Council. So, we are making the Board more manageable, efficient and offering everything to be able to service the people of this country.

I, therefore, urge the hon. Members to support the amendment as proposed in the Bill.

*(Applause)*

**Capt. Nakitare:** Mr. Temporary Deputy Chairman, Sir, I stand to support Mr. Muite's proposal of opposing the Attorney-General's proposed amendments.

If the Government is going to be allowed to muzzle NGOs, then it will be difficult for donor funds to flow to help the people who deserve it. I am one of those who started the first NGO in this country. I am well aware of the clause the Government can use to muzzle NGOs.

**Mr. Sungu:** Mr. Chairman! Mr. Chairman!

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Sungu! You will not continue to call, Mr. Chairman! Just stand up!

**Mr. Sungu:** Mr. Temporary Deputy Speaker, Sir, I apologise! I called you because I thought you had not seen me.

Allow me to oppose my very good friend, Mr. Muite's amendment and support the Attorney-General's. Many of these NGOs obtain money from overseas donors and other agencies, but do not account for it.

*(Applause)*

This is the money that is being used to malign the names of hon. Members of Parliament out there! There is no accountability. Let us not allow people to take money from elsewhere. The donors give money with the intention of helping our people yet there is no accountability.

Mr. Temporary Deputy Chairman, Sir, on that basis, I support the Attorney-General's amendment.

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

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

*(The Non-Governmental Organisations Co-ordination Act as amended agreed to)*

*(The National Council for Law Reporting Act agreed to)*

*(The Narcotic Drugs and Psychotropic Substances Act agreed to)*

**Mr. Muite:** Ms. Abdalla will move it.

*The Auctioneers Act, 1996*

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

THAT, the provisions relating to the Auctioneers Act be amended by inserting the following new amendments in proper numerical sequence:-

Delete Section 3(1)(e) and substitute therefor the following new section:-

s.3(1)(e) four auctioneers of not less than five years' standing, nominated by the Chief Justice on the recommendation of the association.

We think that the operational word there is "association" so that we avoid the mushrooming of new auctioneer associations. We received a lot of input from them during the 2006 version. So, we propose four auctioneers of not less than five years' standing be nominated by the Chief Justice on the recommendations of "the association", meaning one.

Thank you.

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is seconding you, Ms. Abdalla?

**Ms. Abdalla:** Mr. Marende.

**Mr. Marende:** Thank you, Mr. Temporary Deputy Chairman, Sir. I second that amendment. In arriving at the proposed amendment, the Committee conducted whole sessions with various auctioneers belonging to different associations. It became apparent that, so as to properly manage and control the practice and discipline of auctioneers, it is necessary that they are brought under one umbrella association. It is for that reason that, that amendment was generated.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I stand to support this amendment. I support it because I appointed a task force to review all laws relating to auctioneers. The main aim of that was to professionalize auctioneers. Therefore, for them to have one body is very vital if that objective is to be achieved. So, I support!

*(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 Auctioneers Act, 1996 as  
amended agreed to)*

*Kenya Roads Board Act, 1999*

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

THAT, the Schedule to the Bill be amended by deleting the provisions relating to the Kenya Roads Board Act, 1999 (No.7 of 1999).

Mr. Temporary Deputy Chairman, Sir, I propose that all the amendments which appear here

relating to the Kenya Roads Board Act be deleted because they have been overtaken by events. This House has already passed a Bill which the President gave assent to last week. So, all that is already part of the law that has been passed by this House. So, I am proposing that they all be deleted.

*(Question of the amendment proposed)*

**Mr. Kimeto:** Thank you very much, Mr. Temporary Deputy Chairman, Sir. In the amendments that came in 2007, we said that the money for Kenya Roads Board should go to the constituencies. That money would then be under the Chairman of the Constituency Development Fund (CDF) and, being a Member of Parliament, and together with the Constituency Development Committee, they will maintain the roads to the best of their ability. Those are the people who run the affairs of the constituency.

Mr. Temporary Deputy Chairman, Sir, this deletion is due to non-exposure of people who do not know the problem of roads in every constituency. They do not know that they have the money. The only way we can use that money is for the Member of Parliament and the Constituency Development Committee to be in charge of that money. So, I completely oppose this amendment. Let the amendments which were done in 2007 continue to be in force, whereby 24 per cent of all the monies was to go to the constituencies. I wish my friends will support me. That is because it is your money too!

**The Temporary Deputy Chairman (Mr. Khamasi):** Order! Yes, Mr. Kajwang?

**Mr. Kajwang:** Thank you, Mr. Temporary Deputy Chairman, Sir. We would have loved it if the Attorney-General could have explained to us the contents of the Bill that he has referred to, and the consequences of the provisions of that Bill on the proposal here. That is because this proposal is an old one. We have been struggling to make sure that our feeder roads are up to date. We know that the District Roads Officers get a lot of money but they do not put it to proper use. They cannot supervise them. That is why we intended to have that money under the CDF so that, at least, that committee could have powers to supervise that money. Unless the Attorney-General explains his intentions of deleting this paragraph, we need to resist it.

Thank you.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, these proposals are passionate to hon. Members. We want money for the roads boards to go directly to the constituencies to be used in the same manner as the CDF money.

*(Applause)*

But, Mr. Temporary Deputy Chairman, Sir, it is important, in all fairness to the Attorney-General, for hon. Members to appreciate that the Miscellaneous Amendments to the Statute Law we passed here the other day - they were moved by hon. Nyachae - were setting up three roads authorities. There was one for the highways, one for the rural areas and one for the urban areas. They actually contain 20 per cent, which should be going directly to the constituencies, but now, through the medium of those authorities that we enacted. So, in truth, what hon. Members want has been achieved under the Act that we passed here the other day.

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

*(The Kenya Roads Board Act, 1999)*

*as amended, agreed to)*

*The Industrial Property Act, 2001*

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

THAT, the Schedule to the Bill be amended in the provisions relating to the Industrial Property Act, 2001, by deleting the proposed amendments to Section 80.

Mr. Temporary Deputy Chairman, Sir, as we undertook when we were moving and seconding this Bill, that we shall carry out appropriate amendments to the proposed amendments to enable the people of this country, particularly the HIV/AIDS sufferers, to benefit from medication, we are proposing the deletion of amendments to Section 80. I believe the Committee was also proposing the same thing and it is with us on this matter.

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is seconding you, Mr. Attorney-General?

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

*(Question of the amendment proposed)*

**Ms. Abdalla:** Thank you, Mr. Temporary Deputy Chairman, Sir. Although I support the amendment by the Attorney-General, it should be noted that we had proposed this amendment in the 2006 version, and we did not need to bring it in the 2007 version to give unnecessary stress to those who are in need of generic drugs.

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

*(The Industrial Property Act, 2001 as amended agreed to)*

*(The Copy Right Act, 2001 agreed to)*

*The Kenya National Commission on Human Rights Act, 2002*

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, on behalf of the Committee, I beg to move:-

THAT, the Bill be amended by deleting the proposed amendments to the Kenya National Commission on Human Rights (KNCHR) Act.

Mr. Temporary Deputy Chairman,

Sir, our reason is that, although we sympathise with the Minister for Justice and Constitutional Affairs that now the issues of human rights are under her Ministry, we are not sure who it will be in the next Government. The indications are that it will be a different Government! So, we do not want to change this and then come and change it again when the Minister in charge of human rights issues changes. That is why we are proposing a deletion of that proposal.

*(Loud consultations)*

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I beg to second the amendment by hon.

Abdalla. Why would the Minister want to take control of the KNCHR? This body ought to be independent of the Government. Most human rights cases actually are against Government officers in power. They are the ones who are bound to misuse power to interfere with people's human rights. Therefore, their control should not be vested in a Government's Minister. This body should be independent.

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

*(Question of the amendment proposed)*

**Mr. Maore:** Mr. Temporary Deputy Chairman, Sir, I think there is a misunderstanding over the word "Minister". With regard to issues that arise from the violations by the police and other Government officers, they are usually defended by the Attorney-General. With regard to issues that come out of the excesses, say, apart from the prosecution, the judges and the others, they are actually under the Attorney-General.

Mr. Temporary Deputy Chairman, Sir, now, when we raise Questions before this House and intend to change the definition of the word, "Minister", how does the Attorney-General answer his own violation? You may have problems with individuals today, but tomorrow is different. So, how do you get out of that?

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I stand to oppose this proposal. First of all, it must be stated that under our Constitution, it is the President who assigns various portfolios and duties and so on. For now, he has assigned human rights issues to the Minister for Justice and Constitutional Affairs. Tomorrow, or even today, he could assign them to another Minister, say, the Minister for Planning and National Development or the Minister for Water and Irrigation or the Minister for Environment and Natural Resources. He can do that even today.

**An hon. Member:** The Attorney-General!

**The Attorney-General** (Mr. Wako): The Attorney-General is also a Minister! What the President cannot do is to assign my constitutional responsibilities under Section 26 of the Constitution of Kenya to any other person. If he does so, he will be in violation of the Constitution. However, when it comes to assigning portfolios like human rights issues and all that, he has a right to do so. Therefore, that is why it is being framed here, "The Minister for the time being responsible for issues relating to human rights." It does not say here, "The Minister for Justice and Constitutional Affairs", but whoever, at any given time, is responsible for human rights issues, will be responsible.

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, I stand here to support the amendment. I think Parliament must recast itself back to 2003 when we passed this Act. At that time, there was an Attorney-General. There was also the Minister for Justice and Constitutional Affairs. We decided, here in Parliament, to create this statutory body and put it under the Office of the Attorney-General. This statutory body reports to Parliament once a year. In the Departmental Committee of the Administration of Justice and Legal Affairs, we have an oversight role to play over the KNCHR. We have been satisfied that the work it has done, under the Office of the Attorney-General, is satisfactory. We agree with and respect the President's discretion in terms of giving Ministerial ability on certain issues. However, this is a statutory body, which is created by an Act of Parliament. It is Parliament which decides who this particular body should report to. That is what we have decided. I want to tell Members of Parliament that there appears to be mischief in this particular amendment and, therefore, we need to retain the KNCHR under the Office of the Attorney-General. We should not move it because there are Ministries which may not exist next year. What will we do with the statutory body then? Will we have to come back here to amend the

Act again in order to shift it to the Minister who is in charge? So, for these very clear reasons, I wish to support the amendment and urge hon. Members to do so.

*(Applause)*

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I think, like it has been pointed out by hon. Maore, either there is a deliberate intention to mislead the House or to be mischievous. If you look at the wording of the proposed amendment, which I support, it says, "The Minister responsible for matters relating to human rights." It could be any Ministry, but it depends on the organisation of Government.

I want to state that although the Act was passed in 2003 stating that the Commission will be under the Attorney-General, since the inception of this Government, matters of human rights have been with the Ministry of Justice and Constitutional Affairs. Since its inception in 2004, the KNCHR, administratively, has fallen under the Ministry of Justice and Constitutional Affairs. What does that mean?

It means that, functionally, the KNCHR remains independent. However, it also means that Questions relating to them are answered and all administrative issues are served by that Ministry. So, the proposal for this amendment, which was first printed in 2004, merely meant to align what is actually on the ground with the statute so that in future, whatever Minister holds the portfolio of human rights, it is the Ministry that answers for this particular organisation. It does not matter whether it is the Attorney-General or the Ministry of Justice and Constitutional Affairs.

Functional independence of this organisation is by virtue of the Act that sets them up. We are talking of administrative issues only the same way we answer for the Judiciary, the Electoral Commission of Kenya (ECK), but their functional independence remains. It will be good if we understood it from this context and not to attempt to personalise the issue.

I want to repeat that this amendment was crafted in 2004. This is the third time this Bill has been republished. Nothing has changed. This is an amendment that ought to be passed.

**The Temporary Deputy Chairman** (Mr. Khamasi): I want to dispose of this.

**The Assistant Minister for Local Government** (Mr. Muchiri): Mr. Temporary Deputy Chairman, Sir, I just wanted to add one more thing. The Commission draws some funding from the Consolidated Fund. I am supporting the amendment by the Attorney-General because that funding has to fall under a Ministry. Therefore, I want to support the amendment by the Attorney-General. The independence of the Commission is guaranteed under the Act; so, that should not be a worry to anybody.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I wish to bring to the attention of hon. Members that the Kenya National Commission on Human Rights (KNCHR) itself presented a memorandum to the Departmental Committee on Administration of Justice and Legal Affairs, seeking and urging that they would prefer to continue being under the Office of the Attorney-General. The Office of the Attorney-General is a Constitutional one, and, unless we amend our Constitution, it will always be there. The Ministry of Justice and Constitutional Affairs is not a Constitutional Office. The President can wake up tomorrow and abolish it and that will be it.

Mr. Temporary Deputy Chairman, Sir, the amendment which is sought here is to the KNCHR Act in order to remove the Commission from the Office of the Attorney-General and take it to the Ministry of Justice and Constitutional Affairs. The Departmental Committee on Administration of Justice and legal Affairs was fully satisfied that, that is not the way to go. We would urge the hon. Members to really support the amendment proposed by the Committee by deleting this amendment, whose effect is to remove the Commission from the Attorney-General's

Office to the Ministry of Justice and Constitutional Affairs.

**The Temporary Deputy Chairman** (Mr. Khamasi): I want to dispose of the matter by putting the question.

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

Order, hon. Members!

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

*(The Kenya National Commission on  
Human Rights Act, 2002,  
as amended agreed to)*

*The Anti-Corruption and Economic  
Crimes Act, 2003*

**The Temporary Deputy Chairman** (Mr. Khamasi): We have several amendments from the Attorney-General, Mr. Muite and Mr. Cheboi. So, we will start with the amendments by the Attorney-General.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I have three amendments. The first one is what appears on page 1351 of the Bill, headed "Section 23". You will notice that the current provision reads:-

"(4) The provisions of the Criminal Procedure Code, the Evidence Act, the Police Act and any other law conferring on the police the powers, privileges and immunities necessary or expedient for the detection, prevention, investigation and prosecution of offences shall, so far as they are not inconsistent with the provisions of this Act, apply to the Director---"

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

THAT, the above provision relating to the Anti-Corruption and Economic Crimes Act be amended by deleting the words "and prosecution of offences".

Mr. Temporary Deputy Chairman, Sir, so, I want to leave prevention, investigation and other issues to be handled by the Kenya Anti-Corruption Commission (KACC). I want the Director of the KACC to be able to do everything else except prosecution of offences, which is vested in the Attorney-General of the Republic of Kenya. That is the first amendment.

Do I move the second amendment or do we deal with that one first?

**The Temporary Deputy Chairman** (Mr. Khamasi): Move the second amendment!

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, the second amendment is at page 1355 of the Bill, Clause 56.

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Attorney-General, I think we need to go step by step. First we should dispose of one and then go on to the other, if they are not inter-related.

**The Attorney-General** (Mr. Wako): They are not inter-related.

**Ms. Ndung'u**: On a point of order, Mr. Temporary Deputy Chairman, Sir. I am seeking your guidance. If you look at the amendments coming from the Departmental Committee on Administration of Justice and Legal Affairs, we have amendments starting at Section 4. The Attorney-General has no amendments to Sections---

He has just moved amendments to Sections 23 and 56, which are also proposed for deletion



by the Departmental Committee on Administration of Justice and Legal Affairs. So, in what sequence should we have actually done these amendments? The Committee is proposing complete deletions while the Attorney-General is proposing amendments. We also have amendments to the same Sections. In terms of sequence, we should have started with the first proposals and continued like that. There are many proposals and we should go step by step. That is what I would have thought.

**The Temporary Deputy Chairman** (Mr. Khamasi): I think that reasoning makes logic to me, that we go page by page and clause by clause until we come to the last one. So, in this regard, we must go to the first amendment which comes---

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, in this regard, what I have noticed is that under the Anti-Corruption and Economic Crimes Act, with respect to the proposed Sections 2, 3(1) and 4, there are no amendments. So, we can dispose of these. Mr. Temporary Deputy Chairman, Sir, the first amendment appears at the bottom of page 1349, which is the proposed Clause 5. But, Sections 2, 3(1) and 4 are not being amended. So, we can dispose of them and then come to the first amendment, which is proposed by the Committee, the proposed Clause 5.

**Ms. Ndung'u**: Mr. Temporary Deputy Chairman, Sir, if I may correct the Attorney-General, that is not true. There is an amendment to Section 4. So, the best thing, because there are so many amendments---

**The Temporary Deputy Chairman** (Mr. Khamasi): Let us start with what comes first. So, where do we start? Who is moving the amendments?

Mr. Attorney-General, I think you will wait for yours until we come to that stage.

*(Mr. Cheboi moved to the  
Dispatch Box)*

Mr. Cheboi, are you moving the first one?

**Mr. Cheboi**: No, Mr. Temporary Deputy Chairman, Sir. I am moving the deletion of Section 4(5) on behalf of the Committee.

**The Temporary Deputy Chairman** (Mr. Khamasi): On what page of the Bill?

**Mr. Cheboi**: On page 1349 of the Bill, at the very bottom!

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

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended -

a) In the amendments relating to Section 4, by deleting the proposed subsection (5).

This is a section which deals with stay of proceedings. As a way of background information to hon. Members, when there is a case in court relating to economic crimes and somebody feels that his constitutional rights have been violated and seeks a Constitutional reference, Section 4(5) proposes that there shall be no stay, whatsoever. The rationale of our deleting this particular clause is, because, first, it conflicts with Section 77(5) of the Constitution.

Mr. Temporary Deputy Chairman, Sir, secondly, even from a very lay point of view, if one person has been taken to court for corruption, economic crimes and so forth and the case is proceeding, then he seeks some interpretation in a Constitutional Court, there is a very high likelihood that the case in the lower court can be disposed of before the one in the Constitutional Court is heard. Therefore, a conviction can even be secured at the expense of that particular individual.

So, I propose that this particular Section 4(5) be deleted. I hasten to ask Members to

remember that, sometimes in 1982, there was a man called Sir Charles Njonjo. He was a Member of Parliament. He proposed Section 2(A) and he became the first victim of that particular Section. So, I am actually beseeching hon. Members to be careful when we are passing such amendments. Therefore, I propose the deletion of the amendment.

I beg to move. Thank you.

**Mr. Muturi:** Mr. Temporary Deputy Chairman, Sir, I think the Mover has ably demonstrated the mischief that can be occasioned by some wayward organisations like the Kenya Anti-Corruption Commission. As he has explained, it means that if you are taken to court by the Commission, even if you feel your rights under the Constitution have been violated, this proposed amendment by the Attorney-General is saying:-

"An application to the Constitutional Court to seek to interpret whether your rights are being violated shall not be entertained!"

That is an extremely draconian and oppressive proposal by the Attorney-General and it should be deleted.

With those remarks, I beg to second.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose that proposal. First of all, somebody quoted Section 77 Sub-section 5 in support of this proposal. But Section 77 Sub-section 5 does not, in any way, touch on what is being proposed. It touches on the principles of *ultra vires* acquits and *ultra vires* convicts, which really does not come here. So, it is not unconstitutional. In fact, it is very constitutional because the Constitution envisages that criminal cases will be heard as reasonably quickly as they can be heard and disposed of quickly. The proposal in the amendment is actually in accordance with the Constitution. It is trying to have the person being charged and prosecuted under the Anti-Corruption and Economic Crimes Act--- Their trials to be proceeded on speedily and expeditiously to final conclusion.

Mr. Temporary Deputy Chairman, Sir, what has happened is that, invariably, in every trial under the Act--- Any trial under the Act is a major trial! All of them! I can say that there are over 60 or 70 of them. Those are the major ones. They began in 2003 and 2004. In each one of them, they have applied for stay. They have gone to the High Court for a Constitutional application. The trial cannot proceed until the Constitutional application has been heard and determined.

Consequently, there has been an inordinate delay in the hearing of those cases. The public is yearning that we should try to have those cases disposed of within a reasonable time. Therefore, all we are saying is that when the trial begins under this Act, let it continue as quickly as it can go on, until the final conclusion. The person may be acquitted. He may be convicted. But if he is convicted and he appeals, then all those issues that he has raised on constitutional grounds can be heard by the Appellant Court.

So, I oppose the amendment.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I oppose the amendment. If you look at the Section which is being proposed to be amended - which is on page 1349 - and then look at the tabulation of what is in the law now - which is on page 1407, you will see that nothing offends Section 77. We know that when we passed this law, the abuse of court process by suspects had not gained ground like it has now. The people who were charged with economic crimes are holding the courts at ransom, and then claiming that the Government is not prosecuting economic crimes and corruption cases.

Mr. Temporary Deputy Chairman, Sir, when the law is seeking to provide that there will be

no stay, it does not mean that a suspect cannot go to court to allege violation of their rights. But when there is no stay of proceeding because the proceedings are on a day to day basis, it means that the suspects will then hurry to get a hearing date.

The Chief Justice made rules last year in January which provide that, in the case of preliminary issues being raised, those cases should be disposed of within 45 days. Litigants should not file applications whose end result is to create paralyses of the criminal cases.

Mr. Temporary Deputy Chairman, Sir, if this Parliament can listen to the voices of the citizens out there, cases must be concluded speedily. A litigant is not being asked not to agitate for their rights. But when there is no stay, they will never use the preliminary application to paralyse the case. I urge hon. Members to oppose the amendment by the Committee and support the amendment by the Attorney-General.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, apart from all those very nice legal arguments that we have heard from prominent lawyers in the House, my conscious pricks me---

Mr. Temporary Deputy Chairman, Sir, you and I know what this country has gone through, through the hands of corrupt individuals who have looted the economy mercilessly. They go on filing stay after stay, until we are not able to prosecute them. Some even become "St. Paul". That cannot be acceptable. We must not allow people to use the courts to deny wananchi their money, which they looted from them. Let this Parliament rise to the occasion and not look at laws as if they are aimed at individuals like us. But they are aimed at the criminals because this is talking about disallowing applications for stay of proceedings in cases involving corruption and economic crimes. If any of us is guilty of that, he should not be in this House.

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Angwenyi, last one!

**Mr. Angwenyi:** Mr. Temporary Deputy Chairman, Sir, I know that there is an inordinate delay in disposing of cases in our courts. That is not only on economic crime charges alone, but also on civil cases. Are we going to make a law to expedite all those cases at once? Our law should apply to civil cases and marriage cases. Why can we not make our courts work faster and expeditiously on all the cases?

Mr. Temporary Deputy Chairman, Sir, I am sure the Minister is pleading with this House to allow her to appoint more judges. Why can we not apply them to dispose of cases much faster, instead of denying Kenyans their constitutional rights?

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

*(Section 4(5) deleted)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Now, we will move on to the next amendment in sequence. That is the amendment by hon. Muite.

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, it is I who will move that amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): Okay, move it!

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move an amendment to Section 7 of the Act---

**The Temporary Deputy Chairman** (Mr. Khamasi): What page?

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, it is found on page 1350.

I beg to move:-

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be

amended-

In Section 7 by inserting the following proviso at the end thereof:-

Provided that the powers of the Commission under this Act shall only relate to offences taking place after the commencement of the Act.

In this amendment, the Committee is proposing the insertion of a proviso to Section 7 of the Act. Section 7 of the Act in effect sets out the functions of the Kenya Anti-Corruption Commission (KACC), among other things, to investigate matters relating to offences that may have been committed or suspected to have been committed under the Act.

We propose to insert a proviso to the effect that the powers of the Commission under this Act shall only relate to offences taking place after the commencement of the Act.

Mr. Temporary Deputy Chairman, Sir, let us note that the Act commenced on 2nd May, 2003. The rationale for the introduction of this amendment is to ensure that the provisions of the Act in so far as crimes relating to corruption and economic crimes are concerned, do not apply retroactively.

The proposed amendment is also meant to ensure that the operation of the Act is in tandem and consonance with the provisions of the Constitution. Among other things, Section 77(4) of the Constitution disallows the retroactive application of offences. In a nutshell, it provides that no person shall be held to be guilty of a criminal offence on account of an actual omission that did not at the time that it took place amount to an offence. So, in effect, this amendment seeks to defeat retroactive application of the Act. It is very well intended.

I beg to move.

**Mr. Keter:** I support the amendment.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment because the current Act, as it is, does not offend the Constitution in that it does not create new offences retroactively. What the Commission does is that for those acts or omissions which occurred after the Act came into force then, obviously, the Act applies and investigation is carried out for those offences under the new Act. But if what happened prior to the coming into force of the Act, if it constituted an offence under the Penal Code, then they are investigated under the Penal Code. In fact, what we are proposing in the next Section 7(A) is to clarify that very issue. Therefore, I oppose the proposed amendment.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, this is a very strange proposal. The reason why the KACC was formed was mainly because past economic crimes have never been satisfactorily investigated. Since its inception, it has been investigating not only the Goldenberg scandal, but also the Anglo Leasing scandal which started in 1997. Now, when we propose an amendment like this one, do we intend to nullify all the investigations that the KACC has done since 2004 and all the prosecutions that are pending in court?

Mr. Temporary Deputy Chairman, Sir, let this Parliament move forward knowing that by supporting a section like this, we shall be rendering the work of the KACC over the last four years useless.

I also want to say that this Committee should have declared its interest. The Chairman of the Committee, and it is in the public domain, has litigated these very matters in the courts of law. If the section is unconstitutional, what would have been easier for the Chairman of this Committee and allied than to go to the court to declare those sections unconstitutional? I think people must declare their interest---

**Mr. Marende:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I moved that amendment as a Member of the Departmental Committee on Administration of Justice and Legal Affairs. The Committee has no interest in this matter.

Mr. Temporary Deputy Chairman, Sir, with regard to the Chairman of the Committee, the factual position is that he was involved in a case in which the accused person was the hon. Dr. Christopher Murungaru. In civil application in the Court of Appeal No.43 of 2006---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Order!

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, it is important that this goes on record! This is because as a matter of fact, the Minister should not cite something that is untrue.

The case in which---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Marende!

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I just want to put the record straight!

*(Ms. Karua stood up in her place)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Ms. Karua, I am Chairing the Committee of the whole House!

Mr. Marende, you were not standing to begin contributing! You were standing on a point of order which you needed to bring to my attention. You should not take leave of that to begin making a contribution! You just need to point out what is out of order and I will address it! You better do that in the shortest form possible!

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, in a nutshell I am asking: Is the Minister in order to mislead the House that there is personal interest in this amendment on the part of hon. Muite when, in fact, this amendment is moved by the Departmental Committee on Administration of Justice and Legal Affairs?

**An hon. Member:** Period!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I want to state the following: Hon. Muite is the Chairman of the Committee. Unless minutes are shown here to show that when the discussion was put before the Committee, he declared his interest and withdrew from the discussion, I am bound like many other Kenyans, to believe that there is personal interest in this matter. Standing Order No.76 clearly states---

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

I am replying to a point of order!

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Order, all of you!

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! I will not listen to you or grant you a chance! Please, sit down! We must be orderly here for us to progress. You must give Ms. Karua a chance to finish what she is saying.

*(Mr. Weya stood up in his place)*

Mr. Weya, if you are not careful, you will see that door!

**Hon. Members:** Out! Out!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Thank you, Mr.

Temporary Deputy Chairman, Sir.

I was saying that the Standing Orders provide that an hon. Member shall declare his interest, unless if that interest is obvious. I am not asking the honourable Chairman to declare his interest, because his interest is obvious. So, unless if there are minutes to clearly show that he abstained from the debate, one is bound to believe this proposed amendment is motivated by self-interest.

But the greatest reason for opposing this amendment, so that I may conclude, is that we shall make nonsense of---

**An hon. Member:** Aaaah!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I am just saying that we shall be nullifying--- Just to clear what I have said, we shall be making nonsense or nullifying the work that the KACC has done for the last three years. We shall also in effect be nullifying the prosecutions that are before the court; some relating to Anglo Leasing scandal and others to other economic crimes of prior dates. Unless if this Parliament is telling Kenyans that we no longer want investigations into anti-corruption---

**The Temporary Deputy Chairman** (Mr. Khamasi): Very well!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg that we strenuously oppose this particular amendment which, in my view, is mischievous.

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! By the end of the day, you will have to vote on this proposed amendment. It will either be carried or not. So, be prepared to vote.

**Mr. Weya:** On a point of order, Mr. Temporary Deputy Speaker, Sir. First, is the hon. Member in order to discuss an hon. Member without bringing a substantive Motion to this House? Secondly, is she in order to use unparliamentary language like the word "nonsense"?

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! I want to dispose of this matter because we have got very many other amendments.

**Mr. Syongo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Minister in order to mislead this House, through the reporting of the Press tomorrow, to believe that all the work that the Kenya Anti-Corruption Commission (KACC) has been doing for the last three to four years will be annulled if this amendment is carried? The point is that, as the Attorney-General has agreed, the Penal Code provides for sufficient provisions for any action against those who were involved in Anglo Leasing and the KACA can actually still use the Penal Code to arrest them and arraign them in a court of law.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Syongo! You are now debating.

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, is the Minister in order to mislead the House to believe that those who were involved in Anglo Leasing will go scot-free and yet, the Penal Code provides for the KACA to actually---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Syongo! The House will decide on that. I now put the Question.

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

**Hon. Members:** Division! Division!

**The Temporary Deputy Chairman** (Mr. Khamasi): You are only 16 hon. Members!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): No! We are more than 20 hon. Members, Mr. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Ms. Karua! Please, I am chairing the Committee of the whole House. Those hon. Members who want a Division should remain standing since we want to count you.

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Yes, I am told that you are 23. We will then have to go to Division. Ring the Division Bell.

*(The Division Bell was rung)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! Please, take your seats! We are going to proceed to the Division. The Tellers for the Ayes are: Mr. Keter and Capt. Nakitare. The Tellers for Noes are: Ms. Abdalla and Mr. Karaba. The Ayes will move to the lobby on my right. The Noes will move to the lobby on my left. We will take five minutes to vote. The doors to the lobbies will be closed. You will be expected to vote either Aye or Noe. If you want to abstain, you will come and register your name with the Clerk-at-the-Table. We will be counting five minutes from now!

*(Mr. Cheboi consulted other hon. Members)*

Order, Mr. Cheboi! Let us, please, have some order!

Hon. Members, this is an amendment by Mr. Muite, but it was moved on his behalf by Mr. Marende. That is the one we are going to specifically vote on. It is on the Anti-Corruption and Economic Crimes Act, 2003 (No.3 of 2003). You will only take five minutes. Please, move to your desired lobby for voting. Voting starts from now!

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

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

## DIVISION

*(Question put and House divided)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members! I apologise for that delay. We were consulting. My colleague, Mr. Khamasi, has taken a rest. Do we have the results of the division? Could the tellers, please, come forward.

*(Question carried by 38 votes to 27)*

**AYES:** Ms. Abdalla, Messrs. Arungah, Cheboi, Chepkitony, Keter, Dr. Khalwale, Messrs. Kipchumba, Kombe, Kosgey, Ligale, Maitha M.M., Marende, Masanya, Moi, Muite, Dr.

Murungaru, Messrs. Muturi, Mwandawiro, Capt. Nakitare, Mr. Ndolo, Ms. Ndung'u, Rev. Nyagudi, Eng. Nyamunga, Messrs. Ogur, Ochilo-Ayacko, Ojaamong, Prof. Ojiambo, Mr. Okemo, Eng. Okundi, Messrs. Omamba, Omondi, Archbishop Ondiek, Messrs. Opore, Owino, Salat, Dr. Shaban, Messrs. Syongo and Weya.

Tellers of the Ayes: Ms. Abdalla and Mr. Karaba

**NOES:** Messrs. Abdirahman, Githae, Kaindi, Kamanda, Karaba, Ms. Karua, Mrs. Kihara, Messrs. Kimathi, Kimunya, Kingi and Koech J.K., Dr. Kulundu and Dr. Machage, Messrs. Michuki, Mohammed A.M, Mohammed A.C, Muchiri, Mrs. Mugo, Messrs. Mungatana, Munyao, Muriungi, Mwenje, Dr. Mwiria, Messrs. N. Nyagah, Onyancha, Shaaban and Wario.

Tellers of Noes: Mr. Keter and Capt. Nakitare

*(Resumption of the Committee  
of the whole House)*

*(Section 7 as amended agreed to)*

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, on behalf of the Committee, I beg to move:-

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended -

By deleting the proposed Section 7A. That is on page 1350. It is important that some things are brought to light. First, the Departmental Committee on Administration of Justice and Legal Affairs conducted thorough consultations on the amendments we are proposing, including writing to the Law Society of Kenya and talking to the Governance, Justice and Law Reform Sector Programme (GJLOS). For anybody who may be having an idea that the Chairman has some interests because he had litigated on behalf of a particular client, I would like to say that the Chairman attended none of the meetings.

Secondly, it is very important that we realise--- I am a very young Member of this Parliament, only four-and-a-half years old. I know that every amendment to the Statute Law (Miscellaneous Amendments) Bill is done to alter very few issues that are not very detailed. This particular amendment, which was proposed, was very detailed. The Minister should have brought it under the respective Act. I will be very surprised if the Attorney-General opposes this particular amendment on Section 7A, as he has opposed many amendments here. It will be an issue of powers being taken away from his office.

Section 7A has to do with investigative powers. If you look at Section 26(4), you will see that the Attorney-General is the one who is empowered to conduct investigations. Unless the Attorney-General is saying that he is no longer able to investigate such matters, it will be totally wrong to include this particular section. I beseech this House to reject this particular amendment by the Attorney-General to save him from doing nothing in his office, yet he is a constitutional office holder and a very seasoned lawyer. In fact, he is a Senior Counsel, with very high qualifications.

So, I hope that the Attorney-General will not oppose this amendment.

Mr. Temporary Deputy Chairman, Sir, I beg to move and call upon Ms. Ndung'u to support the amendment.

*(Question of the amendment proposed)*

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, I rise to support the amendment by the Departmental Committee on Administration of Justice and Legal Affairs. As I do so, I would



like to inform hon. Members that the Committee did have discussions with the Kenya Anti-Corruption Commission. We told the Director that most of the amendments he wants made to the Kenya Anti-Corruption Commission Act, through the Statute Law (Miscellaneous Amendments) Bill, were unconstitutional, and that Parliament's hands are tied. We told him that although his Commission wanted us to do something, we could not do it.

Mr. Temporary Deputy Chairman, Sir, we advised Justice Ringera to liaise with the Minister for Justice and Constitutional Affairs to bring a Bill to Parliament to amend the Constitution. Until such a constitutional amendment Bill comes to this House, we will just be passing some of these amendments in vain. The courts will reject this law. Therefore, as I support this amendment, and other amendments that are coming, I would like us to keep in mind the fact that Parliament should never legislate anything that is against the Constitution.

I beg to support.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I rise to oppose this amendment. The powers of the Attorney-General, under Section 26(4), are to order the Commissioner of Police to carry out investigations into any criminal matters. I also have powers, under the Anti-Corruption and Economic Crimes Act, to order the Director of the Kenya Anti-Corruption Commission to carry out investigations. What my proposed amendment is trying to do is to harmonise those laws, so that for offences appearing under both the Penal Code and the Act, we have the Kenya Anti-Corruption Commission carrying out the investigations. That is all that I am trying to do. Of course, an argument has been advanced that the Kenya Anti-Corruption Commission should only investigate those crimes which fall under its constituting Act.

However, some of those offences, like abuse of office, also fall under the Penal Code. So, it makes sense for the Commission, which will be investigating offences relating to abuse of office, to also investigate offences relating to abuse of office, under the Penal Code. When they have finalised their investigations, where the offence falls under the Penal Code, the culprit will be charged under the Penal Code. Where the offence falls under the Anti-Corruption and Economic Crimes Act, he will be charged under that Act. What are those offences we are talking about? If hon. Members look at pages 1361 and 1362 of the Bill, they will see that those are the offences in the Penal Code, which we are now saying, for avoidance of doubt, that the Kenya Anti-Corruption Commission should investigate.

If you look at the Penal Code, you will see that Section 99, and all those other sections which are mentioned there, deal with offences such as abuse of office, offences against public authority, stealing by a person in public service, false accounting by a public officer, *et cetera*. These are offences which, in one way or the other, fall under the Anti-Corruption and Economic Crimes Act.

So, all we are trying to do is to harmonise these laws. We are saying that since the Kenya Anti-Corruption Commission has the capacity, and is investigating these kind of offences, let it also investigate such offences under the Penal Code. So, I beg to oppose.

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I rise to support the amendment by the Departmental Committee, largely on the ground that the amendment by introduction of Section 7A will, clearly, be in conflict with Section 26(4) of the Constitution, which vests the power to order an investigation in the Office of the Attorney-General. That provision is so explicit. It says that the Attorney-General may order the Commissioner of Police to investigate. So, if the arguments by the Attorney-General were to have any credence, then the cure would be to amend the Constitution to include the Director of the Kenya Anti-Corruption Commission among the persons who may investigate crime on the orders of the Attorney-General.

That must be clearly understood. Short of that, then we will be seeking to vest in the Director of the Kenya Anti-Corruption Commission by an Act of Parliament power that is

constitutionally conferred on the Office of the Attorney-General. To the extent that there is that contradiction and inconsistency, this provision will be null and void. Further, this area, if we legislate as proposed now, will be another hot spot for conflict between the Office of the Attorney-General and that of the Director of the Kenya Anti-Corruption Commission, the Director of Public Prosecutions and other officers falling under the Office of the Attorney-General. The Attorney-General's amendment is dangerous. Therefore, we should oppose it and support the amendment moved by Mr. Cheboi, on behalf of the Departmental Committee on Administration of Justice and Legal Affairs.

Thank you.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment by the Committee, and state that the amendment proposed by the Attorney-General does not at all conflict with the Constitution, because it is not taking away, the powers of the Attorney-General and giving them to anyone else. The proposed amendment makes it clearer that the Commission can investigate Penal Code offences, like abuse of office, fraud, breach of trust, theft by public servant and obtaining by false pretences.

All those offences are defined as corruption in Section 2 of the Anti-Corruption and Economic Crimes Act, and this now clarifies the matter. We all know that under the Anti-Corruption and Economic Crimes Act, the Attorney-General receives the investigation reports from the Commission, and may direct them to further investigate. The amendment proposed by the Attorney-General does not, at all, conflict with the powers of the Attorney-General. It just clarifies.

With those remarks, I beg to oppose the amendment by the Committee and support the amendment by the Attorney-General.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, we will hear from Mr. Ochilo-Ayacko and then determine the matter.

**Mr. Ochilo-Ayacko:** Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to state very clearly that I support the proposed amendment. The reason for doing so is that a lot has been said about the Anti-Corruption and Economic Crimes Act, and it is important for this House to be cautious. If we try to amend sections of this Act without looking at its totality we will be giving to this institution powers it was not given in the first instance. A proper amendment to this Act would be done if the entire Act is brought back to this House, so that we scrutinise it to see how the powers contained therein have been exercised.

To try and do it within the ambit, or the purview, of this omnibus legislation is to deny this House an opportunity to look at the totality of the effect of empowering this institution. This institution has been a let down to Kenyans. It has been used for witch hunting. This House, at the end of its tenure, cannot permit this institution to go unchecked.

With those remarks, I beg to support the amendment by the Committee.

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

*(Section 7A deleted)*

**Mr. Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members! Please, pay attention! We have to interrupt the business of the House for a while. There is a matter that Mr. Speaker wishes to deal with before we rise this evening. It is to do with the Finance Bill. Therefore, I would kindly request the Attorney-General to move that the Committee do report progress to the House and seek leave to sit again later today!

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, as you have rightly explained, this is just a short interruption in order for the Speaker to deal with that issue. Hon. Members can apply for extension of time if you want.

Under Standing Order No.101, I beg to move:-

THAT, the Committee doth report its progress to the House and seek leave to sit later today.

As per the Standing Orders, the House cannot extend its sitting time at the Committee Stage. Once we go back to the House, that time can be extended.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, before I put the Question, I wish that you understand that this matter has not been raised lightly. As you know, there has been a pending matter regarding the Finance Bill. That needs to be disposed of. Please, understand it is not very light. It will, of course, take a few minutes. We will deal with it and get back to the Committee of the whole House.

The Temporary Deputy Chairman with it and get back to the Committee of the whole House.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Speaker in the Chair]*

### **PROGRESS REPORTED**

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Mr. M'Mukindia:** Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill and seeks leave to sit again today.

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

**The Minister for Finance** (Mr. Kimunya) seconded.

*(Question proposed)*

*(Question put and agreed to)*

### **COMMUNICATION FROM THE CHAIR**

#### FINANCE MINISTER TO RESPOND TO SPEAKER'S ORDER ON OPERATIONALIZATION OF PRIVATISATION ACT

**Mr. Speaker:** Hon. Members, you will recall a communication which I had made earlier this afternoon which is the non-obedience of an order directed by me to the Minister for Finance to

make operational or appoint the operating stake for the Privatisation Bill. You remember I had made certain orders. The hon. Vice-President and Minister for Home Affairs had made certain pleas to me which made me suspend that part of the ruling until tomorrow.

Subsequent to that, the Minister for Finance came to the House and came to see me. He wishes to make a report to me so that I make the final orders. I have decided to take this unusual course of events because, indeed, it touches on the powers and privileges of this House.

*(Applause)*

If you look at the Standing Orders and the Powers and Privileges Act, a matter of privilege will take precedence over any other business. Therefore, this is the right time for us to deal with this matter. I am fully convinced that this is the right procedure to do so. I will, therefore, ask Mr. Kimunya to report to me, now what he has done or failed to do and, whether he intends, as a matter of fact, to obey or continue to disobey my direction to him.

Mr. Kimunya, please, proceed!

### MINISTERIAL STATEMENT

#### STATUS OF OPERATIONALIZATION OF PRIVATISATION ACT

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, pursuant to the order you gave in the House on the matter of the operationalisation of the Privatisation Act, I wish to issue the following Statement on the status of the operationalisation of that Act.

Mr. Speaker, Sir, the privatisation Act contemplates that there will be ongoing transactions prior to the commencement of the Act. For this reason, it provides in the Third Schedule, transition provisions that:-

"Upon the coming into operation of this Act, the Commission shall take over the implementation and management of any ongoing process leading to privatisation in a class set out in Section 22(3)."

Mr. Speaker, Sir, there is, therefore, need for the Commission to be functional from the outset, so that it is in a position to take the ongoing transactions. To achieve a functional state from the outset, it is necessary that the officers that comprise the Commission are appointed immediately on the coming into effect of the Act.

Mr. Speaker, Sir, Section 5(1) of the Act provides for the various officers appointed by the President, the Attorney-General, the Permanent Secretary to the Treasury, seven members not being public officers appointed by the Minister---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! I intend to hear every word that the Minister has to say. Therefore, no hon. Member is now allowed even to whisper!

Mr. Minister, proceed!

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, Section 5(1) of the Act provides for the various officers appointed by the President, the Attorney-General, the Permanent Secretary to the Treasury, seven members, not being public officers, appointed by the Minister and approved by the relevant committee of Parliament by virtue of their expertise in such matters as would ensure that the commission achieves its objectives and very critically, the Executive

Director.

Further Section 10, Subsection 1, of the Act says that the Minister shall, through a competitive process, appoint an Executive Director of the Commission who will be the Chief Executive Officer (CEO) of the Commission and who shall in addition, perform such duties as the Commission shall assign to his office. I have, therefore, proposed to operationalise the Act as follows:-

(i) To identify, through, a transparent process, the person to be appointed as the Executive Director, in accordance with the law.

(ii) To propose the seven directors to be appointed to the Departmental Committee on Finance, Planning and Trade of Parliament.

(iii) To get the Commission to be categorised by the State Corporations Advisory Committee which will then determine the salaries.

Once the Executive Director has been identified and the seven proposed directors have been approved by the Departmental Committee on Finance, Planning and Trade of Parliament, I will then request His Excellency the President to appoint and gazette a Chairman for the Commission. I will, thereafter, gazette the directors and concurrently appoint the Executive Director. Accordingly, looking at the events and expected timing, I will be gazetting the commencement date in accordance with Section 1 of the Act which we have agreed on as 1st November, 2007. So far, I have also done the following:-

(i) I have obtained the categorization of the corporation by the State Corporations Advisory Commission. This is important in order to get a basis for the remuneration level of the Executive Director when the Act comes into operation.

(ii) I have competitively sourced a recruitment agency to run the competitive process required of me by Section 10, Subsection 1 of the Act in the appointment of the Executive Director of the Commission.

(iii) We have advertised for the recruitment of the Executive Director which was placed in the media on 24th August, 2007 and which was to run up to the 6th September, 2007. As we talk, the vetting process is ongoing, after which we would then conduct the interviews and identify an Executive Director.

Mr. Speaker, Sir, as required by Section 5(1), Subsection (d) of the Act, I will also be then proposing for approval by the Departmental Committee on Finance, Planning and Trade the seven members of the Commission.

Mr. Speaker, Sir, in the meantime, there are ongoing transactions as contemplated by the transitional provisions of the Act. These transactions, for the benefit of the record and the House, are being undertaken within the existing laws which are currently operating as follows:-

The first law that we are applying is the Permanent Secretary to the Treasury Incorporation Act, Cap.101 which empowers the Corporation to buy and sell assets on behalf of the public.

We are also using the Companies Act, the Capital Markets Authority Act, the Procurement Act, the individual Acts of Parliament under which each of the State corporations are established. We are also using any other law that may be relevant to a specific transaction.

Mr. Speaker, Sir, I would like to inform this House, that through the Procurement Act, specifically, we are getting great value for the taxpayer in the course of advisory service for privatisation transactions as was evidenced by the bit we received for advisory services for the Safaricom IPO.

We have also empowered Kenyans to directly own shares in companies previously held on their behalf by the Government, deepened our Capital Markets and raised resources for the development of our infrastructure, which is a prerequisite for the rapid economic growth we all

desire and which is well in the spirit of the Privatisation Act that was passed by this House.

Mr. Speaker, Sir, last and most importantly, I have never had any intention, and would never have any intention, of disobeying or belittling this House which I hold in great esteem.

Thank you.

**Mr. Speaker:** Thank you! Why can we not give him a round of applause?

*(Applause)*

Thank you, Mr. Kimunya.

Hon. Members, if Mr. Kimunya had heeded my advice yesterday that he comes this afternoon to explain to this House what he has now done, we would not have had any problem at all. I think I am convinced that the steps being taken, particularly, your Statement that the Act will come into operation on 1st November, 2007 and the reasons behind that late date, I am convinced. I will now lift the sanctions that I had previously placed upon you and your Ministry. That is the right direction.

This is directed to every hon. Member of this House, whether it is the Front Bench or the Back Bench, in the Government or Opposition, and the direction is this: This House will not be disobeyed, will not be held in contempt and the Chair will stand resolute in defence of the integrity of the House and the integrity of the Chair.

In the meantime, thank you Mr. Kimunya. I hope that you fulfil that. If you do not, I am still available. Mr. Kosgey, I think we should now finish this!

**Mr. Kosgey:** Mr. Speaker, Sir, I know you have finished the matter. But when the Minister was explaining, he did not explain to this House and the nation at large, why from October, 2005 he delayed in implementing this law until he had to be ordered by the Speaker and until sanctions had to be imposed on him. Mr. Speaker, Sir, we would like to know the reasons behind the delay. We know that the date of 1st of November, 2007 is after the Safaricom IPO. Am I right? Say yes!

**Mr. Speaker:** Order!

**Mr. Kosgey:** Mr. Speaker, Sir, I think we have a right to know! We have a right to know why the Minister was sleeping on the job. Was it intentional or there was another motive behind that?

**Mr. Speaker:** Could I bring this thing to an end? Please, relax! I think all of you were here three weeks ago and this matter was raised by Mr. Ochilo-Ayacko. He wanted a Ministerial Statement as to the reasons - which I am sure, this is what you are following - for the delay.

The Chair went a step higher and demanded the operationalisation. From that moment, it now became the issue of the Chair's directions being obeyed or disobeyed. I am convinced that the Minister has obeyed and I am further convinced that there are sufficient reasons not to pick an earlier date. Otherwise, you can make the operational date tomorrow and you have no operational apparatus. Whatever we seek must be realistic. Whatever we do, we must also ensure that what we do does not cause chaos as a consequence of our rush. Ultimately, this is a matter of the Chair and there is not going to be any further debate. My orders have been obeyed and I am satisfied. I think we will go the next business.

Before we do that, as I was waiting to come and deal with this issue, I heard the Chair mention that you may not be able to complete the business of the Committee of the whole House which you will go back to immediately now, the only time you can have an extension of time, is in the full House which is now. The Minister or any hon. Member could apply for extension of time. It is totally at your discretion. What is your reaction, Mr. Attorney-General?

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, as I would have wanted to go on very much until we complete the business of today, the fact of the matter is that we have the Commonwealth Law Conference being hosted in the country.

Mr. Speaker, Sir, I am the head of over 1,500 of the legal professions and we have a very important function starting at 7.00 p.m. So, I suggest that we go on up to 7.00 p.m. and then we will continue tomorrow.

**Hon. Members:** Aah!

**Mr. Speaker:** Order, Members!

**The Attorney-General** (Mr. Wako): Let it be 7.00 p.m. then!

**Mr. Speaker:** Order! What time does the function start?

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, the function starts at 7.30 p.m. I am prepared to go up to 7.00 p.m. and call it a day.

**Mr. Speaker:** Then make the application!

### PROCEDURAL MOTION

#### EXTENSION OF HOUSE SITTING TIME

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

THAT, the Business of the House be extended from 6.30 p.m. to 7.00 p.m. today.

**The Assistant Minister for Transport** (Mr. Githae) Seconded.

*(Question put and agreed to)*

**Mr. Speaker:** Hon. Members, I now direct that the Committee of the House resumes now!

*(Resumption of Committee of  
the whole House)*

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*(Mr. Speaker left the Chair)*

#### IN THE COMMITTEE

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

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members! We shall resume from where we left. That is item number (d) on page 517 of the Order Paper. I now call upon hon. Muite or any hon. Member of the Committee to move the amendment.

Proceed, hon. Syongo!

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, on behalf of the Departmental Committee of Administration of Justice and Legal Affairs, I beg to move:-

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended-

(d) By deleting the proposed Section 12A.

Mr. Temporary Deputy Chairman, Sir, there are two reasons which informed the Committee's decision to make this amendment. First, that particular section - Section 12A - is actually superfluous. It is superfluous because if you look at the existing Act, Section 12A Sub-section (a), it clearly provides that the Kenya Anti-Corruption Commission (KACC) may, in the performance of its functions, work in co-operation with any other persons or bodies it may think appropriate and, it "shall" - not "may" - be the duty of any such person or bodies to accord the Commission every co-operation.

Mr. Temporary Deputy Chairman, Sir, that section goes up to the end - Sub-section 3. Among those bodies that are mandatorily required to co-operate is the Commissioner of Police, as well as the Office of the Attorney-General.

The amendment as proposed by the Attorney-General, which is appearing on page 1350, actually intends to take away the powers of the Attorney-General and the Commissioner of Police, both being constitutional office holders, through an Act of Parliament.

Mr. Temporary Deputy Chairman, Sir, I beg to move, and wish to request hon. Marende to second.

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to second that amendment, which is based on a very sound rationale, which is constitutional.

Thank you.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose that amendment. It is true that Section exists---

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Mr. Attorney-General. The question of the amendment has not been proposed!

*(Question of the amendment  
proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose that proposed amendment. It is true that, that section is there, but it is vague! It is open and, in fact, it has opened itself to competition as to who should handle who. The amendment which is here now, is for the sake of smooth investigation of corruption cases. It says that if those offences fall under the Penal Code and under the Economic Crimes Act, which the KACC can investigate, they take priority over any other investigative agency.

I think that is good for the sake of proper investigations and prosecution of corruption cases.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Thank you, Mr. Temporary Deputy Chairman, Sir.

**Mr. Syongo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. For the benefit of the House, the Attorney-General has talked about the vagueness. But Sub-section 2 of Section 12 clearly says as follows:-

"Without limiting the generality of Sub-section 1, such persons who shall, by mandatorily, co-operate with the Commission, such persons or bodies include the Controller and Auditor-General, the Director of the Criminal Investigations



Department---"

Mr. Temporary Deputy Chairman, Sir, it actually provides the framework. It is also quite specific.

*(Applause)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, that is not a point of order because that is a complete misreading of this particular Sub-section. This requires co-operation. We are saying that, in matters which relate to economic crimes and corruption cases, KACC must take priority in investigating.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, it is quite clear that the proposal by the Attorney-General seeks to grant primacy or priority to KACC in all corruption investigations. I recall hon. Members have been asking here what KACC is doing. Until there is this amendment to grant it priority in investigations of corruption matters, then we shall not be able to fight graft comprehensively.

It does not, at all, take away constitutional powers of the Attorney-General or the Commissioner of Police. The amendment is sought to strengthen KACC.

Mr. Temporary Deputy Chairman, Sir, I beg to support the amendment by the Attorney-General and oppose the amendment by the Committee.

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

*(Section 12A deleted)*

*(Applause)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order! I call upon hon. Muite or Mr. Syongo to move the amendment, which is Item No.(e).

Proceed, hon. Syongo!

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, on behalf of the Departmental Committee on Administration of Justice and Legal Affairs, I beg to move:-

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended-

(e) By deleting the proposed Section 16(2).

The Committee considered this very carefully. In its conclusion, the Committee clearly saw that this proposed amendment is seeking to interfere with the independence of the Kenya Anti-Corruption Advisory Board. If you look at Section 16 of the Act as it exists today, all members of the Board are those who are not directly involved with the business of Government. They include the Law Society of Kenya, the Institute of Certified Public Accountants of Kenya (ICPAK), the International Federation of Women Lawyers (FIDA), Kenya Association of Manufacturers (KAM), Joint Forum for Religious Organisations, Federation of Kenya Employers (FKE), Kenya Bankers Association (KBA), Central Organisation of Trade Unions (COTU), Association of Professional Societies of East Africa (APSEA), the Architectural Association of Kenya (AAK), the Institution of Engineers of Kenya and the Kenya Medical Association (KMA) and the Director.

There is not a single representative in that Board either of the Judiciary or Parliament. There is none representing the Executive in that Board. This was the wisdom of Parliament so that

the Board can work independently. This proposed amendment by the Attorney-General wishes to include the Permanent Secretary in the Ministry for the time being responsible for matters related to integrity or a designated representative in the Board. That is against the spirit of the Act, which gives autonomy to the Commission.

Mr. Temporary Deputy Chairman, Sir, I beg to move and wish to ask hon. Muturi to support.

**Mr. Muturi:** Mr. Temporary Deputy Chairman, Sir, I think the explanations given by the Mover are so clear. There is no justification as to why we should now lobby the Permanent Secretary in the Ministry. As it has been explained, we are just going to now tie down the work of the Advisory Board. For those reasons, I beg to support.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. The presence of the Permanent Secretary of that Ministry, which has been charged with the responsibility of this issue is, in fact, a plus. It does not, in any way, remove the independence of the Advisory Board, which is there.

We are not seeking in any way to amend, for example, Section 18 of the Act under which the Board shall not be subject to the direction or control of any person or authority and shall only be accountable to Parliament. We are not seeking to interfere with that one.

On the other hand, it is extremely important that the Board, in the discharge of its function, at least, be informed as much as it can be informed by that Ministry which is responsible for it in terms of many things that the Advisory Board and even the Kenya Anti-Corruption Commission (KACC) normally goes to the Ministry for help with regard to budgeting and other issues like those ones. It is important that, at least, we have a Permanent Secretary, that is, one person out of more than 16 persons who are all very independent and who you cannot tell me that they are so fragile that they can be influenced by only one person. I think they are independent and that is why they have been voted to the Advisory Board.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, the Board was intended to be independent of Government, especially. When you talk about corruption, the Government and its agencies are on one side while the business community is on the other side. That is why we were very careful not to include anybody who would have the input of Government in this Board, which is actually fighting against corruption in Government. So, to introduce the Permanent Secretary there, it will suggest that the Government is going to investigate itself now.

If what the Attorney-General is saying is true, that they will need some advice from the Minister, he can always attend those Board meetings. He can be invited to advise them, if it is necessary, but he need not be a substantive member of that Board.

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

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment proposed.

*(Loud consultations)*

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

**The Minister for Finance** (Mr. Kimunya): In making my contribution, I wish to request the House that we set aside the emotions on this particular issue. Let us ask ourselves if we really want an Advisory Board that is functional or not.

Mr. Temporary Deputy Chairman, Sir, I happen to have sat in the first Kenya Anti-

Corruption Authority (KACA) as the representative of the accountants when we went through the setting up of the body. One of the things that we kept on missing was the representation of Government because matters were being decided in the Advisory Board and yet we could not talk, as outsiders, on matters involving the Public Service. This is a body advising on corruption in the public service, but without any input at all from the public service itself. It was a mistake at the drafting point. I would, therefore, like to urge this House that let us, for once, correct what we did not do in 2003.

You cannot have an Advisory Board advising on corruption in Government without anybody representing Government to give the view of Government and yet the same body is actually set up by Parliament. It has the benefit of interacting with Parliament by law, but it has no benefit of interacting with Government by law. This body is supposed to be checking the Executive.

Mr. Temporary Deputy Chairman, Sir, part of the problems we have been having is that, for example, in this House, we have been debating about the excessive salaries. They were debated out there by the private sector and no reference was made to the Public Service. The salaries were approved by the Board and we have no other opportunity to even discuss that except to pay those salaries that were set up totally outside the Public Service scales.

Mr. Temporary Deputy Chairman, Sir, I would like to urge hon. Members to understand that this is an Advisory Board. I am using my own experience in setting up the former KACA. This is the Advisory Board. It does not make executive decisions on what happens. However, if we do not have that vital input about the representation of Government to provide the interlink, then we shall be failing in our duty, as Parliament, to provide an effective Advisory Board to the Kenya Anti-Corruption Commission (KACC).

Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment and support what was proposed by the Attorney-General to give real teeth to the Advisory Board and the benefit of interaction with the Government.

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

*(Section 16A deleted)*

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

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended-

(f) By deleting the proposed Section 23;

Mr. Temporary Deputy Chairman, Sir, the proposed amendment, as is in the Bill, to Section 23(iv) seeks to confer police powers to an unconstitutional institution. To that extent, therefore, it has no logical basis.

*(Question of the amendment proposed)*

**Mr. Cheboi:** I support the amendment.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I really oppose this because the whole purpose of this amendment is to ensure that the Kenya Anti-Corruption Commission (KACC) has the same investigating powers as the police have. So, I am opposed to the entire deletion of this particular clause. Of course, I will be moving that the prosecution of offences should be deleted from the subparagraph, because prosecution does not arise out of the

Criminal Procedure Code, the Evidence Act or the Police Act. Prosecution arises out of delegated power by the Attorney-General of the Republic. Therefore, I oppose the deletion of this clause.

**Ms. Abdalla:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Is it in order for the Attorney-General to say that he will be opposing the amendment that will be dealing with the prosecutorial powers of his office? Is it that the Commissioner of Police is not here to oppose the deletion? Is it in order for the Attorney-General to be selective in his amendments?

**The Temporary Deputy Chairman** (Mr. M'Mukindia): That is an argument, Ms. Abdalla!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I would like to comment that, firstly, I oppose the amendment and support the proposal by the Attorney-General. I want to say this: Conferring police powers on the KACC does not mean that we are taking the powers from the police. We are merely enabling the Commission to have the same powers to summon a suspect to come before them without having to go to court to get the court to order that suspect. To argue that you cannot confer police powers on a non-constitutional body is not right, because the police are not a constitutional body and police powers have already been conferred on the KRA, the Immigration Department, local authorities and even the Kenya Wildlife Service (KWS).

I beg to support the Attorney-General's amendment and oppose the Committee's amendment.

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

*(Section 23 deleted)*

*Sections 26, 27 and 28*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, on behalf of the Departmental Committee on Administration of Justice and Legal Affairs, I beg to move:-

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended-

(g) by inserting the following new amendments in proper numerical sequence- s. 26, s. 27, s. 28 delete.

The basis of the proposal for deletion of those sections is that, first, those provisions contravene the rights of a suspect as are known in law. So, that if compliance with those provisions results in the suspect, or an accused person, being subjected to a situation where he loses all his constitutional rights and legal rights as are known in law, namely, among others, the right to silence, the right not to self-incriminate and the right of presumption of innocence. Indeed, in criminal law and practice, it is trite that a principle known as the "judge's rules" apply. These confer on a suspect a right to remain silent, among other things, the right to also not disclose information under any compulsion. Indeed, in other jurisdictions, such as South Africa where these provisions are in the statute, there are further provisions that bar the use of that information in evidence. To the contrary, our Act says that any such information may be used in prosecution as evidence.

The Commission can still independently investigate information where there is suspicion of any person without these provisions being in the statutes. The Court of Appeal has said so. Among other things, the Kenyan Court of Appeal, which is the highest court in the land, has had these very wise words to say:- "So that we must be conscious that as we legislate, we are legislating for

persons who may be suspects. We are also legislating for situations where posterity will be concerned. We are also legislating for situations where we, ourselves, may be suspects".

The Court of Appeal further says, and watch these prophetic words:

"Occasionally, those who have been mighty and powerful are the ones who run to seek the protection of the courts when circumstances have changed".

Indeed, circumstances may change; so, we must uphold the sanctity of the law; we must uphold presumption of innocence and we must uphold the right to remain silent.

With those few words, I beg to move.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I oppose and proceed on the basis that we are dealing with Sections 26, 27 and 28 of the Act. These are very important sections of the Act, which give the necessary powers to the KACC to really effectively investigate economic crimes and corruption cases.

Section 26 requires the Commission, by notice in writing, not to just require any person, but a person reasonably suspected of corruption or economic crimes, to furnish within reasonable time a statement enumerating the person's property and the time at which it was acquired, and giving information in relation to any property that was acquired at or about the time of the suspected corruption or economic crime. So, Section 26 deals with the suspect himself, being required to furnish information as to his property.

Section 27 relates to an associate of a suspected person, who can also be required to do a similar thing.

Section 28 now requires, not the suspect or the person associated with the suspect but, any person who may have the records on where property is, and so on, to give that information. So, Sections 26, 27 and 28 go to the very core of investigative powers of the KACC. Without these Sections, the KACC may not be effective in investigating economic crimes and corruption. So, we will really be removing the "teeth", as it were, of the KACC if we delete Sections 26, 27 and 28. We are really mutilating its powers.

For those reasons, I oppose very strongly this amendment.

**Ms. Ndung'u**: Mr. Temporary Deputy Chairman, Sir, I am supporting this amendment. When we passed the Kenya Anti-Corruption Act in 2003, we wanted KACC to have the ability to investigate and follow suspects. But the one thing that we did not want KACC to do was, one, to flout the Constitution and, two, to abuse the powers that we gave to it.

Mr. Temporary Deputy Chairman, Sir, under the Sexual Offences Act, for example, we have provided for DNA testing, so that we can take a sample from a suspect to compare it with the evidence that we have, so that we can prove that, that is the person who raped that person. But we do not take a sample and turn that sample into evidence. That is what is happening. KACC has been using this particular Section to say: "We suspect that you have corruptly bought a house! Can you, please, show us that House?" That is the problem. We want KACC to do its job. Go, get the evidence and then tell somebody: "We have evidence on you, and we want evidence X, Y, Z." They have misused that power.

Mr. Temporary Deputy Chairman, Sir, I am so sorry that, even as the constitutional lawyer, that they have been incorrect! The Constitution is clear that no one can self-incriminate herself or himself. Suspects are not supposed to incriminate themselves in any way. That is why in a police station, you are first cautioned. You are told: "Anything that you say may be held against you!" That way, you know what you say may be held against you. What KACC is saying is: "We are forcing you to say what we can hold against you!" That is unconstitutional and I must support the

amendment!

With those few remarks, I beg to support the amendment.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, it very strange to listen to Members arguing 360 degrees away from the way they argued in 2003. The HANSARD will bear me correct! That is when this Act was passed.

I wish to oppose the amendment and say the following: The amendment by the Committee is clearly a case of conflict of interest. I want to say the following: If you remove Sections 26, 27 and 28, it is better to repeal the entire Anti-Corruption and Economic Crimes Act. I want to say that I am surprised that the Committee is very cleverly only citing Civil Application No.43 of 2006 by the Court of Appeal, where the applicant was told by the court: "Go and agitate your case against Sections 26, 27 and 28, before the Constitutional Court!" The application was dismissed, save for the stay.

Mr. Temporary Deputy Chairman, Sir, the Committee, although I know that it is within the knowledge of some of its Members, is omitting to tell us that the application, which was Civil Application No.54 of 2006 - Miscellaneous Civil Application for Judicial Review - and which was seeking before the Constitutional Bench for a declaration that Sections 26, 27 and 28 are unconstitutional, was finally dismissed with costs on 1st day of December, 2006.

With your indulgence, Mr. Temporary Deputy Chairman, Sir, the court found Sections 26, 27 and 28 of the Anti-Corruption and Economic Crimes Act are investigatory provisions and do not change or reverse the burden of proof, nor do they offend Section 72 or Section 77 of the Constitution.

Further, the court found that those sections are necessary and constitutionally justifiable. Intrusion of the privacy of a home and the property in the interest of the rights and freedoms of others and the public interest--- So, public interest here is being protected against looters or suspected looters.

The court further found that it is not justifiable, in a democratic society, that communal wealth should be spirited and stashed away through corruption and economic crimes.

I wish to table both the Court of Appeal and the High Court rulings, so that they become part of the permanent records of this House, and double-speak in these contributions be noted.

*(Ms. Karua laid the documents  
on the Table)*

Mr. Temporary Deputy Chairman, Sir, allow me to go back to Sections 26, 27 and 28. Section 26 is the one that allows the Commission to summon anyone reasonably suspected of corruption or economic crimes, and to require them to furnish, within a reasonable time, a recent statement enumerating their property, *et cetera*. Section 27 is where the catch is! That, the associates of the suspects may also be summoned.

It reads, Mr. Temporary Deputy Chairman, Sir, with your indulgence:-

"The Commission may, by notice in writing, require an associate of a suspected person to provide, within a reasonable time, specified in a notice, a written statement of the associate's property"

Mr. Temporary Deputy Chairman, Sir, we appreciate that it will be a little bother on the associate's comfort. But, versus public interest, the associate should be able to furnish the statement if there is nothing wrong. We are either for fighting corruption and economic crimes or burying it under the sand.

Mr. Temporary Deputy Chairman, Sir, Members out there in political rallies and here in the House are asking for the progress of the war against corruption. You are here putting an end to the

war against graft!

Finally, Section 28 calls for the production of records. It reads:-

"That the Commission may, by notice in writing, require a person, whether or not suspected of corruption or economic crimes, to produce specified records in his or her possession, that may be required for an investigation, and require that person or any other to provide an explanation"

Here again, it is a suspect and his or her associates.

Mr. Temporary Deputy Chairman, Sir, this is a matter that touches many and, in future, it will touch many. It touches on suspects and their surrogates. It is quite surprising that we have forgotten what we said to this House in 2003. I just thought I should go at length, so that what we are doing today is permanently on record.

Mr. Temporary Deputy Chairman, Sir, I beg to strongly oppose the Committee's amendment and also reiterate that they are motivated by personal interest or surrogates and their members.

I beg to support the Attorney-General's amendment.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, some of the statements that the Minister has given disparage our Committee! It is not very good for this House. The Committee is a Committee of this House. It works on behalf of this House. It has more time than we do to call for opinions of experts and any other interested parties. When this Committee comes to this House, it comes in good faith to advise us on what is good for this country and this House. I do not think that it is good for the Minister to rise and say that the Committee was doing something "for personal interests". We do not know whether a Committee has collective "personal interest". But let me say this: When we passed this law, it was contrary to our jurisprudence in this country. Our jurisprudence says that you are innocent until proven guilty. This jurisprudence is imported from France, which is not under the Commonwealth. It says that, so long as you are suspected, you are guilty until you prove yourself innocent. We are not going to change our jurisprudence in this country because some people want to fight their enemies.

So, we are saying that this law, whether it was passed in 2001 or 2002, was a bad law! It is still a bad law today. We are going to support this Committee because we think it has sufficient time. Even the Minister and the Attorney-General had sufficient time to advise and talk to the Committee. They should not come here and allege personal interest.

With those few remarks, I support.

**Dr. Murungaru:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I have heard the Minister for Justice and Constitutional Affairs refer to a case that involved me, personally. I have also heard her declare repeatedly that there is a personal interest in this proposed amendments by the Committee. First of all, I would like to put it on record that I have argued with the Kenya Anti-Corruption Commission (KACC) in that case whose judgement has just been tabled. I went to court to seek certain specific express declarations by the court, and that is: I cannot be asked to incriminate myself. Indeed, I asked that the court declare that the notice which had been issued to me pursuant to the sections in question were impossible to comply with. Indeed, both the High Court, that is, the constitutional court, and the Court of Appeal agreed with me.

Therefore, as for the case which had been instituted against me, the prosecution by the KACC, was terminated unconditionally. I have no case in court and, therefore, I have no interest.

The failure of the amendment by the Committee to go through will not affect my matter, personally. So, I want to put that on record.

*(Applause)*

Mr. Temporary Deputy Chairman, Sir, with your concurrence again, may I say this: Regarding these particular provisions--- I am not a lawyer myself. Those who were arguing are lawyers and have the benefit of their learning. But as an ordinary, but fairly informed mwananchi, a legislator and a lawmaker in this House, I would like to say that there is something wrong with these provisions that make it possible for the Director of the KACC to serve a notice to ask you to declare your wealth, which is not specified, the wealth of your mother, grandmother, children, friends, including the Chair itself! There is something wrong with that kind of law.

*(Applause)*

Mr. Temporary Deputy Chairman, Sir, may I finish by saying the following: Because of the inadequacy in this law, it has become possible for Integrity Centre to be converted from an investigative agency into a secretariat of a political party of a strange nature. Nothing is happening there except politics directed at foreigners so that their whims can be satisfied, but not in the public interest of the citizens of this country.

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

*(Applause)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members! Let us hear Prof. Kibwana briefly, and then I will put the Question!

**The Minister for Lands** (Prof. Kibwana): Mr. Temporary Deputy Chairman, Sir, I want, in supporting the Attorney-General, to state as follows: If we delete Sections 26, 27 and 28 of this anti-corruption law, we are in essence killing the soul of the anti-corruption law. As hon. Karua said, it will be tantamount to repealing the law.

Mr. Temporary Deputy Chairman, Sir, although there is apparent jubilation in Parliament today, this is a very sad moment for our anti-corruption efforts. This morning, there was a Motion that was fronted by an hon. Member of the Opposition in which the Government was being accused of not following its anti-corruption crusade. This afternoon, a law is being suggested, which is actually going to annul the anti-corruption law for all intents and purposes. It is not correct that if, as Minister for Lands, I become rich in one month and I am told to explain how I have got my wealth, I will be judged guilty because the mere fact of appearing before the KACC to give evidence does not in itself make you guilty as if you have gone before a court of law. So, what hon. Kajwang said is not correct because the KACC is not a court. It does not adjudge you either guilty or innocent.

**An hon. Member:** *Tosha! Tosha!*

**The Minister for Lands** (Prof. Kibwana): Mr. Temporary Deputy Chairman, Sir, as I conclude, and I do not want to be intimidated, I want to state that I have been a student of corruption. One of the first books that I wrote with colleagues was the "*Anatomy of Corruption in Kenya*," which almost led, actually, to my own physical death. I know that, the world over, the jurisprudence is that where public officials have unexpected wealth, before anti-corruption commissions, they can show how they came to gain that wealth. If these three sections are defeated---

Mr. Temporary Deputy Chairman, Sir, I do not want to talk about any court cases and so on. I am simply addressing the law as we passed it in 2003. If these sections are defeated, we can as very well kiss goodbye the anti-corruption crusade in this country courtesy of the Opposition!

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I will be



very brief.

A few minutes ago, there was spirited defence in terms of the wisdom and decision of the House in leaving out the Government within the KACC Advisory Board in 2003. I now hear a total reversal; that in 2003, we made a mistake by including these Sections 26, 27 and 28. The reason behind the inclusion of Sections 26, 27 and 28 as sound.

Let me say that if a law is being abused by the implementor, that should not be the reason for deleting the law. That is tantamount to throwing away the baby with the bath water. What we need is to address the issue of the abuse of the law, but the intention of the law must be maintained. For the benefit of the hon. Members of this House, because it is important, as we think of the fight against corruption where "A" bribes "B," and "B" gets the benefit of the money, it will take us to bring "A" and "B" together to come and say "I bribed "B". "A" will not incriminate himself by saying "I bribed the other one," because bribing is a crime.

The only way that we are going to tackle economic crimes is by tracing them from the person who has been bribed through circumstantial evidence, because there is no way the briber and the bribed are ever going to come and give evidence against one another, because they will be incriminating themselves; which is exactly the principle that is being advocated here. So, this principle should be preserved. If we delete these sections, we know who is for the fight against corruption and who does not want the fight against corruption to continue in this country.

Mr. Temporary Deputy Speaker, Sir, I beg to oppose the amendment by the Committee.

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

*(Sections 26, 27 and 28 deleted)*

**Mr. Syongo:** Mr. Temporary Deputy Speaker, Sir, I beg to move:-  
THAT, Section 47(B) be deleted.

There are two reasons why I am making this proposal on behalf of the Committee. One, if you look at the existing Anti-Corruption and Economic Crimes Act, Section 47 provides very adequately and comprehensively for offences under this Act. Further, Section 48 of the same Act actually now provides for the penalties in respect of the offences under this Act.

Mr. Temporary Deputy Chairman, Sir, the proposed amendment in the Bill says:-

"THAT, the provisions of Sections 20 to 23 of Chapter 5 of the Penal Code shall apply to offences under this Act."

Mr. Temporary Deputy Chairman, Sir, that means that you are going to have two sets of provisions. One set will be under this Anti-Corruption and Economic Crimes Act and another one under the Penal Code. We are not being fair to the Judiciary because to which set of provisions is the Judiciary going to address itself? Secondly, if you look at the penalties provided for under the Penal Code and under this Act, you will find that those provided for under the former are very lenient compared to the latter.

The Committee, therefore, suggests that, one, let us have internal consistency by adhering to the provisions of Section 47 of the Act as it is without cross-referencing to the Penal Code. Secondly, let us opt for the stiffer and more stronger penalties provided for under this Act instead of the lenient penalties provided for under the Penal Code.

Mr. Temporary Deputy Chairman, Sir, I beg to move and I wish to request hon. Muturi to second.

**Mr. Muturi:** Mr. Temporary Deputy Chairman, Sir, I second because this is just tidying up the law. I think the Attorney-General should not find difficulties in agreeing with the Committee.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose. I was looking for the Penal Code. This Section is not trying to create new offences. If you look at Chapter 5 of the Penal Code and read it carefully, it is about parties to offences. It deals with the general principles of law regarding the person who has actually committed the offence and those who assisted him before and this is accessory before the fact and those who have assisted him afterwards, accessory after the fact. I want to make it quite clear that as far as the offences under this Act are concerned, they are also governed by those general principles of law. This means that if you have assisted a corrupt person, you are also an accessory before the fact. If you help him afterwards, you are an accessory after the fact. So, it is going to repeat what is really the general principles of law and I see no reason why this House should be involved in actually deleting a proposal which is in conformity with what, we lawyers who are well versed in criminal law, know are parties to the offence.

So, I really oppose this proposal.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment by the Committee and to support the arguments by the Attorney-General. By the Attorney-General refusing the proposed amendment, we are saying that those who aid and abet corruption are not principal offenders. This is a well known principle even within the Penal Code; that a person who aids or abets is as guilty of an offence as a person who commits it. I think it is important that we stick to the principles of law that we have upheld in other laws.

Mr. Temporary Deputy Chairman, Sir, I beg to support the arguments by the Attorney-General by opposing the Committee's amendments which seems to be aimed at scuttling anti-corruption efforts.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, I must now put the Question---

**Mr. Sungu:** But, Mr. Temporary Deputy Chairman, Sir, I have---

**Hon. Members:** *Keti chini!* Sit down, Mr. Sungu!

**Mr. Sungu:** Let me---

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Mr. Sungu! Please, address the Chair and not your colleagues! Talk to me!

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, because of the hostility, I withdraw. But I have a right to speak as a Member of this House! No other hon. Member can stop me from talking!

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Mr. Sungu! I have already ruled--- I totally agree with you. No other hon. Member can stop you from talking!

*(Mr. Sungu stood up in his place)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Mr. Sungu! Could you resume your seat?

**Hon. Members:** Sit down, Mr. Sungu! What is wrong with you?

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Mr. Sungu! Only the Chair can stop you from talking. The Chair does now stop you from speaking!

*(Question, that the words to be*

*left out, be left out,  
put and agreed to)*

*(Section 47B deleted)*

Mr. Marende, let us move on to the next amendment!

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

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended-

(i) In the amendments relating to Section 55, by deleting the proposed Sub-section 9;

The Minister is seeking to introduce Sub-section 9 to Section 55 of the Act. The essence of it is that Sub-section 9 seeks to make the application of Section 56(9) retroactive. As I cited earlier, it is a cardinal basic and tried principle of criminal law, that it shall not apply retroactively. I cited, in support of that, very rationally, provisions of Section 77(4) of our Constitution, which safeguards that criminal principle in our laws. This provision will have the effect of reversing the provisions of our Constitution by applying this law retroactively.

With those few remarks, I beg to move.

**Mr. Ojode:** Mr. Temporary Deputy Chairman, Sir, I beg to second.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I must really oppose this proposal. Why?

First of all, I think it is a tried constitutional law that you cannot create an offence which will become effective retroactively. But what we are talking about here is not criminal law. It is civil law. In civil law, even the Constitution itself permits this House to enact a legislation that will be effective, retroactively. This section is about a civil process on the issue of unexplained assets. The whole of Section 55 of the Act is what happens in those situations. What happens is that the Commission goes to court under what we call an originating summon. The Commission does not go to court to prosecute under this section.

To prosecute an offence, there must be an originating summon. That originating summon, by itself, is a civil process. Therefore, what I am proposing here is constitutional. It is proposed in the interest of fighting corruption and economic crimes effectively, particularly on the issue of explaining unexplained assets.

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

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment by the Committee. The amendment proposed by the Attorney-General seeks to make it possible to pursue proceeds of past corruption by way of forfeiture of unexplained assets. If anyone has more assets than they can explain how they acquired them, the assets are forfeited to the State. This is a message that corruption does not pay. It has nothing to do with criminal proceedings. This is a simple civil procedure only for economic crime. So, let us not mislead the House that the Constitution prohibits retroactive effects of a law. It is true it does but only for criminal cases.

This is a very important provision. Otherwise, this Parliament then should forget about the recovery of the stolen billions. I beg to strongly oppose the amendment by the Committee, which I think is mischievous and support the one by the Attorney-General.

**Mr. Sungu:** Thank you, Mr. Temporary Deputy Chairman, Sir, for preserving my

constitutional rights as the hon. Member for Kisumu Town East. Allow me to differ with my colleagues in this House. Today, the shoe is worn on the other side and the voting machine is on this side. We are doing a lot of untold damage---

*(Applause)*

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

I do not see what is wrong with that!

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order! Order! Order, hon. Members! Order, Messrs. Keter and Omamba! Please, sit down! It is unacceptable that any hon. Member's freedom to speak as he or she feels is curtailed by other hon. Members. When an hon. Member stands up to speak, let us remember that he has been elected by a whole constituency. It is not just one voice which is speaking. Therefore, we must give him his due respect and freedom to say as he pleases. Therefore, Mr. Sungu has a right to express his opinion.

You may continue, Mr. Sungu, uninterrupted!

*(Mr. Muturi stood up  
in his place)*

Mr. Muturi, I said that he has to continue uninterrupted! Order! Order!

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, if I have offended anyone, then I apologise profusely.

I wish to oppose this amendment because I do not see what is wrong with recovering money stolen from the poor people of Kenya. My heart and conscience would not be clear if I sided with anybody who opposes a law that would help people recover what has been stolen from them and belongs to them by right?

I beg to oppose.

*(Applause)*

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

*(Subsection 9 deleted)*

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members! We only have a few minutes! You can hold on! I do not think we have time to handle the next item, on these amendments. I, therefore, request that Attorney-General to move that the Committee do report progress to the House and seek leave to sit again.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report its progress to the House and seek leave to sit again.

*(Question proposed)  
(Question 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, the Committee of the whole House is considering The Statute Law (Miscellaneous Amendments) Bill and has instructed me to report progress and beg 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 Minister for Justice and Constitutional Affairs** (Ms. Karua) seconded.

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

**Mr. Deputy Speaker:** Hon. Members, just before we adjourn, I want to bring it to your attention that the Chair has noted that, very often, as the Chair leaves, some of you exchange words across the Floor. I just want to remind you that the House shall remain in silence when the Chair leaves the Chamber.

**ADJOURNMENT**

Hon. Members, it is now time to adjourn the proceedings of today. The House is, therefore, adjourned until tomorrow, Thursday, 13th September, 2007, at 2.30 p.m.

The House rose at 7.00 p.m.